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Filed: July 23, 2007
49th Day: September 10, 2007 (Waived)
Staff: YinLan Zhang – SF
Staff Report: December 20, 2007
Hearing Date: January 10, 2008

STAFF REPORT – APPEAL
SUBSTANTIAL ISSUE

APPEAL NO.:	**A-2-HMB-07-030**
APPLICANTS:	**Thomas and Eugene Pastorino**
LOCAL GOVERNMENT:	**City of Half Moon Bay**
ACTION:	Approval with Conditions.
PROJECT LOCATION:	921 Miramontes, Half Moon Bay (San Mateo County)
PROJECT DESCRIPTION:	Construction of an approximately 5,339 square-foot single family residence and 2,400 square-foot barn and associated improvements, including installation of water, sewer, and utilities, road widening, and construction of a driveway located on a 20-acre parcel zoned OS-R(Open Space Reserve)
APPELLANT:	Kevin Lansing
STAFF RECOMMENDATION:	No Substantial Issue

EXECUTIVE SUMMARY

The City of Half Moon Bay approved with conditions a 5,339 square-foot residence, 2,400 square-foot barn, and associated improvements including installation of utilities, widening of a portion of the existing access road, and construction of a driveway on a 20-acre parcel zoned OS-R (Open Space Reserve) at 921 Miramontes Street. A small portion of the approved development is located within 100 feet of a USGS stream,

consisting of approximately 50 feet of trenching and utilities installation within an existing roadway.

The appellant contends that the approved development is inconsistent with several of the biological resource protection policies of the certified LCP. The appellant also contends that the approved development is inconsistent with the minimum density requirements for the zoning district, and that it conflicts with the agricultural and sensitive habitat protection policies of the certified LCP. The appellant further contends that the City inappropriately granted the applicant a variance from the minimum residential density requirements. Finally, the appellant contends that the entire project, including development beyond 100 feet of the USGS stream, is appealable to the Commission because it is located in a Sensitive Coastal Resource Area.

Commission staff analysis indicates that the appeal does not raise a substantial issue of the approved development's conformance with the City's certified LCP. Only a small portion of the approved development is located within 100 feet of a stream and therefore relevant to the Commission's substantial issue determination, consisting of trenching and installation of utilities. The appellant's contentions related to sensitive habitat and sensitive habitat buffers do no raise a substantial issue because the approved development incorporates adequate and comprehensive protective measures to avoid significant impacts to the adjacent sensitive riparian and stream habitat. The contentions concerning the approved development's inconsistencies with the agricultural protection policies of the LCP, the minimum density requirements, and the adequacy of the variance findings are not valid grounds for appeal because they are not contentions regarding appealable development's consistency with the LCP, but rather concern development beyond 100 feet of the USGS stream and therefore not subject to the Commission's appeal jurisdiction pursuant to Section 30603 of the Coastal Act. The assertion related to the appealability of all development because it is located in a sensitive coastal resources area is also invalid because contrary to the appellants' assertions, such development does not constitute appealable development pursuant to Section 30603 of the Coastal Act because the City did not designate sensitive coastal resource areas in its certified LCP. As such, staff recommends that the Commission find that the project, as approved by the City, raises no substantial issue of conformity with the City's LCP.

The motion to adopt the staff recommendation of <u>No Substantial</u> <u>Issue</u> is found on page no. 2.

Exhibits

1. Revised Notice of Final Local Action
2. Appeal Filed by Kevin Lansing
3. Appeal Supplement by Kevin Lansing
4. Aerial Photo of Site
5. Site Plan
6. Site Photos
7. July 3, 2007 Email from Lucy Triffleman, USFWS

8. July 23, 2007 Email from Lucy Triffleman, USFWS

1.0 STAFF RECOMMENDATION

No Substantial Issue

The staff recommends that the Commission determine that no substantial issue exists with respect to the grounds on which the appeal has been filed.

Motion

I move that the Commission determine that Appeal No. A-2-HMB-07-030 raises NO substantial issue with respect to the grounds on which the appeal has been filed under § 30603 of the Coastal Act.

Staff Recommendation of No Substantial Issue

Staff recommends a **YES** vote. Passage of this motion will result in a finding of No Substantial Issue and adoption of the following resolution and findings. If the Commission finds No Substantial Issue, the Commission will not hear the application de novo and the local action will become final and effective. The motion passes only by an affirmative vote by a majority of the Commissioners present.

Resolution to Find No Substantial Issue

The Commission finds that Appeal No. A-2-HMB-07-030 does not present a substantial issue with respect to the grounds on which the appeal has been filed under § 30603 of the Coastal Act regarding consistency of the approved project with the Certified Local Coastal Plan and/or the public access and recreation policies of the Coastal Act.

2.0 PROJECT LOCATION AND DESCRIPTION

The approved development is located in the central eastern region of Half Moon Bay, on a 20-acre parcel that is currently used for grazing, hay production, and growing of ornamental plants. The western half of the parcel is relatively flat and is developed with an office and barn for the applicant's business, Pastorino Hay, and also used for grazing and hay production. The eastern portion of the parcel is located on a hill and is used for cultivating ornamental plants. The subject property is bounded by farmland to the north and east, single-family homes to the south, and an existing paved access road and Arroyo Leon to the west. Arroyo Leon is an intermittent stream with a well-developed riparian corridor that supports the California red-legged frog (federally threatened, California species of special concern) and the San Francisco garter snake (federally and state endangered species, California fully protected species).

The approved coastal development permit authorizes the development of a 5,339 square-foot single-family home, 2,400 square-foot barn, driveway, widening of the existing private access road from 16 to 20 feet for emergency vehicle access, and trenching within the existing access road for installation of utilities including sewer, water, gas, and electricity. The conditions of approval include requirements to control erosion and sedimentation during construction, to reduce post-construction polluted stormwater

runoff and to minimize impacts to the California red-legged frog and San Francisco garter snake during construction.

Along with the coastal development permit, the City also approved a variance to the minimum 50-acre per single-family residence density requirement for the OS-R zoning district to allow the development of a residence on a OS-R zoned parcel that is only 20 acres.

3.0 BACKGROUND

For the October 2007 Commission hearing, Commission staff had recommended that the Commission find that the appeal raises a substantial issue because the approved development did not incorporate adequate measures as recommended by the USFWS to protect the California red-legged frog and the San Francisco garter snake and will therefore result in significant adverse impacts to the adjacent sensitive habitat. The applicant requested that the Commission postpone the substantial issues hearing so that they would have time to work with the City to address the issues raised in the staff report. On October 12, 2007, the Commission agreed to the postponement.

Subsequent to the hearing, the appellant submitted supplements to his appeal as shown in Exhibit 3.

On November 18, 2007, the City's Planning Commission revised its approval of the project and added conditions recommended by the USFWS to protect the California red-legged frog and San Francisco garter snake. In addition, the applicant has completed a survey of the Commission's appeals jurisdiction which demonstrates that the Commission's appeals jurisdiction for purposes of determining substantial issue is limited to a very small portion of the approved project site, consisting of approximately 50 feet of trenching and installation of utilities in an area adjacent to the bridge that spans Arroyo Leon (Exhibit 5).

4.0 APPEAL PROCESS

4.1 Filing of Appeal

The Half Moon Bay Planning Commission approved the CDP on May 24, 2007. The CDP was appealed to the City Council, which on July 3, 2007, denied the appeal and upheld the Planning Commission's approval.

On July 9, 2007, the Commission received the City's Notice of Final Local Action on CDP PDP-070-06. The ten working-day Commission appeal period ran from the next business day, July 10, 2007, to July 23, 2007. On July 23, 2007, the Commission received an appeal of the City's action on the approved CDP from Kevin Lansing (Exhibit 2).

The July 23, 2007 appeal was filed in a timely matter within 10 working days of receipt by the Commission on July 8, 2007 of the City's Notice of Final Local Action. On October 23, 2003, the appellant filed a supplement to appeal No. A-2-HMB-07-030. This

supplemental document newly contends that the approved development is appealable because it is located in a sensitive coastal resource area.

On November 8, 2007, the City revised its approval of the project and added conditions to protect the California red-legged frog and the San Francisco garter snake. On November 29, 2006 the Commission received the City's revised Notice of Final Local Action. The Revised Notice of Final Local Action adds additional sensitive habitat protection measures and expressly state that:

> Conditions of approval adopted on May 24, 2007 are hereby superseded by the conditions contained herein. Development will only be undertaken as amended and no development shall occur as previously approved by the Planning Commission on May 24th.

Pursuant to Section 30621 of the Coastal Act, an appeal hearing must be set within 49 days from the date that an appeal of a locally issued CDP is filed. The appeal of Half Moon Bay CDP PDP-070-06 was filed on July 23, 2007. The 49th day after the day that the appeal was filed is September 10, 2007. On August 13, 2007 the applicants waived their right to a hearing on the appeal within 49 days of the filing of the appeal.

4.2 Appeals under the Coastal Act

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

Coastal Act Section 30603 provides, in applicable part, that an action taken by a local government on a coastal development permit application may be appealed to the Coastal Commission for certain kinds of developments, including the 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 300 feet of the mean high tide line or inland extent of any beach or top of the seaward face of a coastal bluff; or in a sensitive coastal resource area or located within 100 feet of any wetland, estuary, or stream. Developments approved by counties may be appealed if they are not designated as the "principal permitted use" under the certified LCP. Developments that constitute a major public works or a major energy facility may be appealed, whether they are approved or denied by the local government.

A portion of the approved development consisting of trenching and installation of utilities is located within 100 feet of Arroyo Leon, a mapped USGS stream (Exhibit 5). Thus, this portion of the approved development meets the Commission's appeal criteria set forth in Section 30603 of the Coastal Act and is the subject of the Commission's substantial issue determination. Pursuant to Section 30603 of the Coastal Act, an appeal for this type of development is limited to the allegation that the portion of the development that is located within 100 feet of Arroyo Leon, a mapped USGS stream, does not conform to the standards set forth in the certified LCP.

Section 30625(b)(2) of the Coastal Act requires a de novo hearing of the appealed project unless the Commission determines that no substantial issue exists with respect to the grounds on which the appeal has been filed. In this case, because the staff is recommending no substantial issue, the Commission will hear arguments and vote on the substantial issue question. It takes a majority of the Commissioners present to find that no substantial issue is raised. Proponents and opponents will have three minutes per side to address whether the appeal raises a substantial issue. The only persons eligible 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 the substantial issue question must be submitted to the Commission or the Executive Director in writing.

4.3 Standard of Review

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 or its implementing regulations. The Commission's regulations simply indicate that the Commission will hear an appeal unless it "finds that the appeal raises no significant question" (Commission Regulations, 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.

If the Commission chooses not to hear an appeal, the appellant nevertheless may obtain judicial review of the local government's action on the coastal development permit by

filing a petition for a writ of mandate pursuant to Code of Civil Procedure, Section 1094.5.

In this case, the Commission exercises its discretion and finds the appeal raises no substantial issue of conformity of the approved development with the certified LCP.

5.0 SUBSTANTIAL ISSUE ANALYSIS

Appellant's Contentions

The appeal includes the following contentions (see Exhibits 2 and 3):

- The approved development is inconsistent with the minimum density requirements in the Zoning Code for the OS-R district (Open Space Reserve) which requires a minimum parcel size of 50 acres for each residence because the subject parcel is only 20 acres in size.
- The approved variance for the minimum 50-acre per residence density requirements is not consistent with the variance ordinance because the required findings that the property is subject to exceptional circumstances and that the variance would not be materially detrimental to property cannot be made.
- The approved development conflicts with the agricultural resource protection policies of the LCP that require the maximum amount of prime agricultural land be maintained in agricultural production because the approved development is not sited and clustered in an area closer to existing public infrastructure services near the parcel, but instead is located in the center of the parcel.
- The approved development is inconsistent with the biological resource protection policies of the LCP because portions of the approved development, including trenching for utilities installation and widening of the access road, would create disturbance to the habitat of the San Francisco garter snake and the California red-legged frog.
- The approved development is inconsistent with the biological resource protection policies of the LCP because portions of the approved development, including trenching for utilities installation and widening of the access road, would be within the required 50-foot buffer zone.
- The approved development has not obtained approval from the U.S Fish and Wildlife Service, which is required by the LCP for development within sensitive habitat.
- On October 23, 2007, the appellant supplemented his appeal with one additional assertion: the entire project as approved, including development beyond 100 feet from the stream is appealable because it is located in a sensitive coastal resource area.

5.1 Appellant's Contentions that Raise No Substantial Issue

The appellant specifically contends that the approved trenching under the road for utilities is inconsistent with the biological resource protection policies of the certified LCP because (1) it would create disturbance to the California red-legged frog and the San Francisco garter snake, (2) the development activities are located within the 50-foot minimum required buffer zone for habitats for rare and endangered species, including the California red-legged frog and San Francisco garter snake; and (3) the approved development has not obtained approval from the USFWS as required by LCP Policy 3-4.

Disturbance to California Red-legged Frog and San Francisco Garter Snake

The appellant contends that the portion of the approved development located within 100 feet of Arroyo Leon consisting of approximately 50 feet of trenching and installation of utilities within the existing road is inconsistent with the biological resource protection policies of the certified LCP because it would create disturbance to the California red-legged frog and the San Francisco garter snake.

Applicable LCP Policies include:

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 …

3-3 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.

3-21 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 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.

LUP Policy 3-3 requires development adjacent to sensitive habitat to be sited and designed to prevent significant adverse impacts that would degrade the habitat or be incompatible with the maintenance of the biologic productivity of the habitat. LUP Policy 3-23 requires development to avoid impacts to the functional capacity of habitat of rare and endangered species.

The portion of the approved development within 100 feet of a stream consisting of approximately 50 feet of trenching and installation of utilities that is relevant to the Commission's substantial issue determination is located in close proximity to Arroyo Leon and its associated riparian corridor, 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). Arroyo Leon is an intermittent stream, the adjacent area is a riparian corridor, and both serve as habitat for the special-status species San Francisco garter snake and California red-legged frog. According to USFWS biologist, Arroyo Leon and its associated riparian "has been recognized by several experts as containing quality habitat characteristics for the above mentioned listed species"(Exhibit 8).

Due to the proximity of such development from Arroyo Leon, and the high potential for the California red-legged frog and the San Francisco garter snake to occur within the stream and riparian corridor, the sensitive species have a high potential to wander onto the portion of the site relevant to the Commission's substantial issue determination during construction and suffer death or injury from the trenching and other activities that involve heavy equipment. Injury to or death of a frog or snake would adversely affect the populations of the species in the adjacent stream, and would therefore degrade the sensitive habitat and not be compatible with the maintenance of the biologic productivity of those areas, inconsistent with LUP Policy 3-3.

However, the City's revised conditions of approval for the project require the applicant to implement measures recommended by the USFWS to avoid harm to the California red-legged frog and the San Francisco garter snake from construction activities, which include installation of specifically designed temporary fences to exclude frogs and snakes from the project site, preconstruction surveys to ensure that frogs or snakes will not be trapped in the fenced enclosure prior to construction, contractor education by a qualified and USFWS biologist to ensure that construction personnel can identify the species and take appropriate measures if needed, and daily inspection and filling of the trenches to ensure that no frog or snake would be trapped in an exposed trench. According to

USFWS biologist (pers. comm.), these measures are comprehensive and adequate to avoid harm to the listed species.

With the inclusion of the revised mitigation measures, the approved development will not cause any harm to the California red-legged frog or San Francisco garter snake, and therefore will neither degrade the adjacent sensitive habitats nor be incompatible with the maintenance of their biological productivity, consistent with the requirements of the certified LCP. Therefore, the Commission finds that the appeal of the approved development does not raise a substantial issue of conformance of the approved development with the sensitive habitat protection policies of the LCP.

Buffer Policies

The appellant contends that the approved development within 100 feet of the stream consisting of approximately 50 feet of trenching and installation of utilities is inconsistent with Sections 18.38.085D and 18.38.075H of the City's Zoning Code/IP concerning buffers to protect rare and endangered species habitat and riparian habitat.

Arroyo Leon and its associated riparian habitat meet the definition of habitat for rare and endangered species because the biological assessment provided by the applicant states that California red-legged frogs are considered to have a high potential to inhabit Arroyo Leon and that Arroyo Leon also provides suitable habitat for the San Francisco garter snake. USFWS biologist has indicated that Arroyo Leon "has been recognized by several experts as containing quality habitat characteristics for the above mentioned listed species [California red-legged frog and San Francisco garter snake]." Section 18.38.085.D of the Zoning Code requires a 50-foot buffer around habitat of rare and endangered species. As such, development adjacent to Arroyo Leon should be set back at least 50 feet from the edge of the riparian habitat.

The approved development consists of extension of utilities to serve the approved residence and barn. Pipes will need to be extended from the existing sewer and water main located immediately east of the bridge that spans Arroyo Leon, within the required 50-foot buffer zone for habitat of rare and endangered species, to the location of the approved house. Trenching will be required in order to install the pipes. Because of the location of the existing sewer and water main, trenching and installation of pipes and utility lines will occur within 50 feet of the stream and riparian habitat. However, these activities will not encroach into any natural buffer since the development activities will take place within the existing access road, and a natural buffer between the riparian corridor and the approved development does not exist due to existing residential development located between the stream and the road.

The LCP's buffer policy is designed to protect habitat of rare and endangered species by providing a natural, undeveloped area between development and habitat that would serve as a transition zone between one type of habitat and another, an area of refuge for plants and animals between their normal or preferred habitat and human activities, and to filter polluted runoff and other chemicals. However, where the buffer zone is already

significantly developed, it would not be able to function as an area that would buffer the habitat from the impacts of development. Therefore, even though the approved installation of utilities will occur within 50 feet of the stream and riparian habitat, because it is located within an existing paved road with intervening residential development between the stream and the road, the approved development will not encroach into nor disrupt any actual habitat buffers as such buffers do not currently exist on site.

In the supplement to the appeal, the appellant contends that:

> Section 18.35.085 [of the Zoning Code] does not provide for any exceptions to the 50 foot buffer requirement simply because the intervening distance between the creek and the new development may contain some features that are considered unnatural. Please note that section 18.38.085D establishes the buffer zone on the basis of a distance criteria only, not on the basis of any intervening "natural" quality."

Indeed, Section 18.38.085.D does not provide any exceptions to the 50-foot buffer required for habitat of rare and endangered species. However even though the trenching and installation for utilities within an existing access road is within the required 50-foot buffer and therefore raises an issue of consistency with the certified LCP, it does not raise a *substantial* issue of conformity of the approved development with the certified LCP, taking into account the extent and scope of the development as approved by the local government and the significance of the coastal resources affected by the decision.

