

**CALIFORNIA COASTAL COMMISSION**

NORTH CENTRAL COAST DISTRICT OFFICE  
45 FREMONT STREET, SUITE 2000  
SAN FRANCISCO, CA 94105  
PHONE: (415) 904-5260  
FAX: (415) 904-5400  
WEB: WWW.COASTAL.CA.GOV



Click here to go to  
original staff report

# W17a

**Prepared July 7, 2015 for July 8, 2015 Hearing**

**To:** Commissioners and Interested Persons  
**From:** Nancy Cave, North Central Coast District Manager  
Stephanie Rexing, North Central Coast Coastal Planner

**Subject: STAFF REPORT ADDENDUM for W17a  
City of Half Moon Bay Amendment Number LCP-2-HMB-14-0612-1 (Map  
Revisions)**

The purpose of this staff report addendum is to provide a response to the City's letter of July 6, 2015, and correct a typo in the staff report (dated prepared June 26, 2015). The City's letter indicates that the City is not in agreement with the Commission Staff recommendation on the extent of habitat map changes identified, and requests that the Commission only approve the areas the City indicates should be so mapped. The City also indicates that the Commission is precluded from taking an action beyond approving the LCP amendment as submitted. Staff does not agree with the City on either point.

### **Additional Areas Must Be Mapped**

In terms of the City's assertions that the maps should not be altered from what the City approved, Staff continues to believe that the City's existing certified LCP requires the Commission to identify all known habitat in this area on the map. Contrary to the City's claim that only the area shown in red on their submitted map (see staff report Exhibit 1 pages 3 and 4) should be mapped, and as already indicated in the staff report, Commission Staff has received confirmation from the United States Fish and Wildlife Service (USFWS) that additional areas in the near vicinity are also confirmed habitat areas, and thus need to also be added to the map. This is discussed in some detail in the staff report starting on pages 7 and 12, and the USFWS correspondence on this point is attached to the staff report as Exhibit 6.

In addition, in the time since the staff report has been distributed, staff has received three letters of support for the staff recommendation (from the Center for Biological Diversity, the Committee for Green Foothills and the Sierra Club, and James Benjamin (the Half Moon Bay citizen who is a party to the settlement agreement that requires the City to update the habitat maps regarding this area); see attached). These letters provide additional support for the Commission Staff recommendation. Specifically, in a letter dated July 2, 2015, the Center for Biological Diversity states they support the staff recommended modifications and asks that the Commission support staff's recommendation. In another July 2, 2015 letter, the Committee for

Green Foothills and the Sierra Club state they are in strong support of the staff recommendation and assert that with the suggested modifications in the staff recommendation, the amended habitat maps will ensure sensitive habitats are protected and that the policies that protect such habitats are clarified. Finally, a letter dated July, 2, 2015 from Mr. Benjamin expresses full support for the staff recommendation and points out that the City is aware that USFWS and other biological consultants consider the additional area to be habitat. Mr. Benjamin also points out that breeding colonies of California red-legged frog and foraging/refugia habitat for San Francisco garter snakes have been confirmed on the parcel south of the wastewater treatment plant (APN 048-270-080), which is the parcel Commission Staff has recommended be designated as habitat, in addition to the areas to be designated in the City's original application.

In addition to these letters of support, Commission Staff feels the modifications suggested in the staff report (to designate as habitat additional areas that the resource agencies and other experts consider habitat, as well as modifications to add text to LUP policies and IP sections to address other areas in the City that may also be sensitive habitat areas but have yet to be mapped by the City, or habitats that have not yet been found, and depicted as such on the Habitat Areas and Water Resource Overlay Map or Coastal Resource Areas Map) are necessary to assure consistency with Coastal Act Section 30240, which protects environmentally sensitive habitat areas, and is consistent with and adequate to carry out the LUP. Thus, staff continues to recommend that the Commission approve the LCP amendment only if modified per the staff recommendation.

In terms of the City's assertions that the Commission is precluded from adopting anything other than the LCP amendment as submitted, the City's legal arguments are at best misinformed and at worst deceptive. See below for Commission Staff's responses to the City's assertions.

### **The Commission Has Jurisdiction to Modify Submissions**

#### The Coastal Act and the Commission's implementing regulations empower the Commission to suggest modifications to an LCP submittal

The Coastal Act states that the Coastal Commission *shall* certify a land use plan, or any amendments thereto, *if* it finds that a land use plan meets the requirements of, and is in conformity with, the policies of Chapter 3 of the Coastal Act (Public Resources Code (PRC) Section 30512(c); see also PRC Section 30514(b) [referring amendments to the same standard]) (emphases added). The City ignores the "if" in its arguments, which, importantly, qualifies the "shall." Recognizing there may be give and take involved to create a valid LCP, the Legislature specifically provided a process for which the Commission could make suggestions to an LUP or IP submittal and the local entity could approve or reject them (PRC Sections 30512(b), 30513). The Commission's regulations implement this process (California Code of Regulations Title 14 (CCR) Sections 13537, 13541, 13542, 13544, and 13544.5).

Further, while there is a limit to the scope of the suggestions, the limit is not as narrow as the City suggests. While the Commission may not "diminish or abridge the authority of a local government to adopt and establish, by ordinance, the precise content of its land use plan" (PRC Section 30512.2(a)), the Commission "shall" require conformance to Chapter 3 policies "only to

the extent necessary to achieve the basic state goals specified in Section 30001.5” (PRC Section 30512(b)).

In spite of the cautionary “only,” that extent is generous. In particular, one of the enumerated state goals is to:

*Protect, maintain, and where feasible, enhance and restore the overall quality of the coastal zone environment and its natural and artificial resources. (see PRC Section 30001.5(a))*

To “protect” is the Coastal Act’s first basic goal, without regard to feasibility. Section 30240 specifically requires protection of ESHA and buffers:

- (a) Environmentally sensitive habitat areas shall be protected against any significant disruption of habitat values, and only uses dependent on those resources shall be allowed within those areas.*
- (b) Development in areas adjacent to environmentally sensitive habitat areas and parks and recreation areas shall be sited and designed to prevent impacts which would significantly degrade those areas, and shall be compatible with the continuance of those habitat and recreation areas.*

Thus, “development in ESHA areas themselves is limited to uses dependent on those resources, and development in adjacent areas must carefully safeguard their preservation” (*Sierra Club v. California Coastal Commission* (1993) 12 Cal.App.4th 602, 611).

#### Modifications are not drafting

The City cites three cases for the proposition that the suggested modifications amount to drafting the LCP. Again, its consideration is incomplete.

While *Yost v. Thomas* ((1984) 36 Cal.3d 561) does bar the Commission from outright drafting of a land use plan (at least without local approval), it does not discuss modifications and its holding is narrow. *Yost* “stands for nothing more than that a city’s actions in implementing the LCP retain their legislative nature for the purposes of referendum... The city’s actions in implementing the LCP... are still subject to Commission review” (*Charles A. Pratt Const. Co., Inc. v. California Coastal Commission* (2008) 162 Cal.App.4th 1068, 1076).

*City of Chula Vista v. Superior Court* ((1982) 133 Cal.App.3d 472), also cited by the City, actually supports, rather than erodes, the Commission’s authority in these matters:

*Local government is to be included, but statewide standards are to be formulated; local government plans, but a statewide commission reviews. Surely the Legislature did not go to all this trouble to create a statewide rubber stamp agency which does no more than review local legislation for arbitrary and capricious enactments. Rather, it is assumed statewide interests are not always well represented at the local level, and therefore, an agency is needed which promulgates statewide rules and statewide policies. (Id. at p. 489*

(emphasis added, footnote omitted)).

Finally, *Security National Guaranty, Inc. v. California Coastal Commission* ((2008) 159 Cal.App.4th 402) (“SNG”) addresses the Commission’s powers during an appeal, not during consideration of an LCP amendment; in that case, the power to find a site contained ESHA in contradiction to the LCP (see also *Charles A. Pratt Const. Co., Inc. v. California Coastal Commission, supra*, 162 Cal.App.4th at p. 1077 [finding plaintiff’s use of SNG inapposite]).

The SNG court succinctly concluded the Commission “has no statutory authority to amend an LCP during the CDP appeal process” (*Security National Guaranty, Inc., supra*, 159 Cal.App.4th at pp. 419-420. By contrast, the Commission clearly has statutory authority to suggest modifications during the LCP process (PRC Sections 30512(b) and 30513). SNG acknowledges this power by correctly stating that “if” the Commission finds the LUP meets Chapter 3 requirements, then the Commission must certify it (*Security National Guaranty, Inc., supra*, 159 Cal.App.4th at p. 420).

#### Suggested modifications do not interfere with the City’s ability to control its own LCP

The City’s arguments overlook its own powers and responsibilities. As made clear in the Coastal Act, the local government always has final say regarding modifications. It may or may not adopt modifications; it may elect to skip that hearing and resubmit an LUP, IP, or amendment; it may request the Commission not recommend or suggest modifications at all with a submittal (PRC Sections 30512(b) and 30513.) The cases cited by the City and further explored above affirm that power -- without clipping the ability of the Commission to review. The Commission therefore does not exceed its jurisdiction merely by suggesting modifications.

#### The public receives ample notice of LCP amendments

The City is rightly concerned about notice. The Coastal Act declares the public has a right to fully participate in decisions affecting coastal planning, and that implementation of programs for conservation and development should include the “widest” opportunity for public participation. (PRC Section 30006). However, there is plenty of notice built into LCP procedures. Indeed, persons interested in an LCP amendment, for which the Commission suggests modifications, receive *four* rounds of notice:

- 1) At the local hearing that considered the amendment (CCR Section 13551);
- 2) At the Coastal Commission hearing that considers the amendment (CCR Sections 13524, 13525, and 13552);
- 3) At the local hearing on whether to accept or reject the modifications (CCR Sections 13544(a), 13544.5(a), and as required by 13551);
- 4) At the Coastal Commission’s hearing in which the Commission concurs with or rejects the Executive Director’s report on the local action regarding the modifications (CCR Sections 13544(c) and 13544.5(c)).

Furthermore, this particular subject matter was part of a lengthy lawsuit that received publicity.

For these modifications, the City itself is perhaps the most interested person. It was a party to the lawsuit, it owns the entire 9.84 acre Caltrans mitigation site, and has in the past tried to sell the parcel. The City cannot claim it has not received adequate notice.

The Suggested Modifications to the LUP Are Necessary to Fulfill Coastal Act Policies Regarding Sensitive Species

As explained above, in the staff report, and in the letters of support from environmental groups, USFWS, and Mark Jennings, PhD., a neutral expert with particular knowledge of Half Moon Bay's sensitive species population, Modification #1 would ensure that the entire Caltrans mitigation site is mapped accurately as supporting sensitive species habitat, fulfilling the protection required by Coastal Act Section 30240(a).

Suggested Modifications #2 and 3 further clarify that the City makes the final determination as to what constitutes sensitive species habitat. In fact, the LUP *requires* the City to update the map to reflect findings of sensitive habitat (see LUP Policies 3-21 and 3-32 in the staff report on page 14). So far, the City has failed to update the map in question. The lack of updates not only risks a substantial adverse effect on sensitive species, it risks surprise to applicants who may assume that the maps are correct. The modifications do not create policy; they clarify it for the public, environmentalists, and applicants; and they clarify the City's powers to make the ultimate determination of habitat for a specific permit application.

