

**CALIFORNIA COASTAL COMMISSION**

NORTH CENTRAL COAST DISTRICT  
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**W 5.5a**

Filed: April 20, 2007  
49<sup>th</sup> Day: June 8, 2007  
Staff: YinLan Zhang—SF  
Staff Report: April 26, 2007  
Hearing Date: May 9, 2007  
Commission Action:

**APPEAL STAFF REPORT  
SUBSTANTIAL ISSUE DETERMINATION**

**APPEAL NO.:** A-2-HMB-07-015

**APPLICANT:** Francisco Oliva

**LOCAL GOVERNMENT:** City of Half Moon Bay

**LOCAL DECISION:** Approval with Conditions

**PROJECT LOCATION:** 2788 Pullman Avenue, Half Moon Bay

**PROJECT DESCRIPTION:** Construction of a 2,500 square-foot single family residence on a 5,000 square-foot lot.

**APPELLANTS:** Commissioners Reilly and Commissioner Blank

**STAFF  
RECOMMENDATION:** Substantial Issue Exists;

**SUBSTANTIVE FILE  
DOCUMENTS:**

1. City of Half Moon Bay Planning Commission December 14, 2006 Staff Report for PDP 004-006
2. City of Half Moon Bay Planning Commission March 22, 2007 Staff Report for PDP 004-006
3. Pullman Ditch Biological Resource Assessment, H.T. Harvey Associates, November 3, 2006
4. City of Half Moon Bay Local Coastal Program.

**EXECUTIVE SUMMARY**

The City of Half Moon Bay approved with conditions a 2,500 square-foot single family residence on a 5,000 square-foot lot at 2788 Pullman Avenue.

The appellants contend that the approved development is inconsistent with the sensitive habitat protection policies of the City's certified LCP because the approved development does not meet the required minimum setback for sensitive habitats that support the San Francisco garter snake and California red-legged frog or incorporate the necessary measures to ensure that the approved development would be sited and designed to prevent impacts that could significantly degrade the environmentally sensitive habitat and would be compatible with the maintenance of biological productivity of the sensitive habitat.

Commission staff analysis indicates that the appeal raises significant questions regarding whether the development approved by the City is consistent with the sensitive habitat protection policies in the City's certified LCP. Commission staff recommends that the Commission find that the project, as approved by the City, raises a substantial issue of conformity with the City's LCP Policies

**The motion to adopt the staff recommendation of Substantial Issue is found on page no. 2.**

### **STAFF NOTES**

Section 30625(b) of the Coastal Act requires the Commission to hear an appeal unless the Commission determines that no substantial issue is raised by the appeal. Since the staff is recommending substantial issue, unless there is a motion from the Commission to find no substantial issue, the substantial issue question will be considered moot, and the de novo portion of the appeal hearing on the merits of the project will be held in the future.

If the Commission decides to hear arguments and vote on the substantial issue question, proponents and opponents will have three minutes per side to address whether the appeal raises a substantial issue. It takes a majority of Commissioners present to find that no substantial issue is raised. The only persons qualified to testify before the Commission on the substantial issue question are the applicant, persons who made their views known before the local government (or their representatives), and the local government. Testimony from other persons regarding substantial issue must be submitted in writing.

## **1.0 STAFF RECOMMENDATION**

Pursuant to Section 30603(b) of the Coastal Act and as discussed in the findings below, the staff recommends that the Commission determine that a substantial issue exists with respect to the grounds on which the appeals have been filed. The proper motion is:

### **MOTION**

*I move that the Commission determine that Appeal No. A-2-HMB-07-015 raises NO substantial issue as to conformity with the certified Local Coastal Program with respect to the grounds on which an appeal has been filed pursuant to Section 30603 of the Coastal Act.*

## **STAFF RECOMMENDATION**

Staff recommends a **NO** vote. Failure of this motion will result in a de novo hearing on the application, and adoption of the following resolution and findings. Passage of this motion will result in a finding of No Substantial Issue and the local action will become final and effective. The motion passes only by an affirmative vote of the majority of the appointed Commissioners present.

## **RESOLUTION TO FIND SUBSTANTIAL ISSUE**

The Commission hereby finds that Appeal No. A-2-HMB-07-015 presents a substantial issue with respect to the grounds on which the appeal has been filed under § 30603 of the Coastal Act regarding consistency with the Certified Local Coastal Plan and/or the public access and recreation policies of the Coastal Act.

### **2.0 PROJECT BACKGROUND**

#### **2.1 Local Government Action**

On December 28, 2006 Francisco Oliva submitted an application for a coastal development permit to construct a 2,500 square-foot two-story single-family residence on a 5,000 square-foot lot at 2788 Pullman Avenue.

On December 14, 2006, the City of Half Moon Bay Planning Commission considered the permit application and continued the hearing to allow staff to work with the applicant on the redesign of the house to reduce encroachment into the neighboring home and to comply with the LCP's buffer requirements for sensitive habitats.

On March 22, 2007, Planning Commission considered and approved with conditions the coastal development permit application.

#### **2.2 Filing of Appeal**

The Commission received the Notice of Final Action for the City's action on the CDP application for the approved development on April 11, 2007 (Exhibit 4). In accordance with the Commission's regulations, the 10-working-day appeal period ran from April 12 through April 25, 2007 (14 CCR Section 13110). On April 20, 2007, within 10 working days of receipt by the Commission of the Notice of Final Local Action, Commissioners Steve Blank and Mike Reilly appealed the City's action on the CDP to the Commission (Exhibit 5).

Pursuant to Section 30621 of the Coastal Act, an appeal hearing must be set within 49 days from the date an appeal of a locally issued coastal development permit is filed. The appeal on the above-described decision was filed on April 20, 2007 and the 49<sup>th</sup> day is on June 8, 2007. The only Commission hearing within the 49-day period is being held May 9-11, 2007.

In accordance with Section 13112 of Title 14 of the California Code of Regulations, on April 25, 2007, staff requested all relevant documents and materials regarding the subject approval from the City to enable staff to analyze the appeal and prepare a recommendation as to whether a substantial issue exists. The regulations provide that a local government has five working days from receipt of such a request from the Commission to provide the relevant documents and materials. To date, the Commission has not received the local government record.

### **2.3 Appeal Process**

After certification of Local Coastal Programs (LCPs), the Coastal Act provides for limited appeals to the Coastal Commission of certain local government actions on coastal development permits (Coastal Act Section 30603).

Section 30603 states that an action taken by a local government on a coastal development permit application may be appealed to the Commission for certain kinds of developments, including approval of developments located within certain geographic appeal areas, such as those located between the sea and the first public road paralleling the sea or within three hundred feet of the mean high tide line or inland extent of any beach or top of the seaward face of a coastal bluff, or those located in a sensitive coastal resource area. Furthermore, developments approved by counties may be appealed if they are not designated the "principal permitted use" under the certified LCP. Finally, developments that constitute major public works or major energy facilities may be appealed, whether approved or denied by the city or county.

The proposed development is appealable to the California Coastal Commission because it is located between the sea and the first public road paralleling the sea.

## **3.0 FINDINGS AND DECLARATIONS**

The Commission hereby finds and declares:

### **3.1 Project Location and Description**

The approved development is a 2,500 square-foot single-family residence on a 5,000 square-foot residentially zoned (R-1) lot at 2788 Pullman Avenue, adjacent to and north of Pullman Ditch (Exhibits 1 and 2). Pullman Ditch is a manmade earthen agricultural ditch (Exhibit 9) in northern Half Moon Bay that carries storm and irrigation flows from agricultural lands east of Highway One. The drainage ditch provides seasonal flows and is considered an intermittent stream by the City. The lot is approximately 50 feet wide and 100 feet long, with the front of the lot facing east onto Pullman Avenue, and the rear side facing west. The lot line closest to Pullman Ditch is the southern side lot line. Another residence is north of the project site, and a vacant lot and Pullman Avenue abut the west and east sides of the subject property respectively (Exhibit 2).

The City's conditions of approval require the prevention of polluted stormwater discharge, installation of an habitat protection fence to prevent snakes and frogs from entering the project site, and a redesign of the house so that the garage would face south instead of north to address the neighbor's concerns. The approved house would be set back 42 feet from the edge of the

riparian vegetation next to Pullman Ditch and 5 feet from the southern side lot line. Improvements such as stone path and landscaping would be installed within the southern side setback area, between the lot line and the house, and would thus be less than 42 feet from the edge of the Pullman Ditch riparian vegetation (Exhibit 3).

### **3.2 Substantial Issue Analysis**

Section 30603(b) (1) of the Coastal Act states:

*The grounds for an appeal pursuant to subdivision (a) shall be limited to an allegation that the development does not conform to the standards set forth in the certified local coastal program or the public access policies set forth in this division.*

The contentions raised in the appeal present potentially valid grounds for appeal in that they allege the project's inconsistency with policies of the certified LCP.

Public Resources Code Section 30625(b) states that the Commission shall hear an appeal unless it determines:

*With respect to appeals to the commission after certification of a local coastal program, that no substantial issue exists with respect to the grounds on which an appeal has been filed pursuant to Section 30603.*

The term substantial issue is not defined in the Coastal Act. The Commission's regulations simply indicate that the Commission will hear an appeal unless it "finds that the appeal raises no significant question" (Cal. Code Regs., tit. 14, section 13115(b).) In previous decisions on appeals, the Commission has been guided by the following factors:

1. The degree of factual and legal support for the local government's decision that the development is consistent or inconsistent with the certified LCP and with the public access policies of the Coastal Act;
2. The extent and scope of the development as approved or denied by the local government;
3. The significance of the coastal resources affected by the decision;
4. The precedential value of the local government's decision for future interpretation of its LCP; and
5. Whether the appeal raises only local issues, or those of regional or statewide significance.

Even where the Commission chooses not to hear an appeal, appellants nevertheless may obtain judicial review of the local government's coastal permit decision by filing a petition for a writ of mandate pursuant to Code of Civil Procedure, Section 1094.5.

In this case, for the reasons discussed further below, the Commission exercises its discretion and determines that the development as approved by the City presents substantial issue.

### Appellant's Contentions

The appellants contend that the approved development is inconsistent with the sensitive habitat protection policies of the City of Half Moon Bay's certified LCP because the approved development is not setback far enough from Pullman Ditch and its associated riparian area, which are sensitive habitats and, more specifically, habitats for rare and endangered species. The approved development does not meet the minimum setbacks required by the certified LCP or incorporate adequate measures to prevent impacts that would degrade the sensitive habitat. Specifically the appellants contend:

Pullman Ditch and its associated riparian habitat meet the definition of sensitive habitat as well as the definition of habitat of rare and endangered species in the LCP because it provides habitat for the San Francisco garter snake and the California red-legged frog. Additionally, because Pullman Ditch is an intermittent stream, it further qualifies as sensitive habitat under the LCP. As such, development adjacent to the ditch and its associated riparian zone is required to meet the standards set forth in LUP policies 3-3, 3-21, 3-23, 3-24 as well as their corresponding implementing ordinances in chapter 18.38 of the Zoning Code.