The scope of the approved development relevant to the Commission's substantial issue determination is limited to the approximately 50 feet of trenching and installation of utilities for a single family home, which is a very minor portion of the entire approved development. Because the portion of the approved development relevant to the Commission's substantial issue determination is limited to approximately 50 feet of trenching and installation of utilities for a single family home within an existing road, it will not encroach into any natural habitat buffer areas. Moreover, because the approved development has incorporated sufficient measures to protect the California red-legged frog, San Francisco garter snake, and the adjacent sensitive riparian habitat, it will not adversely affect any significant coastal resources. Therefore, based on the above factors, the appeal of the approved development does not a raise a substantial issue of conformity with Section 18.38.085.D of the Zoning Code/IP.

The appellant also contends that the approved development is also inconsistent with the riparian corridor protection policies of the Zoning Code/IP. The appellant states:

> In the case of the Pastorino project, the local jurisdiction failed to make the required findings for development in a riparian buffer zone as mandated by section 18.38.075H. This failure to make the required findings represents a separate and independent justification for substantial

> issue. As currently conditioned, the required findings of 18.38.075H cannot be made because trenching for the installation of utilities and road widening could result in harm or injury to rare or endangered species. The trenching and widening operations could also result in polluted runoff that could enter the creek and surrounding riparian buffer zone, thereby adversely affecting the quality of the sensitive habitat."

Section 18.38.075.E of the Zoning Code allows the installation of pipelines within a riparian buffer as a permitted use, provided that standards specified in Section 18.38.075.G are met and that the approval be supported by findings specified in 18.38.075.H.

Section 18.38.075.G states:

> Development Standards within Riparian Buffer Zones. Development shall be designed and constructed so as to ensure:
>
> 1. That the removal of vegetation is minimized;
>
> 2. That development conforms to natural topography and that erosion potential is minimized;
>
> 3. That provisions have been made to (i.e. catch basins) keep runoff and sedimentation from exceeding pre-development levels;
>
> 4. That native and non-invasive exotic vegetation is used for replanting, where appropriate;
>
> 5. That any discharge of toxic substances, such as fertilizers and pesticides, into the riparian corridor is prevented;
>
> 6. That vegetation in or adjacent to man-made agricultural ponds is removed if the life of the pond is endangered;
>
> 7. That dredging in or adjacent to man-made ponds is allowed if the San Mateo County Resource Conservation District, or any similar or successor agency or entity, certifies that siltation imperils continued use of the pond for agricultural water storage and supply.

With respect to the development standards specified in Section 18.38.075.G, standard numbers 1 and 4 are not applicable to the approved development relevant to this substantial issue determination because the approved development involves work within an existing roadway that will not remove any vegetation or require any planting. Standard numbers 6 and 7 are not applicable because the approved development does not involve any agricultural or manmade ponds. With respect to standard numbers 2, 3, and 5 which address erosion, sedimentation, and toxic and polluted runoff, condition numbers B1, B2, and B6 in the City's Revised Notice of Final Local Action require the implementation of construction and post-construction phase best management practices to minimize erosion,

sedimentation, and polluted runoff into Arroyo Leon. The approved development therefore meets the relevant development standards set forth in Section 18.38.075.G.

Section 18.38.075 H states:

> Findings for Development within Riparian Buffer Zones. The following Findings shall be supported by the contents of the required Biological Report:
>
> 1. That there are special circumstances or conditions affecting the property;
>
> 2. That the project is necessary for the proper design and function of some permitted or existing activity on the property;
>
> 3. That the project will not be detrimental to the public welfare or injurious to other property downstream or in the area in which the project is located;
>
> 4. That the project will not significantly reduce or adversely impact the sensitive habitat, or there is no feasible alternative which would be less damaging to the environment;
>
> 5. That the project is in accordance with the purpose of this Chapter and with the objectives of the L.C.P. Land Use Plan;
>
> 6. That development on a property which has its only building site located in the buffer area maintains a 20-foot buffer from the limit of riparian vegetation, or if no vegetation exists, a 20-foot buffer from the bank of a perennial stream and a 20-foot buffer from the midpoint of an intermittent stream.

With respect to the required findings specified in Section 18.38.075.H, the City's approval included a review of a biological report. Therefore, there is factual and legal support for the approved development to make the findings specified in sections 1-5 above. Finding 6 is applicable only to the specific use within riparian buffers specified in Section 18.38.075.F.1 in the Zoning Code, and is not applicable to the installation of pipelines, which is the development that is the subject of this substantial issue determination. With respect to finding1, the special conditions affecting the property include the location of the existing sewer and water mains within the riparian buffer. With respect to finding 2, the location of the approved utilities is dictated by the location of the existing sewer and water main. With respect to finding 3, the approved development will not be detrimental to public welfare or be injurious to other property downstream because the development will minimize erosion, sedimentation, and polluted runoff into the stream and prevent significant adverse impacts to water quality that could negatively affect downstream properties. With respect to finding 4, as conditioned and approved in the revised Notice of Final Local Action, the development will not result in significant adverse impacts to the adjacent habitat and will not result in significant

adverse water qualities impacts to Arroyo Leon. Finally, with respect to finding 5, because the approved development will not degrade the adjacent sensitive habitat and will prevent adverse impacts to water quality, the approved development is in accordance with the purpose of Chapter 18.38 of the Zoning Code and the objectives of the LCP Land Use Plan to protect coastal resources consistent with the Chapter 3 policies of the Coastal Act (specified in LUP Policy 1-1).

For the above reasons, the appeal of the approved development does not a raise a substantial issue of conformity with the riparian buffer protection policies of the City's LCP.

CDFG and USFWS Approval as Required by LUP Policy 3-4

The appellant contends that the approved development is inconsistent with LUP Policy 3-4 that require California Department of Fish and Game and Fish and US Fish and Wildlife Service approval for development in a sensitive habitat.

LUP Policy 3-4 states:

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.

Because the approved development within 100 feet of Arroyo Leon will occur within the existing paved access road, none of the approved development relevant to the Commission's substantial issue determination is located in sensitive habitat.

In the appeal supplement, the appellant states that upland areas adjacent to Arroyo Leon are sensitive habitats because they facilitate movement and dispersal of California red-legged frog. The appellant submitted his appeal supplement prior to the applicant's submittal of a detailed survey of the Commission's appeals jurisdiction. Prior to the completion of this survey, it was Commission staff as well as the appellant's understanding that the area within 100 feet of Arroyo Leon included some natural areas aside from the trenching and installations of utilities within the existing access road. However, the survey demonstrates that the appeals jurisdiction is limited to work within the existing access road and therefore the appellants contentions in his supplement concerning these natural areas understood to be in the appeals area are no longer relevant to this substantial issue determination. Even the appellant acknowledges that the road does not serve as sensitive habitat. In his supplement the appellant notes:

> California red-legged frogs require both breeding and non-breeding habitat for survival. Arroyo Leon represents breeding habitat for the species and the upland areas extending outward from the creek on both sides of the access road represents non-breeding habitat… [Emphasis added]

Therefore, since none of the approved development relevant to the Commission's substantial issue determination would be located in sensitive habitat, LUP Policy 3-4 is not applicable to the substantial issue determination and the contention that the approved development is inconsistent with that policy does not raise a substantial issue of conformity of the approved development with the certified LCP.

5.2 Conclusion—No Substantial Issue

Applying the factors listed in Section 4.3 above further clarifies that the appeal raises no 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 approved development is consistent with the certified LCP, there is factual and legal support for the City's finding that the approved development is consistent with the biological resources protection policies of the LCP because the City's approval was supported by a biological report as well as recommendations made by a USFWS biologist, the approved development will prevent injury or harm to the California red-legged frog and the San Francisco garter snake, and the approved development will not result in significant adverse impacts to the adjacent sensitive riparian and stream habitat. The approved development will also minimize erosion, sedimentation, and polluted stormwater runoff to prevent significant adverse impacts to water quality.

Regarding the extent and scope of the development as approved by the local government, the portion of the approved development appealable to the Commission is limited to only approximately 50 feet of trenching and installation of utilities within an existing access road, and therefore is very minor in scope.

Regarding the significance of the coastal resources affected by the decision, the portion of the approved development appealable to the Commission, as conditioned adequately address all potential impacts to adjacent biological resources, and as such will not adversely affect any coastal resources.

Therefore, in conclusion, the Commission finds that the appeal raises no substantial issue concerning the consistency of the approved development with the policies of the Half Moon Bay LCP.

5.3 Appellant's Contentions that are not Valid Grounds for Appeal

Pursuant to Section 30603 of the Coastal Act, for purpose of determining substantial issue, an appeal for a development where only a portion of the development is within the Commission's geographic appeal zone is limited to the allegation that the portion of the development that is located in the Commission appeal jurisdiction does not conform to the standards set forth in the certified LCP or the public access policies set forth in the Coastal Act.

As stated above, the approved development is appealable to the Commission because a portion of the approved development consisting of approximately 50 feet of trenching and installation for utilities is located within 100 feet of a USGS stream, Arroyo Leon. The appellant's allegations regarding approved development located more than 100 feet from the stream, i.e. the residence and barn, are not valid grounds for appeal.

The following contentions are not valid grounds for appeal because they apply only to the approved single-family residential development located outside of the area relevant to the Commission's substantial issue determination:

- The approved development is inconsistent with the minimum density requirements in the Zoning Code for the OS-R district (Open Space Reserve) which requires a minimum parcel size of 50 acres for each residence because the subject parcel is only 20 acres in size.
- The approved variance for the minimum 50-acre per residence density requirements is not consistent with the variance ordinance because the required findings that the property is subject to exceptional circumstances and that the variance would not be materially detrimental to property cannot be made.
- The approved development conflicts with the agricultural resource protection policies of the LCP that requires the maximum amount of prime agricultural land be maintained in agricultural production because the approved development is not sited and clustered in an area closer to existing public infrastructure services near the parcel, but instead is located in the center of the parcel.

Regarding the density requirements of the open space reserve district and the variance allowing deviation from those density requirements, pursuant to Section 18.11.020 of the Zoning Code, the 50-acre per residence density requirement applies only to the development of a single-family home on OS-R zoned lands. Other development, including on-site retail sales of agricultural products and the installation of minor utilities, is not subject to the 50-acre minimum parcel size requirement. In addition, the variance that the City approved was to allow a residence on the subject parcel, which does not meet the minimum size requirements to permit a residence in the OS-R zoning district. Therefore, the contentions regarding inconsistencies of the approved development with the minimum density requirements in the Zoning Code, as well as the inconsistencies of the approved variance with the variance ordinance, are contentions applicable to the

approved residence, which is located outside of the area relevant to the Commission's substantial issue determination. These contentions regarding approved development located more than 100 feet from the stream are therefore not valid grounds for appeal.

With respect to the contention of the approved development's inconsistencies with the agricultural resource protection policies, the appellant states:

> Approximately 50 percent of the 20-acre parcel is designated as prime farmland by San Mateo County. To maximize the agricultural productivity of the parcel, the proposed project should be re-sited and clustered in an area that is closer to existing public infrastructure services near the edge of the parcel, rather than located at the center of the parcel.

This allegation of the approved development's inconsistency with the agricultural resource protection policies of the LCP applies to the siting and design of the approved residence and barn, which are located more than 100 feet from the stream and therefore outside of the area relevant to the Commission's substantial issue determination. Therefore the contention regarding inconsistency of the approved residence and barn with the agricultural protection policies of the LCP is also an invalid ground for appeal.

Finally, the allegation that approved development beyond 100 feet from the stream is appealable because it is located in a sensitive coastal resource area is also invalid.

In an appeal supplement submitted on October 23, 2007, after the 10-day appeals period for the approved development has ended, the appellant contends that development beyond 100 feet from Arroyo Leon, i.e. the barn and residence, is appealable because it is located in a sensitive coastal resource area. This allegation is invalid because (1) contrary to the appellants' assertions, development outside of the area 100 feet from Arroyo Leon does not constitute appealable development pursuant to Section 30603 of the Coastal Act because the City did not designate sensitive coastal resource areas in its certified LCP, and (3) it does not raise a contention about approved development that is appealable to the Commission pursuant to Section 30603 of the Coastal Act.

Section 30116 of the Coastal Act defines Sensitive Coastal Resource Areas as follows:

> *"Sensitive coastal resource areas" means those identifiable and geographically bounded land and water areas within the coastal zone of vital interest and sensitivity.*

Section 30502 of the Coastal Act indicates that sensitive coastal resource areas are areas within the coastal zone where the protection of coastal resources and public access requires, in addition to the review and approval of zoning ordinances, the review and approval by the Commission of other implementing actions to protect coastal resources. Sensitive coastal resource areas (SCRAs) can be designated either by the Commission pursuant to Section 30502 of the Coastal Act, or by a local government by expressly mapping and identifying such a designation in its Local Coastal Program (LCP).

The Commission did not ultimately designate SCRAs or make recommendations to the Legislature, as contemplated by Section 30502 and 30502.5. Although a city or county is not required to designate SCRAs in their LCP, at least four local governments have chosen to do so. These local governments designated SCRAs by expressly designating and mapping specific areas within their jurisdictions consistent with the requirements of 30116 of the Coastal Act. The Commission has certified LCP's that contain SCRA designations from the City of Grover Beach (1982), San Luis Obispo County (1987), the City of Dana Point (1989) and the segment of Mendocino County's LCP that covers areas outside of the Town of Mendocino (1992). However, the City of Half Moon Bay did not designate SCRAs in its LCP consistent with the provisions of Sections 30116 and 30502 of the Coastal Act.

2-HMB-07-177

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: November 28, 2007 File: PDP-070-06

Applicant: Kerry Burke
34 Amesport Landing
Half Moon Bay, CA 94019

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 amendment and was conducted by the Planning Commission at its regularly scheduled meeting of November 8, 2007.

Project Description: To add Conditions of Approval amending a project previously approved by the Planning Commission May 24, 2007, for a Coastal Development Permit, Use Permit, Variance to minimum lot size from 50 acres to 20 acres and Mitigated Negative Declaration of a new two-story, single-family residence and barn on a 20 acre site in the Open Space – Reserve zoning district. (APN 056-280-010)

Project Location: 921 Miramontes Street

Assessors Parcel Number: APN 056-280-010

COASTAL PERMIT APPROVED, BASED UPON Findings for Approval contained in the attached Resolution and Conditions of Approval contained in Exhibit A.

The ten (10) working day period for appeal of this action to the Half Moon Bay Planning Commission ended on November 28, 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.

Exhibit 1
A-2-HMB-07-030 (Pastorino)
Revised Notice of Final Local Action
Page 1 of 18

PLANNING COMMISSION RESOLUTION P-36-07
RESOLUTION FOR APPROVAL
PDP-070-06

To add Conditions of Approval amending a project previously approved by the Planning Commission, May 24, 2007, for a Coastal Development Permit, Use Permit, Variance to minimum lot size from 50 acres to 20 acres and Mitigated Negative Declaration of a new two-story, single-family residence and barn on a 20 acre site in the Open Space – Reserve zoning district. (APN 056-280-010)

WHEREAS, an application for a Coastal Development Permit, Use Permit, Variance to minimum lot size from 50 acres to 20 acres and Mitigated Negative Declaration of a new two-story, single-family residence and barn on a 20 acres site in the Open Space – Reserve zoning district (APN 056-280-010) was approved by the Planning Commission on May 24, 2007; and

WHEREAS, a Mitigation Monitoring Program was also approved by the Planning Commission on May 24, 2007; and

WHEREAS, an appeal was filed with the Half Moon Bay City Council within the local appeal period and the determination of the Planning Commission was upheld by the City Council on July 3, 2007; and

WHEREAS, an appeal was filed with the Coastal Commission on July 23, 2007; and

WHEREAS, the Substantial Issue hearing scheduled by the Coastal Commission for October 12, 2007, was postponed in order to amend the previously approved Conditions of Approval; and

WHEREAS, the Planning Commission conducted a duly noticed public hearing on November 8, 2007, 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, all prior Conditions of Approval, Mitigation Measures and the Mitigation Monitoring Program, as previously adopted will remain unchanged;

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 amendment of additional conditions of approval to the previously approved permit (PDP-070-06).

PASSED AND ADOPTED by the City of Half Moon Bay Planning Commission at a duly noticed public hearing held on November 8, 2007, by the following vote:

AYES,
NOES,
ABSENT,
ABSTAIN,

ATTEST:

Steve Flint, Planning Director

APPROVED:

Tom Roman, Chair

Exhibit 1
A-2-HMB-07-030 (Pastorino)
Revised Notice of Final Local Action
Page 3 of 18

EXHIBIT A
FINDINGS AND EVIDENCE
PDP-070-06

To add Conditions of Approval amending a project previously approved by the Planning Commission, May 24, 2007, for a Coastal Development Permit, Use Permit, Variance to minimum lot size from 50 acres to 20 acres and Mitigated Negative Declaration of a new two-story, single-family residence and barn on a 20 acre site in the Open Space – Reserve zoning district. (APN 056-280-010)

Coastal Development Permit – Findings for an Amendment to Conditions of Approval

The Coastal Development Permit Extension for this project may be approved or conditionally approved only after the approving authority has made the following findings (1-5 listed below) per Municipal Code Section 18.20.070:

1. **Local Coastal Program** – The development as proposed or as modified by conditions, conforms to the Local Coastal Program.

   Planning Commission Findings: The proposed project was previously reviewed for conformance with all policies of the Local Coastal Program (LCP). The project was determined to be consistent with the LCP. Additional conditions of approval were submitted by the US Fish and Wildlife Service subsequent to the original approval. The Applicant requested the prior approval be amended by the incorporation of the new conditions. Those conditions do not negate prior conditions or mitigation measures and therefore are deemed as additional protection to Coastal Resources and remain consistent with the LCP.

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: There are no changes to the previously approved project proposal, therefore, the development remains consistent with the annual population limitation system established in the Land Use Plan and Zoning Ordinance.

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: There are no changes to the previously approved project proposal. The findings remains consistent that the project complies with all of the zoning standards, except minimum lot size and the findings for a variance also remain unchanged. Therefore, 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.

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 Planning Commission determines that there are no foreseeable impacts to the local infrastructure by adding biological minimization measures.

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 developed site is not located between the sea and the first public road parallel to the sea and therefore will not restrict pubic access or pubic recreation policies.

Environmental Review – Findings for

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

    Planning Commission Findings: The project is not exempt from CEQA and a Mitigated Negative Declaration (MND) was prepared. The MND was circulated for public review between April 23, 2007, and May 23, 2007. On May 24, 2007 the Planning Commission determined that the project would not have a significant effect on the environment. The Applicant has requested the inclusion of additional conditions of approval that do not revoke or change prior mitigation measures but adds more protection for biological resources. Therefore, the Commission determines the project will not have a significant effect on the environment.