The Suggested Modifications to the IP Are Necessary to Fulfill the LUP's Policies Regarding Sensitive Species

Suggested Modifications #4 and #5, regarding map labels, likewise promote clarity and provide notice for the public, environmentalists, and applicants that the "map is not the territory" and the City's determination is the final word. No matter how conscientious a local government, a map will usually lag behind what is happening on the ground. Updates to maps, as required by LUP Policies 3-21 and 3-32, should acknowledge this fact in an open manner. The Commission approved similar language for the amendments to the Malibu LCP, with accompanying policies that clarified an unmapped area may still constitute habitat (see Malibu IP policies, Chapter 4, paragraphs 4.1, 3.2 and 4.3). Malibu ESHA overlay maps carry a label to provide maximum notice of this policy (see e.g., "ESHA Overlay Map 1: Nicholas Canyon to Trancas Beach"). The concept that "the maps don't prevail over resource on the ground" is fundamental to the Commission's program, and is found in many LCP's statewide (see e.g., San Luis Obispo County LCP).

**CEQA Mandates Protection of the Environment**

The Commission's CEQA responsibility

As explained in the staff report, the Commission has legislated responsibility to fulfill CEQA requirements when reviewing LCP submissions, relieving the need for the local government to prepare a separate environmental document (PRC Section 21080.9.) Nevertheless, certification of an LCP amendment is subject to CEQA (*Id*). The Commission ensures this compliance via its

certified program (CCR Section 15251; see also PRC Section 21080.5). Therefore, Commission documents prepared during its review of an LCP submission act in lieu of traditional CEQA documents such as an EIR.

The Commission may not approve a proposed project, including amendments to an LCP, if there are feasible alternatives or feasible mitigation measures available which would substantially lessen any significant adverse impact which the activity may have on the environment (PRC Section 21080.5(d)(2)(A)). For this amendment request by the City, substantial evidence, including repeated statements by USFWS, exists to support designation of the entire 9.84 acres of the Caltrans mitigation site as habitat for sensitive species (see **Exhibits 6 and 7**). The City would have the Commission ignore a large part of the parcel.

The remaining modifications ensure that development will not be allowed in ESHA when specific evidence, such as a biological survey, supports a finding of ESHA. In the past, applicants have argued that the map constitutes the City's final determination of ESHA, which would promote a potential violation of CEQA.

### **Correction**

In terms of the above-referenced typo, the staff report text shows an "or" when the actual LCP shows an "and" in Suggested Modification #2 on staff report page 5, and thus this suggested modification is changed to read as follows:

*In the event the habitat of a rare and endangered species is found to exist within the City, revise the Habitat Areas and Water Resources Overlay Map to show the location of such habitat. Any habitat ~~so designated~~, of a rare and endangered species, regardless of whether it is mapped, including but not limited to the habitats shown on the Habitat Areas and Water Resources Overlay Map, shall be subject to Policies 3-22 through 3-31.*

**CALIFORNIA COASTAL COMMISSION**

NORTH CENTRAL COAST DISTRICT OFFICE  
45 FREMONT STREET, SUITE 2000  
SAN FRANCISCO, CA 94105  
PHONE: (415) 904-5260  
FAX: (415) 904-5400  
WEB: WWW.COASTAL.CA.GOV



# W17a

**Prepared June 26, 2015 (for July 8, 2015 hearing)**

**To:** Coastal Commissioners and Interested Persons  
**From:** Nancy Cave, North Central Coast District Manager  
Stephanie Rexing, North Central Coast District Planner  
**Subject:** **City of Half Moon Bay Amendment Number LCP-2-HMB-14-0612-1 (Map Revisions)**

---

## **SUMMARY OF STAFF RECOMMENDATION**

The City of Half Moon Bay proposes to revise their Local Coastal Program's (LCP's) Land Use Plan (LUP) Habitat Areas and Water Resources Overlay Map, and the Implementation Plan (IP) Coastal Resource Areas Map. Specifically, the City proposes to amend the LCP maps to reflect certain additional areas in the City found to contain or likely to contain certain sensitive coastal resources, based on a decision by the San Mateo Superior Court. Specifically, the Court found that the Kehoe Watercourse and its adjacent riparian areas are likely to support and/or contain Endangered Species Act (ESA) protected California red-legged frog (CRLF)<sup>1</sup> and San Francisco garter snake (SFGS)<sup>2</sup>.

Staff concurs that these areas should be added to the maps, as the LCP identifies such map updates as an important step as rare, endangered, and unique species habitats are identified. At the same time, Staff believes that the area identified in the City's submittal does not match up to the actual area that should be shown on the maps. Based on United States Fish and Wildlife Service (USFWS) determinations, there are additional areas associated with the Kehoe Watercourse and the adjacent riparian area that contain and/or support rare and endangered or unique species, specifically CRLF and SFGS. In addition, the proposed map modifications are specific to the area involved in the court case, and it is clear that there are other areas of the City where there may well be additional sensitive habitats, including rare, endangered or unique species habitats, as evidenced by recent appeals to the Commission. Given that the driver for this amendment is the Court's decision relative to Kehoe, Staff believes that the great deal of extra effort that would be required to clearly identify these other areas and add them to the maps at this

---

<sup>1</sup> California Species of Special Concern, and threatened under the Federal Endangered Species Act. Considered a unique species under the LCP.

<sup>2</sup> Endangered under the California Endangered Species Act and the Federal Endangered Species Act, and fully protected under Section 5050 of the Fish and Game Code. Considered a rare and endangered species under the LCP.

time would be overly burdensome to the City. At the same time, Staff believes it is important to make sure that the LCP explicitly recognizes that these other areas that are not shown on the maps may still constitute sensitive habitat given the resources present there to which the LCP's general sensitive habitat policies, and more specific habitat policies depending on the resource, apply. Thus, additional modifications are needed to modify LUP policies and IP sections to address other areas in the City that may also be sensitive habitat areas but have yet to be mapped by the City, or habitats that have not yet been found, and depicted as such on the Habitat Areas and Water Resource Overlay Map or Coastal Resource Areas Map.

As modified, the Commission finds the proposed LUP amendment would conform with Coastal Act Section 30240, which protects environmentally sensitive habitat areas, and finds the proposed IP amendment to be consistent with and adequate to carry out the LUP. The maps can continue to be an indicator for when sensitive habitat issues need be addressed, and the amended LCP policies would assure that both mapped and not yet mapped sensitive habitat areas are protected by the LCP in the same way.

**Staff Note: LCP Amendment Action Deadline:** This proposed LCP amendment was filed as complete on April 30, 2015. The proposed amendment affects both the City's LUP and the IP, thus the Commission has a 90-day action deadline, or until July 29, 2015 to take a final action on this LCP amendment, unless that deadline is extended.

## TABLE OF CONTENTS

<b>I. MOTIONS AND RESOLUTIONS .....</b>	<b>3</b>
<b>II. SUGGESTED MODIFICATIONS .....</b>	<b>5</b>
<b>III. FINDINGS AND DECLARATIONS.....</b>	<b>6</b>
<b>A. PROPOSED LUP AND IP AMENDMENTS AND BACKGROUND .....</b>	<b>6</b>
<b>B. STANDARDS OF REVIEW .....</b>	<b>8</b>
<b>C. CONSISTENCY ANALYSIS .....</b>	<b>8</b>
<b>1. LCP SENSITIVE HABITAT POLICIES .....</b>	<b>8</b>
<b>2. LUP AMENDMENT CONSISTENCY ANALYSIS .....</b>	<b>11</b>
<b>3. IP AMENDMENT CONSISTENCY ANALYSIS .....</b>	<b>13</b>
<b>D. CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA) .....</b>	<b>15</b>

### EXHIBITS

Exhibit 1: Proposed Map Amendments in Composite

Exhibit 2: City Council Ordinance

Exhibit 3: Settlement Agreement, Statement of Decision, U.S. Fish and Wildlife Service Revised Guidance on Site Assessments and Field Surveys for the California Red-legged Frog

Exhibit 4: Letter from City of Half Moon Bay

Exhibit 5: Map Exhibit to CDP-01-96

Exhibit 6: Letters from United States Fish and Wildlife Service

Exhibit 7: Correspondence

Exhibit 8: Relevant Policies of the Half Moon Bay Land Use Plan



## I. MOTIONS AND RESOLUTIONS

Staff recommends that the Commission, after public hearing, approve the proposed LCP amendment only if modified. The Commission needs to take four votes, two each on the LUP and IP components of the proposed amendment, in order to act on this recommendation.

### A. Reject the LUP Amendment as Submitted

Staff recommends a **NO** vote on the motion below. Failure of the motion will result in denial of the LUP amendment as submitted and the adoption of the following resolution and findings. The motion passes only by an affirmative vote of a majority of the appointed Commissioners.

***Motion (1 of 4):*** I move that the Commission certify Land Use Plan Amendment LCP-2-HMB-14-0612-1 as submitted by the City of Half Moon Bay, and I recommend a no vote.

***Resolution (1 of 4):*** The Commission hereby denies certification of Land Use Plan Amendment LCP-2-HMB-14-0612-1 as submitted by the City of Half Moon Bay and adopts the findings set forth below on the grounds that the Amendment does not conform with the policies of Chapter 3 of the Coastal Act. Certification of the Land Use Plan Amendment would not comply with the California Environmental Quality Act because there are feasible alternatives or mitigation measures which could substantially lessen any significant adverse impacts which the Land Use Plan Amendment may have on the environment.

### B. Certify the LUP Amendment with Suggested Modifications

Staff recommends a **YES** vote on the motion below. Passage of the motion will result in the certification of the LUP amendment with suggested modifications and adoption of the following resolution and findings. The motion passes only by an affirmative vote of a majority of the appointed Commissioners.

***Motion (2 of 4):*** I move that the Commission certify Land Use Plan Amendment LCP-2-HMB-14-0612-1 for the City of Half Moon Bay if it is modified as suggested in this staff report, and I recommend a yes vote.

***Resolution (2 of 4):*** The Commission hereby certifies Land Use Plan Amendment LCP-2-HMB-14-0612-1 for the City of Half Moon Bay Local Coastal Program, if modified as suggested, and adopts the findings set forth below on the grounds that the Land Use Plan Amendment with the suggested modifications will meet the requirements of and be in conformity with the policies of Chapter 3 of the Coastal Act. Certification of the Land Use Plan Amendment, if modified as suggested, complies with the California Environmental Quality Act because either 1) feasible mitigation measures and/or alternatives have been incorporated to substantially lessen any significant adverse effects of the Land Use Plan Amendment on the environment, or 2) there are no further feasible alternatives or mitigation measures that would substantially lessen any significant adverse impacts which the Land Use Plan Amendment may have on the environment.

### **C. Reject the IP Amendment as Submitted**

Staff recommends a **YES** vote on the motion below. Passage of the motion will result in rejection of the IP amendment and the adoption of the following resolution and findings in this staff report. The motion passes only by an affirmative vote of a majority of the Commissioners present.