The house approved by the City, however, does not conform with the above policies because, as evidenced in the record, the City does not consider Pullman Ditch habitat for the San Francisco garter snake or the California red-legged frog, and therefore has not provided for the protection of this sensitive habitat in its approval of the development. The approved house would only be set back 42 feet from the edge of the riparian vegetation, which is inconsistent with Section 18.38.085 of the Zoning Code/IP that requires a 50-foot buffer for habitat of rare and endangered species and Policy 3-3 of the LUP that requires development adjacent to sensitive habitats to be sited and designed to prevent impacts that would significantly degrade the habitat. Moreover, while the City's condition of approval includes the requirement for installing an animal exclusion wall to keep the snake and frog from entering the project site, since the City does not consider Pullman Ditch habitat for the San Francisco garter snake or the California red-legged frog, it has not incorporated comprehensive measures in consultation with U.S. Fish and Wildlife Service and California Department of Fish and Game to adequately preserve the habitat or to prevent impacts that would significantly degrade the sensitive habitat. The approved development is thus inconsistent with LUP Policies 3-3, 3-21, 3-23, and 3-24 and their corresponding implementing ordinances in Chapter 18.38 of the Zoning Code/IP.

### Applicable LCP Policies

#### *Applicable LUP Policies*

#### 3-1 Definition of Sensitive Habitats

- (a) Define sensitive habitats as any area in which plant or animal life or their habitats are either rare or especially valuable and as those areas which meet one of the following criteria: (1) **habitats containing or supporting “rare and endangered” species ...**, (2) all perennial and intermittent streams and their tributaries, ... (6) lakes and ponds and adjacent shore habitat ...[Emphasis added.]

### 3-3 Protection of Sensitive Habitats

- (a) Prohibit any land use and/or development which would have significant adverse impacts on Sensitive Habitat areas.
- (b) Development in areas adjacent to sensitive habitats shall be sited and designed to prevent impacts that could significantly degrade the Sensitive Habitats. All uses shall be compatible with the maintenance of biologic productivity of such areas.

### 3-4 Permitted Uses

- (a) Permit only resource-dependent or other uses which will not have a significant adverse impact in sensitive habitats.
- (b) In all sensitive habitats, require that all permitted uses comply with U.S. Fish and Wildlife Service and State Department of Fish and Game regulations.

### 3-5 Permit Conditions

- (a) Require all applicants to prepare a biologic report by a qualified professional selected jointly by the applicant and the city to be submitted prior to development review. The report will determine if significant impacts on the sensitive habitats may occur, and recommend the most feasible mitigation measures if impacts may occur.

The report shall consider both any identified sensitive habitats and areas adjacent. Recommended uses and intensities within the sensitive habitat area shall be dependent on such resources, and shall be sited and designed to prevent impacts which would significantly degrade areas adjacent to the habitats. The city and the applicant shall jointly develop an appropriate program to evaluate the adequacy of any mitigation measures imposed.

### 3-21 Designation of Habitats of Rare and Endangered Species

In the event the habitat of a rare and endangered species is found to exist within the City, revise the Habitat Areas and Water Resources Overlay to show the location of such habitat. Any habitat so designated shall be subject to Policies 3-22 through 3-31.

3-23 Permit Conditions

Require, prior to permit issuance, that a qualified biologist prepare a report which define requirement of rare and endangered organisms.... (4) any development must not impact the functional capacity of the habitat, and (5) recommend mitigation if development is permitted within or adjacent to identified habitats.

3-24 Preservation of Critical Habitats

Require preservation of all habitats of rare and endangered species using the policies of this Plan and other implementing ordinances in the City.

*Applicable IP/Zoning Code Policies*

18.38.020 Coastal Resource Areas. The Planning Director shall prepare and maintain maps of all designated Coastal Resource Areas within the City. Coastal Resource Areas within the City are defined as follows:

- A. Sensitive Habitat Areas. Areas in which plant or animal life or their habitats are either rare or especially valuable, and/or as designated on the Habitat Areas and Water Resources Overlay Map. Areas considered to be sensitive habitats are listed below.

Sensitive Habitat	
1.	sand dunes
2.	marine habitats
3.	sea cliffs
4.	riparian areas;
5.	wetlands, coastal tidelands and marshes, lakes and ponds and adjacent shore habitats
6.	coastal and off-shore areas containing breeding and/or nesting sites or used by migratory and resident water-associated birds for resting and feeding
7.	areas used for scientific study and research concerning fish and wildlife, and existing game or wildlife refuges and reserves
8.	habitats containing or supporting unique species or any rare and endangered species defined by the State Fish and Game Commission
9.	rocky intertidal zones
10.	coastal scrub community associated with coastal bluffs and gullies

18.38.050 Environmental Evaluation Standards. Projects proposed within Coastal Resource Areas shall be evaluated in an Initial Study and any necessary subsequent C.E.Q.A.[California Environmental Quality Act] documents according to the following general standards (in addition to those set forth in CEQA guidelines):



A. Development and Land Use:

1. Shall be prohibited when significant adverse impacts on coastal resource areas would occur as a result.
2. Shall be sited and designed to prevent impacts that could significantly degrade adjacent sensitive habitat areas or significantly degrade areas adjacent to sensitive habitat areas.
3. Shall be compatible with the maintenance of biologic productivity of any adjacent sensitive habitat areas.
4. Shall be permitted within sensitive habitat areas only if they are resource-dependent uses or other uses which will not have any significant adverse environmental impacts, and if the uses comply with U.S. Fish and Wildlife Service and State Department of Fish and Game regulations.
5. Shall assure stability and structural integrity, and neither create nor contribute significantly to erosion, geologic instability or destruction of the site or surrounding area or in any way require the construction of protective devices that would substantially alter natural land forms along bluffs and cliff, and shall minimize risks to life and property in hazard areas.
6. Shall comply with the restrictions listed in this Title for each coastal resource area, and with all other applicable sections of the City's Local Coastal Program Land Use Plan.

18.38.085 Habitats for Rare and Endangered Species.

A. Rare and Endangered Species. The potential exists for any of the following Rare and Endangered Species to be found within the San Mateo County Coastal Area and therefore within the City of Half Moon Bay:

1. Animals: the San Francisco Garter Snake, California Least Tern, California Black Rail, California Brown Pelican, San Bruno Elfin Butterfly, San Francisco Tree Lupine Moth, Guadalupe Fur Seal, Sea Otter, California Brackish Water Snail, Globose Dune Beetle

...

D. **Buffer Zones. The minimum buffer surrounding a habitat of a rare or endangered species shall be 50 feet.** [Emphasis added.]

Discussion

The appellants contend that the approved development is inconsistent with the LCP's sensitive habitat protection policies because (1) the approved development does not meet the setback requirement for sensitive habitat, specifically, the 50-foot setback required for "habitats for rare and endangered species" as provided in Section 18.38.085 of the Zoning Code/IP, and (2) the approved development does not incorporate adequate mitigation measures to prevent impacts that could significantly degrade the environmentally sensitive habitats that support the federally

and state endangered San Francisco garter snake and the federally threatened, state species of concern, California red-legged frog and to ensure that the development would be compatible with the maintenance of biological productivity of the sensitive habitat.

### *Setbacks*

The approved single-family residence would be located 42-feet from the edge of the riparian vegetation at Pullman Ditch. Associated landscaping improvement for the residence would be less than 42 feet from the edge of the riparian vegetation. The minimum required buffer for habitats for rare and endangered species in Section 18.38.085 of the Zoning Code/IP is 50 feet. In addition, Policy 3-3 of the LUP requires development adjacent to sensitive habitats to be sited and designed to prevent impacts that would significantly degrade the habitat. The City allowed the house to be located less than 50 feet from the edge of the riparian vegetation because although the City recognized that Pullman Ditch is sensitive habitat because it is an intermittent stream and the surrounding area is riparian corridor, both of which independently qualifies the area as sensitive habitat under Policy 3-1 of the certified LUP, the City did not find that Pullman Ditch and adjacent riparian habitat support the San Francisco garter snake or the California red-legged frog. As such, the City determined that Pullman Ditch does not meet the specific definition of "habitats for rare and endangered species," another type of sensitive habitat specifically identified in Policy 3-1 of the certified LUP and afforded extra protection by Policies 3-21, 3-23, and 3-24 of the certified LUP as well as Section 18.38.085 of the Zoning Code/IP.

The City's March 22, 2007 staff report states

The bio report does specify that below the stream bank there may be vegetation that provides habitat or cover for wildlife, it does not specify that that is the habitat of a rare or endangered species. In fact, the bio report concludes that no wildlife species listed as threatened or endangered under the Federal Endangered Species Act are likely to occur on the project site. Therefore, the requirement in the LCP that a buffer zone of a minimum of 50 feet surrounding a habitat of a rare or endangered species would not apply to the proposed project site.

The "bio report" referenced in the above City finding is the November 3, 2005 Pullman Ditch Biological Resources Assessment (H.T. Harvey and Associates) conducted for the purposes of a City maintenance project. Biologists from the California Department of Fish and Game (CDFG), and the U.S. Fish and Wildlife Service (USFWS) have commented on the biological report and disputed the report's conclusion that neither California red-legged frogs nor San Francisco garter snakes are likely to be present in Pullman Ditch.

Dave Johnston from CDFG states in his March 9, 2006 email to City staff (Exhibit 6):

We can't completely concur with the assessment's conclusion that California red-legged frogs (CRLF) would be very uncommon on the site and San Francisco garter snakes will not be present at all. The ditch is within the known range of these species and unsurveyed aquatic habitat is within easy dispersal distance.

We do concur that the species are not resident and that individuals seen here would be dispersing and/or foraging.

...

For any portions of this ditch or any other ditches in the area that contain ponded water or native riparian vegetation, we recommend a more in-depth biological evaluation, conducted with input from the Department and the United States Fish and Wildlife Service.

Lucy Triffleman from USFWS states in her email March 14, 2006 email to City staff (Exhibit 7):

The Service does not agree with the conclusion that SFGS are not found in the area and in fact proposes that the Pullman ditch corridor is almost certainly used by this species as well as the California red-legged frog as a migration corridor between breeding populations and feeding areas.

In another email dated March 27, 2007, Lucy Triffleman of USFWS wrote the following to the City's Planning Director (Exhibit 8):

Below is an email I sent to Don [City Planner] a year ago stating the Service's belief that this area is habitat both for the California red-legged frog and the San Francisco garter snake. This sentiment was also relayed to the City by my predecessor Mary Hammer as well as the former recovery branch chief Harry McQuillen. Therefore, the administrative record shows that the precedent has been set regarding the Service's position on the availability of habitat in the Pullman ditch area. The Service continues to maintain the position that habitat does exist in the area along and adjacent to Pullman Ditch.

The above determinations by biologists from CDFG and USFWS provide evidence, contrary to the City's finding, that Pullman Ditch and its associated riparian areas serve as habitat for the San Francisco garter snake and the California red-legged frog, and as such, meet the definition of habitats for rare and endangered species as specified in Section 18.38.085 of the Zoning Code. Furthermore, development adjacent to Pullman Ditch and its riparian zone is required by Section 18.38.085.D of the zoning code to provide a minimum 50-foot buffer area and required by LUP Policy 3-3 to be sited and designed to prevent impacts that would significantly degrade the habitat. As such, because the approved single-family house and associated improvements would be located less than 50 feet from the edge of the Pullman Ditch riparian vegetation, the appeal raises a substantial issue of conformity of the approved development with the City's certified LCP Policies.