EXHIBIT B
CONDITIONS OF APPROVAL
PDP-070-06

To add Conditions of Approval amending a project previously approved by the Planning Commission, May 24, 2007, for a Coastal Development Permit, Use Permit, Variance to minimum lot size from 50 acres to 20 acres and Mitigated Negative Declaration of a new two-story, single-family residence and barn on a 20 acre site in the Open Space – Reserve zoning district. (APN 056-280-010)

Authorization: Approval of this permit authorizes the amendment of the previously approved development of May 24, 2007, of a two-story, single-family dwelling of approximately 4,230 square feet of floor area, 1,109 square feet of attached garage and 1,701 square feet of covered porch and a 2,400 square foot barn on APN 056-280-010 as shown on plans with City date stamp of May 8, 2007. Conditions of approval adopted on May 24, 2007 as Exhibit B (Resolution P-020-07) are hereby superseded by the conditions contained herein. Development will only be undertaken as amended and no development shall occur as previously approved by the Planning Commission on May 24th.

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 May 8, 2007. 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. The applicant shall demonstrate issuance of a sewer permit from the City of Half Moon Bay. _____ (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 revised 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 San Mateo County Building Standards and Half Moon Bay Fire District Ordinance Number 2002-01, the applicant is required to install an automatic fire sprinkler system throughout the proposed or improved dwelling and garage. All attic access locations will be provided with a pilot head on a metal upright. All areas that are accessible for storage purposed shall be equipped with fire sprinklers including closets and bathrooms. The only exception is small linen closets less than 24 square feet with full depth shelving. The plans for this system must be submitted to the City of Half Moon Bay. A building permit **will not** be issued until plans are received, reviewed and approved. Upon submission of plans, the County or 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. 2006-01. 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 street or road. _____ (Building).

14. OCCUPANCY SEPARATION: As per the 2001 CBC, Section 302.4, a one-hour occupancy separation wall shall be installed with a solid core, 20-minute

fire rated, self-closing door assembly with smoke gasket between the garage and the residence. ____(Building)

15. FIRE HYDRANT: As per 2001 CFC, Appendix III-A and III-B, a fire district approved fire hydrant (CLOW 960) must be located within 250 feet of the proposed single-family dwelling unit measured by way of drivable access. As per 2001 CFC, Appendix IIIA, the hydrant must produce a minimum fire flow of 1,000 gallons per minute at 20 pounds per square inch residual pressure for 2 hours. Contact the local water purveyor for water flow details. _____(Fire)

16. EXTERIOR BELL AND INTERIOR HORN/STROBE: are required to be wired into the required flow switch on your fire sprinkler system. The bell, horn/strobe and flow switch, along with the garage door opener are to be wired into a separate circuit breaker at the main electrical panel and labeled._____(Fire)

17. SMOKE DETECTORS WHICH ARE HARD WIRED: As per the CBC, State Fire Marshal regulations, and Half Moon Bay Fire District Ordinance 2002-01, the applicant is required to install State Fire Marshall approved and listed smoke detectors which are hard wired, interconnected, and have battery backup. These detectors are required to be placed in each sleeping room and at a point centrally located in the corridor or area giving access to each separate sleeping area. A minimum of one detector shall be placed on each floor. Smoke detectors shall be tested and approved prior to the building final._____(Fire)

18. ADDRESS NUMBERS: As per Half Moon Bay Fire District Ordinance 2002-01, building identification shall be conspicuously posted and visible from the street. (TEMORARY ADDRESS NUMBERS SHALL BE POSTED PRIOR TO COMBUSTIBLES BEING PLACED ON SITE). The letters/numerals for permanent address signs shall be **4 inches** in height with a minimum ¾ inch stroke. Such letters/numerals shall be internally illuminated and facing the direction of access. When the building is served by a long driveway or is otherwise obscured, a reflectorized address sign shall be placed at the entrance from the nearest public roadway. _____(Fire)

19. ROOF COVERING: As per Half Moon Bay Fire District Ordinance 2002-01, the roof covering of every new building or structure, and materials applied as part of a roof covering assembly, shall have a minimum fire rating of Class "B" or higher as defined in the current edition of the California Building Code._____(Fire)

20. FIRE ACCESS ROADS: The applicant must have a maintained all-weather surface road for ingress and egress of fire apparatus. As per the 2001 CFC, dead-end roads exceeding 150 feet shall be provided with a turnaround in

accordance with Half Moon Bay Fire District specifications. As per the 2001 CFC, Section 902.2.2.2.1, road width shall not be less than 20 feet [existing private road]. Fire access roads shall be installed and made serviceable prior to combustibles being placed on the project site and maintained during construction. Approved signs and painted curbs or lines shall be provided and maintained to identify fire access roads and state the prohibition of their obstruction. If the road does not allow parking on the street (20 foot road) and on-street parking is desired, an additional improved area shall be developed for that use. The driveway access from the existing private road shall be a minimum of 16 feet in width of the same all-weather surface material such as compacted decomposed granite, pavers, asphalt or concrete._____(Fire)

21. VEGETATION MANAGEMENT: The Half Moon Bay Fire District Ordinance 2002-01, the 2001 California Fire Code and Public Resources Code 4291 require a minimum clearance of 100 feet, or to the property line of all flammable vegetation to be maintained around all structures by the property owner. This does not include individual species of ornamental shrubs and landscaping._____(Fire)

22. MITIGATION MEASURES:

1. Within two weeks prior to the start of construction, a worker education program shall be presented at the project site by a biologist familiar with the species. Associated written material will be distributed. It shall be the onsite foreman's responsibility to ensure that all construction personnel and subcontractors receive a copy of the education program. The education program shall include a description of the California red-legged frog and San Francisco farter snake and their habitat, the general provisions of the Endangered Species Act, the necessity of adhering to the Act to avoid penalty, measures implemented to avoid affecting California red-legged frog and San Francisco farter snake specific to the project and the work boundaries of the project.
2. If California red-legged frogs or San Francisco garter snakes are observed by workers or anyone else prior to or during construction, work shall cease and the USFWS and CDFG contacted for guidance. The regulatory agencies may require daily biological monitoring and/or other mitigation measures.
3. Exposed trenches resulting from project construction shall be backfilled as soon as practicable. Open trenches should have an escape ramp (composed of earthen material) installed at the end of each work day so that any entrapped wildlife may exit.
4. If feasible, project construction shall take place outside of the breeding bird season (the breeding bird season is generally February 15 to August 15). If work must be conducted during the breeding season, a qualified biologist shall conduct a pre-construction breeding bird survey of any

construction activity. If bird nests are observed, an appropriate buffer zone shall be established around all active nests to protect nesting adults and their young from construction disturbance. Buffer zones shall be determined by a qualified biologist in consultation with CDFG based on the site conditions and the species potentially impacted. Work within the buffer zone shall be postponed until all the young are fledged, as determined by a qualified biologist.

5. Hours of construction shall be limited for residential, commercial and industrial development to: Monday – Friday 7:00 a.m. to 6:00 p.m., Saturday 8:00 a.m. to 6:00 p.m. and Sunday and Holidays 10:00 a.m. – 6:00 p.m.
6. In order to approve the proposed project and associated mitigated negative declaration, the reviewing body shall approve a variance with finding to allow the construction of a single-family residence on an existing parcel of 20± acres.

23. A worker education program shall be implemented prior to the start of any ground breaking activity and should be conducted by a Service-approved biologist. (This individual should send their qualifications via a 1-2 pg resume to the Service for email approval prior to conducting the education session. Highlight this individual's experience working with amphibians and reptiles in a field setting)._____(Planning)

24. Establish exclusion fencing surrounding the entire project area (i.e. anywhere where the ground will be disturbed). A gate shall be installed to allow entrance/exit of construction vehicles and staff as needed, but it shall remain closed the majority of the time, especially overnight. Fencing should be a minimum of 36 inches above ground level and buried 4-6 inches into the ground. Fencing should have one-way escape funnels and should remain intact for the entire duration of development activities. Fencing may be made of plywood or erosion mesh but shall not be made of orange construction fencing or anything with larger holes that could trap listed species. Fencing should be erected two weeks prior to the start of construction and should be established by Service-approved monitor(s) (see above). Fencing should be inspected for any rips or other malfunctions once per week by biological

monitors during all phases of construction activity. Upon completion of the proposed project all traces of fencing should be removed and properly disposed of off-site. _____(Planning)

25. After the establishment of fencing but prior to the start of construction, grass and vegetation within this area should be removed via belt driven weedwacker to a two- to four-inch height._____(Planning)

26. Immediately after grass clipping, Service-approved monitors shall perform preconstruction surveys of the area. If any listed species are found, monitors will remove these animals from the fenced area and bring them to Arroyo Leon creek for release. Under no circumstance shall these individuals be allowed to be placed at any other location. Preconstruction surveys should be performed again the day of the onset of construction activities to ensure the area is clear. If any listed species are found during the course of construction, construction will cease until biological monitors have been contacted and arrive on the site. Biological monitors will then be allowed to remove listed species from the site and translocate them to Arroyo Leon. Under no circumstances will anyone else be allowed to handle these species. At the end of the construction period, biological monitors will issue a report to the Service describing the species encountered during construction activities and what actions where taken._____(Planning)

27. All trenches and holes shall be filled or covered at the end of each work day within the project area._____(Planning)

28. No staff or equipment shall enter the riparian areas during the construction period._____(Planning)

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 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. _____ (Building/Public Works)

3. DISCOVERY OF ARCHAELOGICAL 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 inhabitance 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 as indicated in the final Off-Site Interim Improvement Plans._____ (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 existing elevation specified in the approved plans. _____ (Building)

10. BUFFER ZONES. The minimum buffer surrounding a habitat of a rare or endangered species shall be 50 feet.

C. The following must be fulfilled prior to Occupancy:

1. INSTALLATION OF STREET TREES. Street trees shall be installed in the parkway of the public right-of-way per final Off-Site Improvement Plan proposal with adequate irrigation provided prior to the installation of the sidewalk. The trees 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 low precipitation sprinkler heads, bubblers, drip irrigation systems and timing devices. _____ (Building/Planning)

3. COMPLETION OF FIRE DISTRICT REQUIREMENTS. All requirements of the Half Moon Bay Fire Protection District shall be met. _____ (Fire/Building)

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4. COMPLETION OF DRAINAGE IMPROVEMENTS. All surface and subsurface storm drainage facilities necessary for the development of this parcel shall be constructed pursuant to the approved Lot Drainage Plan. Run-off from and to adjacent properties must be considered in the proposed plans. All roof drainage shall be collected and conveyed directly to an approved Best Management Practice (BMP) facility. 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. Sediment and hydrocarbon separation devices that have been reviewed and approved by the City Engineer shall be installed in on-site storm drains prior to discharging any on-site storm water into the off-site City storm drainage system_____ (Engineering/Building)

5. ENCROACHMENT PERMIT. An Encroachment Permit shall be required prior to any installation of utilities and any other required work within the public right-of-ways. _____ (Public Works)

6. COMPLETION OF WATER AND SEWER FACILITIES. The applicant shall construct domestic water line facilities and appurtenances for service from the water utility. Water service from any interim well shall not be permitted. Low flow plumbing fixtures shall be used throughout the proposed project. A water pressure regulator shall be installed. The sanitary sewer line and lateral facilities for complete and adequate service for this parcel shall be connected to the public sewer lines. A cleanout is to be provided within three feet of the property line in the Public Right of Way. _____ (Building)

7. COMPLETION OF UTILITIES. Any public utilities requiring relocation as a result of the construction of the building(s) or improvements under this permit shall be relocated at the owner's expense. _____ (Building)

8. UNDERGROUND UTILITIES. All utilities for energy and communications shall be installed underground. _____ (Building)

9. 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)

10. 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)

11. 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 September 12, 2006, and approved by the Architectural Review Committee (ARC) on January 17, 2007. ____ (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, including the parkway between the sidewalk and the street curb, 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.

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):

_____ _____
(Signature) (Date)

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STATE OF CALIFORNIA – THE RESOURCES AGENCY ARNOLD SCHWARZENEGGER, *Governor*

CALIFORNIA COASTAL COMMISSION
NORTH CENTRAL COAST DISTRICT OFFICE
45 FREMONT STREET, SUITE 2000
SAN FRANCISCO, CA 94105-2219
VOICE (415) 904-5260 FAX (415) 904-5400

APPEAL FROM COASTAL PERMIT DECISION OF LOCAL GOVERNMENT

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

RECEIVED
JUL 23 2007
CALIFORNIA
COASTAL COMMISSION

SECTION I. Appellant(s)

Name: Kevin J. Lansing

Mailing Address: 359 Filbert St.

City: Half Moon Bay Zip Code: 94019 Phone: 415-974-2393

SECTION II. Decision Being Appealed

1. Name of local/port government:

City of Half Moon Bay

2. Brief description of development being appealed:

Coastal Development Permit, Use Permit and Proposed Variance to the Half Moon Bay Land Use Plan for the construction of a two-story 5339 sq. ft. house (including garage), plus a 2,400 sq. ft. barn, utility service extensions, and access road widening, on a 20-acre parcel zoned Open Space Reserve (OSR), designated in part as Prime Farmland.

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

921 Miramontes St., Half Moon Bay 94019
APN 056-280-010

4. Description of decision being appealed (check one.):

☐ Approval; no special conditions

☒ Approval with special conditions:

☐ 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-07-030

DATE FILED: 7/23/07

DISTRICT: North Central Coast

Exhibit 2 (Page 1 of 18)
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Appeal Filed by Kevin Lansing

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

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

☐ Planning Director/Zoning Administrator
☒ City Council/Board of Supervisors
☒ Planning Commission
☐ Other

6. Date of local government's decision: 5-24-07 (CDP)
7-3-07 (local appeal)

7. Local government's file number (if any): PDP-070-06

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:

Thomas and Eugene Pastorino
921 Miramontes St.
Half Moon Bay, CA 94019

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) Wayne and Dana Pastorino, 921 Miramontes St., Half Moon Bay, CA 94019
Kerry Burke, 34 Amesport Landing, Half Moon Bay, CA 94019
Anne Gustin, 3414 Scenic Dr, Napa, CA 94558
Stan Pastorino, 12491 San Mateo Rd., Half Moon Bay, CA 94019
Eda Muller, 923 Miramontes St., Half Moon Bay, CA 94019

(2) Al Andreveno, 925 Miramontes St., Half Moon Bay, CA 94019
Eric Kiebler and Janice Solimeno, 975 Miramontes St., Half Moon Bay, CA 94019
Guido Ciare, 995 Miramontes St., Half Moon Bay, CA 94019
Andrew Dorfman 1009 Miramontes St., Half Moon Bay, CA 94019
John Meador, 1121 Miramontes St., Half Moon Bay, CA 94019

(3) Don Tainter, 712 Monte Vista Drive, Half Moon Bay, CA 94019
Terry Andreotti, 227 Kelly Ave. Half Moon Bay, CA 94019
Chad Hooker 423 San Benito St., Half Moon Bay, CA 94019
Silvia Prewett, 401 Spruce St., Half Moon Bay, CA 94019

(4) Urs Willimann, 515 San Benito St., Half Moon Bay, CA 94019
Dale Dunham, 513 Ruisseau Francais Ave., Half Moon Bay, CA 94019
Lennie Roberts, Committee for Green Foothills, 339 La Cuesta, Portola Valley, CA 94028
Lucy Triffleman, US Fish and Wildlife Service, 2800 Cottage Way room W-2605, Sacramento, CA. 95825

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

SECTION IV. Reasons Supporting This Appeal

PLEASE 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.
- 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.)
- This 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.

See attachment.

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 : July 23, 2007

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 : _____

Appeal Attachment (Pastorino)

1. Conflicts With Land Use Plan.

Section 18.11.020 of the HMB zoning code requires a minimum parcel size of 50 acres for each residence in the Open Space Reserve (OSR) district. The locally-approved permit included a variance to this minimum density requirement. The required findings for a variance cannot be made for this project for the following reasons:

a. According to section 18.23.010, variances may only be granted "when such variance will not be contrary to the intent of this Title." The intent of the City's Land Use Plan is to hold OSR parcels in reserve until other alternative infill zones have been developed. Clear evidence of this intent can be found in LCP Policy 8-5 which states:

> "Lands designated Open Space Reserve on the Land Use Plan Map shall not be eligible for development approval and shall not receive a permit for development, other than for uses permitted under the designation Open Space Reserve, unless and until there are no alternative areas appropriate for infilling within the City for the proposed use and no division of such lands shall be permitted until development approval is obtained pursuant to this policy."

In addition, pages 112-113 of the City's Land Use Plan state the following with regard to "Agricultural Phasing"

> "The land use designations and agricultural policies in this Plan establish a logical scheme for the conversion to urban use of lands currently in some form of agricultural use...Those lands designated Open Space Reserve because continued agricultural use may remain viable for the short term will be developed only after all of the remaining lands in the City suitable for development have been developed or committed to other uses."

It is clear from Policy 8-5 that only conforming uses in the OSR zone (including extremely low density residential of one house per 50 acres) are intended to be approvable during the time frame when the parcel is held in "reserve." Policy 8-5 and the discussion on "agricultural phasing" clearly do not envision the granting of variances that would serve to accelerate the development of OSR parcels ahead of other eligible infill zones. The granting of a variance that allows immediate development of an OSR parcel at higher-than-allowable density is contrary to the intent of the City's Land Use Plan.

b. According to 18.23.010, variances may only be granted when there are exceptional circumstances that "do not apply generally to the land, buildings, and/or uses in the same [zoning] district." The proposed variance does not meet this standard because 5 out of the 7 remaining undeveloped OSR parcels within City limits also do not meet the 50-acre minimum lot size for the construction of a single family residence (see table below). The undersize lot condition that affects this project is a circumstance that applies generally to other undeveloped parcels in the same zoning district. The correct course of action would be for the City to undertake a revision to the Land Use Plan, not to grant a variance that will set a precedent for future proposed development on the 5 other similarly-zoned parcels that do not meet

the minimum lot size requirement. Indeed, the City is currently processing an application for development on another undersize OSR parcel located at 985 Miramontes. Sequential granting of variances on undersize OSR parcels would constitute a defacto LCP amendment, effectively eliminating the lot size minimum for OSR parcels without legislation by the City Council and without certification by the California Coastal Commission. Such actions would harm the public welfare by compromising the integrity of the City's Land Use Plan and the explicitly stated "logical scheme for the conversion to urban use of lands currently in some form of agricultural use." On July 3, 2007, the City Council directed City planning staff to place a new item on the strategic plan to accomplish a re-zoning of these OSR parcels. This action shows that the City Council recognizes the inappropriate use of a variance to address the undersize lot condition on the remaining undeveloped OSR parcels. The proposed project could also set a precedent for the use of variances to allow increased density in other zoning districts throughout the City.