***Motion (3 of 4):*** *I move that the Commission reject Implementation Plan Amendment LCP-2-HMB-14-0612-1 as submitted by the City of Half Moon Bay, and I recommend a yes vote.*

***Resolution (3 of 4):*** *The Commission hereby denies certification of the Implementation Plan Amendment Number LCP-2-HMB-14-0612-1 as submitted by the City of Half Moon Bay and adopts the findings set forth below on the grounds that, as submitted, the Implementation Plan Amendment does not conform with and is inadequate to carry out the provisions of the certified Land Use Plan as amended. Certification of the Implementation Plan Amendment would not meet the requirements of the California Environmental Quality Act as there are feasible alternatives or mitigation measures that would substantially lessen the significant adverse impacts on the environment that will result from certification of the Implementation Plan Amendment as submitted.*

### **D. Certify the IP Amendment with Suggested Modifications**

Staff recommends a **YES** vote. Passage of the motion will result in the certification of the IP amendment with suggested modifications and adoption of the following resolution and findings. The motion passes only by an affirmative vote of the majority of the Commissioners present.

***Motion (4 of 4):*** *I move that the Commission certify Implementation Plan Amendment LCP-2-HMB-14-0612-1 if it is modified as suggested in this staff report, and I recommend a yes vote.*

***Resolution (4 of 4):*** *The Commission hereby certifies Implementation Plan Amendment LCP-2-HMB-14-0612-1 for the City of Half Moon Bay Local Coastal Program, if modified as suggested, and adopts the findings set forth below on the grounds that the Implementation Plan Amendment with suggested modifications conforms with and is adequate to carry out the certified Land Use Plan as amended. Certification of the Implementation Plan Amendment, if modified as suggested, complies with the California Environmental Quality Act because either 1) feasible mitigation measures and/or alternatives have been incorporated to substantially lessen any significant adverse effects of the Implementation Plan Amendment on the environment, or 2) there are no further feasible alternatives or mitigation measures that would substantially lessen any significant adverse impacts on the environment.*

## II. SUGGESTED MODIFICATIONS

The Commission hereby suggests the following modifications to the proposed LCP amendment, which are necessary to make the requisite Coastal Act and LUP consistency findings. If the City of Half Moon Bay accepts each of the suggested modifications within six months of Commission action (i.e., by January 8, 2016), by formal resolution of the City Council, and submits that acceptance to the Commission, the modified LCP amendment will become effective upon Commission concurrence with the Executive Director's finding that this acceptance has been properly accomplished. Where applicable, text in ~~cross-out~~ format denotes text that the City proposes to delete and text in underline format denotes text that the City proposes to add. Text in ~~double cross-out~~ format denotes text to be deleted through the Commission's suggested modifications and text in double underline format denotes text to be added through the Commission's suggested modifications.

1. **Modify LUP and IP Maps.** Amend the LUP's "Habitat Areas and Water Resources Overlay Map" and the IP's "Coastal Resource Areas Map" to include the "Kehoe Watercourse", the 9.8 acre "Caltrans mitigation project site" (APN 048-270-080), and the vacant "Sewer Authority Midcoast-side" parcel located immediately south of the Kehoe Watercourse (also known as the "Landstra Parcel"). All three areas are shown in **Exhibit 5**.

2. **Modify LUP Policy 3-21 as follows:**

*In the event the habitat of a rare or endangered species is found to exist within the City, revise the Habitat Areas and Water Resources Overlay Map to show the location of such habitat. Any habitat ~~so designated~~, of a rare or endangered species, regardless of whether it is mapped, including but not limited to the habitats shown on the Habitat Areas and Water Resources Overlay Map, shall be subject to Policies 3-22 through 3-31.*

3. **Modify LUP Policy 3-32 as follows:**

*In the event the habitat of a unique species is found to exist within the City, revise the Habitat Areas and Water Resources Overlay Map to show the location of such habitat. Any habitat ~~so designated~~, of a unique species, regardless of whether it is mapped, including but not limited to the habitats shown on the Habitat Areas and Water Resources Overlay Map, shall be subject to Policies 3-33 through 3-36.*

4. **Modify IP Section 18.38.020 as follows:**

*Chapter 18.38.020 Coastal Resource Areas. The Planning Director shall prepare, update, and maintain maps of all Coastal Resource Areas within the City. Such maps shall help the City to identify Coastal Resource Areas within the City for purposes of applying the LCP. The maps, however, are not the only determinant of such areas, and it is acknowledged that Coastal Resource Areas may be determined as part of the LCP planning and permitting process even if not yet mapped, and all such areas, whether mapped or not yet mapped, shall be subject to Coastal Resource Area requirements. Coastal Resource Areas within the City are defined as follows:...*

**5. Modify IP Section 18.38.025 as follows:**

*Amendments to coastal resource area maps shall be made as prescribed for amendments to zoning district boundaries in this title. (1996 zoning code (part)). Coastal Resource Area maps, as added, revised, or amended, shall contain the following statement, depicted in legible font and appearing at the top of the first page, as follows: “The information on this map is subject to revision. Boundaries of sensitive habitat areas may change location over time. This map is not intended to depict fixed boundaries of sensitive habitat areas or coastal resources and may not include all areas that are sensitive habitat areas. This map does not establish any final boundary lines or constraints on the City of Half Moon Bay’s ability to identify, map, or regulate sensitive habitat areas or coastal resources.”*

### **III. FINDINGS AND DECLARATIONS**

#### **A. PROPOSED LUP AND IP AMENDMENTS AND BACKGROUND**

The City of Half Moon Bay is proposing to amend its certified Local Coastal Program (LCP) Land Use Plan (LUP) and Implementation Plan (IP) to revise (1) the LUP’s Habitat Areas and Water Resources Overlay Map, and (2) the IP’s Coastal Resource Areas Map to reflect certain areas in the City recently determined to support or contain, or likely to support or contain, sensitive coastal resources.

The proposed amendment is the result of a lawsuit, filed in 2010, brought against the City by local citizen James Benjamin, alleging unpermitted vegetation cutting in the Kehoe Watercourse in Half Moon Bay. Ultimately the San Mateo Superior Court found that Kehoe and adjacent riparian areas support or contain Endangered Species Act (ESA) protected and federally-listed California red-legged frog (CRLF)<sup>3</sup> and the San Francisco garter snake (SFGS)<sup>4</sup>.

The settlement agreement (see **Exhibit 3**) establishes that the Kehoe Watercourse contains ESHA. Section C, “Recitals”, part 5 states:

*(f) The Kehoe Watercourse and adjacent Riparian Area qualify as an Environmentally Sensitive Habitat Area for purposes of the Coastal Act, Local Coastal Program of the City of Half Moon Bay and the HMB Zoning Ordinance for the following reasons:*

*(1) The Kehoe Watercourse and adjacent riparian area contains or supports rare and endangered species as defined by the State Fish and Game Commission, including the California Red-Legged Frog and San Francisco Garter Snake ...*

*(2) The Kehoe Watercourse and adjacent riparian area qualify under the Zoning Ordinance and LCP as a Riparian Area and Corridor...*

---

<sup>3</sup> California Species of Special Concern, and threatened under the Federal Endangered Species Act. Considered a unique species under the LCP.

<sup>4</sup> Endangered under the California Endangered Species Act and the Federal Endangered Species Act, and fully protected under Section 5050 of the Fish and Game Code. Considered a rare and endangered species under the LCP.

*(h) That the Kehoe Ditch is a riparian area or corridor based on the fact that it is an area covered by vegetative coverage “at least fifty percent of which is comprised of a combination of ... arroyo willow ... (and other specified plant species).”*

*(i) The Kehoe Ditch and adjacent Riparian Area qualify as an Environmentally Sensitive Habitat Area for purposes of the Coastal Act, the Local Coastal Program of the City and the City of Half Moon Bay Zoning Ordinance.*

The City and Mr. Benjamin agreed to comply with the Court’s decision as identified in a settlement agreement that required the City to:

- 1) Acknowledge that the following areas are habitat “supporting or containing rare, endangered, threatened or unique species”: (a) the Kehoe Watercourse (also as a riparian area and corridor); and (b) the “Caltrans mitigation project site” (also as a wetland);
- 2) Acknowledge that the vacant Sewer Authority Midcoast-side parcel located immediately south of the Kehoe Watercourse (aka the Landstra Parcel) is “likely habitat;” and
- 3) Amend the LCP’s Habitat Areas and Water Resources Overlay Map in order to show the habitats listed above on the map.

Please see **Exhibits 1, 2 and 3** for the map amendments in composite; the City Council Ordinance that proposes the map amendments; and the settlement agreement and exhibits which resulted from the lawsuit, respectively.

The Half Moon Bay City Council voted to amend the LUP’s Habitat Areas and Water Resources Overlay Map and to amend the IP’s Coastal Resource Areas Map pursuant to the court decision and the requirements of the settlement agreement referenced above, at a noticed council hearing on December 16, 2014. Throughout the local process, the City and Mr. Benjamin, who initially brought the lawsuit against the City, have disagreed regarding the extent of area covered by the designated “Caltrans project mitigation site” that is required to be designated habitat “supporting or containing rare, endangered, threatened or unique species” per the requirements of the court decision and the settlement agreement. During City deliberations, Mr. Benjamin wrote numerous letters stating that the Caltrans mitigation project site covered much more area than the City was actually designating as habitat. In response, the City states that the area defined as the Caltrans mitigation site is delineated by the amount of land the City agreed to mitigate on that property as a result of biological impacts of a Caltrans Highway 92 Safety Improvement Project (see CDP-01-096), an area of about 2.5 acres (see **Exhibit 5**). However, Mr. Benjamin states and cites a project description for CDP-01-096 that calls the entirety of the subject property (9.8 acres) the “project site.” United States Fish and Wildlife Service (USFWS) has asserted that “the entirety of the “Landstra Parcel” west of Highway 1 and adjacent to the Kehoe Watercourse and the entirety of APN 048-270-080 constitutes habitat for the California red-legged frog (*Rana draytonii*) and San Francisco garter snake (*Thamnophis sirtalis tetrataeni*)” (see **Exhibit 6**).

## **B. STANDARDS OF REVIEW**

The proposed amendment affects both the LUP and IP components of the City of Half Moon Bay's LCP. The standard of review for the LUP amendment is that it must conform with the requirements of Chapter 3 of the Coastal Act. The standard of review for the IP amendment is that it must conform with and be adequate to carry out the provisions of the certified LUP.

## **C. CONSISTENCY ANALYSIS**

### **1. LCP SENSITIVE HABITAT POLICIES**

#### **General Policies**

The City of Half Moon Bay LCP and its components, the LUP and IP, strongly support the protection of sensitive species and their habitats.

The general policies of the City's LCP adopt the policies of the Coastal Act, including Sections 30231 and 30240, which respectively protect the biological productivity and quality of coastal streams and environmentally sensitive habitat areas (LUP Policy 3.1.). Where the policies within the LCP overlap or conflict internally, the general policies of the LCP require that the policy which is most protective of coastal resources shall take precedence. LCP Policy 1-2 states:

*Where policies within the Land Use Plan overlap or conflict, on balance, the policy which is the most protective of coastal resources shall take precedence.*

This is an overriding policy of the LCP regardless of the status of maps.