### *Mitigation Measures*

The City's conditions of approval require the applicant to install a "habitat protection fence" designed to prevent snakes and frogs from entering the project site (Exhibit 4). The condition does not state that the fence is required to specifically protect the San Francisco garter snake or the California red-legged frog, but since those are the sensitive species most likely to be present on or near the site, presumably, the condition is crafted to address those species. However, as discussed above, because the City ultimately determined that Pullman Ditch and its riparian areas

are not habitat for the San Francisco garter snake or the California red-legged frog, no other conditions were incorporated in its approval of the single-family home to address the protection of these species.

LUP Policy 3-3 requires development adjacent to sensitive habitats to be sited and designed to prevent impacts that could significantly degrade the environmentally sensitive habitats and requires uses to be compatible with the maintenance of biological productivity of the sensitive habitat. LUP Policies 3-23, and 3-24 and Section 18.38.050 and 18.38.085 of the Zoning Code/IP require protection of all habitats of rare and endangered species. While the habitat protection fence could prevent San Francisco garter snake and California red-legged frog from entering the project site and be harmed during construction or by residential use, the City's approval did not address other potential impacts to the San Francisco garter snake and California red-legged frog that could result from the approved development. For instance, there are no measures such as seasonal restrictions or contractor education to ensure that development would be undertaken during a time when minimal risk to the species would occur or to ensure that if a snake or frog should enter the project site it would not be harmed. Because the approved development does not include comprehensive measures to adequately prevent impacts that would degrade the sensitive habitat in and around Pullman Ditch for the San Francisco garter snake and the California red-legged frog, the appeal raises a substantial issue of conformity of the approved development with the City's LCP Policies.

### **3.3 Conclusion—Substantial Issue**

Applying the factors listed in section 3.2 above further clarifies that the appeal raises substantial issue with respect to the conformity of the approved development with the policies of the Half Moon Bay LCP.

Regarding the degree of factual and legal support for the local government's decision that the development is consistent with the certified LCP, the City's findings for approval of the local CDP state that the approved project conforms to the policies of the LCP concerning sensitive habitats because since Pullman Ditch does not support any San Francisco garter snake or California red-legged frog, the approved development does not need to meet the minimum buffer requirements or incorporate the appropriate mitigation measures, as required by the LCP, to protect these sensitive species and their habitats. As discussed above, CDFG and USFWS biologists provided evidence that Pullman Ditch and its associated riparian area are habitats for the San Francisco garter snake and the California red-legged frog, and as such, there is a lack of factual and legal support for the City's finding that Pullman Ditch is not habitat for these species and the City's decision that the approved development adjacent to Pullman Ditch does not need to be sited and designed to prevent impacts to the sensitive habitat.

Regarding the significance of the coastal resources affected by the decision, the approved development is located next to Pullman Ditch and its associated riparian area, which meet the definition of both sensitive habitat and habitats for rare and endangered species under the LCP (Policies 3-1 and Section 18.38.085 of the Zoning Code) because Pullman Ditch is an intermittent stream, the adjacent area is a riparian corridor, and it serves as habitat for the special-status species San Francisco garter snake and the California red-legged frog. As such,

biological resources in Pullman Ditch and its surrounding areas, adjacent to the approved development, are significant.

Regarding the precedential value of the local government's decision for future interpretations of its LCP, as discussed above, the City's decision involved a finding that Pullman Ditch does not provide habitat for the San Francisco garter snake or the California red-legged frog even though there is evidence to the contrary, leading to the City's dismissal of applicable sensitive habitat LCP policies in its approval of the development. This finding and decision could lead the City to interpret the LCP similarly when other development proposals adjacent to Pullman Ditch are before the City's review. As such, the City's action on the approved development has precedential value for the City's future interpretation and implementation of its LCP.

Therefore, in conclusion, the Commission finds that the appeal does raise a substantial issue concerning the consistency of the approved development with the policies of the Half Moon Bay LCP regarding the protection of sensitive habitats.

### **3.4 Information Needed for *De Novo* Review of Application**

Section 30625(b) of the Coastal Act requires the Commission to hear an appeal unless the Commission determines that no substantial issue exists with respect to the grounds on which an appeal has been filed. Section 30621 of the Coastal Act instructs the Commission to provide for a *de novo* hearing on all appeals where it has determined that a substantial issue exists with respect to the grounds on which an appeal has been filed. If the Commission finds substantial issue as recommended above, staff also recommends that the Commission continue the *de novo* portion of the appeal hearing to a subsequent date. The *de novo* portion of the appeal hearing must be continued because the Commission does not have sufficient information to determine how development can be approved consistent with the certified LCP.

Given that the project the Commission will be considering *de novo* has come to the Commission after an appeal of a local government action, the Commission has not previously been in the position to request information from the applicant needed to determine if the project can be found to be consistent with the certified LCP. Following is a discussion of the information needed to evaluate the development.

#### Biologic Assessment

Policies 3-3 of the LUP requires development to be sited and designed to prevent impacts which could significantly degrade environmentally sensitive habitat areas and be compatible with the maintenance of biological productivity of such areas. Given these requisite findings for approval, *de novo* analysis of the coastal development permit application by the Commission would involve consideration of sensitive habitat issues specific to this development.

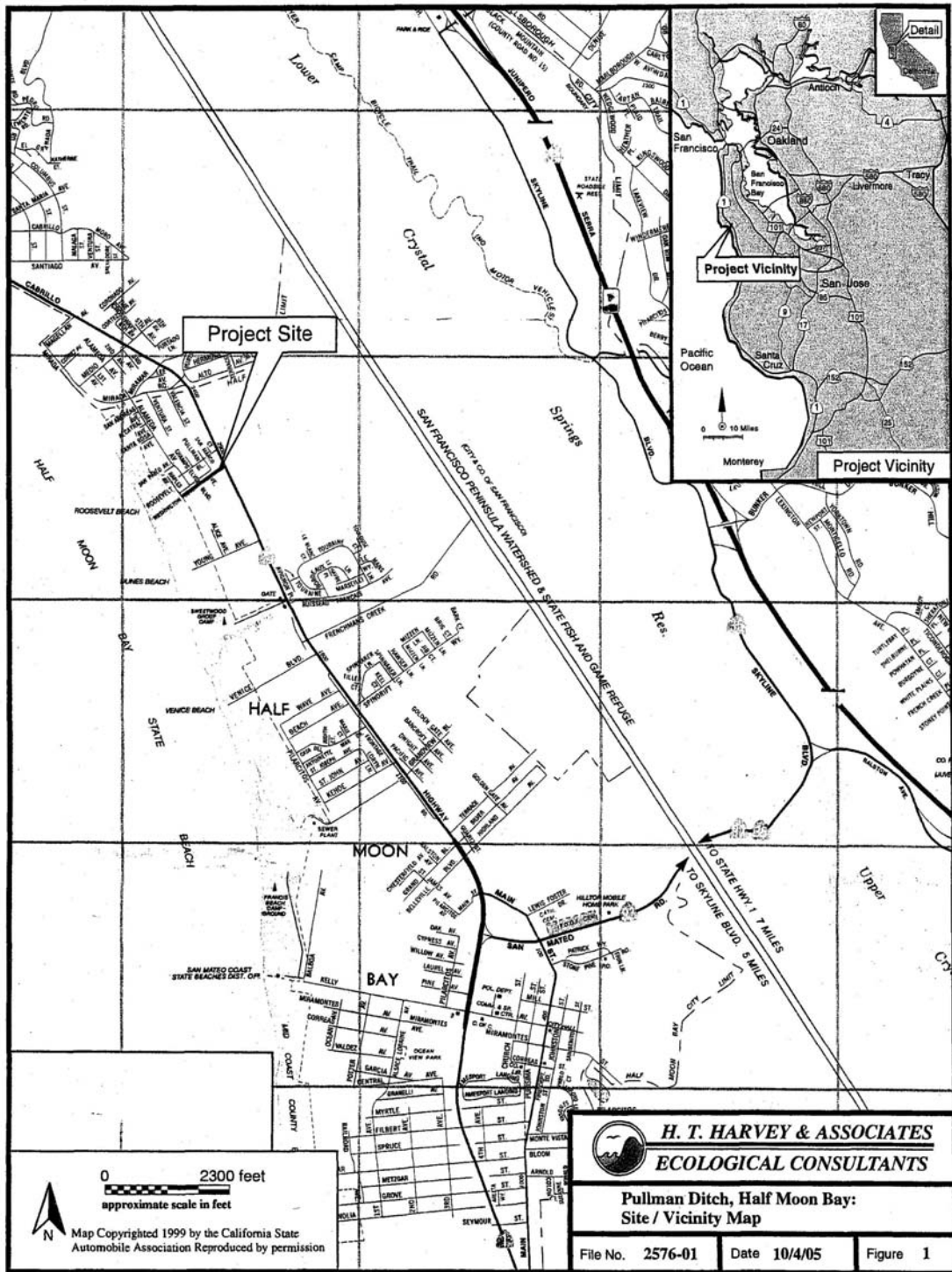
Policy 3-23 of the LUP and Section 18.38.035 of the Zoning Code/IP provide specific requirements for the preparation of biological report for development adjacent to sensitive habitats. The City prepared a biological report for Pullman Ditch for the purposes of determining biological impacts of City maintenance project and relied on the same report for the development

in question. However, as discussed above, concerns have been raised by biologists from CDFG and USFWS regarding the adequacy of the biological assessment used by the City in its approval of the development. Moreover, since the biological assessment was prepared for a different project, the report does not provide any analysis of specific impacts that could potentially result from the development in question. To assure the development's consistency with LCP provisions regarding the protection of the sensitive habitats, a biological assessment that meets the requirements of Policy 3-33 of the LUP and Section 18.38.035 of the Zoning Code/IP is needed. Information in the biological report should include but not be limited to the potential use of Pullman Ditch and its adjacent riparian and upland areas by the San Francisco garter snake and the California red-legged frog, the potential biological impacts of the specific development and appropriate mitigation measures to address those impacts.

Without the above information, the Commission cannot reach a final determination concerning the project's consistency of the project with the environmentally sensitive habitat area policies of the LCP. Therefore, before the Commission can act on the proposed project *de novo*, the applicant must submit all of the above-identified information.