Remaining Undeveloped OSR Parcels

APN	Size (acres)
056-280-090	0.31*
056-280-010	20.1*
056-260-030	5.3*
056-260-030	18.4*
047-340-160	299.3
047-340-110	37.0*
047-340-180	328.9

* = does not meet 50-acre minimum density requirement.

c. According to 18.23.010, variances may only be granted when "such application...will not...materially affect adversely...the persons residing or working in the neighborhood...and will not...be materially detrimental...to property or improvements in said neighborhood." Testimony was presented to the local government that adverse property value effects to at least one neighbor would occur if the variance were granted. The neighbor filed an appeal of the permit to the City Council, which was denied on July 3, 2007. Section 4 of the City staff report for the July 3 appeal hearing acknowledged that another pending project before the City on a separate OSR parcel at 985 Miramontes would also impose adverse effects on the neighborhood, providing further evidence that variances are not a viable planning tool to address the development constraints on the remaining OSR parcels.

2. Conflicts with Agricultural Resource Protection Policies. The minimum density requirement of the OSR zoning implements the intent of the Land Use Plan to preserve the viability of agriculture for as long as possible while other remaining infill areas are developed. In addition, the Land Use Plan incorporates the agricultural protection requirements of the Coastal Act, specifically, section 30241 which requires that "The maximum amount of prime agricultural land shall be maintained in agricultural production..." Approximately 50 percent of the 20-acre parcel is designated as prime farmland by San Mateo County. To maximize the agricultural productivity of the parcel, the proposed project should be re-sited and clustered in an area that is closer to existing public infrastructure services near the edge of the parcel, rather than located at the center of the parcel. Coastal Act section 30250 requires new residential

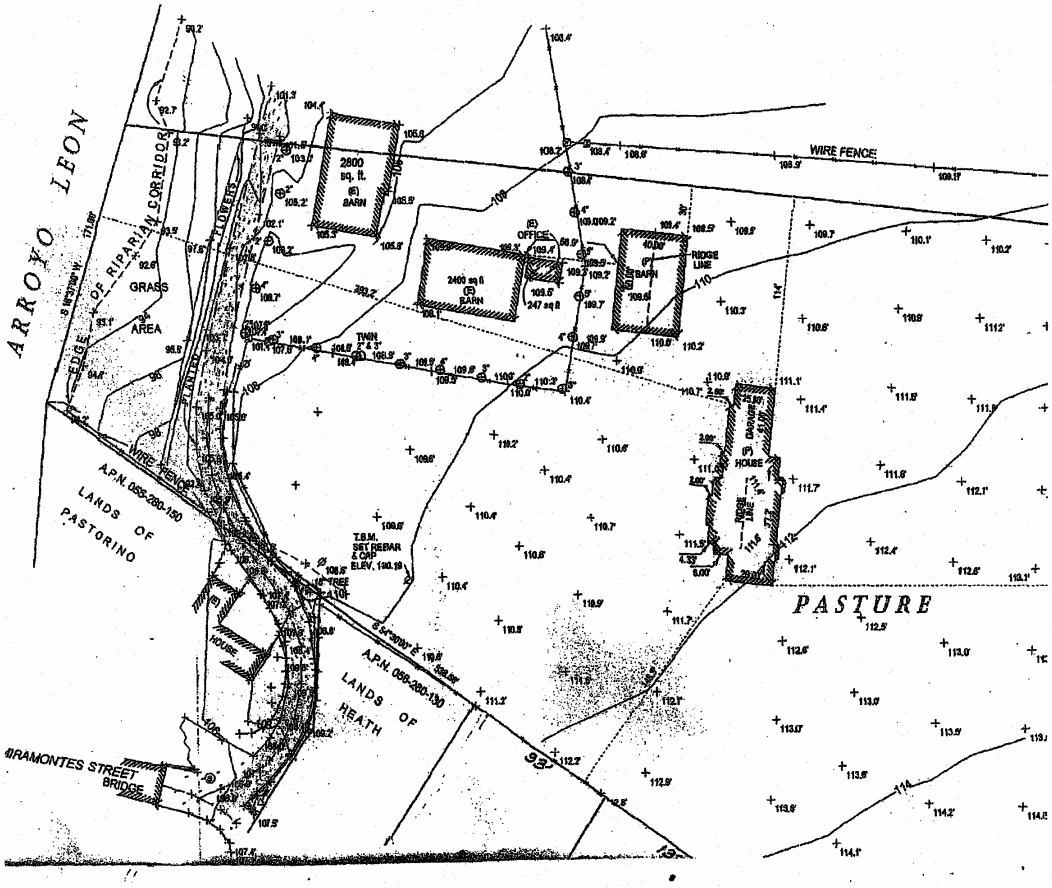
development to be located "in close proximity to" existing developed areas with adequate public services.

3. Conflicts with Biological Resource Protection Policies

The riparian corridor of Leon Creek meets the definition of sensitive habitat stated in section 18.38.020 of the City's zoning code. LCP Policy 3-4 specifically calls out the need to abide by the regulations of the U.S. Fish and Wildlife Service (USFWS) and the California Department of Fish and Game (CDFG) in sensitive habitat areas. Section 18.38.085 requires a buffer zone of 50 feet around habitat of rare or endangered species. The project will require widening of the access road to the project site for the purpose of emergency vehicle access. Trenching underneath the acccess road is also required for the installation of water and sewer utilities. Based on the general site plan and an aerial map (enclosed) both of these operations may encroach within the 50 foot buffer, and would certainly create a disturbance to the habitat of San Francisco Garter Snakes and California Red-legged Frogs. In an email to the City planner dated July 16, 2007 (enclosed), USFWS biolgist Lucy Triffleman indicated that the applicant would be required to obtain a Take Permit pursuant to the preparation of a Habitat Conservation Plan (HCP). Finding for compliance with LCP Policy 3-4 cannot be made until this process has been completed.

Summary

The project should not have been approved by the local government due to substantial conflicts with Half Moon Bay's certified Local Coastal Program. The local government was made aware of these conflicts during the local review process (see the enclosed comment letters dated May 22, May 23, and July 3, 2007). An approvable project may exist if: (1) the City were to undertake a revision to the Land Use Plan to address the development constraints on the remaining undeveloped OSR parcels, (2) the site plan is redesigned to cluster development so as to maximize the agricultural productivity of the prime farmland, and (3) the project applicant obtains a Take Permit from USFWS, and (4) the Coastal Development Permit is conditioned to properly mitigate the incidental take of endangered species habitat in accordance with USFWS and CDFG regulations.



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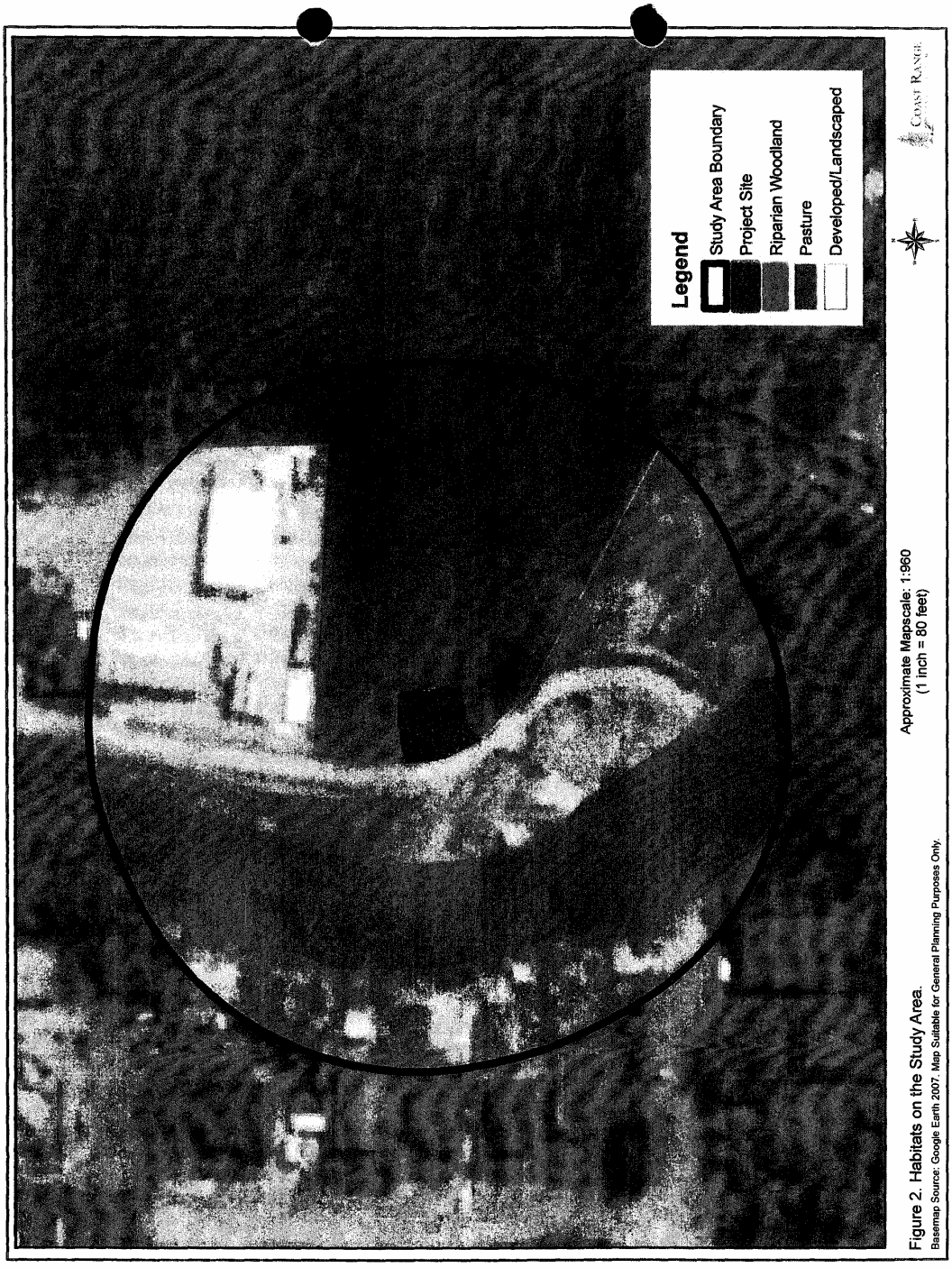


Figure 2. Habitats on the Study Area.

-----Original Message-----
From: Lucy_Triffleman@fws.gov [mailto:Lucy_Triffleman@fws.gov]
Sent: Monday, July 16, 2007 6:25 PM
To: Kathy Marx
Cc: Ryan_Olah@fws.gov; SGLUSHKOFF@dfg.ca.gov; YinLan Zhang
Subject: RE: Comment Letter for Appeal of PDP-070-06

Kathy-
Sorry to respond to your email so late- I have been trying to get some BOs out the door before I go on annual leave. I am concerned about the road being widened to an area closer to the creek as it seems you indicate in the below email. I would strongly advise the applicant to consider alternatives such as widening the road only away from Arroyo Leon and relining the road, or placing the access road elsewhere. The primary point is to avoid placing development any closer to the creek than it currently is. Without implementing these avoidance measures the Service would consider the widening of the road a result of the construction of the house, and therefore a cumulative effect needing incidental take. This means doing a biological opinion either through section 7 or doing a low effect HCP or doing an HCP. I also want to alert you that there may need to be additional discussion with my supervisor that will require incidental take of this species regardless of avoidance. I am waiting for him to return to the office to discuss further. I will keep you posted. I will be out of the office until Friday- you can contact me at that point if yo have questions. Thanks-

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

"Kathy Marx" <kmarx@ci.half-moon-bay.ca.us>

07/10/2007 11:54 AM

To <Lucy_Triffleman@fws.gov>
cc
Subject RE: Comment Letter for Appeal of PDP-070-06

Lucy, Please note that the proposed driveway to the residence is located 20 feet from the southern property line accessed by an existing 14 foot wide paved road. Please review site plan page 5 of the Initial Study. Within that twenty feet of existing roadway, on the east side (not the creek side, because the roadway is at the edge of an elevated terrace) is proposed landscaping. Development has been proposed for that section from the inception of the project proposal. The Fire Department requested that twenty foot portion of the existing road be widened to twenty feet. The additional road surface is not required to be asphalt but may be such material as decomposed granite or grass-crete. Please see Condition of Approval # A. 20. This was discussed at the Planning Commission public hearing. Lastly, the Initial Study does not include the increase in the 20 foot span of private roadway from 14 feet to 20 feet because that

Condition of Approval was incorporated by the local Fire Department after review of the Initial Study (for the exact purpose of the Initial Study – to give affected agencies the right of comment on a project.) In the staff report to the Planning Commission on page 6 under Services and Infrastructure there is distinct discussion regarding that Fire Dept. condition.

If the USFWS would have commented during the Initial Study review period those comments would have been included in the staff report and as additional mitigation measures or conditions of approval, accordingly. It is understood that as a Federal agency USFWS is not required to participate in the State and Local review process but that does not negate the fact that as a local jurisdiction, we have to operate under State procedural criteria. The MND has been filed and recorded with appropriate fees paid May 30, 2007. The project applicant has agreed to the minimization measures that you emailed July 3, 2007, and indicated necessary in order to receive a not likely to adversely affect determination.

If there is any further need for clarification regarding PDP-070-06 please don't hesitate to call, 650-512-5836. Thank you. Kathy Marx

---

From: Lucy_Triffleman@fws.gov [mailto:Lucy_Triffleman@fws.gov]
Sent: Monday, July 09, 2007 2:43 PM
To: Kathy Marx
Cc: SGLUSHKOFF@dfg.ca.gov
Subject: Fw: Comment Letter for Appeal of PDP-070-06

Kathy-
In this letter I notice Kevin states that the road next to the Creek will need to be widened. Am I interpreting this correctly? if so, this widening will need to be incorporated into the Project description and we may need to add additional minimization measures.
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

COMMITTEE FOR
GREEN FOOTHILLS

May 23, 2007 by email

Kathy Marx
City of Half Moon Bay
501 Main Street
Half Moon Bay, CA 94019

Re: PDP-070-06: Coastal Development Permit, Use Permit, Variance from minimum lot size requirement of 50 acres in the Open Space – Reserve Zoning District and approval of a two-story Single Family Residence and barn on a 20 acre site at 921 Miramontes Street.

Dear Ms. Marx,

I have reviewed the Staff Report and proposed Negative Declaration for the above-referenced project. I have the following comments on behalf of Committee for Green Foothills:

Re: Proposed Variance: I do not believe that the Findings for a Variance can be made. The City's Zoning Code provides that variances can only be granted in instances where the particular characteristics of the property or its location or surroundings create a situation where a literal enforcement of the zoning regulations would result in a hardship, among other requirements. In this case, the size, shape, topography, etc. of the property, its location and surroundings do not create such a situation.

Re: Proposed conversion of prime agricultural land to non-agricultural use: I do not believe that, as designed and located, the large residential structure, extensive driveway, accompanying landscaping, and other improvements can be permitted. Under the Coastal Act, and the City's LCP, the maximum amount of prime agricultural land shall be preserved, and conversions to non-agricultural uses are strictly limited. If the City were able to make the Findings for a Variance (which we do not believe it can), the project would need to be re-designed to conform with Section 30241 of the Coastal Act.

Thank you for the opportunity to comment. Please keep us informed as to the determinations the City makes on this proposed project.

Sincerely,

(signed)

Lennie Roberts, Legislative Advocate
Committee for Green Foothills
339 La Cuesta, Portola Valley 94028

COMMITTEE FOR
GREEN FOOTHILLS
3921 E. Bayshore Road
Palo Alto, CA 94303
650.968.7243 PHONE
650.968.8431 FAX
info@GreenFoothills.org
www.GreenFoothills.org

May 23, 2007

Planning Department
City of Half Moon Bay City
501 Main Street
Half Moon Bay, CA 94019
Attn: Kathy Marx, Project Planner

Subject: PDP-070-06 (Pastorino), Comment on proposed Initial Study and Mitigated Negative Declaration (IS/MND) and application for a Coastal Development Permit, Use Permit and Proposed Variance to the Half Moon Bay Land Use Plan for the construction of two-story 5339 sq. ft. house (including garage), plus a 2,400 sq. ft. barn on 20-acre parcel zoned Open Space Reserve (OSR) designated in part as Prime Farmland.

Dear Kathy:

I would like to provide the following comments on the above-named project. Please include these comments as part of the official public record for PDP-070-06. I also request that these comments be provided to the other members of the Planning Commission.

1. Land Use and Planning.

The draft IS/MND claims that conflicts with the City's Land Use Plan can be reduced to "less than significant" by approving a variance to zoning code section 18.11.020 which requires a minimum parcel size of 50 acres in the OSR zone. However, the approval of such a variance would represent a separate unanalyzed conflict with the City's Land use plan that would have a significant unmitigated impact for the following reasons:

a. Per zoning code section 18.23.010, variances may be granted only "when such variance will not be contrary to the intent of this Title." The intent of the City's Land Use Plan (as implemented by Section 18) is to hold OSR parcels in reserve until other alternative infill zones have been developed. Clear evidence of this intent can be found in LCP Policy 8-5 which states:

> "Lands designated Open Space Reserve on the Land Use Plan Map shall not be eligible for development approval and shall not receive a permit for development, other than for uses permitted under the designation Open Space Reserve, unless and until there are no alternative areas appropriate for infilling within the City for the proposed use and no division of such lands shall be permitted until development approval is obtained pursuant to this policy."

In addition, pages 112-113 of the City's Land Use Plan state the following with regard to "Agricultural Phasing"

> "The land use designations and agricultural policies in this Plan establish a logical scheme for the conversion to urban use of lands currently in some form of agricultural use...Those lands designated Open Space Reserve because continued agricultural use may remain viable for the short term will be developed only after

all of the remaining lands in the City suitable for development have been developed or committed to other uses."

It is clear from Policy 8-5 that only conforming uses in the OSR zone (including extremely low density residential of one house per 50 acres) are intended to be approvable during the time frame when the parcel is held in "reserve." Policy 8-5 and the discussion on "agricultural phasing" clearly do not envision the granting of variances that would serve to accelerate the development of OSR parcels ahead of other eligible infill zones. The proposed granting of a variance that would allow immediate development of this 20-acre OSR parcel is contrary to the intent of the City's Land Use Plan.

b. Section 18.23.010 also limits variances to cases where there is no adverse impact to public welfare. Granting a variance to this project will set a precedent for future proposed development on other similarly-zoned parcels that do not meet the minimum lot size requirement. Indeed, the City is currently processing an application for development on a much smaller OSR parcel located at 985 Miramontes. Sequential granting of such variances would constitute a defacto LCP amendment: effectively eliminating the lot size minimum for OSR parcels without legislation by the City Council and without certification by the California Coastal Commission. Such actions would harm the public welfare by compromising the integrity of the City's Land Use Plan and the explicitly stated "logical scheme for the conversion to urban use of lands currently in some form of agricultural use."

c. The proposed findings for granting the variance state that it would not be "injurious to property or improvements in said neighborhood." This finding cannot be made as evidenced by the letter dated May 16, 2007 from the owners of an existing residence at 975 Miramontes. The letter states that the proposed Pastorino project will have an adverse material affect on nearby property values and will reduce privacy and quality of life.

d. Per section 18.02.040, the lot in question qualifies as a "Substandard Lot," which is defined as "Any lot...that is less than the requirements in the zoning district in which the lot is located." The design guidelines for substandard lots in section 18.06.050.G.1 state that "To the maximum extent possible, garages must be located in the rear yard." The proposed project fails to meet this standard.