#### **Mapping Habitat**

While the publication of maps serves vital functions, chiefly to notify applicants and the public of habitat areas and to support City designations regarding those areas during permitting or LCP considerations, maps may be incomplete or fall out of date due to the movement of species or other changes on the ground. LUP Chapter 3 contains language specifically recognizing that determining the precise locations of rare and endangered species is not always possible due to species movement and for the purpose of protecting the rare species:

*Precise locations are not always possible because of the dynamic fluctuations of populations. No attempt is made to locate with absolute precision the exact extent of any rare species. This is done to protect the species as well as to indicate that any boundary placed on such a distribution may not be the case from year to year or season to season. Any boundary for an organism on a map would tend to place permanently that organism on that site without taking into account the possibility of its moving, increase or decrease on or from any given site. (emphasis added)*

LCP Policies further indicate that maps are a step toward, but not determinative, of the City's final designation regarding a particular site. LUP Section 3.4 states:

*Overlay designation symbolically represents the locations of habitat areas in HMB....*

*While the designations reflected on the Habitat Areas and Water Resource Overlay Map represent the best available information, these designations are **not definitive and may need modification in the future.** (emphasis added)*

In addition, the specific LCP policies that designate sensitive habitats areas found on the Overlay Map do not limit designation to only those mapped areas. LUP Policy 3-2 states:

*Designate sensitive habitats as those, **including but not limited to**, shown on the Habitat Areas and Water Resources Overlay. (emphasis added)*

The LCP also designates riparian corridors shown on the Overlay Map and any other riparian area as sensitive habitats requiring protection. LUP Policy 3-8 states:

*...Designate those corridors shown on the Habitat Areas and Water Resources Overlay **and any other riparian area** as sensitive habitats requiring protection... [with an exception for artificial irrigation ponds] (emphasis added.)*

Thus, sensitive habitats do not have to be depicted on the Overlay Map to be considered sensitive habitats requiring protection under the LCP. In support of this conclusion, LCP IP Section 18.38.020(A) states:

*Sensitive Habitat Areas. Areas in which plant or animal life or their habitats are either rare or especially valuable, **and/or** as designated on the habitat areas and water resources overlay map. Areas considered to be sensitive habitats are listed below.*

*Sensitive Habitat*

- 1. Sand dunes.*
- 2. Marine habitats.*
- 3. Sea cliffs.*
- 4. Riparian areas.*
- 5. Wetlands, coastal tidelands and marshes, lakes and ponds and adjacent shore habitats.*
- 6. Coastal and off-shore areas containing breeding and/or nesting sites or used by migratory and resident water-associated birds for resting and feeding.*
- 7. Areas used for scientific study and research concerning fish and wildlife, and existing game or wildlife refuges and reserves.*
- 8. **Habitats containing or supporting unique species or any rare and endangered species defined by the State Fish and Game Commission.***
- 9. Rocky intertidal zones.*

*10. Coastal scrub community associated with coastal bluffs and gullies.*

(Emphasis added)

Finally, the general policies of the LCP assert that the text of the LCP shall be considered a part of the LCP as it serves as the findings justifying the policies and maps (LUP Policy 1-5):

*The textual discussion is intended as elaboration of and justification for the Plan policies and map designations. Therefore, the text shall be considered a part of the Land Use Plan, serving as the findings justifying the specified policies and Land Use Maps...*

Therefore, the LCP policies that are most protective of coastal resources, such as the policies which direct the designation of sensitive habitats and require application of protective policies and buffers to such areas, even if not mapped, would take precedence.<sup>5</sup>

**Status of Species**

Additionally, the status of particular species may change over time. For example, the LUP describes the California red-legged frog (CRLF) as a “unique” species, that is protected by state law,<sup>6</sup> but that description predates the 1996 federal listing of the CRLF as a threatened species.

The LUP acknowledges that San Francisco garter snake (SFGS) is listed as endangered both by the state (1971) and by the U.S. Fish and Wildlife Agency (1967).<sup>7</sup> However, the LUP is cautious about describing the location of the snake, stating “not all of the habitats have been mapped...” “little is known about the snake,” it “moves around reasonably easily in search of new prime habitats,” and “recently the snake has been caught in open grassy areas some distance from riparian or marshy habitats.”<sup>8</sup> The LUP cites a Department of Fish and Game map from 1978 that is “not very site specific” which was “an intentional action to prevent illegal taking” of the attractive, collector’s item snake. In other words, the map cited in the LUP was deliberately vague. The LUP also explains that the SFGS “migrates from one habitat to another” and cautioned that it is “important that migration corridors are maintained” and likely that if routes are cut off, “isolated populations could not continue to exist.”

As discussed above, the Half Moon Bay LUP has mapped some areas of sensitive habitat “symbolically” and left flexibility for future determinations of habitat.

Therefore, the Commission finds that the LCP Overlay Map is not intended to represent all sensitive habitats found within the City and does not limit application of rare and endangered species or unique species policy protections to areas designated on the Overlay Map. Such an

---

<sup>5</sup> During appeals and as support by the LCP, the Commission may also designate a site as ESHA, as long as the determination is supported by substantial evidence (*LT-WR, LLC v. California Coastal Com.* (2007) 152 Cal.App.4th 770, 793 [that subject property was not mapped as ESHA did not preclude it from being designated as ESHA]).

<sup>6</sup> Chapter 3 “Unique Species”, Part 2.

<sup>7</sup> Chapter 3, “Existing Conditions,” Part 1.

<sup>8</sup> *Id.*



interpretation would fail to protect coastal resources consistent with the sensitive habitat policies of the LCP and the requirements of the Coastal Act that serve as the guiding policies of the LCP.

## 2. LUP AMENDMENT CONSISTENCY ANALYSIS

### Applicable Policies

Coastal Act Section 30107.5 defines environmentally sensitive habitat areas and 30240 protects such environmentally sensitive habitat areas from significant disruption of habitat values, and allows only uses dependent on those resources in those areas. Additionally, Section 30240 requires that development in areas adjacent to environmentally sensitive habitat areas be sited and designed to prevent impacts that would degrade those areas. Coastal Act Sections 30107.5 and 30240 state:

***Section 30107.5.** “Environmentally sensitive area” means any area in which plant or animal life or their habitats are either rare or especially valuable because of their special nature or role in an ecosystem and which could be easily disturbed or degraded by human activities and developments.*

***Section 30240.** (a) Environmentally sensitive habitat areas shall be protected against any significant disruption of habitat values, and only uses dependent on those resources shall be allowed within those areas. (b) Development in areas adjacent to environmentally sensitive habitat areas and parks and recreation areas shall be sited and designed to prevent impacts which would significantly degrade those areas, and shall be compatible with the continuance of those habitat and recreation areas*

### Analysis of Proposed LUP changes

The proposed LUP map amendment would add areas within the City coastal zone as areas considered to be, or likely to be, habitat that supports or contains rare, endangered, threatened or unique species on the City’s Habitat Areas and Water Resources Overlay Map. According to LUP Section 3.4, the Habitat Areas and Water Resources Overlay Map symbolically indicates the location of habitat areas in Half Moon Bay. Specifically, this map shows locations of habitats and water resources such as riparian habitats along perennial and intermittent streams, intermittent marshes, stabilized dunes, rocky intertidal zones and coastal scrub communities associated with coastal bluffs and gullies that have been identified and mapped.

According to the LCP, the following habitat criteria warrant designation on the map: unique, rare or fragile communities that should be preserved to ensure their survival in the future (such as dune and riparian vegetation) and areas that are structurally important in protecting natural landforms and species (such as dunes to protect inland areas and riparian corridors to protect stream banks from erosion). The Habitat Areas and Water Resources Overlay Map is limited by the fact that it is updated infrequently, and thus it represents an acknowledgement of a subset of areas that have been determined to meet the specific criteria *and* that have been added to the map through an LCP amendment. Because of this, the map is not definitive. Further, LUP Section 3.4 is careful to point out that maps of such designations will need modification in the future and, as the maps are limited in accuracy by their scale and precision, mapped habitat areas are not necessarily exact representations of the habitat area conditions on the ground. Therefore, Section

3.4 recognizes that the maps would be periodically updated in order to incorporate new information.

The City's LCP includes general sensitive habitat policies, in addition to more specific policies depending on the type of sensitive habitat. LUP Policy 3-2 requires the City to designate sensitive habitats as defined by the LUP policies, including but not limited to those mapped on the Habitat Areas and Water Resources Overlay Map. LUP Policy 3-8 requires riparian corridors shown on the Map, or as defined by the LUP, to be designated as sensitive habitat. These policies make clear that habitats should be designated as sensitive habitats whether they are mapped or unmapped. LUP Policies 3-21 and 3-31 require habitats of rare and endangered species and habitats of unique species to be designated on the Map when found to exist in the City. Once designated on the Map, habitats that are known to support or contain rare and endangered or unique species makes the mapped areas subject to LUP policies that 1) limit permitted uses within such areas, 2) require certain prior to issuance permit conditions, 3) require preservation of the habitats, and 4) require certain development standards. See **Exhibit 8** for LUP policies that are applicable to the mapping and protection of such habitats.

Updating the existing certified LUP resource map as the City proposes in this action is consistent with Coastal Act Sections 30107.5 and 30240 because identifying habitats that are known to support or contain rare, endangered, threatened or unique species will provide additional notice to the public and ensure that these areas are treated as sensitive habitat areas, and more specifically rare, endangered and unique species habitat areas. Further, LUP Policies 3-3 and 3-4, which apply to areas designated as sensitive habitats and areas mapped, prohibit land use or developments that would have significant adverse impacts on sensitive habitats and allow only resource dependent uses in designated areas. Limiting development uses in such designated areas ensures environmentally sensitive habitats are protected from significant disruption of habitat values. Further, updating the map in this manner will ensure that LUP Policies 3-22 through 3-31 and 3-33 through 3-36 apply to these areas that further limit activities within these areas to resource-dependent activities such as education, research, and management or restoration, and require preservation of these habitats, consistent with Section 30240 of the Coastal Act.

However, in order to protect all currently known rare, endangered, and unique species habitat that exist in association with the area dictated by the lawsuit settlement agreement, there is a need to map additional areas. As previously stated, the City disagrees with Mr. Benjamin and the USFWS on the extent of acreage contained in the "Caltrans mitigation project site" and what amount of land to add to the Habitat Areas and Water Resources Overlay Map. Mr. Benjamin contends that the entirety of the 9.8 acre APN 048-270-080 (see **Exhibit 5** as designated on Vicinity Map of CDP-01-96 covering a Caltrans remediation project) is the "Caltrans mitigation project site;" whereas, the City asserts that the "Caltrans mitigation project site" only encompasses the 2.5 acres that the City actually remediated, and not the whole 9.8 acre parcel (see **Exhibit 5** for differences in areas proposed to be mapped by the City and areas designated habitat by the USFWS). While this difference of opinion will have bearing on the execution of the terms of the settlement agreement, this LCP map amendment must map all known sensitive habitat in the area, in order to be consistent with Coastal Act Section 30240. Therefore, this map amendment should capture all such habitats, and not only those specified for protection under the terms of the at-issue settlement agreement. The Coastal Commission has received letters, emails

and phone correspondence from USFWS that the entirety of the 9.8 acre Caltrans site (APN 048-270-080) is habitat that supports or contains unique, rare or endangered species (see **Exhibit 6** for USFWS letters and emails). The Commission therefore finds that the entire 9.8 acre APN 048-270-080 constitutes habitat to be mapped and, as a result, **Suggested Modification 1** is required to amend the Habitat Areas and Water Resources Overlay Map further to reflect all associated areas known to contain sensitive habitats and designated as such by USFWS.