**EXHIBITS:**

1. Regional Location Map
2. Project Site Aerial and Photo
3. Site Plan
4. Notice of Final Local Action
5. Appeal, filed by Commissioners Blank and Reilly
6. March 9, 2006 Email from Dave Johnston, CDFG to City staff
7. March 14, 2006 Email from Tracy Triffleman, USFWS to City staff
8. March 27, 2007 Email from Tracy Triffleman, USFWS to City staff
9. Photos of Pullman Ditch



A-2-HMB-07-015  
 Oliva SFR  
 Exhibit 1  
 Regional Location  
 Map

**C. Aerial Photo of the Site and Surrounding Area:**



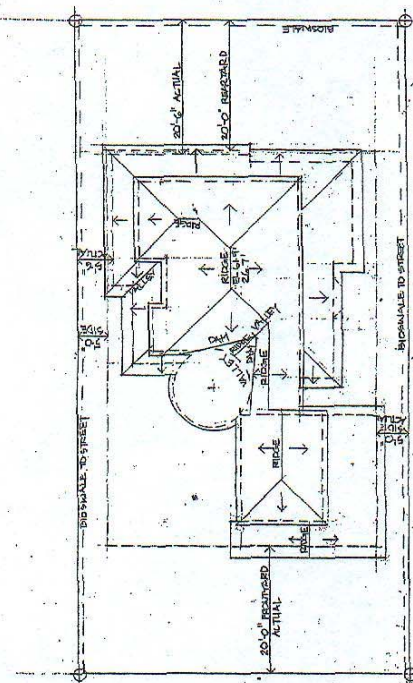
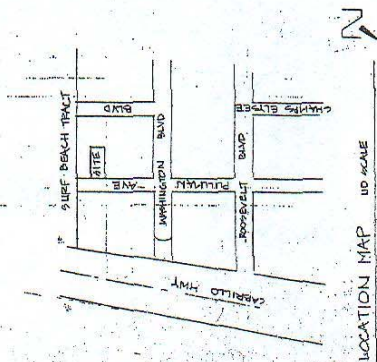
*(Property lines shown are approximate)*

**D. Existing Site Conditions:**





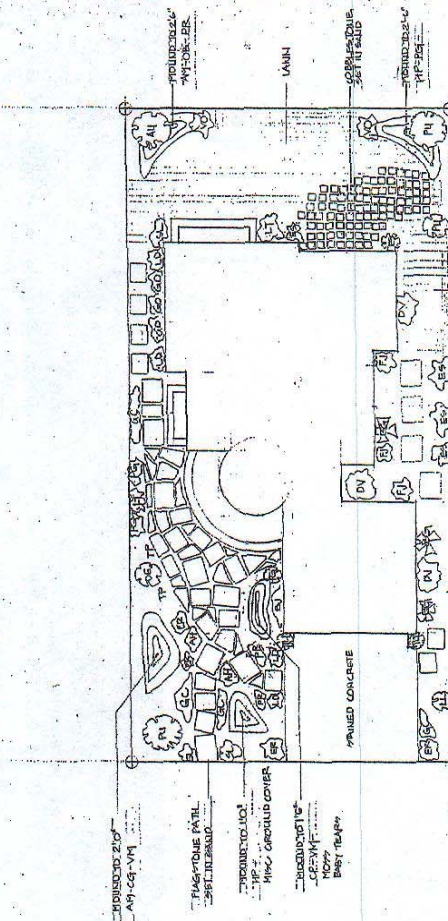
- SHEET INDEX
- 1. SITE PLAN, ROOF PLAN, LOCATION MAP
  - 2. GROUND LEVEL, RAISED PLAN, ERT PLAN
  - 3. UPPER LEVEL, FLOOR PLAN, ERT PLAN
  - 4. AREA, TERRACE
  - 5. BOUNDARY & TOPOGRAPHIC SURVEY



BUILDING LOCATION & ROOF PLAN SCALE 1/8" = 1'-0"  
 DIMENSIONS ON WALLS, PROPERTY BOUNDARIES, TO PRINT TO THE STREET,  
 TO BE THOUGH AS TO CONCRETE.

PLANT LIST

SPRINGBERRY TREE	5 GAL
HOP BUSH	1 GAL
RED SPANISH YACON	1 GAL
ORANGE BLOSSOM PLUM	1 GAL
SMOOTH HYDRANGEA	1 GAL
ORANGE CLEMATIS	1 GAL
FRAGRANT HYDRANGEA	1 GAL
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LANDSCAPE PLAN SCALE 1/8" = 1'-0"

A-2-HMB-07-015  
Oliva SFR  
Exhibit 3  
Site Plan

PLANNING DEPT.

JUL 14 2006

RECEIVED

**RECEIVED**

APR 11 2007

CALIFORNIA  
COASTAL COMMISSION

NOTICE OF FINAL ACTION  
Coastal Permit  
**City of Half Moon Bay Planning Department**  
**501 Main Street, Half Moon Bay CA 94019**  
**(650) 726-8250 Fax (650) 726-9389**

Date: April 6, 2007 File: PDP-004-06

Applicant: Francisco Oliva  
66 S. 22<sup>nd</sup> St.  
San Jose, CA 95116

Planner: Kathy Marx

This notice is being distributed to the Coastal Commission and those who requested notice. The following project is located within the appealable area of the Coastal Zone. The public hearing on the Coastal Development permit and was conducted by the Planning Commission at its regularly scheduled meeting of March 22, 2007.

Project Description: Coastal Development Permit for the construction of a 2,500 square foot two-story single-family residence on a standard size lot located at 2788 Pullman Avenue (APN 048-121-090)

Project Location: 2788 Pullman Avenue

Assessors Parcel Number: APN 048-121-090

COASTAL PERMIT APPROVED, BASED UPON Findings for Approval contained in the attached Resolution P-12-07 and Conditions of Approval contained in Exhibit A, as modified by the Planning Commission during the meeting.

The ten (10) working day period for appeal of this action to the Half Moon Bay Planning Commission ended on April 5, 2007.

Local Review of this Coastal Development Permit Application is now complete. The City's approval of this Coastal Development Permit application may be appealed to the California Coastal Commission in accordance with California Public Resources Code Section 30603. A 10 working-day appeal period for appeal of this action to the Coastal Commission will commence the next working day following the Commission's receipt of this notice of final local action. Please contact the Coastal Commission's North Central Coast District Office at (415) 904-5200 for further information about the Commission's appeal process.

**PLANNING COMMISSION RESOLUTION P- 12-07  
RESOLUTION FOR APPROVAL  
PDP-004-06**

**Coastal Development Permit for a  
Single-Family Residence Located at 2788 Pullman Avenue (APN 048-121-090)**

**WHEREAS**, an application was submitted requesting approval a Coastal Development Permit for of the construction of a two-story, single-family residence on a vacant parcel located at 2788 Pullman Avenue (APN 048-121-090), on a parcel zoned R-1, Single-Family Residential; and

**WHEREAS**, the procedures for processing the application have been followed as required by law; and

**WHEREAS**, the Architectural Review Committee of the City of Half Moon Bay conducted a noticed public meeting for the project on February 15, 2006, at which time all those desiring to be heard on the matter were given the opportunity to be heard; and

**WHEREAS**, the Planning Commission conducted a duly noticed public hearing on December 14, 2006, and continued at the March 22, 2007, public hearing, at which time all those desiring to be heard on the matter were given an opportunity to be heard; and

**WHEREAS**, the Planning Commission considered all written and oral testimony presented for their consideration; and

**WHEREAS**, the Planning Commission has determined that the construction of the proposed single-family residence are categorically exempt from CEQA under Section 15303(a); and

**WHEREAS**, the Planning Commission has made the required findings for approval of the project, set forth in Exhibit A to this resolution;

**NOW, THEREFORE, BE IT RESOLVED** that, based upon the Findings in Exhibit A and subject to the Conditions of Approval contained in Exhibit B, the Planning Commission approves the application (PDP-004-06).

**PASSED AND ADOPTED** by the City of Half Moon Bay Planning Commission at a duly noticed public hearing held on March 22, 2007, by the following vote:

AYES, Commissioners Poncini, McCarthy, Vice Chair Roman and Chair Allis

NOES, Commissioner Lansing

ABSENT,

RECUSED: Commissioners Snow and Jonsson

ATTEST:

  
Steve Flint, Planning Director

APPROVED:

  
Jeff Allis, Chair

A-2-HMB-07-015  
Oliva SFR  
Exhibit 4  
Notice of Final Local  
Action  
Page 2 of 14

**EXHIBIT A  
FINDINGS AND EVIDENCE  
PDP-004-06**

**Coastal Development Permit for a  
Single-Family Residence Located at 2788 Pullman Avenue (APN 048-121-090)**

*issuance of a development permit, the Planning Commission or City Council shall make the finding that adequate services and resources will be available to serve the development upon its completion and that such development is located within and consistent with the policies applicable to such an area designated for development. The applicant shall assume full responsibility for costs incurred in the service extensions or improvements that are required as a result of the proposed project, or such share as shall be provided in such project would participate in an improvement or assessment district. Lack of available services or resources shall be grounds for denial of the project or reduction in the density otherwise indicated in the Land Use Plan.*

**Compliance:** The project has a 5/8" water connection, which is sufficient to serve a residence of this size. The applicant will have to purchase a sewer connection from the Granada Sanity District prior to the issuance of a building permit. The Granada Sanity District has informed City staff that there is enough capacity to serve the proposed residence. The Planning Commission finds that there are adequate services and resources for the development of the single-family residences and associated infrastructure improvements.

- 2. Growth Management System** – The development is consistent with the annual population limitation system established in the Land Use Plan and Zoning Ordinance.

**Planning Commission Findings:** The project is consistent with the established growth control ordinance in Chapter 17.06 of the Municipal Code. The applicant has a valid Measure A certificate.

- 3. Zoning Provisions** – The development is consistent with the use limitations and property development standards of the base district as well as the other requirements of the Zoning Ordinance.

**Planning Commission Findings:** The project site is zoned R-1 (Single-Family Residential). The project complies with all development standards including lot size, structure height, setbacks, lot-coverage, floor to area ratio and building envelope. The project has been reviewed for compliance with the design review criteria in Chapter 18.21 of the Zoning Code.

- 4. Adequate Services** – Evidence has been submitted with the permit application that the proposed development will be provided with adequate services and infrastructure at the time of occupancy in a manner that is consistent with the Local Coastal Program.

**Planning Commission Findings:** The project is located within an existing subdivision with roads and other infrastructure serving the existing houses. One 5/8" non-priority water service connection is assigned to the property. The property is within the Granada Sanitary District and is not assessed for a sewer connection. The applicant will have to purchase a sewer connection prior to the issuance of a building permit. The project is located within an existing developed area in the predominantly built-out City of Naples Tract Subdivision, which contains roads and adequate sewer, water and other infrastructure that serve the existing needs of the immediate neighborhood. In accordance with the City Council's

action during the public hearing of May 2, 2006, the applicants shall execute a recorded street agreement for future construction of public improvements adjacent to the project site frontage(s) as approved by the Public Works Director/City Engineer.

- 5. California Coastal Act** – Any development to be located between the sea and the first public road parallel to the sea conforms with the public access and public recreation policies of Chapter 3 of the California Coastal Act.

**Planning Commission Findings:** The proposed project will not restrict or otherwise adversely affect public coastal access or public coastal recreational opportunities because it involves residential construction on an existing residential lot, does not involve new roads, does not alter existing access ways and will utilize existing access ways on Pullman Avenue. and provide infrastructure improvements that will improve coastal access.

**Site and Design Review – Findings**

The required Coastal Development Permit for the construction of a residence may only approved only after the approving authority has made the following finding (Number 6 listed below) per Municipal Code Section 18.21.040:

- 6. Architectural Review** - The project will not hinder the orderly and harmonious development of the City, nor will it impair the desirability or opportunity to attain the optimum use and value of the land and the improvements, nor will it impair the desirability of living and working conditions in the same or adjacent areas, nor will it otherwise adversely affect the general prosperity and welfare.

**Planning Commission Findings:** The project was reviewed and approved by the Architectural Review Committee (ARC) at the meeting of February 15, 2006 and the ARC made the necessary finding.

**Environmental Review – Findings**

- 7. CEQA** – The project is consistent with CEQA guidelines and will not have a significant effect on the environment.