2. Agricultural Resources.

a. The draft IS/MND claims that conversion of the parcel from agricultural use to urban use is consistent with the discussion on page 99 of the Half Moon Bay Land Use Plan, which states that Coastal Act section 30241(c) applies " to virtually all of the lands located within the limits of the City of Half Moon Bay." However, in this case, the proposed conversion from agricultural use to urban use would be accomplished by means of a variance that directly conflicts with the logical scheme for agricultural phasing in the City's Land Use Plan. Legal conversion of this parcel to urban use at this time can only take place by means of a certified amendment to the City's Land Use Plan.

b. The draft IS/MND claims that "the conversion of less than 2% of the site's prime farmland is acceptable per LCP requirements." The Half Moon Bay LCP incorporates Coastal Act section 30241 which requires that "The maximum amount of prime agricultural land shall be maintained in agricultural production..." [underline added]. As a mitigation measure, the draft IS/MND must investigate and discuss alternative site and design features that would

serve to concentrate the development in a smaller area, say closer to the access road, so as to minimize the impact on the potential agricultural productivity of the parcel.

3. Biological Resources

The draft IS/MND states that "The proposed project is located at a minimum of seventy (70) feet from the drip line of the riparian woodland canopy associated with Leon Creek." It is my understanding that trenching starting from Miramontes Steet is needed to extend water service to the project. If so, then "development" as defined by the LCP would appear to encroach within the 50 foot buffer mandated by section 18.38.085.D. Moreover, the proposed biological mitigation measures for the project have not been designed in consultation with the U.S. Fish and Wildlife Service (USFWS) and the California Department of Fish and Game (CDFG). LCP Policy 3-4 specifically calls out the need to abide by USFWS and DFG regulations in sensitive habitat areas. The riparian corridor of Leon Creek meets the definition of sensitive habitat stated in section 18.38.020 of the City's zoning code.

4. Population and Housing

The draft IS/MND claims that there would be "No Impact" of the project in inducing substantial population growth either directly or indirectly. There are two potential growth-inducing impacts that have not been analyzed or mitigated. The first is the proposed use of a variance that could effectively nullify minimum lot size requirements for other future projects. As noted above, the City is currently processing a development application for another undersized OSR parcel in the same vicinity. No mitigation measures have been proposed that would prevent the use of similar variances in the future to allow further increases in density on large OSR parcels. The second potential growth-inducing impact stems from the extension of water and road service to a large OSR parcel that could increase pressure for conversion to a planned unit development (PUD)—effectively accelerating the time frame for conversion to urban use versus that currently envisioned by the City's Land Use Plan.

5. Findings of Significance

The draft IS/MND claims that the current project would have no impacts which are "Cumulatively considerable." However, it is reasonably foreseeable that the approval of a variance for this project would have implications for the enforcement of minimum lot size requirements on many probable future projects, including at least one project that is currently in the City's application pipeline. No analysis has been done or mitigation measures proposed that would address the cumulative impacts on land use of allowing variances similar the one proposed for this project.

Kevin J. Lansing
Planning Commissioner

Copy to:
City Manager
Planning Director
California Coastal Commission, North Central Coast Office

July 3, 2007

Mayor Naomi Patridge and Members of the City Council
City of Half Moon Bay
501 Main Street
Half Moon Bay, CA 94019

Subject: Comment on Appeal of PDP-070-06 (Pastorino).

Dear Council Members:

For the record, I am a member of the City's Planning Commission, but the comments below represent my views as an individual citizen. I urge the City Council to uphold the above-named appeal and deny the granting of a Coastal Development Permit to the project for the reasons outlined below. Please include these comments as part of the official public record for PDP-070-06.

1. Legal findings for a variance cannot be made.

a. Per 18.23.010, variances may only be granted "when such variance will not be contrary to the intent of this Title." The intent of the City's Land Use Plan is to hold OSR parcels in reserve until other alternative infill zones have been developed, as stated in LCP Policy 8-5. The City's Land Use Plan incorporates Coastal Act section 30241 which requires that "The maximum amount of prime agricultural land shall be maintained in agricultural production..." The proposed variance violates the intent of the Land Use Plan as it relates to phasing of OSR development and the protection of prime agricultural land. If the applicant wishes to develop the parcel at this time, consistency with the Land Use Plan requires that (1) the project description should be amended to include a rezoning of the parcel to allow a higher density, and (2) the project should be re-sited and clustered to minimize negative impacts to agricultural productivity.

b. Per 18.23.010, variances may only be granted when "such application...will not...materially affect adversely...the persons residing or working in the neighborhood...and will not...be materially detrimental...to property or improvements in said neighborhood." Credible testimony has been presented that material adverse affects to at least one neighbor will occur and that negative property valuation impacts will occur if the variance were to be approved. The variance application therefore does not meet the legal standard for approval. Paragraph 2 of the City staff's response to the appeal claims that the appellant Mr. Kiebler has failed to provide evidence of material adverse effects. Please note that 18.24.040 places the burden of proof on the applicant to show that legal findings for a variance can be made. Therefore, the City's zoning code requires City staff to present evidence that Mr. Kiebler's claims of adverse effects are not material. City staff has not done this. Moreover, paragraph 4 of the City staff's response puts forth an argument against a pending project at 985 Miramontes—an issue that is not before the City Council at this time.

c. Per 18.23.010, variances may only be granted when there are exceptional circumstances that "do not apply generally to the land, buildings, and/or uses in the same [zoning] district." The proposed variance does not meet this legal standard because there are a total of five (5)

serve to concentrate the development in a smaller area, say closer to the access road, so as to minimize the impact on the potential agricultural productivity of the parcel.

3. Biological Resources

The draft IS/MND states that "The proposed project is located at a minimum of seventy (70) feet from the drip line of the riparian woodland canopy associated with Leon Creek." It is my understanding that trenching starting from Miramontes Steet is needed to extend water service to the project. If so, then "development" as defined by the LCP would appear to encroach within the 50 foot buffer mandated by section 18.38.085.D. Moreover, the proposed biological mitigation measures for the project have not been designed in consultation with the U.S. Fish and Wildlife Service (USFWS) and the California Department of Fish and Game (CDFG). LCP Policy 3-4 specifically calls out the need to abide by USFWS and DFG regulations in sensitive habitat areas. The riparian corridor of Leon Creek meets the definition of sensitive habitat stated in section 18.38.020 of the City's zoning code.

4. Population and Housing

The draft IS/MND claims that there would be "No Impact" of the project in inducing substantial population growth either directly or indirectly. There are two potential growth-inducing impacts that have not been analyzed or mitigated. The first is the proposed use of a variance that could effectively nullify minimum lot size requirements for other future projects. As noted above, the City is currently processing a development application for another undersized OSR parcel in the same vicinity. No mitigation measures have been proposed that would prevent the use of similar variances in the future to allow further increases in density on large OSR parcels. The second potential growth-inducing impact stems from the extension of water and road service to a large OSR parcel that could increase pressure for conversion to a planned unit development (PUD)—effectively accelerating the time frame for conversion to urban use versus that currently envisioned by the City's Land Use Plan.

5. Findings of Significance

The draft IS/MND claims that the current project would have no impacts which are "Cumulatively considerable." However, it is reasonably foreseeable that the approval of a variance for this project would have implications for the enforcement of minimum lot size requirements on many probable future projects, including at least one project that is currently in the City's application pipeline. No analysis has been done or mitigation measures proposed that would address the cumulative impacts on land use of allowing variances similar the one proposed for this project.

Kevin J. Lansing
Planning Commissioner

Copy to:
City Manager
Planning Director
California Coastal Commission, North Central Coast Office

undeveloped OSR parcels within City limits that fail to meet the 50-acre minimum lot size for the construction of a single family residence (see attached list). The undersize lot size condition that affects this project is, in fact, a circumstance that applies generally to other undeveloped parcels in the same zoning district. The correct course of action would be for the City to undertake a revision to the Land Use Plan, not to grant a variance that is clearly not legal in this case.

2. Biological mitigation measures are not adequate

The biological mitigation measures that are legally imposed as conditions of approval in the CDP have not been designed in consultation with the U.S. Fish and Wildlife Service (USFWS) and the California Department of Fish and Game (CDFG). LCP Policy 3-4 specifically calls out the need to abide by USFWS and DFG regulations in sensitive habitat areas. The riparian corridor of Leon Creek meets the definition of sensitive habitat stated in section 18.38.020 of the City's zoning code. Please note that any recent discussions with these agencies cannot be considered as part of the appeal hearing, as only evidence that was originally presented to the Planning Commission can legally be considered during the appeal. Any new proposed biological mitigation measures would require an amendment to the project CDP. The project will require widening of the access road to the project site. This road widening constitutes "development" per 18.20.020.C and would appear to encroach within the 50 foot buffer mandated by section 18.38.085.D.

3. Public notice was not adequate

None of the public notices for the project included any mention of the proposed utility line extensions and proposed road widening that are in close proximity to biological resources. Section 18.20.060.4 requires the public notice to include a "description of the proposed development..." Given that the utility line extensions and the road widening constitute "development," these items should have been included in the project description contained in the public notice.

Kevin J. Lansing
359 Filbert Street
Half Moon Bay

Copy to:
City Clerk
California Coastal Commission, North Central Coast Office
USFWS
CDFG

October 23, 2007

California Coastal Commission
c/o North Central Coast District Office
45 Fremont Street, Suite 2000
San Francisco, CA 94105-2219
Attn: Mr. Michael Endicott, District Manager

Re: Appeal A-2-HMB-07-030, (921 Miramontes, Pastorino).

Dear Mr. Endicott:

As the appellant for the above agenda item, I would like to provide the following supplemental material in support of the appeal. These comments are made in response to the Commission staff report dated September 21, 2007.

1. Page 6 of the staff report states:

"Pursuant to Section 30603 of the Coastal Act, an appeal for this type of development is limited to the allegation that the portion of the development that is located within 100 feet of Arroyo Leon, a mapped USGS stream, does not conform to the standards set forth in the certified LCP."

Response: The definition of appealable development is the City's zoning code sections 18.20.020.A and 18.20. 075.C does not exactly coincide with Coastal Act section 30603.(a). Specifically, section 30603.(a).(3) allows for appeals of developments "located in a sensitive coastal resource area." If 30603.(a) applies, then such an area would include the entire portion of the development that is considered "sensitive habitat," not just the portion within 100 feet of Arroyo Leon. The portion of the development beyond 100 feet of Arroyo Leon meets the LCP definition of sensitive habitat contained in section 18.38.020 based on the July 23, 2007 email from a U.S. Fish and Wildlife Service biologist.

In December 2005, the Coastal Commission approved a major LCP Amendment for the City of Half Moon Bay. That amendment included a supersession clause which stipulated that any conflicts between the coastal development permitting requirements in zoning code section 18.20 and those of the Coastal Act must be resolved in favor of the Coastal Act. The discussion here involves a conflict involving rules laid out in a particular sub-section of 18.20 which governs appeals of local coastal development permits. Moreover, the December 2005 Commission staff report explicitly stated staff's opinion that any conflicts between the City's coastal development permitting requirements in 18.20 and those of the Coastal Act must be resolved in favor of the Coastal Act even if a supersession clause was not present.

Regarding the resolution of conflicts, Coastal Action section 30200.(b) states:

> "Where the commission or any local government in implementing the provisions of this division identifies a conflict between the policies of this chapter, Section 30007.5 shall be utilized to resolve the conflict and the resolution of such conflicts shall be supported by appropriate findings setting forth the basis for the resolution of identified policy conflicts."

The phrase "in implementing the provisions of this division" is reasonably interpreted to include the City's permitting actions pursuant to the local zoning ordinance. Coastal Act section 30007.5 requires that conflicts identified in 30200.(b) must be resolved in a manner that "on balance is the most protective of significant coastal resources." Applying this principle to the conflict between the City's implementing ordinance 18.20 and Coastal Act section 30603 would argue that the conflict should be resolved in favor of section 30603 even if a supersession clause is not present.

2. Page 11 of the staff report states:

> *"Due to the proximity of the appealable development from Arroyo Leon, and the high potential for the California red-legged frog and the San Francisco garter snake to occur within the stream and riparian corridor, the sensitive species have a high potential to wander onto the portion of construction site relevant to the Commission's substantial issue determination during construction and suffer death or injury from activities such as trenching, road widening, and construction of a new driveway..."*

Page 14 of the staff report states

> *"While the trenching and installation of pipes and utility lines would occur within 50 feet of the stream and riparian habitat, it would not encroach into any natural buffer since the development activities would take place within the existing access road, and a natural buffer between the riparian corridor and the approved development does not exist due to existing residential development located between the stream and the road..."*

Response: The intervening distance between Arroyo Leon and the proposed new development includes the riparian corridor, a grassy area, and the access road. Zoning code section 18.38.085 requires a buffer zone of 50 feet between any new development and habitat of rare or endangered species. Arroyo Leon has been determined to be habitat for rare or endangered species by the U.S. Fish and Wild life Service. Section 18.38.085 does not provide for any exceptions to the 50 foot buffer requirement simply because the intervening distance between the creek and the new development may contain some features that are considered non-natural. Please note that section 18.38.075.D establishes the buffer zone on the basis of a distance criteria only, not on the basis of any intervening "natural" quality.

Staff's interpretation of the buffer zone requirement would effectively amend the City's LCP to switch from a distance-based buffer zone requirement to a natural function-based buffer zone requirement. Staff's interpretation would set a precedent for future projects without any legislation by the City to amend its certified LCP. At the June 2007 Commission appeal hearing for the Gale project, the Coastal Commission explicitly rejected arguments by the project applicant that encroachment into a wetland buffer zone could be justified on the basis of functionality arguments.[1]

In the case of the Pastorino project, the local jurisdiction failed to make the required findings for development in a riparian buffer zone as mandated by section 18.38.075.H. This failure to make the required findings represents a separate and independent justification for substantial issue. As currently conditioned, the required findings of 18.38.075H cannot be made because trenching for the installation of utilities and road widening could result in harm or injury to rare or endangered species. The trenching and widening operations could also result in polluted runoff that could enter the creek and surrounding riparian buffer zone, thereby adversely affecting the quality of the sensitive habitat.

3. Page 15 of the staff report states:

> *"The USFWS has required the applicant to apply for an incidental take permit through the Habitat Conservation Planning process...However, because the majority of the approved development within 100 feet of Arroyo Leon will occur within the existing paved access road, and the remaining portion will occur on the far side of the existing road from the stream...Therefore, since none of the approved development relevant to the Commission's substantial issue determination would be located in sensitive habitat, LUP Policy 3-4 is not applicable to the substantial issue determination."*

[1] See City of Half Moon Bay Appeal A-2-HMB-07-021 (Gale).

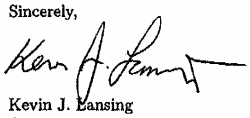
Response: Staff is making the incorrect argument that "none of the approved development" between the creek and the 100 foot jurisdiction limit is "located in sensitive habitat." First, this argument is directly contradicted by staff's own words on page 11 (quoted above) which acknowledge that *"Due to the proximity of the appealable development from Arroyo Leon... the sensitive species have a high potential to wander onto the portion of construction site..."* Second, staff's argument is also directly contradicted by the July 23, 2007 email from USFWS biologist Lucy Triffleman which states:

> "[R]regarding the construction of the proposed single family residence at 921 Miramontes Way, the Service has determined that the proposed lot constitutes potential San Francisco garter snake and California red-legged frog habitat. The Service reached this determination based on:
>
> 1) The proximity of the project to Arroyo Leon which has been recognized by several experts as containing quality habitat characteristics for the above mentioned listed species;
>
> 2) The proximity of the area to the Johnson Ranch property currently owned by POST where experts have observed California red-legged frogs utilizing the perennial aquatic habitat;
>
> 3) The connectivity of these areas to the proposed location as well as other properties known to contain listed species with an absence of significant barriers to impede movement of either species. Note that San Francisco garter snakes have been reported traveling 1.2 km over a single season and California red-legged frogs have been observed traveling in excess of 4 km regardless of terrain or climate conditions." (underline added)

California Red-legged frogs require both breeding and non-breeding habitat for survival. Arroyo Leon represents breeding habitat for the species and the upland areas extending outward from the creek on both sides of the access road represents non-breeding habitat. A recent published research study states that "non-breeding habitats are critically important" for the survival of California Red-legged Frogs, and that even disturbed agricultural land can provide critical non-breeding habitat. The same study found that California red-legged frogs moved a median distance of 150 meters, and as far as 1.4 kilometers, between breeding and non-breeding areas.[2]

Based on the above evidence, the portion of the approved development within 100 feet of the creek is clearly sensitive habitat that facilitates transit between breeding and non-breeding areas for California Red-legged Frogs. LUP Policy 3-4 is invoked in sensitive habitat areas and therefore this policy is applicable to the substantial issue determination as asserted in the original July 23, 2007 appeal document.

Sincerely,



Kevin J. Lansing
Appellant
359 Filbert Street
Half Moon Bay, CA 94019

[2]See attached scientific article: G.M. Fellers and P.M. Kleeman, "California Red-Legged Frog Movement and Habitat Use: Implications for Conservation," *Journal of Herpetology*, 2007, vol. 41, no. 2, pp. 271-281.

Journal of Herpetology, Vol. 41, No. 2, pp. 271–281, 2007

California Red-Legged Frog (*Rana draytonii*) Movement and Habitat Use: Implications for Conservation

GARY M. FELLERS[1] AND PATRICK M. KLEEMAN

Western Ecological Research Center, USGS, Point Reyes National Seashore, Point Reyes, California 94956 USA

ABSTRACT.—**Nonbreeding habitats are critically important for *Rana draytonii*, especially for individuals that breed in temporary bodies of water. We radiotracked 123 frogs to evaluate seasonal habitat use. Individual frogs were continuously tracked for up to 16 months. Some individuals remained at breeding ponds all year, but 66% of female and 25% of male frogs moved to nonbreeding areas, even when the breeding site retained water. Frogs at our main study site moved 150 m (median), roughly the distance to the nearest suitable nonbreeding area. The greatest straight-line distance traveled was 1.4 km, although the presumed distance traveled was 2.8 km. Females were more likely than males to move from permanent ponds (38% of females, 16% of males), but among dispersing frogs, males and females did not differ in distance moved. Some frogs left breeding sites shortly after oviposition (median = 12 days for females, 42.5 days for males), but many individuals remained until the site was nearly dry. Fog provided moisture for dispersal or migration throughout the summer. Our data demonstrate that maintaining populations of pond-breeding amphibians requires that all essential habitat components be protected; these include (1) breeding habitat, (2) nonbreeding habitat, and (3) migration corridors. In addition, a buffer is needed around all three areas to ensure that outside activities do not degrade any of the three habitat components.**

Rana draytonii (California Red-Legged Frog) was once an abundant frog throughout much of central and southern California and is believed to have inspired Mark Twain's fabled story "The Celebrated Jumping Frog of Calaveras County." Now this frog is rare in both the Sierra Nevada foothills and the southern portion of its range (Jennings and Hayes, 1994). In parts of the central Coast Range, there are still large, vigorous populations, some of which probably rival those present 200 years ago (Fellers, 2005). *Rana draytonii* was federally listed as a Threatened species on 24 June 1996, and the recovery plan states that it ". . . has been extirpated from 70 percent of its former range . . . Potential threats to the species include elimination or degradation of habitat from land development and land use activities and habitat invasion by non-native aquatic species" (U.S. Fish and Wildlife Service, 2002:iv).