Currently the City's certified LUP is not completely explicit regarding whether areas containing or supporting rare and endangered or unique species within the City that have not yet been designated on the map are accorded similar protections to areas that have been designated on the map. Applicants have sometimes interpreted this to mean unmapped areas cannot contain rare, endangered or unique species habitat, ignoring the fluid status of both species and their geography. The Commission considers any habitat containing or supporting rare and endangered or unique species to be environmentally sensitive habitat that should be protected as such, consistent with Coastal Act Section 30240, regardless of whether the habitat area is mapped or not yet mapped. The Commission has historically interpreted the City's LCP in this way in several past cases (e.g., A-2-HMB-14-004 (City Drainage Maintenance), A-2-HMB-12-005 (Stoloski Subdivision), A-2-HMB-07-015 (Oliva), A-1-HMB-99-051 (Wavecrest Village, LLC), and A-1-HMB-99-022-A-1 (Pacific Ridge)). In this sense, the Commission recognizes that there are other habitat areas throughout the City that have been found to contain or support rare and endangered or unique species that have not been proposed for mapping through this LUP map amendment, as well as other areas that have yet to be found.

In order to assure consistency with Coastal Act Section 30240, further clarify the applicable LUP policies and recognize that sensitive habitat areas known to exist in the City but not yet being added to the map through this LUP amendment, or not yet found, should be afforded the same protections as those areas mapped, **Suggested Modifications 2 and 3** are required. These modifications add provisions to the relevant LUP sections that make clear that rare, endangered and unique species habitats that exist within the City, whether they have been designated on LUP maps or not, are still considered sensitive habitats and protected as such, including with regard to restrictions on types of development appropriate within such habitats as required by LUP Policies 3-22 through 3-31 and 3-33 through 3-36 as applicable.

As modified above, the Commission finds the proposed LUP amendment would conform with Coastal Act Sections 30107.5 and 30240, as it would accurately designate the rare, endangered and unique species habitat areas actually found on the ground in accordance with resource experts at USFWS in the areas at issue and would ensure that sensitive habitat areas currently not identified and/or not yet mapped are protected to the same extent that existing mapped areas are protected.

### 3. IP AMENDMENT CONSISTENCY ANALYSIS

#### Applicable Policies

LUP Policies 3-21 and 3-32 require that the Habitat Areas and Water Resources Overlay Map be updated to show the location of habitats of rare and endangered species and habitats of unique species as such habitats are found to exist. LUP Policy 3-35 further requires that rare and

endangered species habitats within the City are preserved through the implementation of the applicable LUP policies. LUP Policies 3-21, 3-32, and 3-35 state:

***Policy 3-21:** In the event the habitat of a rare and endangered species is found to exist within the City, revise the Habitat Areas and Water Resources Overlay to show the location of such habitat. Any habitat so designated shall be subject to Policies 3-22 through 3-31.*

***Policy 3-32:** In the event the habitat of a unique species is found to exist within the City, revise the Habitat Areas and Water Resources Overlay to show the location of such habitat. Any habitat so designated shall be subject to Policies 3-33 through 3-36.*

***Policy 3-35:** Require preservation of all rare and endangered species habitats using the policies of this Plan and implementing ordinances of the City.*

### **Analysis of Proposed IP changes**

The City proposes to amend the IP's Coastal Resource Areas Map to reflect the habitats added to the LUP's Habitat Areas and Water Resources Overlay Map as a result of the LUP amendment. This IP map amendment would effectively implement the proposed LUP map amendment and would conform to and carry out LUP Policies 3-21, 3-32, and 3-35 which require that the Habitat Areas and Water Resources Overlay Map be updated to show the location of identified habitats of rare and endangered species and habitats of unique species and require that such habitats within the City are preserved through the implementation of the applicable LUP policies.

As previously stated however, the City's proposed LUP map amendments do not reflect the entirety of the known rare, endangered, or unique species habitats found on the ground in the areas proposed for mapping, as demonstrated by USFWS communications with the Commission. Therefore, more area is designated on the LUP map through **Suggested Modification 1** to accurately reflect the known conditions on the ground. In order to assure the IP's Coastal Resource Areas Map is consistent with the LUP version of the map, **Suggested Modification 1** also designates the same additional habitat areas on the IP map that the modification designates on the LUP map. With this change, the proposed map amendment can be added to the IP, assuring that it carries out the mandate of the LUP consistently and accurately reflects the LUP maps.

As also stated above, there is concern that additional sensitive habitat areas, including rare, endangered, and unique species habitat areas, that exist within the City's coastal zone that 1) have been identified but not yet mapped or 2) have not yet been identified or mapped, will not be adequately protected because the current IP policies are not explicit as to their protection of not yet mapped or identified habitat areas. Again, the Commission has historically interpreted the LCP's habitat policies to apply to habitat resources on the ground, whether mapped or not yet mapped.

In order to be consistent with the provisions added to the LUP in **Suggested Modifications 2 and 3**, IP Policy 18.38.020, which carries out the LUP policies regarding these maps, will need to be updated per **Suggested Modification 4**. This modification makes clear and explicit that sensitive habitats that are found to exist within the City's coastal zone, whether they have already

been identified and designated on maps or not, are still considered sensitive habitats and shall be restricted from development as such. To provide notice to applicants and the public that maps do not control the determination of sensitive habitats, and clarify maps may be revised or areas not yet mapped may be determined as sensitive habitats, **Suggested Modification 5** requires a clear label on revised, updated, or additional maps that Coastal Area Resources Maps may be revised and do not provide a final determination of the boundary lines of sensitive habitats.

As modified above, the Commission finds the proposed IP amendment would conform with and be adequate to carry out the sensitive habitat mapping policies of the LUP.

## **D. CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA)**

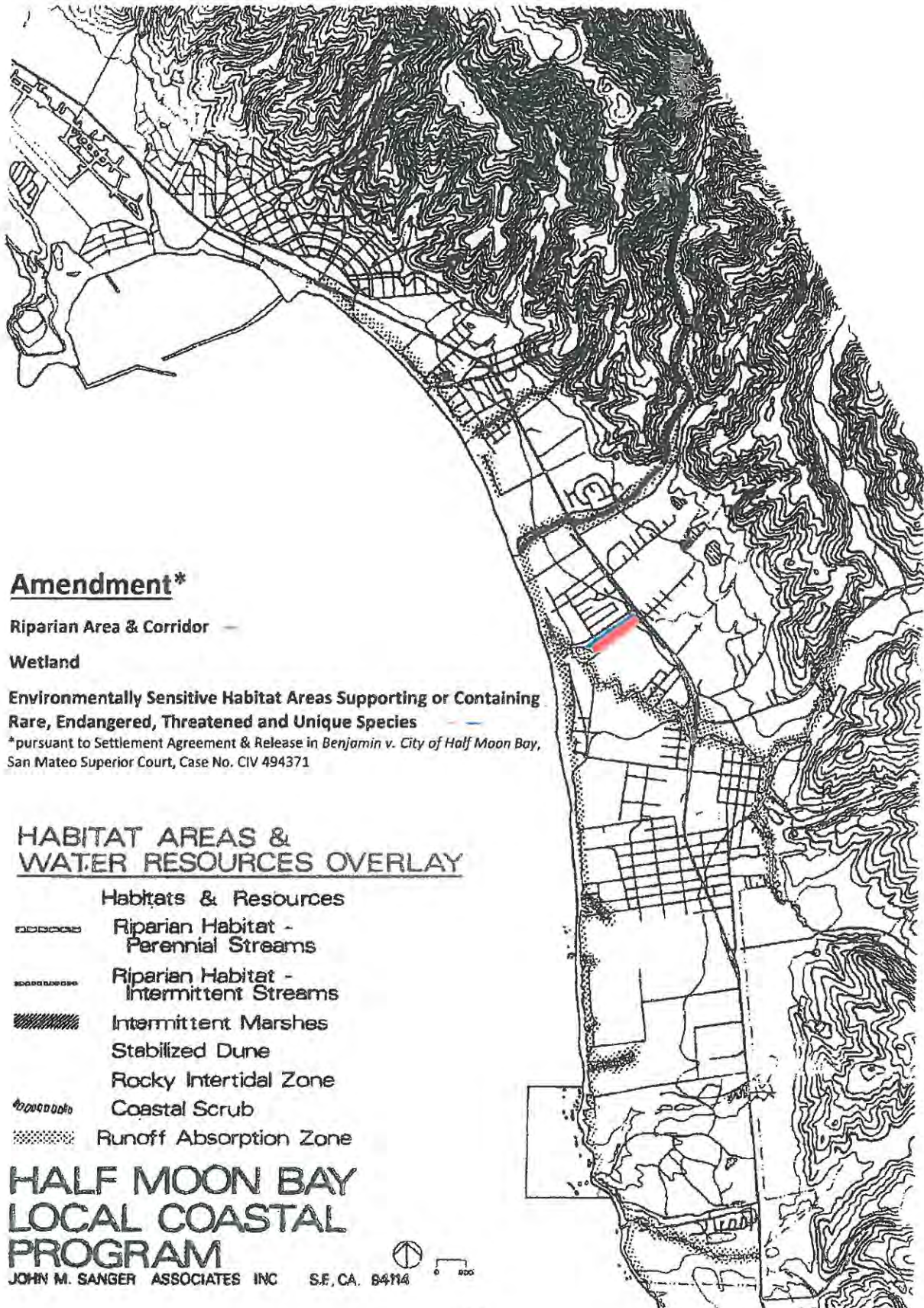
Section 21080.9 of the California Public Resources Code, within the California Environmental Quality Act (CEQA), exempts a local government from the requirement of preparing an environmental impact report (EIR) in connection with its activities and approvals necessary for the preparation and adoption of a LCP. Therefore, local governments are not required to prepare an EIR in support of their proposed LCP amendments, although the Commission can and does use any environmental information that the local government submits in support of its proposed LCPA. Instead, these LCP CEQA responsibilities are assigned to the Coastal Commission. The Commission's LCP review and approval program has been found by the Resources Agency to be the functional equivalent of the environmental review required by CEQA, pursuant to CEQA Section 21080.5. Therefore, Commission documents prepared during its review of an LCP submission, including this staff report, act in lieu of traditional CEQA documents such as an EIR.