**Planning Commission Findings:** This project proposes the development of a new single-family residence which is categorically exempt under California Administrative Code Sections 15303(a) for new construction of single-family residences.

**EXHIBIT B  
CONDITIONS OF APPROVAL  
PDP-004-06  
Coastal Development Permit for a  
Single-Family Residence with Located at 2788 Pullman Avenue  
(APN 048-121-090)**

**Authorization:** Approval of this permit authorizes development of a two-story, single-family dwelling of approximately 2,500 square feet of floor area on APN 048-121-090 as shown on plans with City date stamp of July 14, 2006, except as modified by the conditions of approval set forth herein.

**A. The following Conditions must be fulfilled prior to the issuance of a building permit:**

1. **CONFORMANCE WITH APPROVED PLANS.** Development shall be in substantial conformance with the approved plans that have a City date stamp of July 14, 2006 except for any changes that may be required by these conditions of approval. The Planning Director shall review and approve any deviation from the approved plans. In the event that the Planning Director determines that any proposed changes warrant further Planning Commission review and approval, the applicant shall submit the revised plans for consideration at a public hearing before the Planning Commission. \_\_\_\_\_ (Planning)
2. **CONSTRUCTION PLANS.** All plans, specifications, engineering calculations, diagrams, reports, and other data for construction of the building and required improvements shall be submitted with the appropriate permit application to the Building Department for review and approval. Computations and back-up data will be considered a part of the required plans. Structural calculations and engineering calculations shall be prepared, wet stamped, and signed by an engineer or architect licensed by the State of California. A geotechnical report shall be prepared, wet stamped, and signed by an engineer licensed by the State of California. \_\_\_\_\_ (Building)
3. **COMPLIANCE WITH UBC.** All structures shall be constructed in compliance with the standards of the Uniform Building Code Regulations for building and structure earthquake safety as required by the 2001 California Building Code (Title 24). \_\_\_\_\_ (Building)
4. **BUILDING STANDARDS.** All buildings, structures, and improvements shall be designed and constructed in accordance with Chapter 14.04 of the Municipal Code (Building Code, Administrative Code, Mechanical Code, Building Code Standards, Plumbing Code, Electrical Code, Energy Code) and with Half Moon Bay Standard Details. The minimum basic wind speed for determining design wind pressure shall be 90 miles per hour. The exposure

assigned for the subject site, for which a building or structure is to be designed in accordance with Chapter 16, Division III of the Uniform Building Code (1997 edition or latest version adopted by the City of Half Moon Bay), shall be Exposure C and Exposure D when project is within one quarter mile of the Ocean. \_\_\_\_\_ (Building)

5. NOISE STANDARDS. The residential dwelling shall be designed in such a manner that the ambient noise level within the structures shall meet a Sound Transmission Class (STC) of 50 (45 if field-tested). \_\_\_\_\_ (Building)
6. EVIDENCE OF WATER CONNECTION CAPACITY. The applicant shall submit a letter from CCWD certifying that the subject site has an adequately sized water connection for this approved project. No building permit shall be issued without such a letter. \_\_\_\_\_ (Building)
7. EVIDENCE OF SEWER CONNECTION CAPACITY. The applicant shall demonstrate issuance of a sewer permit from the City of Half Moon Bay or Granada Sanitary District. \_\_\_\_\_ (Building)
8. VALID MEASURE A CERTIFICATE. The Planning Department shall verify the Measure A Certificate issued for the property has not expired, remains valid, and, if applicable, the recordation of any required owner occupancy deed restriction has taken place. \_\_\_\_\_ (Planning)
9. LOT DRAINAGE PLAN. A Lot Drainage Plan and a Project Applicant Checklist shall be submitted for City Engineer review and approval showing how the surface runoff is retained on-site and the remainder is drained to the public right-of-way in accordance with National Pollutant Discharge Elimination System (NPDES) standards and Best Management Practices (BMP). The Plan shall show how the rear and side yards will properly drain to an approved BMP facility, and how the finished grades on the property relate to the existing grades on adjacent property. The Plan shall include pad elevation, finished floor elevation, site high and low points, drainage swale, area drain, existing grade at adjacent property, etc. The Plan must show the location of the sewer connection, and a property line sewer cleanout must be installed for Building Permit approval. The applicant shall provide appropriate measures to discharge the flood waters from any unfinished floor areas. \_\_\_\_\_ (Public Works/Building)
10. FIRE SPRINKLERS. As per Fire District ordinance, the applicant is required to install an automatic fire sprinkler system **throughout** the proposed or improved dwelling. All areas that are accessible for storage purposes shall be equipped with fire sprinklers. The plans for this system must be submitted to the City of Half Moon Bay Building Division. A building permit **will not** be issued until plans are received, reviewed, and approved. Upon submission of plans, the City will forward a complete set to the Half Moon Bay Fire District

for review. The fee schedule for automatic fire sprinkler systems shall be in accordance with Half Moon Bay Ordinance No. 13. Fees shall be paid prior to plan review. \_\_\_\_\_ (Fire/Building)

11. SURVEY REQUIRED. A detailed topographic/site boundary survey shall be prepared and **certified by a licensed surveyor** and submitted with building application plans. The survey shall include a baseline elevation datum point on, or close to the construction site, indicating existing grade of the datum. This datum point shall be permanent, marked, shall remain fixed in the field, and shall not be disturbed throughout the building process. Examples of datum points include: fire hydrants, manhole covers, survey markers, street curbs, etc. This datum point shall be shown on all site plans including revised/resubmitted plans. The survey must show the footprint and roof plan of the proposed residence and identify the existing grade elevations at the corners and roof ridgeline of the residence. \_\_\_\_\_ (Building)
12. LANDSCAPE/HARDSCAPE PLANS. The applicant shall submit proposed landscape (including required street tree(s)) and hardscape plans to the Public Works Department prior to issuance of a building permit. These plans shall include the proposed land/hardscape in the public rights-of-way. The applicant is advised that line of sight triangles regarding roadway intersections (for corner properties) and driveways shall be adhered to in accordance with Section 18.06.040(B) (4). In addition, allowable heights for fencing, walls, posts mailbox holders, etc. if permitted, shall follow the same height and structure guidelines for facilities that are located in building setback areas. \_\_\_\_\_ (Building/Planning)
13. FINISHED FLOOR ABOVE CURB OR CROWN. The plans submitted for a building permit shall show the finished first floor to be a minimum of twelve (12) inches above the height of curb, or in cases where there is no curb, from the height of the crown of the existing street or road. \_\_\_\_\_ (Building).
14. LOT MERGER. The applicant shall submit the required information to the City to merge the recorded lots that the building will be constructed on into a single legal parcel of record and record the action with the San Mateo County Recorder's Office. This must be completed and evidence must be provided to the City prior to the issuance of a building permit. \_\_\_\_\_ (Planning/Public Works)
15. OFF-SITE INTERIM IMPROVEMENT PLANS. The applicant should be prepared to install curb, gutter, sidewalk and reconstruct and match-up pavement matching other adjacent property Right of Way improvements in Pullman Avenue prior to occupancy if the City Council approves roadway standards prior to occupancy. The applicant shall provide a plan for interim improvements as deemed appropriate by the Public Works Director/City Engineer. This plan shall match and coincide with other adjacent property's



Right of Way improvements and shall be reviewed and approved by the Public Works Director/City Engineer prior to the issuance of a building permit. The applicants shall construct the approved interim improvements prior to occupancy. \_\_\_\_\_ (Public Works/Building)

16. RESIDENCE DESIGN. Prior to the issuance of a building permit, the residence shall be flipped on the site in a mirror image of the plan as proposed and located as far from the Pullman ditch as possible, while still maintaining the approved setbacks. (The garage shall be located on the south elevation.) \_\_\_\_\_ (Planning/Building)

**B. The following apply during any grading/construction phase of the project:**

1. STORMWATER MANAGEMENT / EROSION CONTROL. During Construction the applicant shall minimize the transport and discharge of storm water from the project site by incorporation of the following measures into the construction site practices:
- a. Identify all storm drains, drainage swales and creeks located near the construction site and make sure all subcontractors are aware of their locations to prevent pollutants from entering them. Use silt fence barrier, straw bale barrier, sand bags, brush or rock filter or other appropriate measures, as necessary to minimize the quantity of sediment laden runoff from the site. \_\_\_\_\_
  - b. Stabilize any areas that have been stripped of vegetation, and maintain erosion control measures between October 15 and April 15. \_\_\_\_\_
  - c. Ensure that erosion control by re-vegetation is performed just prior to the rainy season unless on site irrigation is provided. Select seed to minimize fertilizer and water use. Limit watering to the amount and frequency, which can be absorbed on site. \_\_\_\_\_
  - d. Avoid stockpiling of soils or materials, when rain is forecast. Cover with a waterproof tarp during periods of rainy weather to control runoff. Monitor the site for minimization of erosion and sediment runoff every 24 hours during and after every storm event. Before it rains, sweep and remove materials from surfaces that drain to storm drains, creeks, or channels. \_\_\_\_\_
  - e. Never clean brushes or rinse paint containers into a street, gutter, storm drain, or creek. Recycle, return to supplier or donate unwanted water-based (latex) paint. Dried latex paint may be disposed of in the garbage.

- Unwanted paint (that is not recycled), thinners, and sludges must be disposed of as hazardous waste. \_\_\_\_\_
- f. Avoid cleaning, fueling, or maintaining vehicles on site, except in an area designated to contain and treat runoff. Clean up leaks, drips, and other spills immediately so they do not contact stormwater. Never wash down pavement or surfaces where materials have spilled. Use dry cleanup methods whenever possible. \_\_\_\_\_
  - g. Avoid mixing excess amounts of fresh concrete or cement mortar. Whenever possible, return contents of mixer barrel to the yard for recycling. Dispose of small amounts of excess concrete, grout, and mortar in the trash. \_\_\_\_\_
  - h. Practice source reduction. Reduce waste by only ordering the amount you need to finish the job. Recycle leftover materials whenever possible. Materials such as concrete, asphalt, scrap metal, solvents, degreasers, cleared vegetation, paper, rock, and vehicle maintenance materials such as used oil, antifreeze, and batteries are recyclable. \_\_\_\_\_
  - i. Inspect portable toilets for leaks. Do not place on or near storm drain outlets. Be sure the leasing company adequately maintains, promptly repairs, and replaces units as needed. \_\_\_\_\_ (Building)
2. DRAINAGE PLAN IMPLEMENTATION. All drainage from the lot shall drain towards the public right-of-way roadway utilizing the appropriate National Pollutant Discharge Elimination System (NPDES) Best Management Practice (BMP). There shall be no direct connections of pipes to the roadway or other drainage facility. The drainage plans shall show how the rear and side yards will properly drain to an approved BMP. If required, approved drainage BMP's shall be permitted by Public Works Department for drainage within the right(s)-of-way fronting the project for drainage to move unobstructed along the right(s)-of-way. \_\_\_\_\_ (Building/Public Works)
3. DISCOVERY OF ARCHAEOLOGICAL RESOURCES. If historic or archaeological resources are uncovered during grading activities, all work shall stop and the applicant shall retain a qualified archaeologist. At the applicant's expense the qualified archaeologist will perform an archaeological reconnaissance and develop mitigation measures to protect archaeological resources. \_\_\_\_\_ (Building)
4. HOURS OF CONSTRUCTION. The hours of construction shall be limited to 7:00 a.m. to 6:00 p.m. Monday through Friday, 8:00 a.m. to 6:00 p.m. Saturday, and 10:00 a.m. to 6:00 p.m. Sundays and Holidays. \_\_\_\_\_ (Building)