Rana draytonii use ponds or pools for breeding during the wet season (December through March) and ponds, riparian areas, or other aquatic habitats during the rest of the year. In Marin County, stock ponds are the most commonly used breeding sites. There is only one published report on migration or nonbreeding habitat requirements for this frog. Bulger et al. (2003) described movements of 56 *R. draytonii* in a coastal area about 100 km south of San Francisco. They found that 80–90% of the frogs remained at one breeding site all year. Frogs radiotagged at nonbreeding sites often moved in a straight-line between breeding and upland habitats without apparent regard to intervening vegetation or topography. Frogs traveled overland up to 2,800 m, and Bulger et al. (2003) recommended a 100 m buffer zone around breeding sites.

The California Red-Legged Frog recovery plan outlines the necessary actions for recovery. One task is to "conduct research to better understand the ecology of the California Red-legged Frog including the use of uplands, dispersal habits, and overland movements" (U.S. Fish and Wildlife Service, 2002:84). This is a concern not only for *R. draytonii* but also for many endangered and nonendangered vertebrates that migrate between breeding and nonbreeding areas. This includes salamanders (*Ambystoma*; Madison, 1997; *Triturus*; Joly et al., 2001), frogs (*Rana*; Richtor et al., 2001; Pope et al., 2000), snakes (*Farancia*; Gibbons et al., 1977), turtles (Burke and Gibbons, 1995; Bodie, 2001), and many species of passerine birds (Keast and Morton, 1980). Lamoureux and Madison (1999) made the point that studies need to examine amphibian habitat requirements at all times of the year not just during the breeding season. We designed our study to address this concern for *R. draytonii*.

MATERIALS AND METHODS

Study area.—Our study was conducted in Marin County, California, 45 km northwest of

[1]Corresponding Author. E-mail: gary_fellers@usgs.gov

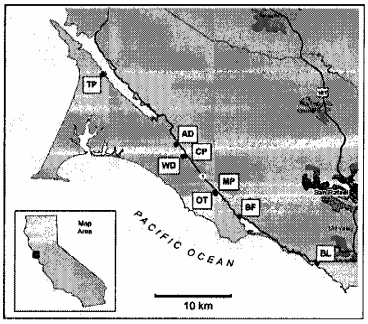


FIG. 1. Sites where California Red-Legged Frogs (*Rana draytonii*) were radiotagged at Point Reyes National Seashore and Golden Gate National Recreation Area, Marin County, California. Site descriptions are listed in Table 1.

San Francisco. All sites were within 6 km of the ocean and located at either Point Reyes National Seashore or Golden Gate National Recreation Area (Fig. 1). The local climate is Mediterranean, with an average annual rainfall of 100 cm that largely occurs between November and March. Mean monthly temperatures range from 8.6°C (December) to 16.6°C (August/September) at the headquarters of Point Reyes National Seashore in Olema Valley (National Park Service weather records). Most frogs (N = 112) were tagged in the Greater Olema Valley (Olema Valley and Pine Gulch Valley; 38°01′41″N, 122°46′50″E). To evaluate movement and habitat use in areas with contrasting habitats, nine frogs were tagged at Big Lagoon (37°51′36″N, 122°34′29″E), and two were tagged at Tomales Point (38°09′19″N, 122°54′43″E; Fig. 1).

Most of the Greater Olema Valley was characterized by a mixture of grazed and ungrazed grasslands interspersed with seasonal drainages with California bay (*Umbellularia californica*) and coast live oak (*Quercus agrifolia*). The west side of the valley was predominantly a Douglas fir forest (*Pseudotsuga menziesii*). Olema and Pine Gulch Creeks had well-defined riparian zones composed of California bay, red alder (*Alnus rubra*), willow (*Salix* spp.), big-leaf maple (*Acer macrophyllum*), and Douglas fir, with an understory dominated by blackberry (*Rubus discolor*), poison oak (*Toxicodendron diversilobum*), nettles (*Urtica dioica*), and western sword fern (*Polystichum munitum*). Within the valley, there were 24 *R. draytonii* breeding sites. Fourteen of these were artificial stock ponds, and the others were naturally occurring ponds or marshes. Aquatic vegetation was predominantly cattails (*Typha* spp.), pennywort (*Hydrocotyle verticillata*), and rushes (*Juncus* spp.). About half of the ponds were seasonal, whereas the others usually held water all year. Study sites within the Olema Valley were selected to represent a range of habitats and because there was a sufficiently large *R. draytonii* population at each of the study sites.

The Big Lagoon study site consisted of a cattail marsh with a seasonal creek (Green Gulch Creek) that flowed into it. The marsh had several small areas where water depth was 1.0–1.5 m during the winter, but most of the marsh was covered by < 0.25 m of water, even during the wet season. A levee on the north side separated the marsh from a permanent creek (Redwood Creek), but a set of culverts allowed water to enter the marsh during higher winter flows. Water retention in the marsh varied with rainfall but was also influenced by how much water the National Park Service allowed to pass through flood gates on the culverts. The Tomales Point study site was a nonbreeding site at a seasonal seep. The dominant vegetation was coyote brush (*Baccharis pilularis*), with a few wax myrtle (*Myrica californica*). The nearest breeding pond was 650 m away.

Field methods.—Frogs were caught at night either with a dip net or by hand. We marked each frog with a passive integrated transponder (PIT) tag (TX1400L, Biomark, Meridian, ID; www.biomark.com) for individual identification and recorded sex, snout–vent length (SVL), and mass. Each frog was radiotagged by attaching a transmitter (model BD-2G, Holohil Systems Ltd., Carp, Ontario, Canada; www.holohil.com) to a belt of aluminum beaded chain that was slipped over the frog's extended rear legs and up onto the waist (Rathbun and Murphey, 1996). The transmitters were either a dull green or light brown color. The aluminum belt was painted flat black to eliminate reflections. The smallest frog we radiotagged was 32 g, and the mass of the transmitter and belt was approximately 2.1 g (6% of the frog's mass). When possible, we recaptured frogs before the battery died (20-week life) and fitted a new transmitter. We tagged frogs during all months of the year except August, with most being tagged just prior to, or during, the December to January breeding season.

A total of 123 individual frogs was radiotagged (47 females, 76 males) between 5 November 1997 and 1 May 2003 at eight sites (Table 1). Twenty-three frogs were consecutively fitted with two transmitters, six frogs with three transmitters, and one frog wore six

TABLE 1. Sites where California Red-Legged Frogs (*Rana draytonii*) were fitted with radiotransmitters in Marin County, California. Figure 1 shows the geographic distribution of the sites.

Site name	Habitat	Number of frogs tagged		Days tracked	
		M	F	Median $\bar{x} \pm SD$	Range
Greater Olema Valley					
CP	Permanent pond	44	31	86 89.6 ± 56.0	2–229
MP	Seasonal pond	19	9	76 80.5 ± 47.3	12–191
AD	Seasonal pond	2	4	127 139.0 ± 75.0	63–253
BF	Seasonal pond	2	2	112 109 ± 74.9	28–184
WD	Permanent pond	0	1	134	134
OT	Permanent pond	1	0	121	121
All sites	–	68	47	83 91.3 ± 56.1	5–253
Big Lagoon					
BL	Permanent marsh	9	0	68 66.8 ± 36.8	16–130
Tomales Point					
TP	Seasonal seep and ditch	0	2	283	68–498

consecutive transmitters. Seventy-eight percent of all transmitters ($N = 166$) were recovered. Three frogs (two females, one male) lost their transmitters but were subsequently recaptured and outfitted with new transmitters 54,244, and 493 days later. This yielded 126 telemetry histories. We generally located radiotagged frogs twice weekly; more often when the frogs were making regular movements. We recaptured frogs every 3–4 weeks to check for injuries and ensure proper fit of the transmitter belt. Frogs were radiotagged for 91 days (median) at the Olema Valley study sites and for 67 and 283 days at the Big Lagoon and Tomales Point sites, respectively.

Frogs were located using a TR-2 receiver (Telonics, Mesa, AZ; www.telonics.com) or an R-1000 receiver (Communication Specialists, Inc., Orange, CA; www.com-spec.com) with a directional "H" or three-element yagi antenna. Fine scale location of transmitters was accomplished with a partially stripped coaxial cable inserted into a length of PVC pipe that was used as a probe (Fellers and Kleeman, 2003). Radio locations were only determined during the day.

Frog locations were plotted on a 7.5′ USGS topographic by noting proximity to a mapped feature or permanent local landmark (e.g., dead snag, fence corner). On a few occasions, locations were initially determined using a Garmin 12XL GPS unit (Garmin International Inc., Olathe, Kansas, www.garmin.com), but these locations were later visited and mapped on a topographic map using local landmarks. Telemetry data were analyzed by plotting coordinates on digitized USGS topographic maps (1:24,000 scale) using Topo! software (National Geographic TOPO! Maps, San Francisco, California; maps.nationalgeographic.com/topo). Unless otherwise noted, movements represent straight-line distances between successive locations. For some frogs, we also calculated a longer distance moved based on locations between breeding and nonbreeding sites. For example, frogs found at several successively further distances along a riparian corridor were presumed to have followed the creek between sites. This typically resulted in a longer distance moved than would be obtained using a straight-line distance and is referred to as presumed distance. Statistical analysis was conducted using Statistix (Version 7, Analytical Software, Tallahassee, Florida; www.statistix.com/home.html). We used $\alpha = 0.05$ to evaluate statistical significance.

Olema Creek passed within 110 m of our main study site (CP) in Olema Valley (Fig. 1). To evaluate use of nonbreeding habitat, we conducted nocturnal surveys along all or part of a 4.8-km segment of Olema Creek where it flowed past our study area. One or two observers walked the creek while carefully searching both pools and stream banks for frogs. Observers used a combination of spotlights and binoculars to locate animals (Corben and Fellers, 2001). Radiotelemetry was not used as part of these nocturnal surveys. We believe that most of the frogs we located used the adjacent pond (CP) for breeding because (1) it

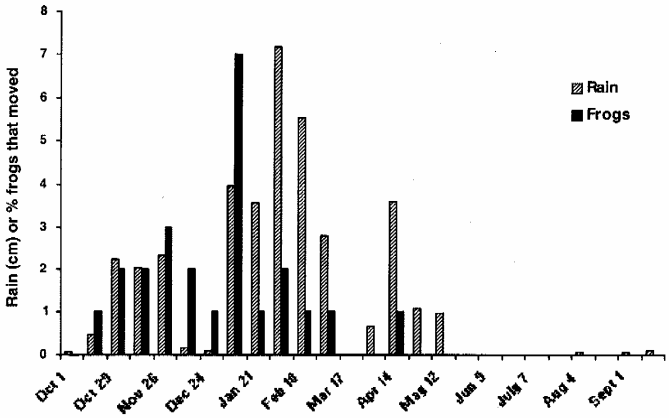


FIG. 2. Biweekly rainfall and the percent of radiotagged *Rana draytonii* that moved ≥ 30 m between October 1999 and September 2000.

was the closest breeding site and (2) some of the frogs found along the creek had been fitted with radiotransmitters at the pond.

RESULTS

Frogs made small-scale movements (< 30 m) throughout the year. Movements of < 30 m could be made without leaving the breeding sites; hence, they were considered local, non-dispersal. Movements ≥ 30 m generally coincided with winter rains, although some frogs did not move until their seasonal habitat was on the verge of completely drying. In general, frogs moved toward breeding ponds with the onset of heavy winter rains. Frogs departed from breeding ponds at varying times throughout the rainy season, with some frogs remaining at permanent ponds all year. Some frogs made large-scale movements during the dry season (May through October), as seasonal breeding sites dried. A regression of the percent of frogs that moved ≥ 30 m versus rain showed that more frogs moved with higher amounts of rain (P = 0.006). We show rainfall and movements for the 1999–2000 season (Fig. 2), the year we had the most frogs simultaneously radiotagged.

Frog movements in the greater Olema Valley.— One hundred fifteen frogs were tracked for a mean of 91 days each (range = 5–253, Table 1). Median distance moved from the breeding site was 0 m, but for the 36 frogs that moved ≥ 30 m, the median was 150 m (range = 30–1400 m, Table 2, Fig. 3). In many cases, frogs almost certainly moved more than the straight-line distance between sites. This was confirmed with individuals that were located in transit. Presumed distance moved for those frogs that moved ≥ 30 m was 185 m (median, range = 30–1400 m).

A higher proportion of radiotagged females moved ≥ 30 m than males (13 of 68 males, 23 of 47 females, χ^2 = 11.49, df = 1, P < 0.01). For frogs that moved ≥ 30 m, distance traveled was not significantly different for males (N = 13) and females (N = 23; median = 210 vs. 140 m, respectively; Wilcoxon rank sum T = 1.22, P = 0.22). Because some frogs lost their transmitters or were killed by predators (see below), the median distance moved might be greater than what we measured. Of the 36 frogs that moved ≥ 30 m, 22 (11 males, 11 females) reached a destination where they remained for at least two weeks. For these frogs, median distance traveled was 175 m. The median for these males and females was not significantly different (210 vs. 120 m; Wilcoxon rank sum T = 0.56, P = 0.58), in part because of the large variability in distance traveled.

A higher proportion of females left breeding sites than males. At our main study site (CP), nine of 21 (43%) females left the breeding site, whereas only four of 25 (16%) males departed. Females left the breeding site sooner than males (1, 5, 5, 5, 12, 55, 60, 76, 92 days for females [median = 12]; 31, 38, 47, 69 days for males

TABLE 2. Distance moved for 110 California Red-Legged Frogs (*Rana draytonii*) with radiotransmitters at three study sites in Marin County, California. Sixteen frogs radiotagged at nonbreeding sites are not included in this tabulation.

		Distance moved for frogs that moved ≥ 30 m						Frogs that moved < 30 m
	Sex	Minimum	Median	Maximum	Mean	SD	*N*	*N*
Olema Valley								
CP	Males	200	240	490	293	135	4	31
CP	Females	100	320	1400	421	416	10	14
MP	Males	270	270	270	270	–	1	18
MP	Females	150	150	150	150	0	2	7
AD	Males	–	–	–	–	–	0	2
AD	Females	30	80	90	70	28	4	0
BF	Males	80	80	80	80	–	1	1
BF	Females	40	95	150	95	78	2	0
WD	Males	–	–	–	–	–	0	0
WD	Females	–	–	–	–	–	0	1
OT	Males	560	560	560	560	–	1	0
OT	Females	–	–	–	–	–	0	0
Big Lagoon								
BL	Males	30	105	390	158	136	6	3
	Females	–	–	–	–	–	0	0
Tomales Point								
TP	Males	–	–	–	–	–	0	0
TP	Females	30	40	50	40	14	2	0

[median = 42.5]), but the sample size was small, and the difference was not significant ($T = 0.61$, df = 11, $P = 0.55$).

Some of the dispersing frogs moved well away from the breeding site. One female (10.7 cm SVL) left the pond at our main study area (CP), crossed Olema Creek (the primary nonbreeding area) and stopped at a pond 320 m from the breeding pond. Two females (10.9 and 10.1 cm SVL) moved from CP, across Olema Creek and eventually resided in marshes, 0.88 and 1.02 km from the breeding site. Another female (10.6 cm SVL) moved down Olema Creek and up a small tributary for a total distance of 2.8 km (see individual case histories below).

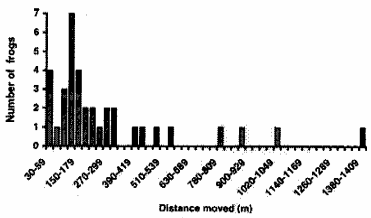


FIG. 3. Straight-line distance moved for all radiotagged Greater Olema Valley frogs that traveled ≥ 30 m. Median = 185 m, $N = 36$.

Fourteen of the breeding sites in the Greater Olema Valley were stock ponds surrounded by pastures. At these sites, all frogs that left the breeding site had to cross heavily grazed grassland to reach another pond or the riparian area. Frogs moved directly across these fields, typically traveling the most direct route to their destination. Movements of 100–200 m across open grasslands were common. With one exception, movements taking more than one night were along riparian corridors. One frog, however, spent five days sitting in a small clump of rushes in an open grassland (45 m from the breeding pond) before moving another 100 m to a small riparian area where it spent the next 50 days.

In two instances, we radiotagged females that appeared to have recently laid eggs (i.e., gaunt sides, conspicuously loose skin). Both frogs left the breeding pond within two days and moved to a seasonal marsh 800 m away. One frog took 32 days (5 December 1997 to 5 January 1998), whereas the other took five days (14–19 January 2000). A gravid female was fitted with a transmitter at a seasonal pond on 29 January 2001. By 8 February 2001, she had moved to an adjoining swale dominated by rushes. When captured on 28 February 2001, she had laid her eggs, as indicated by a sudden drop in mass. By 3 April 2001, she had moved 150 m to a riparian area where she remained until the transmitter was removed on 1 August 2001.

Frog movements at Big Lagoon.—The nine male frogs at this site moved a median distance of 70 m (0– 390 m, Table 2). Frogs made small-scale movements (< 30 m) throughout the time they were radiotagged (26 December 2002 through 3 June 2003). Most movements were between three of the deeper parts of the marsh, but one frog moved 390 m up Green Gulch Creek (when part of the marsh dried), to a seasonal creek that flowed into the marsh system. The other frogs moved to the only remaining pool at the west edge of the marsh, 50–75 m away. Most frogs did not use the riparian zone along the adjacent Redwood Creek. One individual spent four weeks there, and another frog moved to the riparian zone just before it lost its transmitter. We found frogs in the riparian area during only one nocturnal survey, although we regularly found them in the marsh or adjacent cattails.

Frog movements at Tomales Point.—The two female frogs radiotagged at this site (6.7 and 10.6 cm SVL) were relatively sedentary and apparently did not move to a breeding site. They had transmitters for an average of 283 days (68 and 498 days). Both frogs moved > 30 m, with a mean of 65 m (Table 2). Although it might have been possible for the female that we tracked for 498 days to have moved to a breeding pond, laid eggs, and returned to her nonbreeding site without our noticing her absence, the gradual increase in mass throughout the time we tracked her indicated that this did not happen, and she apparently did not breed during the time we radiotracked her.