Nevertheless, the Commission is required, in approving an LCP amendment submittal, to find that the approval of the proposed LCP, as amended, conforms with CEQA provisions, including the requirement in CEQA section 21080.5(d)(2)(A) that the amended LCP will not be approved or adopted as proposed if there are feasible alternative or feasible mitigation measures available which would substantially lessen any significant adverse impact which the activity may have on the environment. **Exhibits 6 and 7** contain written responses to significant environmental points raised during the Commission's evaluation of the land use plan and implementing action amendments (California Code of Regulations Title 14 Sections 13540(f) and 13542(d)).

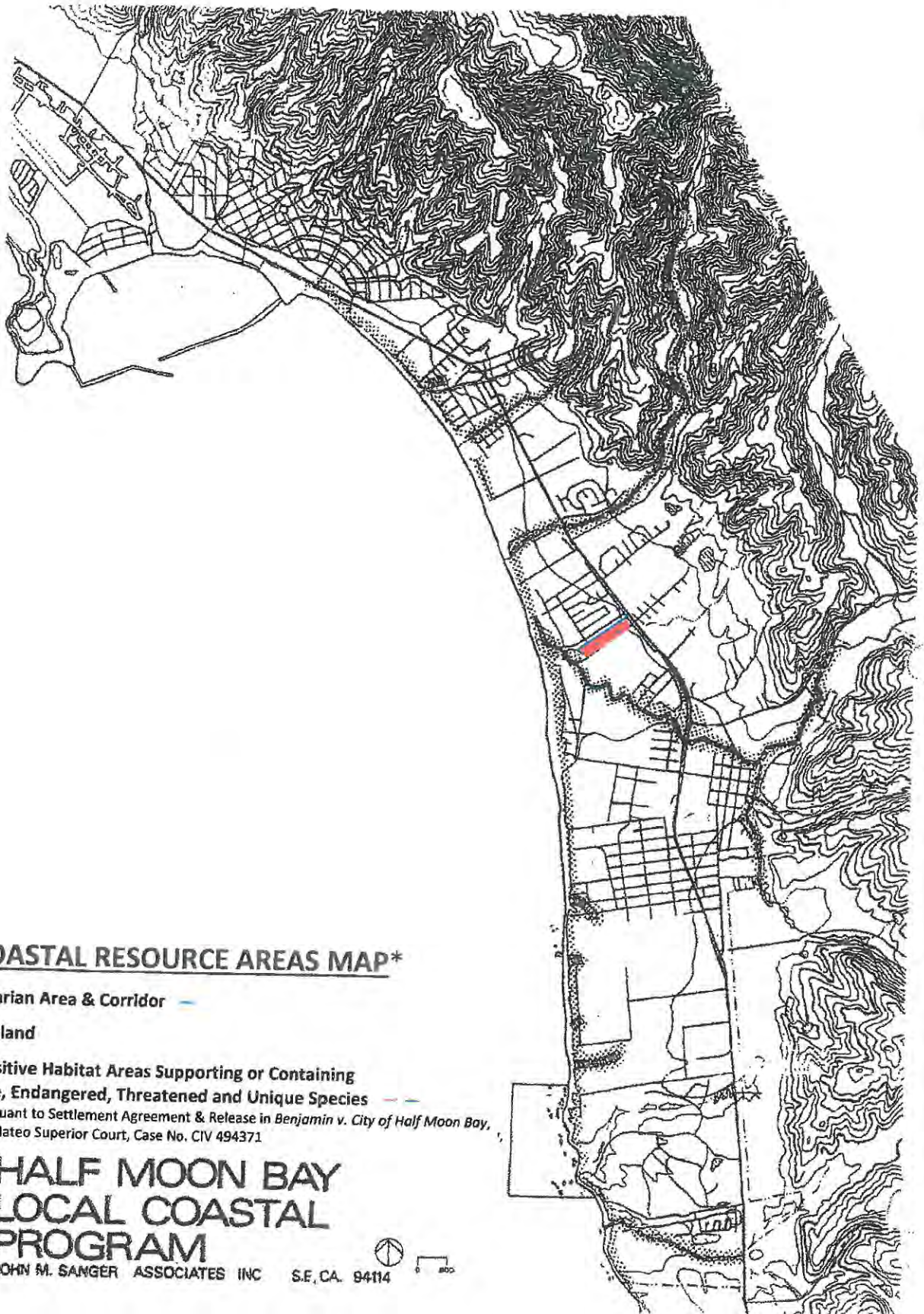
The City's proposed LCP amendment consists of both LUP and IP amendments. The Commission incorporates its findings on Coastal Act and Land Use Plan conformity into this CEQA finding as it is set forth in full. As modified, the Commission finds that approval of the LCP amendments will not result in significant adverse environmental impacts under the meaning of the CEQA.

As the amendments add further protections for environmentally sensitive habitat areas, and the amendments create no potential for significant adverse environmental impacts. Therefore, the Commission finds that there are no other feasible alternatives or mitigation measures under the meaning of CEQA which would further reduce the potential for significant adverse environmental impacts.









**COASTAL RESOURCE AREAS MAP\***

Riparian Area & Corridor —

Wetland

Sensitive Habitat Areas Supporting or Containing  
Rare, Endangered, Threatened and Unique Species —

\*pursuant to Settlement Agreement & Release in *Benjamin v. City of Half Moon Bay*,  
San Mateo Superior Court, Case No. CIV 494371

**HALF MOON BAY  
LOCAL COASTAL  
PROGRAM**

JOHN M. SANGER ASSOCIATES INC

S.F., CA. 94114





EXHIBIT A-1

AMENDMENT

HABITAT AREAS & WATER RESOURCES OVERLAY MAP

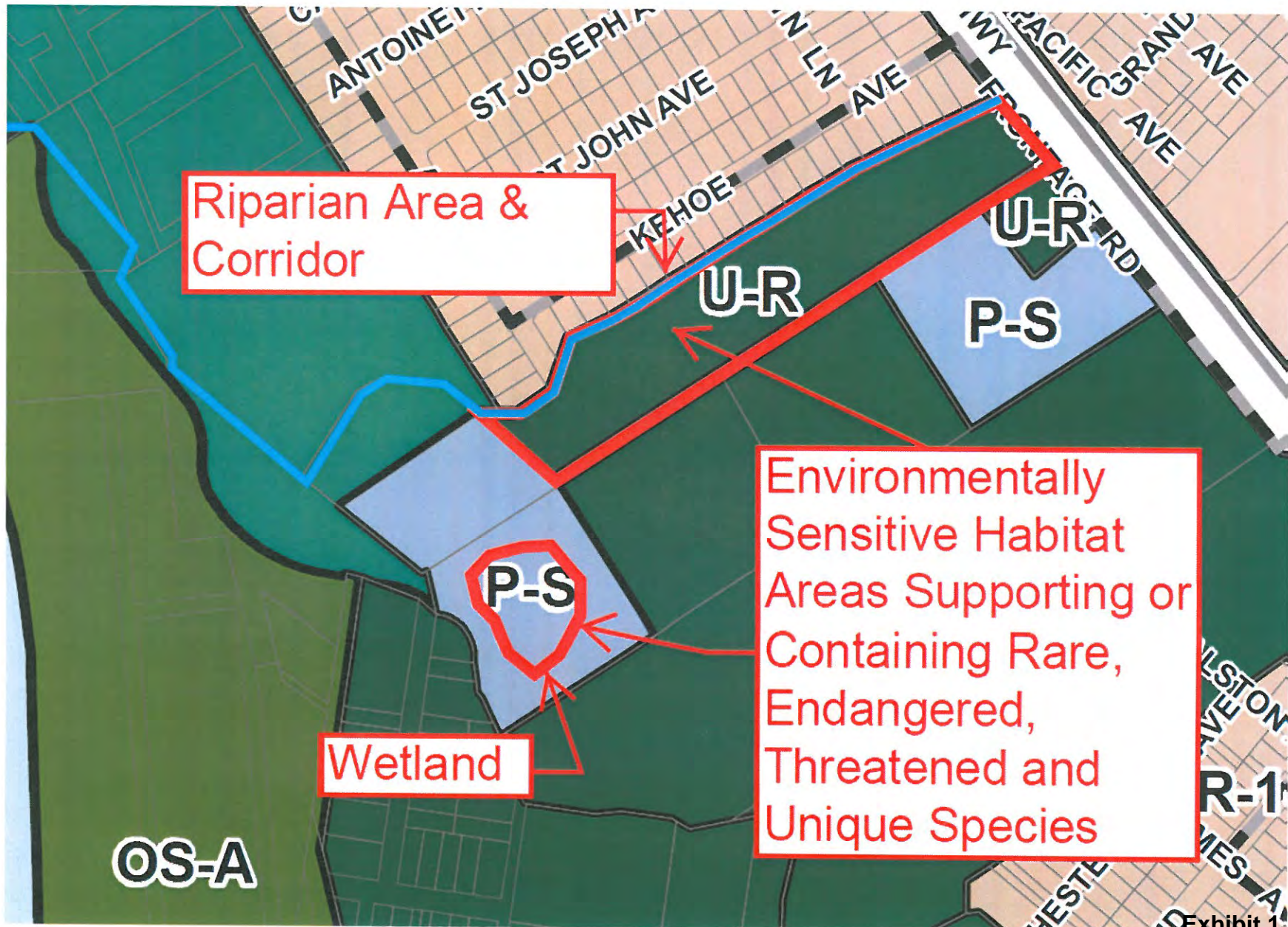
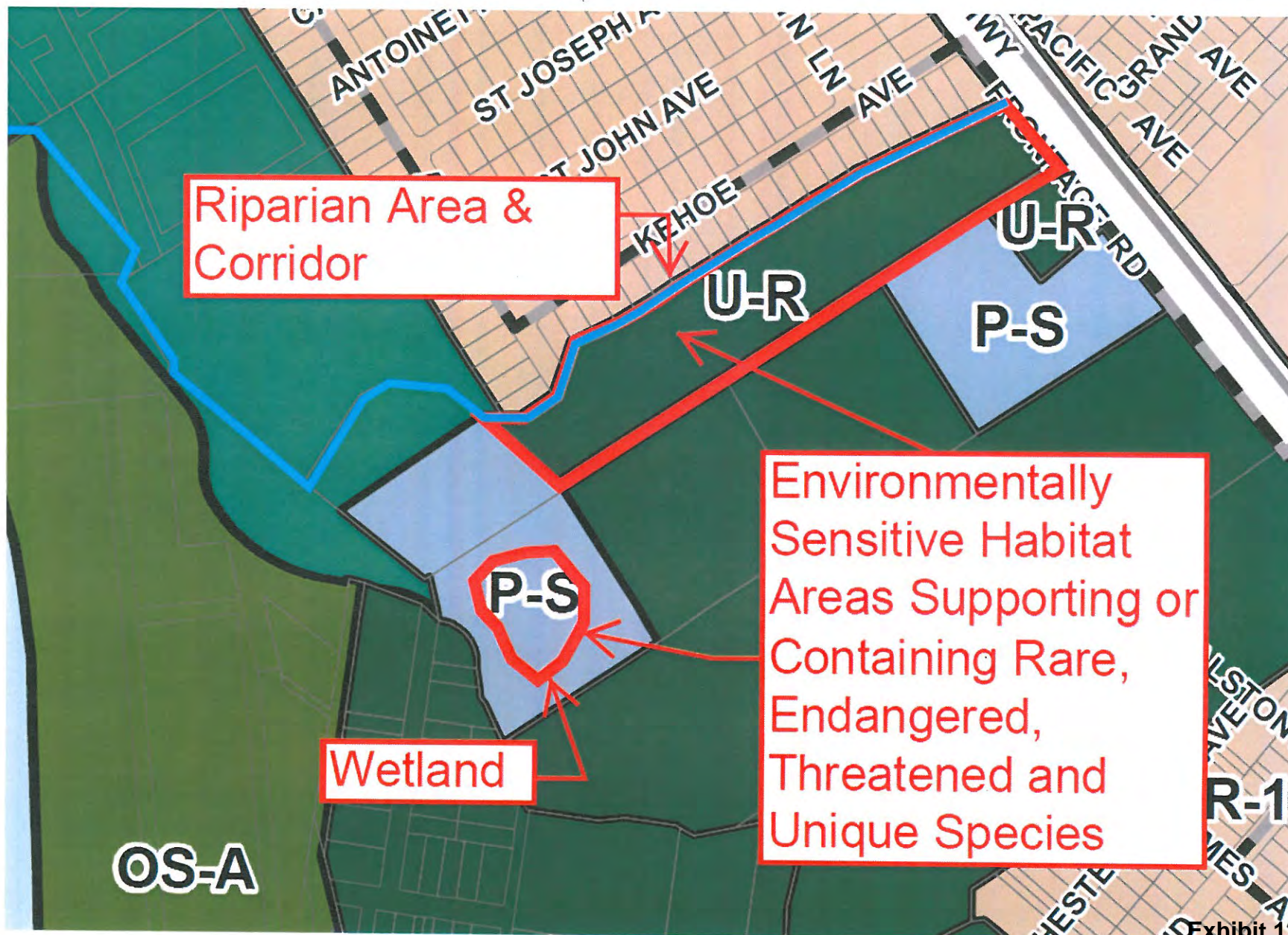