5. CONSTRUCTION TRAILERS. Temporary construction trailers are permitted as accessory uses in conjunction with the development of this site, subject to the following conditions:
  - a. No construction trailer shall exceed 200 square feet in size.
  - b. The construction trailer shall be used as a temporary construction office only.
  - c. Neither sanitation facilities nor plumbed water is permitted within the trailer.
  - d. No overnight inhabitation of the construction trailer is permitted.
  - e. No construction trailers are permitted on site prior to building permit issuance.
  - f. The construction trailer shall be removed 90 days from building permit issuance. Use Permit approval is required for construction trailers beyond 90 days. \_\_\_\_\_ (Building/Planning)
  
6. LOT GRADING, MATERIALS, EQUIPMENT AND VEHICLE STORAGE. An erosion and sediment control plan shall be submitted to the City Engineer and the City Planning Department for review and approval prior to issuance of a grading permit. No lot site grading or preparation nor storage or placement of construction materials, equipment or vehicles shall take place prior to submittal and approval of building plans by the Public Works Department. Any earth movement on or off the site in excess of 50 cubic yards shall require the submittal of a grading plan for review and approval by the Public Works Department. Lot Grading includes, but is not limited to, any leveling, scraping, clearing, or removal of lot surface area. Materials, Equipment, and Vehicles include, but are not limited to:
  - a. All masonry, wood, and steel construction materials
  - b. All construction-related equipment and storage containers.
  - c. All construction-related vehicles including temporary trailers \_\_\_\_\_ (Building)
  
7. HAZARDOUS MATERIALS. Any materials deemed hazardous by the San Mateo County Department of Health that are uncovered or discovered during the course of work under this permit shall be disposed in accordance with regulations of the San Mateo County of Health. \_\_\_\_\_ (Building/County Health)
  
8. FIRST FLOOR HEIGHT VERIFICATION. Prior to below floor framing or concrete slab steel reinforcement inspection, a stamped and signed building height verification letter shall be submitted to the City from a licensed land survey certifying that the first floor height as constructed is equal (or less) to the elevation specified for the first floor height in the approved plans. The building pad shall be at least one-foot above the centerline crown of the roadway or the top of the curb. \_\_\_\_\_ (Building)

9. STRUCTURAL ROOF HEIGHT VERIFICATION. Prior to roof sheathing inspection, a stamped and signed building height verification letter shall be submitted to the City from a licensed land surveyor certifying that the highest top elevation of the roof, peak, or ridge first floor height as constructed is equal (or less) to the elevation specified in the approved plans. \_\_\_\_ (Building)

10. INSTALLATION OF HABITAT PROTECTION FENCE. **Prior to construction** the fence shall be constructed of overlapping panels of 4 x 8 plywood, installed with the bottom edge buried a minimum of 6" to 12" below grade and anchored with steel T- posts on the inside, to prevent snakes from climbing into the enclosure. Any gaps at the base will be covered with soil; no gaps larger than 0.25 inch will remain. No silt fencing or erosion control blankets will be used in the area of the exclusion fence because they present an entrapment hazard. The fence shall be installed at the outer southern edge of the construction area.

One-way exit funnels built to the above design will be installed with the fencing to allow snakes and frogs to leave the enclosure but not return. Funnels will be constructed with 1/8-inch hardware cloth and will be installed so that the wider opening is flush with the ground surface inside the fence, and the narrow exit opening will be no more than 2 inches off the ground on the outside of the fence. The exit funnel shall be 9 inches tall by 18 inches wide. Elevation of the exit opening will be sufficient to prevent re-entry of snakes and/or frogs. The fence shall be constructed before any activities and the project will not receive any progress inspections until this condition is complied with. Grading and construction shall start immediately after the construction fence is in place. \_\_\_\_ (Planning/Building)

**C. The following must be fulfilled prior to Occupancy:**

1. INSTALLATION OF STREET TREES. One street tree shall be installed on the property's street frontage between the curb and sidewalks or on the private property **immediately adjacent to the street right-of-way**, whichever is preferred by the Public Works Department. The tree shall be of a species allowed by the HMB Master Tree List. Container size, quantity and planting specifications shall be subject to the review and approval of the City's Public Works Department. The trees shall not be planted within the Sight Distance Area, as defined by the Zoning Code, unless the trees meet the minimum required clearance. \_\_\_\_ (Planning/Public Works)

2. LANDSCAPE IMPROVEMENTS. Any landscape improvements shall apply xeriscape principles for drought resistance and to reduce water consumption, including such techniques and materials as native or low water use plants and

10. OVERALL PROJECT HEIGHT. Maximum overall height of the project, including any grading, foundation, pad, and building elevations shall be calculated using the elevation points indicated on the topographic survey map submitted at the time of application. The approved height of all projects developed in the City will be measured from existing grade as indicated on the submitted topographical survey. \_\_\_\_\_ (Building)
11. BUILDING ENVELOPE. The building envelope shall be measured from the property lines and setback lines as they existed PRIOR to disturbance in preparation for development of the site. \_\_\_\_\_ (Building)
12. EXTERIOR BUILDING COLORS AND MATERIALS. Exterior colors and materials shall be in substantial compliance with those shown on the color and materials board with a City date stamp of December 28, 2005 and approved by the Architectural Review Committee (ARC) on February 15, 2006. \_\_\_\_ (Planning)

**D. The project is subject to the following permanent Conditions:**

1. DISPLAY OF STREET ADDRESS. The residential dwelling shall display a lighted street address number in a prominent location on the street side of the residence that is easily visible to approaching emergency vehicles. The numerals shall be no less than four inches in height and shall be a contrasting color to the background.
2. LANDSCAPE MAINTENANCE. The applicant/owner shall ensure that all landscaped areas and/or fences shall be continuously maintained, and all plant material shall be continuously maintained free of refuse and weeds and in a healthy growing condition.
3. ENCROACHMENTS NOT AUTHORIZED. The property owner shall ensure that landscaping or fencing does not encroach into the right-of-way or any public easements, except for any street trees authorized by this permit.

**E. Validity and Expiration of Permits**

1. EFFECTIVE DATE. The Coastal Development Permit shall take effect after final local action or 10 working days after receipt of the Notice of Final Action by the Coastal Commission for projects that are located in the Coastal Appeal Areas. The applicant/owner's shall submit a signed copy of these conditions of approval to the Planning Department before they can obtain a building permit. \_\_\_\_\_
2. ACCURACY OF APPLICATION MATERIALS. The applicant shall be responsible for the completeness and accuracy of all forms and material

submitted for this application. Any errors or discrepancies found therein may be grounds for the revocation or modification of this permit and/or any other City approvals. \_\_\_\_\_

3. **EXPIRATION.** The Coastal Development Permit shall expire on the latest expiration date applicable to any other discretionary or ministerial permit or approval required for the development, including any extension granted for other permits or approvals. Should the development not require City permits or approvals other than a Coastal Development Permit, the Coastal Development Permit shall expire one year from its date of approval if the development has not begun during that time.
4. **HOLD HARMLESS.** The applicant agrees as a condition of approval of this application to indemnify, protect, defend with counsel selected by the City, and hold harmless, the City, and any agency or instrumentality thereof, and its elected and appointed officials, officers, employees and agents, from and against an and all liabilities, claims, actions, causes of action, proceedings, suits, damages, judgments, liens, levies, costs and expenses of whatever nature, including reasonable attorney's fees and disbursements (collectively, "Claims") arising out of or in any way relating to the approval of this application, any actions taken by the City related to this entitlement, any review by the California Coastal Commission conducted under the California Coastal Act Public Resources Code Section 30000 et seq., or any environmental review conducted under the California Environmental Quality Act, Public Resources Code Section 210000 et seq., for this entitlement and related actions. The indemnification shall include any Claims that may be asserted by any person or entity, including the applicant, arising out of or in connection with the approval of this application, whether or not there is concurrent, passive or active negligence on the part of the City, and any agency or instrumentality thereof, and its elected and appointed officials, officers, employees and agents. The applicant's duty to defend the City shall not apply in those instances when the applicant has asserted the Claims, although the applicant shall still have a duty to indemnify, protect and hold harmless the City. \_\_\_\_\_
5. **PERMIT RUNS WITH THE LAND.** The Coastal Development Permit runs with the land and the rights and obligations there under, including the responsibility to comply with conditions of approval, shall be binding upon successors in interest in the real property unless or until such permits are expressly abandoned.

**OWNER'S/PERMITTEE'S CERTIFICATION:**

I have read and understand and hereby accept and agree to implement the foregoing conditions of approval of the Coastal Development Permit.

OWNER(S) / APPLICANT(S):

Monica Oliva  
(Signature)

4-14-07  
(Date)

**APPEAL FROM COASTAL PERMIT  
DECISION OF LOCAL GOVERNMENT**

**Please Review Attached Appeal Information Sheet Prior To Completing This Form.**

**SECTION I. Appellant(s)**

Name, mailing address and telephone number of appellant(s):

Commissioner Mike Reilly  
45 Fremont St., Ste. 2000  
San Francisco, CA 94105 (415 ) 904-5260  
Zip Area Code Phone No.

**SECTION II. Decision Being Appealed**

1. Name of local/port government:

City of Half Moon Bay

2. Brief description of development being appealed:

Development of single-family residence at 2788 Pullman Avenue, adjacent to Pullman ditch.

3. Development's location (street address, assessor's parcel no., cross street, etc.):

2788 Pullman Avenue, Half Moon Bay.  
APN 048-121-090

4. Description of decision being appealed:

a. Approval; no special conditions: \_\_\_\_\_

b. Approval with special condition: X \_\_\_\_\_

c. Denial: \_\_\_\_\_

**Note:** For jurisdictions with a total LCP, denial decisions by a local government cannot be appealed unless the development is a major energy or public works project. Denial decisions by port governments are not appealable.

**TO BE COMPLETED BY COMMISSION:**

APPEAL NO: A-2-HMB-07-015  
DATE FILED: 4/20/07  
DISTRICT: North Central Coast

**RECEIVED**

APR 20 2007  
CALIFORNIA  
COASTAL COMMISSION  
NORTH CENTRAL COAST



APPEAL FROM COASTAL PERMIT DECISION OF LOCAL GOVERNMENT (Page 2)

5. Decision being appealed was made by (check one):

- a.  Planning Director/Zoning Administrator      c.  Planning Commission
- b.  City Council/Board of Supervisors      d.  Other

6. Date of local government's decision: March 22, 2006

7. Local government's file number (if any): PDP 004-06

**SECTION III. Identification of Other Interested Persons**

Give the names and addresses of the following parties. (Use additional paper as necessary.)

a. Name and mailing address of permit applicant:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

b. Names and mailing addresses as available of those who testified (either verbally or in writing) at the city/county/port hearing(s). Include other parties which you know to be interested and should receive notice of this appeal.