Use of riparian habitat.—On six of the 21 nocturnal stream surveys, there were ≥ 4 frogs per 100 m of stream, and one survey located seven frogs per 100 m (2 September 1999). Because radiotagged frogs known to be present (i.e., located during the same day by telemetry and also found along the creek on subsequent days) were frequently not seen during nocturnal surveys, the number of frogs along the creek was greater than what we observed, but it is not possible to determine by how much. For example, during a nocturnal survey on 5 July 2000, we observed one of the radiotagged frogs known to be along the creek, but we did not find two other radiotagged frogs whose presence had been confirmed earlier that day. Similarly, a nocturnal survey on 3 August 2000 did not detect either of two radiotagged frogs known to be present earlier that day; however, two untagged adults and nine subadults (< 5.5 cm SVL) were observed. Nocturnal surveys also suggested that frogs tended to concentrate along portions of the creek nearest the breeding sites (Fig. 4).

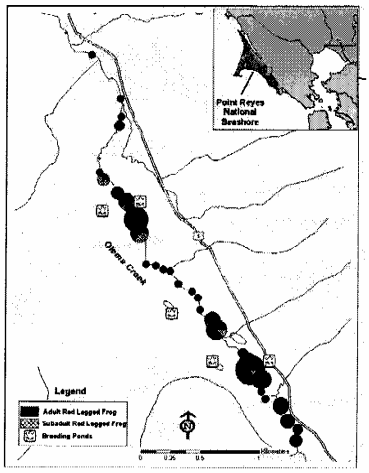


FIG. 4. Distribution of *Rana draytonii* along Olema Creek as detected during nocturnal surveys 4–6 October 1999. The distribution of frogs was similar during other surveys. Circles represent frogs, and size of each circle indicates relative number of frogs.

Diurnal behaviour.—We conducted our radiotracking during the day and were frequently able to confirm visually the exact location of frogs with transmitters. This allowed us to evaluate diurnal microhabitat use. It was not unusual to find California Red-Legged Frogs basking in full sun, immediately adjacent to the water. Although we observed this behavior primarily at breeding ponds, occasionally frogs were found in similar situations in nonbreeding riparian areas.

Frogs that were not basking used a variety of cover. In permanent ponds, they sat entirely underwater in the deeper portions of the pond (> 0.75 m), usually in association with the emergent vegetation. At sites with deeper water, *R. draytonii* sat on the bank in close proximity to the water. In shallow, seasonal ponds (< 0.4 m deep), frogs were usually under vegetation (e.g., rushes, blackberries, hedge nettles [*Stachys ajugoides*]) at the edge of the pond. In seeps or seasonal streams, frogs were found under blackberry thickets interspersed with poison oak, coyote brush, hedge nettles, stinging nettles (*Urtica dioica*), and mats of rushes. Along permanent streams, frogs were found in or near pools with a depth of > 0.5 m and associated with structurally complex cover (e.g., root mass, logjam, or overhanging bank).

When on stream banks, frogs sat under dense vegetation as far as 2 m from the water's edge. Vegetation was predominantly western swordfern, blackberry, hedge nettle, and giant horsetail (*Equisetum telmateia*).

Predation.—We documented two predation events and had circumstantial evidence for three others. A Great Blue Heron (*Ardea herodia*) ate two radiotagged frogs sometime between 4 and 18 January 2000 (Fellers and Wood, 2004). Three other frogs appeared to have been killed by predators. The skin, bones, and transmitter of one frog were found at the base of a guano-stained fence post, along with a number of raptor pellets. Two frogs appeared to have been killed by mammalian predators, although we have no definitive proof. We found the skin, internal organs, PIT tag, and transmitter of a frog in a riparian corridor, and we found pieces of skin, internal organs, and the transmitter of another frog. One frog appeared to have been stepped on by a large, hoofed animal, probably one of the cows that grazed in the pasture. We found the anterior two-thirds of the frog in a pasture; the posterior portion of the frog had been crushed into the ground. Although we did not observe any predation during our nocturnal surveys along Olema Creek, we regularly observed raccoons (*Procyon lotor*), Black-Crowned Night Herons (*Nycticorax nycticorax*), river otters (*Lutra canadensis*), and nonnative rats (*Rattus* spp.). At breeding sites, we observed Great Blue Herons, but other potential predators probably visited the ponds and marshes at times.

Injuries from transmitters.—Twenty frogs had injuries from transmitter belts (17% of radiotagged frogs). The most common injury consisted of small abrasions on the dorsum or, less frequently, a midventral abrasion. The wounds generally healed within two weeks if frogs were fitted with transmitter belts with one additional bead. Eleven of the injured frogs were reweighed at the time the wound was noticed, and all frogs had gained mass since their initial capture. We reweighed 22 uninjured frogs with transmitters; 18 (78%) gained mass after initial capture, two (9%) had no change, and three (13%) lost mass. The mean mass gain for these frogs was 21%, and mean mass loss was 8.5%. Overall, we do not believe that the minor injuries caused by the transmitter belt interfered with frog behavior.

Individual case histories.—The frog that was radiotagged for the longest time had a transmitter for 16 months. When first caught on 12 May 1999, the female frog weighed 42.5 g and was 7.3 cm SVL. It grew steadily and was 77.7 g and 8.9 cm when last captured on 14 June 2000.

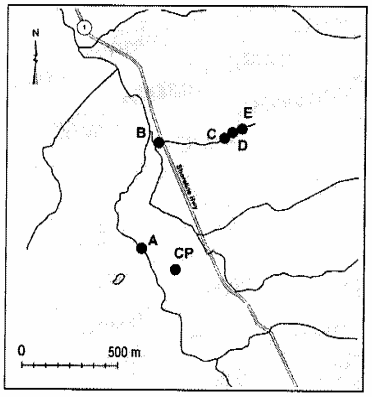


FIG. 5. Movements of a female radiotagged *Rana draytonii* that was captured at a breeding pond (CP) and subsequently moved to sites A–E. The frog was 10.5 cm (SVL) and was tagged during the breeding season (19 January 1999). The straight-line distance from CP to E was 1.4 km, but the presumed distance moved was 2.8 km.

The frog was caught in a puddle (1.0 × 0.3 m, 15 cm deep) that had formed in a rut created by a roadside seep along an abandoned dirt road on Tomales Point (site TP, Fig. 1). For 16 months, this frog made frequent, small (2–10 m) movements, within a 200-m^2 area surrounding the seep. The furthest the frog moved was 110 m. It used a variety of microhabitats: underwater in the puddle, underground in small mammal burrows, partially buried in duff beneath wax myrtle and coyote brush, and sitting in small clumps of grass. Although this frog was an adult female, it did not move to the nearest known breeding pond (650 m away) during the winter of 1999–2000. On 1 September 2000, the transmitter was found in the grass beneath a coyote brush, 6 m from where the frog had last been found. We could not determine whether the transmitter had fallen off or whether the frog had met a predator.

One frog moved at least 1.4 km. This was a female (10.5 cm SVL) tagged at a breeding pond (CP) during the breeding season (19 January 1999). On 23 January 1999, she was located under a fallen tree, 240 m away in Olema Creek. On 30 January 1999, she had moved a minimum of 650 m to a pool in a small tributary of Olema Creek (Fig. 5). It is quite likely that the frog followed Olema Creek to the tributary, which would have required a move-

ment of 1.0 km to reach that point. By 14 February 1999, the frog had moved either across a two-lane, paved country road or under the road through a culvert. She then moved up a small, seasonal drainage, 430 m from its previous location. The presumed distance traveled by this frog was 2.8 km. The frog stayed in this drainage and was often found under blackberry brambles and thickets of poison oak along the stream. The transmitter and remains of the frog were found on 14 June 1999, apparently the victim of avian predation (see Predation above).

Discussion

The California Red-Legged Frog recovery plan emphasizes protection and recovery of breeding habitat (U.S. Fish and Wildlife Service, 2002), and most protection efforts have focused on breeding sites. One challenge in managing *R. draytonii* has been the paucity of data on habitat use beyond the breeding site, thus making it difficult to evaluate requirements for nonbreeding habitat and connecting migration corridors. Our study provides insights into *R. draytonii* movement and habitat use in a coastal environment and establishes a basis for making decisions about habitat protection.

Migration of *R. draytonii* from the breeding sites we studied was highly variable. Some frogs remained at breeding ponds all year, whereas others spent only a few days. Two-thirds of female frogs and 25% of male frogs moved from breeding areas. Bulger et al. (2003) found that 80–90% of *R. draytonii* remained at one breeding site all year. In our study, frogs at sites that held water only seasonally often lingered until the site was on the verge of drying completely. Because all our study sites were in an area where summer fog is the norm (E. J. Null, NOAA Technical Memorandum, NWS WR-126, 1995; Lundquist and Bourcy, 2000), frogs could move throughout much of the summer with little risk of desiccation. Once along the riparian corridor, frogs used a range of microhabitats that provided both cover and moisture, especially blackberry thickets, log-jams, and root tangles at the base of standing or fallen trees. Regular summer dispersal across open grassland is in contrast to what Rothermel and Semlitsch (2002) reported for juvenile *Ambystoma* and *Bufo* in Missouri where desiccation appeared to be a significant factor affecting amphibian dispersal across fields adjacent to their artificial pools.

There was a wide range of migration distances (30–1400 m, straight-line). Our main study pond was 110 m from a riparian zone that provided suitable nonbreeding habitat (CP, Fig. 1). For frogs that moved at least 30 m from the pond, the median movement was 150 m. Relatively short movements from breeding sites was also suggested by the nocturnal surveys of riparian vegetation along Olema Creek (Fig. 4) where we found more frogs in areas adjacent to breeding sites. At Big Lagoon, where nonbreeding habitat was immediately adjacent to breeding sites in the marsh, the median distance moved was 68 m, and none of the frogs went more than 390 m. These short movements were similar to Columbia Spotted Frogs (*Rana luteiventris*); Pilliod et al. (2002) found no significant difference between males ($\bar{x}$ = 367 m moved) and females ($\bar{x}$ = 354 m). Bartelt et al. (2004) reported that male Western Toads (*Bufo boreas*) traveled shorter distances from breeding ponds than females (581 m ± 98 and 1105 m ± 272, respectively). Because there is relatively little data on these species, it is not possible to determine whether the differences are species-specific or dependent on the local landscape.

When frogs moved beyond the minimum distance to reach a suitable nonbreeding area, some followed riparian corridors, whereas others moved directly toward sites where they stayed through the nonbreeding season. Because most frogs moved from a breeding pond, across a grazed pasture, to a riparian area, they did not have the option of following a waterway during their initial movement. This is similar to Bulger et al. (2003), where frogs mostly moved in a straight line without apparent regard to intervening vegetation or topography. However, there were a few individuals in each study that moved primarily along a creek.

During our nocturnal surveys of Olema Creek, some frogs were well hidden by cover, whereas others sat fully exposed on top of logs or even on the sandy edge of the creek, places where Red-Legged Frogs were rarely seen during the day. It is unclear why some individuals spent hours exposed to predation when good cover was only 1–2 m away. A frog in the open would have a wider field of view to detect and capture prey, perhaps partially mitigating the risk of predation. We documented predation by a Great Blue Heron, had evidence of predation by a raptor, and suspect that two other frogs succumbed to mammal predators. Additionally, we occasionally observed predators along Olema Creek including raccoons, Black-Crowned Night Herons, river otters, and nonnative rats (*Rattus* spp.). At a marsh that was not part of this study, we regularly observed night herons, and *R. draytonii* were so skittish that we have never been able to capture a single individual.

Based on their findings that 60% of the radiotagged frogs stayed within 30 m of their

breeding sites, Bulger et al. (2003) recommend a 100-m buffer with an array of suitable habitat elements around breeding sites. Although that may work well at their study area, we do not believe that a simple, symmetrical buffer is typically adequate. At our main study site, a 100-m buffer would not include any suitable nonbreeding habitat. Because the pond completely dries every 4–5 years, such a buffer would result in the elimination of the local population. By contrast, the Big Lagoon site has suitable nonbreeding habitat immediately adjacent to the marsh. At that site, maintaining the marsh habitat and the natural water levels would likely be adequate for long-term survival.

Three important conclusions from our study are that (1) most frogs move away from breeding sites, but only a few move farther than the nearest suitable nonbreeding habitat; (2) the distance moved is highly site-dependent, as influenced by the local landscape; and (3) land managers should not use average dispersal or migration distances (from our study, or any other) to make decisions about habitat requirements. A herpetologist familiar with *R. draytonii* ecology needs to assess the local habitat requirements.

Recommendations.—Maintaining populations of pond-breeding amphibians, such as *R. draytonii*, requires that all essential habitat components be protected. These include (1) breeding habitat, (2) nonbreeding habitat, and (3) migration corridors. In addition, a buffer is needed around all three areas to ensure that outside activities do not degrade any of the three habitat components.

For *R. draytonii*, nonbreeding habitats must have several characteristics: (1) sufficient moisture to allow amphibians to survive throughout the nonbreeding season (up to 11 months), (2) sufficient cover to moderate temperatures during the warmest and coldest times of the year, and (3) protection (e.g., deep pools in a stream or complex cover such as root masses or thick vegetation) from predators such as raptors (hawks and owls), herons, and small carnivores.

Breeding habitat has been well described (U.S. Fish and Wildlife Service, 2002; Stebbins 2003) and receives most of the management attention (US Fish and Wildlife Service, 2002). However, nonbreeding areas are equally important because some *R. draytonii* spend only a week or two at breeding sites, yet nonbreeding habitat is frequently ignored and is generally not well understood. Aside from our study, Bulger et al. (2003) are the only ones to publish details on the use of nonbreeding habitat by *R. draytonii*. Additional research on nonbreeding habitat is needed, especially in other parts of range where *R. draytonii* occupy a diversity of ecotypes.

Migration corridors are frequently not considered in management planning for California Red-Legged Frogs. Our work and that of Bulger et al. (2003) indicate that *R. draytonii* migration corridors can be less "pristine" (e.g., closely grazed fields, plowed agricultural land) than the other two habitat components. Bulger et al. (2003) observed that *R. draytonii* did not avoid or prefer any landscape feature or vegetation type. They tracked frogs that crossed agricultural land, including recently tilled fields and areas with maturing crops. Our study site did not encompass such a diversity of habitats, but frogs readily traversed pastureland that surrounded the breeding sites. While conducting other research, we observed five frogs crossing a recently burned field as they moved toward a breeding pond during the first rain of the season (25 October 2004). Both our study and that of Bulger et al. were conducted at study sties near the Pacific Ocean where summer fog and high relatively humidity reduce the risk of desiccation for dispersing amphibians (E. J. Null, NOAA Technical Memorandum, NSW, WR-126, 1995; Lundquist and Bourcy, 2000). 5 Though desiccation was probably not a problem for frogs in our study, amphibians are often faced with a variety of hazards including roads (Gibbs, 1998; Vos and Chardon, 1998), degradation of habitat (Vos and Stumpel, 1995; Findlay and Houlahan, 1997; Gibbs, 1998), predation (Gibbs, 1998), as well as desiccation (Rothermel and Semlitsch, 2002; Mazerolle and Desrochers, 2005).

Buffers are often described as the area that frogs use near breeding sites. Such usage combines migration corridors and nonbreeding habitat, as well as the adjacent area necessary to protect these areas. We believe that it is important to identify each habitat component separately and then include a buffer that is sufficiently large to maintain the integrity of each habitat type. Such a buffer cannot be defined as a standard distance but rather as an area sufficient to maintain the essential features of the amphibian habitat. Hence, a riparian area adjacent to a forest undergoing clear-cut logging would need a relatively large buffer to protect it from increased sedimentation and the increased temperature fluctuations that occur after logging. Less severe habitat modifications adjacent to amphibian habitat could be accommodated with a narrower buffer (deMaynadier and Hunter, 1995, 1999; Gibbs, 1998).

Buffers are typically described as a fixed-width boundary around breeding sites (Semlitsch and Bodie, 2003). However, the distribution of habitat components is rarely symmetrical

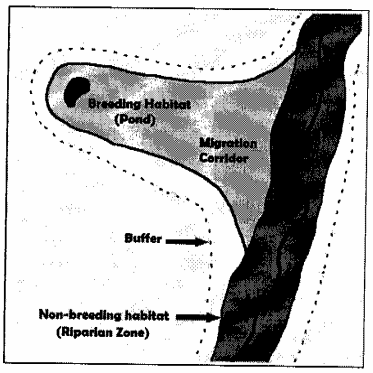


FIG. 6. Stylized diagram of typical *Rana draytonii* habitat showing the critical habitat components and the required asymmetrical buffer.

(e.g., a pond with frogs dispersing in all directions to surrounding nonbreeding area). At all of our study sites, frogs moved primarily in one direction, often toward the nearest riparian area, similar to what Rothermel and Semlitsch (2002) reported. As suggested by Regosin et al. (2005), protecting frog habitat in these situations requires an asymmetrical conservation area (Fig. 6). Because it is often not obvious from casual inspection what areas frogs are relying upon, delineating each habitat component and determining the size of a suitable buffer requires either an expert opinion from a field biologist with extensive experience with the species of interest or a field study to monitor radiotagged frogs.

The design of protected areas is often developed with the unstated assumption that only the most sedentary frogs can or need to be protected. The resulting systematic loss of individuals that move the farthest can have unexpected and unwanted effects (Gill, 1978; Berven and Grundzien, 1990). Long-distance dispersers are the individuals most likely to reach distant breeding sites and, hence, provide the genetic diversity that is important for survival of small populations. Additionally, those same dispersers are the individuals that would colonize sites where frogs have been lost because of random events that periodically extirpate local populations. By consistently selecting against frogs that disperse the greatest distances, the effective size of a metapopulation is reduced and the size of the effective breeding population is smaller; smaller breeding populations have a greater likelihood of extirpation (Gill, 1978; Sjogren, 1991).

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Accepted: 20 January 2007.