EXHIBIT B-1  
AMENDMENT  
COASTAL RESOURCES AREAS MAP



**ORDINANCE NO. C-2014-13**

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF HALF MOON BAY AMENDING THE CITY'S LOCAL COASTAL PROGRAM LAND USE PLAN AND IMPLEMENTATION PLAN BY REVISING THE HABITAT AREAS AND WATER RESOURCES OVERLAY MAP AND COASTAL RESOURCE AREAS MAP TO REFLECT AREAS IN THE CITY FOUND CONTAINING SENSITIVE COASTAL RESOURCES IN THE U-R, URBAN RESERVE AND P-S, PUBLIC SERVICE, ZONING DISTRICTS**

**WHEREAS**, the City of Half Moon Bay is committed to the maximum public participation and involvement in matters pertaining to the General Plan and its Elements, the Local Coastal Program, and the Zoning Code; and

**WHEREAS**, the Planning Commission, as the Advisory Board to the City Council, conducted a duly noticed public hearing on December 10, 2013 where all those in attendance desiring to be heard were given an opportunity to speak on this application; and

**WHEREAS**, following the close of the public hearing, the Planning Commission voted unanimously to recommend that the City Council amend the Local Coastal Program's Land Use Plan and Implementation Plan to revise the Habitat Areas and Water Resources Overlay map and Coastal Resource Areas map to reflect areas in the City found likely to contain sensitive coastal resources; and

**WHEREAS**, the City Council conducted a duly noticed public hearing to re-introduce an ordinance to amend the LCP Land Use Plan and Implementation Plan on November 18, 2014, at which time all those desiring to be heard on the matter were given an opportunity to be heard; and

**WHEREAS**, the City Council considered all written and oral testimony presented for consideration; and

**WHEREAS**, section 15265 of the CEQA Guidelines provides that responsibility for environmental review of Local Coastal Programs lies with the California Coastal Commission;

**NOW, THEREFORE**, the City Council does ordain as follows:

**Section 1.**     **Amendment of Local Coastal Program Land Use Plan.** The Habitat Areas and Water Resources Overlay map of the Half Moon Bay Local Coastal Program Land Use Plan is hereby amended as shown in the attached Exhibit A.

**Section 2.**     **Amendment of Local Coastal Program Implementation Plan.** The Coastal Resource Areas Map of section 18.38.020 of the Half Moon Bay Municipal Code is hereby amended as described in the attached Exhibit B.

**Section 3.**     **Submission to California Coastal Commission for Certification.** The City Clerk is hereby directed to transmit a copy of this ordinance to the California Coastal Commission for certification. The City Council of the City of Half Moon Bay hereby certifies that the Local Coastal program, as amended, is intended to be carried out in a manner fully in conformity with the California Coastal Act.



**Section 4. Effective Date.** This ordinance amending the LCP shall take effect immediately upon its certification by the California Coastal Commission or upon the concurrence of the Commission with a determination by the Executive Director that the ordinance adopted by the City is legally adequate.

\*\*\*\*\*

**INTRODUCED** the 18<sup>th</sup> day of November, 2014

**ADOPTED** the 16<sup>th</sup> day of December 2014, by the following votes:

AYES: Kowalczyk, Muller, Mayor Fraser

NOES: Penrose, Ruddock

ABSENT: \_\_\_\_\_

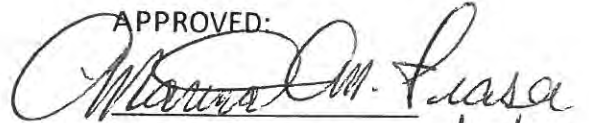
ABSTAIN: \_\_\_\_\_

ATTEST:



Siobhan Smith, City Clerk

APPROVED:



Marina Fraser, Mayor

1/6/15

## SETTLEMENT AGREEMENT AND RELEASE

*James Lawrence Benjamin and Zoya Dorry Benjamin, Plaintiffs  
v. City of Half Moon Bay, Defendant,  
San Mateo County Superior Court Case No. CIV 494372*

### A. INTRODUCTION

This Settlement Agreement and Release ("Agreement") is made by the parties specified below and pertains to the above-captioned litigation.

### B. PARTIES

This Agreement and Release is made and entered into by and among the following parties (the "Parties"):

James Lawrence Benjamin and Zoya Dorry Benjamin (collectively and individually, "Plaintiffs"); and

City of Half Moon Bay, a general law city ("City" or "Defendant").

### C. RECITALS

This Agreement is entered into with reference to the following:

1. The Parties are all of the parties to litigation entitled *James Lawrence Benjamin and Zoya Dorry Benjamin, Plaintiffs v. City of Half Moon Bay, Defendant*, San Mateo County Superior Court Case No. CIV 494372 (the "Lawsuit").
2. The key issues of the Lawsuit, in general terms, involve certain work performed in early 2009 (the "Work") by the California Conservation Corps under contract with the City in a certain stream commonly known as the "Kehoe Ditch," and also known as the "Kehoe Watercourse" which runs adjacent to Plaintiffs' residence and then feeds into the Pilarcitos Creek, and ultimately the Pacific Ocean. The Work, in general, involved the use of chain saws to cut down several arroyo willow trees and the use of hand tools and manual labor to remove the tree branches and other vegetation, and two truckloads of materials were removed.
3. Plaintiffs filed their VERIFIED FIRST AMENDED PETITION FOR WRIT OF MANDAMUS AND COMPLAINT FOR DECLARATORY AND EQUITABLE RELIEF on or about June 4, 2010, alleging violations of the California Coastal Act and California Fish & Game Code, and seeking damages for trespass, nuisance, quiet title, slander of title inverse condemnation.
4. The matter came on regularly for trial before the Honorable Julie Conger in August, 2011 and was taken under submission on Monday, August 29, 2011.

5. A Statement of Decision prepared by Judge Conger, attached hereto as Exhibit A and hereby incorporated by reference, was filed on or about September 23, 2011 and was subsequently served with an affidavit of mailing on November 23, 2011. Among other things, in the Statement of Decision Judge Conger states:
- (a) The California Coastal Act (Public Resources Code Section 30600, et seq.) requires a Coastal Development Permit (CDP) for all development located within the coastal zone, with certain exceptions.
  - (b) Public Resources Code section 30240 requires that "Environmentally Sensitive Habitat Areas" (ESHAs) be protected against any significant disruption of habitat values.
  - (c) Half Moon Bay Municipal Code Section 18.38.020 contains the following definitions:
    - (1) Environmentally Sensitive Habitat Areas: Habitats containing or supporting unique species or rare and endangered species defined by the State Fish and Game Commission.
    - (2) Riparian Area and Corridor: Any area of land bordering a perennial or intermittent stream or their tributaries...Riparian corridors are the areas between the limits of riparian vegetation, where limits are determined by vegetative coverage, at least fifty percent of which is comprised of a combination of the following plant species: red alder, jaumea, pickleweed, big leaf maple, narrow-leaf cattail, arroyo willow, broadleaf cattail, horsetail, creek dogwood, black cottonwood, and box elder....."
  - (d) Title 14, California Code of Regulations section 13252, elaborating on Public Resources Code Section 30610, which exempts repair and maintenance from the requirement to obtain a Coastal Development Permit provides, in part, as follows:
    - (1) For purposes of Public Resources Code section 30610(d), the following extraordinary methods of repair and maintenance shall require a coastal development permit because they involve a risk of substantial adverse environmental impact:
      - a) Any repair or maintenance to facilities or structures or work located in an environmentally sensitive habitat area....that include:
        - (i) The placement or removal, whether temporary or permanent, of rip-rap, rocks, sand or other beach materials or any other forms of solid materials.

- (ii) The presence, whether temporary or permanent, of mechanized equipment or construction materials.
  - (e) The Work was performed without a Coastal Development Permit.
  - (f) The Kehoe Watercourse and adjacent Riparian Area qualify as an Environmentally Sensitive Habitat Area for purposes of the Coastal Act, Local Coastal Program of the City of Half Moon Bay and the HMB Zoning Ordinance for the following reasons:
    - (1) The Kehoe Watercourse and adjacent riparian area contains or supports rare and endangered species as defined by the State Fish and Game Commission, including the California Red-Legged Frog and San Francisco Garter Snake...
    - (2) The Kehoe Watercourse and adjacent riparian area qualify under the Zoning Ordinance and LCP as a Riparian Area and Corridor...
  - (g) That the "repair and maintenance exception" to excuse the necessity of a Coastal Development Permit for the Work is inapplicable because of the "presence of mechanized equipment" to wit: use of a chainsaw in performing the work.
  - (h) That the Kehoe Ditch is a riparian area or corridor based on the fact that it is an area covered by vegetative coverage "at least fifty percent of which is comprised of a combination of ... arroyo willow...(and other specified plant species)."
  - (i) The Kehoe Ditch and adjacent Riparian Area qualify as an Environmentally Sensitive Habitat Area for purposes of the Coastal Act, the Local Coastal Program of the City and the City of Half Moon Bay Zoning Ordinance.
  - (j) Under the requirements of the Coastal Act and the City of Half Moon Bay Municipal Code a Coastal Development Permit was required for the Work.
6. The Parties now desire to settle the Lawsuit, under the terms and conditions set forth in this Settlement Agreement and Release.