- (1) \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_
- (2) \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_
- (3) \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_
- (4) \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**SECTION IV. Reasons Supporting This Appeal**

**Note:** Appeals of local government coastal permit decisions are limited by a variety of factors and requirements of the Coastal Act. Please review the appeal information sheet for assistance in completing this section, which continues on the next page.

APPEAL FROM COASTAL PERMIT DECISION OF LOCAL GOVERNMENT  
Page 3

State briefly your reasons for this appeal. Include a summary description of Local Coastal Program, Land Use Plan, or Port Master Plan policies and requirements in which you believe the project is inconsistent and the reasons the decision warrants a new hearing. (Use additional paper as necessary.)

See attachment A

Note: The above description need not be a complete or exhaustive statement of your reasons of appeal; however, there must be sufficient discussion for staff to determine that the appeal is allowed by law. The appellant, subsequent to filing the appeal, may submit additional information to the staff and/or Commission to support the appeal request.

SECTION V. Certification

The information and facts stated above are correct to the best of my/our knowledge.

Signed: *Mike Rully*  
Appellant or Agent

Date: 4/20/07

Agent Authorization: I designate the above identified person(s) to act as my agent in all matters pertaining to this appeal.

Signed: \_\_\_\_\_

Date: \_\_\_\_\_

(Document2)

A-2-HMB-07-015  
Oliva SFR  
Exhibit 5  
Appeal  
Page 3 of 12

**APPEAL FROM COASTAL PERMIT  
DECISION OF LOCAL GOVERNMENT**

**Please Review Attached Appeal Information Sheet Prior To Completing This Form.**

**SECTION I. Appellant(s)**

Name, mailing address and telephone number of appellant(s):

Commissioner Steve Blank  
45 Fremont St., Ste. 2000  
San Francisco, CA 94105 (415 ) 904-5260  
Zip Area Code Phone No.

**SECTION II. Decision Being Appealed**

1. Name of local/port government:

City of Half Moon Bay

2. Brief description of development being appealed:

Development of single-family residence at 2788 Pullman Avenue, adjacent to Pullman ditch.

3. Development's location (street address, assessor's parcel no., cross street, etc.):

2788 Pullman Avenue, Half Moon Bay.  
APN 048-121-090

4. Description of decision being appealed:

a. Approval; no special conditions: \_\_\_\_\_

b. Approval with special condition: X \_\_\_\_\_

c. Denial: \_\_\_\_\_

**Note:** For jurisdictions with a total LCP, denial decisions by a local government cannot be appealed unless the development is a major energy or public works project. Denial decisions by port governments are not appealable.

**TO BE COMPLETED BY COMMISSION:**

APPEAL NO: A-2-HMB-07-015

DATE FILED: 4/20/07

DISTRICT: North Central Coast

**RECEIVED**  
APR 20 2007  
CALIFORNIA  
COASTAL COMMISSION  
NORTH CENTRAL COAST

A-2-HMB-07-015  
Oliva SFR  
Exhibit 5  
Appeal  
Page 4 of 12

APPEAL FROM COASTAL PERMIT DECISION OF LOCAL GOVERNMENT (Page 2)

5. Decision being appealed was made by (check one):

- a.  Planning Director/Zoning Administrator                      c.  Planning Commission
- b.  City Council/Board of Supervisors                              d.  Other

6. Date of local government's decision: March 22, 2006

7. Local government's file number (if any): PDP 004-06

**SECTION III. Identification of Other Interested Persons**

Give the names and addresses of the following parties. (Use additional paper as necessary.)

a. Name and mailing address of permit applicant:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

b. Names and mailing addresses as available of those who testified (either verbally or in writing) at the city/county/port hearing(s). Include other parties which you know to be interested and should receive notice of this appeal.

(1) \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

(2) \_\_\_\_\_  
\_\_\_\_\_  
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(3) \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

(4) \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**SECTION IV. Reasons Supporting This Appeal**

**Note:** Appeals of local government coastal permit decisions are limited by a variety of factors and requirements of the Coastal Act. Please review the appeal information sheet for assistance in completing this section, which continues on the next page.

APPEAL FROM COASTAL PERMIT DECISION OF LOCAL GOVERNMENT (Page 3)

State briefly **your reasons for this appeal**. Include a summary description of Local Coastal Program, Land Use Plan, or Port Master Plan policies and requirements in which you believe the project is inconsistent and the reasons the decision warrants a new hearing. (Use additional paper as necessary.)

See Attachment A

**Note:** The above description need not be a complete or exhaustive statement of your reasons of appeal; however, there must be sufficient discussion for staff to determine that the appeal is allowed by law. The appellant, subsequent to filing the appeal, may submit additional information to the staff and/or Commission to support the appeal request.

**SECTION V. Certification**

The information and facts stated above are correct to the best of my/our knowledge.

\_\_\_\_\_  
Signature of Appellant(s) or Authorized Agent

Date: \_\_\_\_\_

**Note:** If signed by agent, appellant(s) must also sign below.

**Section VI. Agent Authorization**

I/We hereby authorize \_\_\_\_\_ to act as my/our representative and to bind me/us in all matters concerning this appeal.

\_\_\_\_\_  
Signature of Appellant(s)

Date: \_\_\_\_\_

G:\Legal\AdministrativeForms\Appeal form.doc

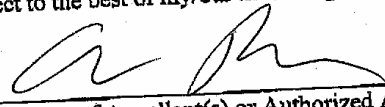
A-2-HMB-07-015  
Oliva SFR  
Exhibit 5  
Appeal  
Page 6 of 12

Apr-18-2007 02:10pm From-

**APPEAL FROM COASTAL PERMIT DECISION OF LOCAL GOVERNMENT (Page 4)**

**SECTION V. Certification**

The information and facts stated above are correct to the best of my/our knowledge.

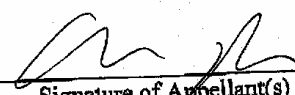
  
\_\_\_\_\_  
Signature of Appellant(s) or Authorized Agent

Date: 4/20/07

Note: If signed by agent, appellant(s) must also sign below.

**Section VI. Agent Authorization**

I/We hereby authorize \_\_\_\_\_  
to act as my/our representative and to bind me/us in all matters concerning this appeal.

  
\_\_\_\_\_  
Signature of Appellant(s)

Date: 4/20/07

A-2-HMB-07-015  
Oliva SFR  
Exhibit 5  
Appeal  
Page7 of 12

### **Oliva Appeal Attachment A**

The approved development does not conform to the policies of the certified City of Half Moon Bay Local Coastal Program (LCP) concerning sensitive habitats (see applicable LCP policies attached).

#### **Discussion**

The approved development is a single family home adjacent to Pullman Ditch on Pullman Avenue in Half Moon Bay. Both U.S. Fish and Wildlife Service and California Department of Fish and Game have determined that Pullman Ditch and its associated riparian habitat serve as habitat for the federally and state endangered San Francisco garter snake and the federally threatened and state species of concern California red-legged frog.

LUP Policy 3-1 defines intermittent streams and habitat for threatened, endangered, and unique species as sensitive habitats. Policy 3-3 requires development adjacent to sensitive habitats to be sited and designed to prevent impacts that could significantly degrade the environmentally sensitive habitats and requires uses to be compatible with the maintenance of biological productivity of the sensitive habitat. Policies 3-21, 3-23, and 3-24 restrict uses within sensitive habitats (including limiting uses to those which are deemed compatible by the U.S. Fish and Wildlife Service), require biological reports, and require protection of all habitats of rare and endangered species. Section 18.38.085 of the Zoning Code/IP also provides for the protection of habitat for rare and endangered species and requires a 50-foot buffer for such habitat.

Pullman Ditch and its associated riparian habitat meet the definition of sensitive habitat as well as the definition of habitat of rare and endangered species in the LCP because it provides habitat for the San Francisco garter snake and the California red-legged frog. Additionally, because Pullman Ditch is an intermittent stream, it further qualifies as sensitive habitat under the LCP. As such, development adjacent to the ditch and its associated riparian zone is required to meet the standards set forth in LUP policies 3-3, 3-21, 3-23, 3-24 as well as their corresponding implementing ordinances in chapter 18.38 of the Zoning Code.

The house approved by the City, however, does not conform with the above policies because, as evidenced in the record, the City does not consider Pullman Ditch habitat for the San Francisco garter snake or the California red-legged frog, and therefore has not provided for the protection of this sensitive habitat in its approval of the development. The approved house would only be set back 42 feet from the edge of the riparian vegetation, which is inconsistent with Section 18.38.085 of the Zoning Code/IP that requires a 50-foot buffer for habitat of rare and endangered species and Policy 3-3 of the LUP that requires development adjacent to sensitive habitats to be sited and designed to prevent impacts that would significantly degrade the habitat. Moreover, while the City's condition of approval includes the requirement for installing an animal exclusion wall to keep the snake and frog from entering the project site, since the City does not consider Pullman Ditch habitat for the San Francisco garter snake or the California red-legged frog, it has not incorporated comprehensive measures in consultation with U.S. Fish and Wildlife Service and California Department of Fish and Game to adequately preserve the habitat or to prevent impacts that would significantly degrade the sensitive habitat. The approved

development is thus inconsistent with LUP Policies 3-3, 3-21, 3-23, and 3-24 and their corresponding implementing ordinances in Chapter 18.38 of the Zoning Code/IP.



## Relevant LCP Policies

### Applicable LUP Policies

#### 3-1 Definition of Sensitive Habitats

- (a) Define sensitive habitats as any area in which plant or animal life or their habitats are either rare or especially valuable and as those areas which meet one of the following criteria: (1) habitats containing or supporting “rare and endangered” species ..., (2) all perennial and intermittent streams and their tributaries, ... (6) lakes and ponds and adjacent shore habitat ...

#### 3-6 Protection of Sensitive Habitats

- (c) Prohibit any land use and/or development which would have significant adverse impacts on Sensitive Habitat areas.
- (d) Development in areas adjacent to sensitive habitats shall be sited and designed to prevent impacts that could significantly degrade the Sensitive Habitats. All uses shall be compatible with the maintenance of biologic productivity of such areas.

#### 3-7 Permitted Uses

- (c) Permit only resource-dependent or other uses which will not have a significant adverse impact in sensitive habitats.
- (d) In all sensitive habitats, require that all permitted uses comply with U.S. Fish and Wildlife Service and State Department of Fish and Game regulations.

#### 3-8 Permit Conditions

- (b) Require all applicants to prepare a biologic report by a qualified professional selected jointly by the applicant and the city to be submitted prior to development review. The report will determine if significant impacts on the sensitive habitats may occur, and recommend the most feasible mitigation measures if impacts may occur.

The report shall consider both any identified sensitive habitats and areas adjacent. Recommended uses and intensities within the sensitive habitat area shall be dependent on such resources, and shall be sited and designed to prevent impacts which would significantly degrade areas adjacent to the habitats. The city and the applicant shall jointly develop an appropriate program to evaluate the adequacy of any mitigation measures imposed.

3-22 Designation of Habitats of Rare and Endangered Species

In the event the habitat of a rare and endangered species is found to exist with in the City, revised the Habitat Areas and Water Resources Overlay o show the location of such habitat. Any habitat so designated shall be subject to Policies 3-22 through 3-31.

3-23 Permit Conditions

Require, prior to permit issuance, that a qualified biologist prepare a report which define requirement of rare and endangered organisms.... (4) any development must not impact the functional capacity of the habitat, and (5) recommend mitigation if development is permitted within or adjacent to identified habitats.