2001 Aerial Photo of Site of Entire Approved Development

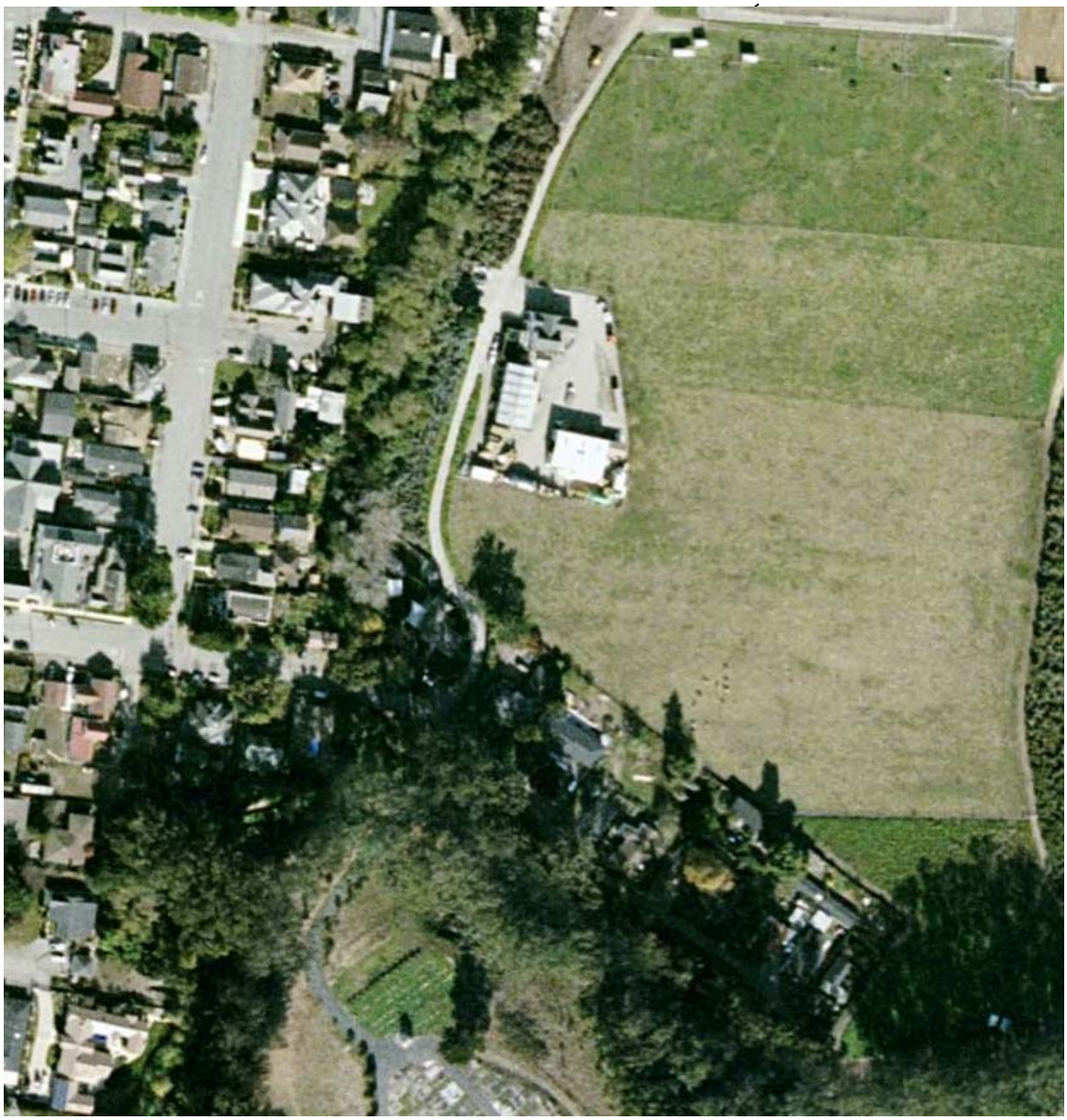
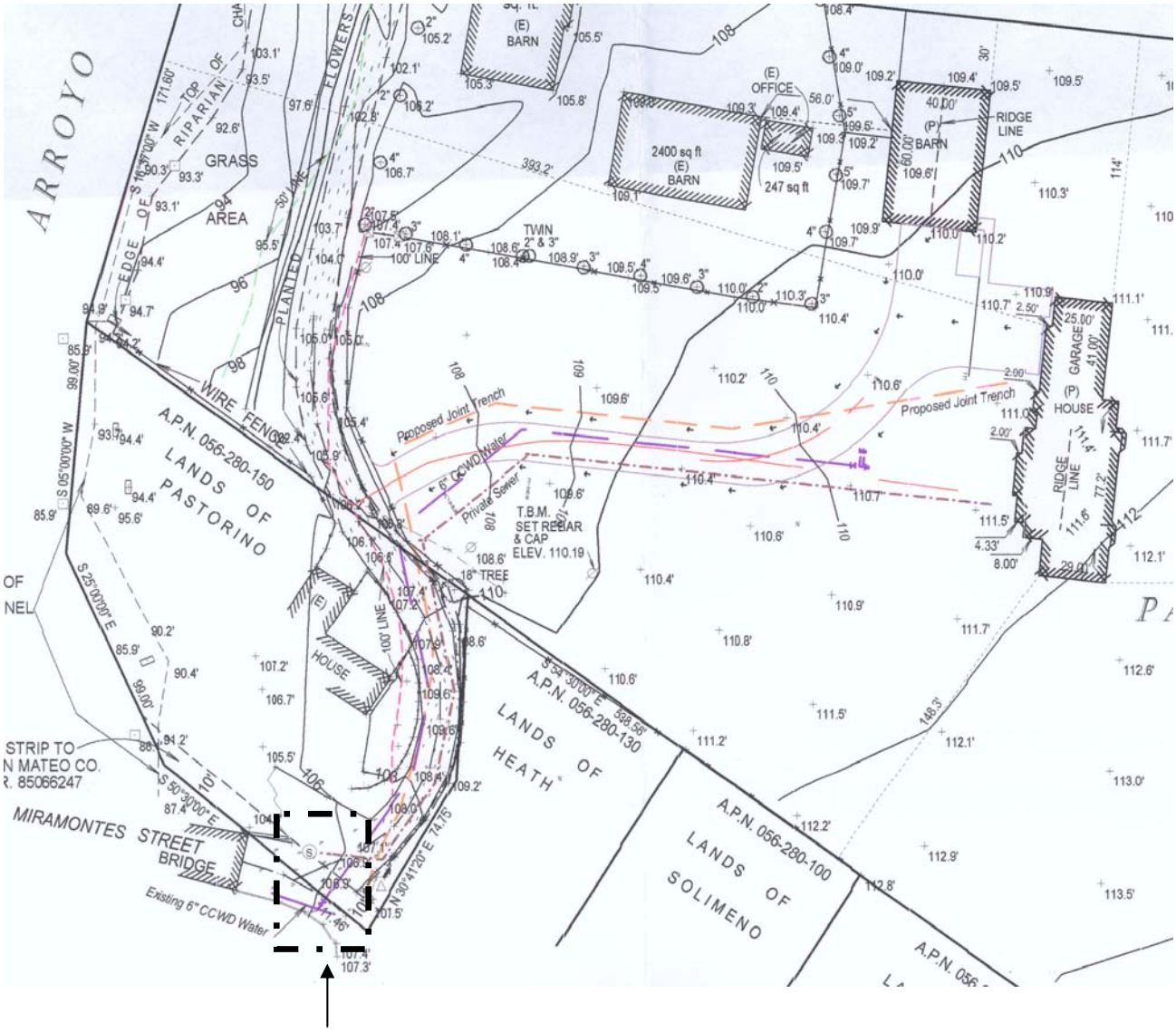


Exhibit 4
A-2-HMB-07-030 (Pastorino)
Aerial Photo of Site



Extent of Commission Appeals Jurisdiction

Exhibit 5
A-2-HMB-07-030 (Pastorino)
Site Plan

Existing access road leading from bridge across Arroyo Leon

Existing access road to subject property

Exhibit 6
A-2-HMB-07-030 (Pastorino)
Site Photos

YinLan Zhang

From: Lucy_Triffleman@fws.gov
Sent: Tuesday, July 03, 2007 12:43 PM
To: kathym@hmbcity.com
Cc: SGLUSHKOFF@dfg.ca.gov; YinLan Zhang; sflint@ci.half-moon-bay.ca.us
Subject: 921 Miramontes

Kathy-
It was good to talk with you today. I appreciate getting your feedback and getting further clarification of the project and the area. I hope I was able to speak to at least some of your concerns. As we discussed on the phone, the Service recommends the following additional minimization measures be incorporated into this project in order to receive a not likely to adversely affect determination for listed species:

1) Mitigation Measure 1a- please be sure that the applicant understands that the worker education program needs to be implemented prior to the start of any ground breaking activity and should be conducted by a Service-approved biologist (this individual should send their qualifications via a 1-2 pg resume to the Service for email approval prior to conducting the education session. Be sure to highlight this individuals experience working with amphibians and reptiles in a field setting)

2) Exclusion fencing should be established surrounding the entire project area (i.e. anywhere where the ground will be disturbed). A gate should be installed to allow entrance/exit of construction vehicles and staff as needed but it is important that it remains closed the majority of the time, especially overnight. Fencing should be a minimum of 36 inches above ground level and buried 4-6 inches into the ground. Fencing should have one-way escape funnels and should remain intact for the entire duration of development activities (Note: I am attaching designs to the end of this document). Fencing may be made of plywood or erosion mesh but MAY NOT be made of orange construction fencing or anything with larger holes as this may trap listed species. Fencing should be established two weeks prior to the start of construction and should be established by Service-approved monitor(s) (see above). Fencing should be inspected for any rips or other malfunctions once per week by biological monitors during all phases of construction activity. Upon completion of the proposed project all traces of fencing should be removed and properly disposed of off-site.

3) After the establishment of fencing but prior to the start of construction, grass and vegetation within this area should be removed via belt driven weedwacker to a two- to four-inch height.

4) Immediately after grass clipping, Service-approved monitors should perform preconstruction surveys of the area. If any listed species are found, monitors will remove these animals from the fenced area and bring them to Arroyo leon creek for release. Under no circumstance will these individuals be allowed to be placed at any other location. Preconstruction surveys should be performed again the day of the onset of construction activities to ensure the area is clear. If any listed species are found during the course of construction, construction will cease until biological monitors have been contacted and arrive on the site. Biological monitors will then be allowed to remove listed species from the site and translocate them to Arroyo Leon. Under no circumstances will anyone else be allowed to handle these species. At the end of the construction period, biological monitors will issue a report to the Service describing the species encountered during construction activities and what actions where taken.

5) Please be sure to incorporate measures that all trenches and holes will be filled or covered at the end of each work day within the project area.

6) Please be sure that no staff or equipment enter the riparian areas during the construction period.

Finally, please clarify where piping will connect to on a map to ensure that there will be limited access to the riparian areas.

9/19/2007

Exhibit 7
A-2-HMB-07-030 (Pastorino)
July 3, 2007 Email from Lucy Triffleman, USFWS
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Let me know your and your applicant's decision on the above measures and/or if you have more suggestions comments. Note that this email represents the comments of the Service alone and may deviate from the questions and concerns of the State agencies.

On a separate note- I also spoke with someone in my office after hanging up with you that mentioned that a conservation strategy is being developed in Alameda county . This document would be created with the Service in which planners and Service staff would identify those locations where development is preferred and where mitigation/preservation should be oriented. Additionally, the document sets up basic minimization measures that should be adhered to at certain areas. This is similar to the process used in HCPs except it would require continued discussion with the Service for projects but would streamline our review and reduce the costs associated with putting together biological assessments by the applicant. It also would not take nearly as long or require as much review as an HCP as BOs would still have to be written (i.e. effects analyzed on an individual basis) thus allowing for more oversight by the Service but not as much discussion as is currently required. If you are interested in perusing this, let me know and I will find out more info for you. In the meantime, here is a link to the Santa Rosa conservation strategy for your review and internal discussion. Note that this does not have to be the same style as one put together for HMB, only a suggestion. Thanks-

http://ci.santa-rosa.ca.us/default.aspx?PageId=1111

Lucy Triffleman
US Fish and Wildlife Service
Coast-Bay Delta branch
2800 Cottage Way room W-2605
Sacramento, CA. 95825
Ph. (916) 414-6628
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9/19/2007

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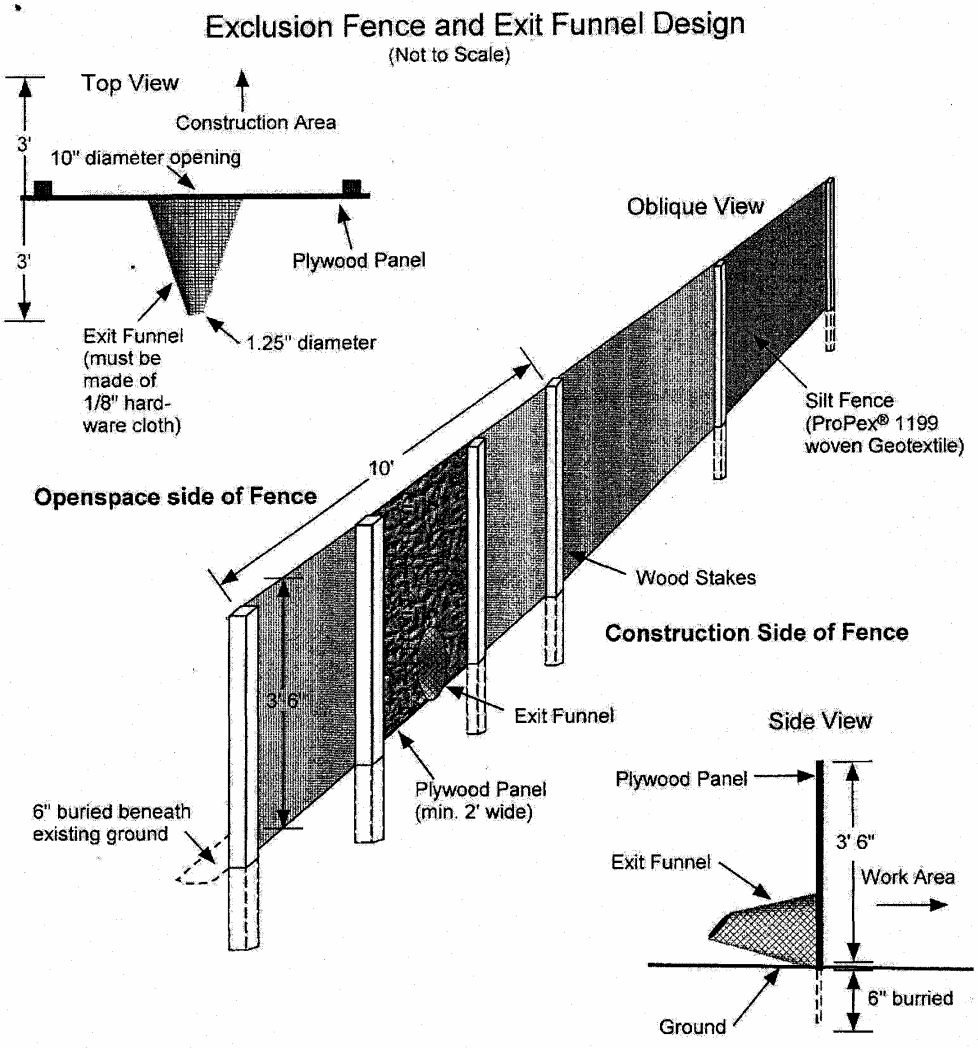

Clear vegetation (weed eat grass; prune branches, vines, etc.) within 3' of exclusion fence.
No existing fences (barbed wire, chain link, etc.) within 3' of exclusion fence.

Appendix B - Exclusion Fence Schematic.

Exhibit 7
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July 3, 2007 Email from Lucy Triffleman, USFWS
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1. Spec for height of exit funnel from ground.

The exit funnels will be placed such that the large opening is flush with the ground surface.

2, 3. Detail for area of removable panels for access and operation of panel.

Design will depend on the width of the access opening. It is likely the design will consist of two panels hinged at the ends of the exclusion fence and flush with the ground. A small flap of rubber will be attached to the bottom of the panels to prevent gaps under them. On-site construction personnel will be available at all times to open and close the gate to allow access for vehicles. The gate will remain closed except to allow access.

4. How long will the fence be in place? Propex hasn't received general approval for long term use.

Propex has been used at two long term (one 3 years, one for one year so far) construction sites in the East Bay for Alameda whipsnake exclusion fences. The advantage over 8 foot lengths of Plywood are that a longer length can be installed such that connections occur only where exit funnels are placed (every 50 feet) rather than every 8 feet with plywood panels. The durability of propex seen at these two sites is sufficient for SFGS sites.

The material was designed for use under asphalt and is highly resistant to puncture, tearing an uv.

5. Narrative for schedule of fence maintenance/repair.

The fence would be inspected daily by construction personnel and any repairs made immediately. An inspection by a qualified biologist would be made weekly along with a through full site inspection.

Exhibit 7
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YinLan Zhang

From: Lucy_Triffleman@fws.gov
Sent: Monday, July 23, 2007 4:03 PM
To: Kevin.J.Lansing@sf.frb.org
Cc: YinLan Zhang; SGLUSHKOFF@dfg.ca.gov; kmarx@ci.half-moon-bay.ca.us; stevef@hmbcity.com
Subject: 921 Miramontes

Kevin -
After discussion internally regarding the construction of the proposed single family residence at 921 Miramontes Way, the Service has determined that the proposed lot constitutes potential San Francisco garter snake and California red-legged frog habitat. The Service reached this determination based on:

1) The proximity of the project to Arroyo Leon which has been recognized by several experts as containing quality habitat characteristics for the above mentioned listed species;
2) The proximity of the area to the Johnson Ranch property currently owned by POST where experts have observed California red-legged frogs utilizing the perennial aquatic habitat;
3) The connectivity of these areas to the proposed location as well as other properties known to contain listed species with an absence of significant barriers to impede movement of either species. Note that San Francisco garter snakes have been reported traveling 1.2 km over a single season and California red-legged frogs have been observed traveling in excess of 4 km regardless of terrain or climate conditions.

Therefore, the Service has determined that incidental take must be obtained from the Service to be in compliance with the Endangered Species Act of 1973, as amended. Take incidental to an otherwise lawful activity may be authorized by one of two procedures. If a Federal agency is involved with the permitting, funding, or carrying out of the project, then initiation of formal consultation between that agency and the Service pursuant to section 7 of the act is required if it is determined that the proposed project will adversely affect a listed species. Such a consultation would result in a biological opinion that addresses the anticipated effects of the project to the listed species and may authorize a limited level of incidental take. If a federal agency is not involved with the project, and a listed species may be taken as a result of the project, then an incidental take permit pursuant to section 10 (a)(1)(B) of the Act should be obtained. The Service may issue a permit upon completion of a satisfactory habitat conservation plan (HCP) for the listed species that would be subject to take as a result of the project.
Given the containing interest in development along the western San Mateo coastline the Service strongly urges the applicant and the City to pursue this second option as this will allow for take for projects with or without a federal nexus and drastically reduce the time frames needed for permits necessary for construction and development. If this is not an option currently available, the Service recommends locating a federal nexus or contacting the Service to develop an interim agreement until a final HCP can be developed. should you have any questions, please do not hesitate to contact me at the number below. Thanks-

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Exhibit 8
A-2-HMB-07-030 (Pastorino)
July 23, 2007 Email from Lucy Triffleman, USFWS