3-24 Preservation of Critical Habitats

Require preservation of all habitats of rare and endangered species using the policies of this Plan and other implementing ordinances in the City.

**Applicable IP/Zoning Code Policies**

18.38.020 Coastal Resource Areas. The Planning Director shall prepare and maintain maps of all designated Coastal Resource Areas within the City. Coastal Resource Areas within the City are defined as follows:

- A. Sensitive Habitat Areas. Areas in which plant or animal life or their habitats are either rare or especially valuable, and/or as designated on the Habitat Areas and Water Resources Overlay Map. Areas considered to be sensitive habitats are listed below.

Sensitive Habitat	
1.	sand dunes
2.	marine habitats
3.	sea cliffs
4.	riparian areas;
5.	wetlands, coastal tidelands and marshes, lakes and ponds and adjacent shore habitats
6.	coastal and off-shore areas containing breeding and/or nesting sites or used by migratory and resident water-associated birds for resting and feeding
7.	areas used for scientific study and research concerning fish and wildlife, and existing game or wildlife refuges and reserves
8.	habitats containing or supporting unique species or any rare and endangered species defined by the State Fish and Game Commission
9.	rocky intertidal zones
10.	coastal scrub community associated with coastal bluffs

	and gullies
--	-------------

18.38.050 Environmental Evaluation Standards. Projects proposed within Coastal Resource Areas shall be evaluated in an Initial Study and any necessary subsequent C.E.Q.A. documents according to the following general standards (in addition to those set forth in CEQA guidelines):

A. Development and Land Use:

1. Shall be prohibited when significant adverse impacts on coastal resource areas would occur as a result.
2. Shall be sited and designed to prevent impacts that could significantly degrade adjacent sensitive habitat areas or significantly degrade areas adjacent to sensitive habitat areas.
3. Shall be compatible with the maintenance of biologic productivity of any adjacent sensitive habitat areas.
4. Shall be permitted within sensitive habitat areas only if they are resource-dependent uses or other uses which will not have any significant adverse environmental impacts, and if the uses comply with U.S. Fish and Wildlife Service and State Department of Fish and Game regulations.
5. Shall assure stability and structural integrity, and neither create nor contribute significantly to erosion, geologic instability or destruction of the site or surrounding area or in any way require the construction of protective devices that would substantially alter natural land forms along bluffs and cliff, and shall minimize risks to life and property in hazard areas.
7. Shall comply with the restrictions listed in this Title for each coastal resource area, and with all other applicable sections of the City's Local Coastal Program Land Use Plan.

18.38.085 Habitats for Rare and Endangered Species.

A. Rare and Endangered Species. The potential exists for any of the following Rare and Endangered Species to be found within the San Mateo County Coastal Area and therefore within the City of Half Moon Bay:

1. Animals: the San Francisco Garter Snake, California Least Tern, California Black Rail, California Brown Pelican, San Bruno Elfin Butterfly, San Francisco Tree Lupine Moth, Guadalupe Fur Seal, Sea Otter, California Brackish Water Snail, Globose Dune Beetle

...

D. Buffer Zones. The minimum buffer surrounding a habitat of a rare or endangered species shall be 50 feet.

**YinLan Zhang**

---

**From:** David Johnston [DJOHNSTON@dfg.ca.gov]  
**Sent:** Thursday, March 09, 2006 9:08 AM  
**To:** ddakins@ci.half-moon-bay.ca.us  
**Cc:** YinLan Zhang; R3 HabCon Secretary; Serge Glushkoff; Lucy\_Triffleman@fws.gov  
**Subject:** Pullman Ditch Biotic Assessment

Don

I've taken a look at the Biotic Resources Assessment for the Pullman Ditch Clearing. This is your project PDP-50-05 and our Streambed Alteration Agreement # 1600-2004-0227-3 (CEQA project 2006-0128). In making these comments, I am referring only to the 300' section proposed for clearing as Phase 1 and am following the assertion in the report that this area contains little or no native riparian vegetation. I will briefly address potential issues on other portions of the drainage afterward.

We can't completely concur with the assessment's conclusion that California red-legged frogs (CRLF) would be very uncommon on the site and San Francisco garter snakes will not be present at all. The ditch is within the known range of these species and unsurveyed aquatic habitat is within easy dispersal distance. We do concur that the species are not resident and that individuals seen here would be dispersing and/or foraging. Given our concern that individuals of the two species may be present on an unpredictable basis and that spot surveys are unlikely to detect the presence of individuals of either species using the ditch on a transient basis, we recommend revising some of the project conditions. Rather than conducting two spot surveys immediately prior to beginning work, we recommend having a monitor on site during operations. In addition to observing the work, the monitor must inspect under any vehicle parked on the site for more than 15 minutes, before it is moved. If it is possible to completely isolate the site, including parking and staging areas, with silt fencing (Propex 1199 or equivalent) then the monitor can be dispensed with after the vegetation removal.

For any portions of this ditch or any other ditches in the area that contain ponded water or native riparian vegetation, we recommend a more in-depth biological evaluation, conducted with input from the Department and the United States Fish and Wildlife Service. The ditch network in the Half Moon Bay area could be serving as a dispersal 'highway' for the two species mentioned. Maintenance activities could significantly reduce or even eliminate this function. In addition loss of riparian habitats in general (even temporal loss associated with vegetation removal) should be considered a potentially significant impact under CEQA, particularly for cumulative impacts.

The solution to this issue, and the best way to allow the City to carry out necessary maintenance activities, is to evaluate all of the ditches at one time, defining what would be the core important areas and ensuring they are protected. This would also allow you to streamline processing of future permits because impacts and mitigations would already be defined. A program of this nature would be a high priority to DFG and staff would be available for regular consultation.

Please feel free to contact me if you have any questions on any of these issues.

Dave

Dave Johnston  
Calif. Department of Fish and Game  
(831)466-0234

**YinLan Zhang**

---

**From:** Lucy\_Triffleman@fws.gov  
**Sent:** Tuesday, March 14, 2006 11:28 AM  
**To:** ddakins@ci.half-moon-bay.ca.us  
**Cc:** DJOHNSTON@dfg.ca.gov; R3 HabCon Secretary; Serge Glushkoff; YinLan Zhang  
**Subject:** Re: Pullman Ditch Biotic Assessment

Don-

Having briefly visited the site on my own on 2/28/06 and reviewing the submitted Biological Resources Assessment, the US Fish and Wildlife Service (Service) does not feel that they have been provided with sufficient information to comment on this project at this time. We require additional information including:

- summary of previous ditch maintenance projects at the proposed location
- a description of the location where sediment removed as a result of the proposed action will be placed
- a description of the other phases of the proposed project (the report only refers to this as being phase one but fails to elaborate on future phases of the project)
- Discussion of monitoring plans proposed for during and after the completion of the proposed project
- Discussion of the impacts of the project on San Francisco Garter Snake populations (the Service does not agree with the conclusion that SFGS are not found in the area and in fact proposes that the Pullman ditch corridor is almost certainly used by this species as well as the California red-legged frog as a migration corridor between breeding populations and feeding areas).

In order to accurately comment on the Pullman Ditch Biological Resources Assessment, dated November 3, 2005, the Service requests a response to these missing items. The Service will make official comments once these segments are complete. If you have any questions, feel free to contact me using the information provided below.

Sincerely,

Lucy Triffleman  
US Fish and Wildlife Service  
Coast-Bay Delta branch  
2800 Cottage Way  
Sacramento, CA. 95825  
Ph. (916) 414-6628  
Fax (916) 414-6712

4/26/2007

A-2-HMB-07-015  
Oliva SFR  
Exhibit 7  
Email from Lucy  
Triffleman, USFWS

**YinLan Zhang**

**From:** Lucy\_Triffleman@fws.gov  
**Sent:** Tuesday, March 27, 2007 1:43 PM  
**To:** sfint@ci.half-moon-bay.ca.us  
**Cc:** YinLan Zhang; SGLUSHKOFF@dfg.ca.gov  
**Subject:** Fw: Pullman Ditch Biotic Assessment

Steve-

I'm sure your getting sick of emails from me by now but I have been informed recently that the City approved the construction of a single family residence adjacent to Pullman ditch. Below is an email I sent to Don a year ago stating the Service's belief that this area is habitat both for the California red-legged frog and the San Francisco garter snake. This sentiment was also relayed to the City by my predecessor Mary Hammer as well as the former recovery branch chief Harry McQuillen. Therefore, the administrative record shows that the precedent has been set regarding the Service's position on the availability of habitat in the Pullman ditch area. The Service continues to maintain the position that habitat does exist in the area along and adjacent to Pullman Ditch. Although it is still unclear whether the Corps will take jurisdiction of these waters, take under the Endangered Species Act of 1973 (as amended) and as described in previous emails, is not limited to projects requiring a federal nexus or an HCP. Take may occur through private citizens or a government entity. Under the law, any and all parties can be held responsible for their actions. It is the personal responsibility of the individual not to perform or allow these actions to occur, much like a robbery or theft. I only mention this portion of the law as it seems, based on previous emails and conversations that I have had with the City and their various applicants, that there is continuing confusion as to the purpose and role of the Service and its involvement in the area.

I encourage you to contact the Service to work to develop a strategy to implement this and the other projects in Half Moon Bay and to work toward the conservation of listed species. I am available to meet with you and your various staffers to develop a plan that will coordinate with everyone's interest. Please feel free to contact me at any time.

Lucy Triffleman  
US Fish and Wildlife Service  
Coast-Bay Delta branch  
2800 Cottage Way room W-2605  
Sacramento, CA. 95825  
Ph. (916) 414-6628  
Fax (916) 414-6712

----- Forwarded by Lucy Triffleman/SAC/R1/FWS/DOI on 03/27/2007 01:00 PM -----

Lucy Triffleman/SAC/R1/FWS/DOI

03/14/2006 12:28 PM

To <ddakins@ci.half-moon-bay.ca.us>

cc <DJOHNSTON@dfg.ca.gov>, "R3 HabCon Secretary"  
<HCSeckyR3@dfg.ca.gov>, "Serge Glushkoff" <SGLUSHKOFF@dfg.ca.gov>,  
yzhang@coastal.ca.gov

Subject Re: Pullman Ditch Biotic Assessment [Link](#)

Don-

Having briefly visited the site on my own on 2/28/06 and reviewing the submitted Biological Resources Assessment, the US Fish and Wildlife Service (Service) does not feel that they have been provided with sufficient information to comment on this project at this time. We require additional information including:

4/26/2007

A-2-HMB-07-015  
Oliva SFR  
Exhibit 8  
Email from Lucy  
Triffleman, USFWS  
Page 1 of 2

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In order to accurately comment on the Pullman Ditch Biological Resources Assessment, dated November 3, 2005, the Service requests a response to these missing items. The Service will make official comments once these segments are complete. If you have any questions, feel free to contact me using the information provided below.

Sincerely,

Lucy Triffleman  
US Fish and Wildlife Service  
Coast-Bay Delta branch  
2800 Cottage Way  
Sacramento, CA. 95825  
Ph. (916) 414-6628  
Fax (916) 414-6712



A-2-HMB-07-015  
Oliva SFR  
Exhibit 9  
Photos of Pullman  
Ditch