**D. TERMS OF AGREEMENT**

- 1. For purposes of resolving this matter, City accepts the recitals in Paragraph C.5 as a correct recitation of the law applicable to future repair and maintenance activities in environmentally sensitive habitat areas, and of the evidence presented in this Lawsuit as pertains to future repair and maintenance activities performed by the City in the Kehoe Ditch.
- 2. Notwithstanding the exemptions contained in the Half Moon Bay Municipal Code and Title 14, California Code of Regulations section 13252, the City shall obtain a coastal



development permit before (or, in the event of an emergency only, after) undertaking any development, including repairs and maintenance, within the Kehoe Ditch. Prior to issuance of any such CDP, the City shall prepare and circulate a biological report in conformance with Local Coastal Program ("LCP") Policy 3-23 and Municipal Code Section 18.38.035 including, but not limited to, the requirement that the report "describe and map existing wild strawberry habitat on the site, existing sensitive habitats, riparian areas and wetlands located on or within two hundred feet of the project site." In the event of an emergency, as defined by Public Resources Code Section 30624, the City shall fully comply with the requirements of the Coastal Act and Coastal Commission Regulations pertaining to emergency permits.

3. Using best efforts and reasonable diligence, the City shall apply for and process to completion the issuance of a retroactive CDP for the Work. Plaintiffs will participate in good faith with such processing and issuance of a retroactive CDP. The processing of said CDP will include the following:

- (a) The City shall commission a biological report in accordance with LCP Policy 3-23 and Municipal Code Section 18.38.035 to examine the scope of the Work and recommend reasonable mitigation measures for the Work. The biological report shall be prepared by a biological consultant or firm (said consultant or firm to be mutually agreed to by the Parties within fifteen (15) days of the Effective Date, or, if the Parties are unable to agree upon the selection of a consultant or firm within that time, in accordance with subparagraph 3(e), below).
- (b) The CDP will incorporate conditions requiring implementation of mitigation measures recommended by the biological report, if any, provided that such mitigation measures shall be reasonable in terms of:
  - (1) Their practicability;
  - (2) The passage of time since the Work was performed; and
  - (3) The cost of implementing any recommended mitigation measures relative to the cost of the Work or any damage or hazard caused thereby.
- (c) Using best efforts and reasonable diligence the City shall implement the mitigation measures incorporated in the CDP pursuant to Paragraph 3(b).
- (d) Using its best efforts and reasonable diligence, the City shall implement the following El Granada Pipeline staging area mitigation measures described in the February 29, 2008 letter from Erin McDermott, Principal, ISA Certified Arborist, Botanist, Wetland & GIS Specialist of Nomad Ecology to Steve Flint, Planning Director, City of Half Moon Bay. Staging Area 1 should be re-vegetated with an appropriate assemblage of native vegetation characteristic of Coastal grasslands present within project vicinity. A restoration and monitoring plan should be prepared that includes, but is not limited to, the species to be used, restoration

techniques, planting specifications, appropriate timing of restoration planting, monitoring and success criteria, adaptive management strategies, and remedial actions if the success criteria are not achieved.

- (e) In the event that the Parties are unable to timely reach agreement on selection of a biological consultant under paragraph 3(a), above, then this subparagraph shall apply, and each Party shall, within thirty (30) days of the Effective Date, select a biological consultant of their choosing who, in turn, will be instructed to, within forty-five (45) days of their selection, mutually select a qualified biologist or firm to prepare the biological report. If no biologist has been selected after ninety (90) days of the Effective Date, either party may petition the court to select one.
4. City acknowledges that the following areas have been identified as habitat supporting or containing rare, endangered, threatened or unique species in the March and August 2005 studies by Essex Environmental, the March 2007 study by Rana Creek Habitat Restoration, the February 12, 2008 report from Nomad Ecology, and the October 2005 report by H.T. Harvey & Associates:
- (a) the Kehoe Watercourse (also as a riparian area and corridor); and
  - (b) Caltrans mitigation project site (also as a wetland).

In addition, the City acknowledges that the following has been identified as likely habitat supporting or containing rare, endangered, threatened or unique species the October 2005 report by H.T. Harvey & Associates:

- (c) the vacant Sewer Authority Mid-Coastside parcel located immediately south of the Kehoe watercourse (APN 048-240-040, commonly known as the "Landstra Parcel").

The areas identified in Subparagraphs (a) through (c) are hereinafter collectively referred to as the "Protected Area."

5. As material consideration to Plaintiffs under this Agreement, City agrees for each Protected Area:
- (a) To use its best efforts and reasonable diligence to process to successful adoption, including compliance with all notice and hearing requirements of the Half Moon Bay Municipal Code, an amendment to the LCP amending both (1) the Habitat Areas and Water Resources Overlay of the City's Local Coastal Program in accordance with LCP Policies 3-21 and 3-32 and (2) the Coastal Resource Area maps of Municipal Code section 18.38.020 in accordance with Half Moon Bay Municipal Code section 18.38.025 designating such Protected Area as Environmentally Sensitive Habitat Areas and Sensitive Habitat Areas, respectively, supporting or containing rare, endangered, threatened and unique species, and as riparian or wetland areas, Pending completion of the



aforementioned process, City shall not process or accept as complete for purposes of processing any coastal development permit for any Protected Area, except for: (1) the retroactive CDP required by Paragraph 3 and (2) development that is expressly permitted pursuant to Half Moon Bay Municipal Code section 18.38.085.

- (b) Alternatively, City may elect to conduct a protocol level survey of such Protected Area in full compliance with the accepted protocol for CRLF (attached hereto as Exhibit B) as to whether the Protected Area supports or contains CRLF. Since no written protocol for SFGS currently exists, a finding that a Protected Area contains or supports CRLF shall be presumed indicative of the fact that Protected Area also contains or supports SFGS. The survey shall be limited to such Protected Area, shall include a map clearly delineating all sensitive habitat areas (as defined in LCP Policy 3-1 and Half Moon Bay Municipal Code Section 18.38.020.A) within the confines of such Protected Area, and shall be performed by a biologist selected in the manner specified by Paragraph 3, above. Upon completion of the survey and mapping required by this Paragraph, the City shall use its best efforts and reasonable diligence to process to successful adoption, including compliance with all notice and hearing requirements of the Half Moon Bay Municipal Code, an amendment to the LCP amending both (1) the Habitat Areas and Water Resources Overlay of the City's Local Coastal Program and (2) the Coastal Resource Area maps of Municipal Code section 18.38.020 in accordance with Half Moon Bay Municipal Code section 18.38.025 to designate such Protected Area as Environmentally Sensitive Habitat Areas and Sensitive Habitat Areas, respectively, supporting or containing rare, endangered, threatened and unique species, and as riparian or wetland areas in such maps unless such surveys establish by clear and convincing evidence that such Protected Area does not contain or support any protected species or otherwise meet the LCP definition of ESHA. Pending completion of the aforementioned process, City shall not process or accept as complete for purposes of processing any coastal development permit for such Protected Area, except for: (1) the retroactive CDP required by Paragraph 3 and (2) development that is expressly permitted pursuant to Half Moon Bay Municipal Code Section 18.38.085.
  - (c) If the City makes the election specified under subparagraph 5(b) above, and the survey is not completed in full compliance with subparagraph 5(b) by December 31, 2013, City shall perform all actions specified in subparagraph 5(a), above.
6. Using its best efforts and reasonable diligence, the City will conduct and process to completion street vacation proceedings in accordance with the requirements of the California Streets and Highways Code for the unimproved portion of the Pilarcitos Avenue street right of way commencing on the southern terminus of Casa Del Mar Drive and extending southeast along the entire length of Pilarcitos Avenue (as highlighted in red on the attached St. John Subdivision Unit No. 3 Map attached hereto as Exhibit C and hereby incorporated by reference) and extending therefrom in a southeasterly direction to the southern edge of the Sewer Authority Mid-Coastside (formerly Landstra) parcel (the

"Landstra Right-of-Way"). If the City Council determines, after the public hearing, that the Landstra Right-of-Way and easement along the built portion of Pilarcitos Avenue north of the Kehoe Watercourse are no longer needed for future street or highway purposes, then City shall vacate said right-of-way and abandon the related easement. The City Council shall not unreasonably conclude that said right-of-way or easement is needed for future street or highway purposes.

7. Pursuant to California Code of Civil Procedure Section 664.6, the parties hereby stipulate that the court may, upon motion, enter judgment pursuant to the terms of this Agreement, and hereby request the court to retain jurisdiction over the parties to enforce the Agreement until full performance of all of the provisions of this Agreement. The parties shall give the court notice of this Agreement, and request a case management conference. At the case management conference the parties will request the court retain jurisdiction to enforce this Agreement (and, if filed pursuant to Paragraph 8, take final action on the Memorandum of Costs and Motion for Attorneys Fees), and discuss dismissal of the Complaint at the earliest possible date in a manner which will still allow the court to retain jurisdiction. If the court agrees to retain jurisdiction after dismissal of the Complaint, the Complaint will be dismissed with prejudice within 10 days of the court agreement and oral order on the record retaining jurisdiction as aforesaid.
8. City shall pay the sum of two hundred ninety five thousand dollars (\$295,000.00) (the "Settlement Payment") to the trust account of Willoughby, Stuart & Bening within ten (10) calendar days of dismissal. The Settlement Payment shall be the entire cash consideration for the settlement of the Lawsuit, and encompassing all matters, whether damages, civil penalties, attorneys fees, costs of suit or otherwise.
9. In the event that the City does not pursue with best efforts and due diligence the actions provided for in Paragraphs D. 1 through 8 of this Agreement, Plaintiffs may bring an action to enforce this Agreement pursuant to California Code of Civil Procedure Section 664.6, including a claim for injunctive relief for an order to comply with the provisions of this Agreement. As described in detail in Paragraph 7, the parties will request the court to retain jurisdiction over the parties to enforce the terms of this Agreement until performance in full of the terms of Paragraphs D. 1 through 8, and all of the terms of this Agreement. In the event that Plaintiffs seek to enforce this Agreement, and the court issues an order requiring the City to satisfy its obligations pursuant to Paragraphs D.1 through 8 of this Agreement, the Plaintiffs shall have the right to obtain reasonable attorneys fees incurred to enforce this Agreement and the public interest.
10. The signatories to this Agreement warrant and represent that they have all requisite authority to execute this agreement on behalf of Plaintiffs and City.
11. Except for any payment made pursuant to Paragraph 8 and/or fees awarded pursuant to Paragraphs 9 and 14(c), the parties shall bear their own respective attorneys fees and costs of suit.

12. The "Effective Date" of this Agreement shall be the last execution date of any of the parties to this Agreement.

- a. The court shall retain jurisdiction over this matter until all of its terms and conditions are fulfilled.

13. RELEASE

- a. Each Party to this Agreement hereby releases and forever discharges all other Parties, their controlled corporations or other business entities and affiliates and their respective officers, directors, members, attorneys, partners, employees, legal successors, assigns, grantees, agents, executors, heirs, devisees and representatives from any and all rights, claims, demands, obligations, administrative remedies and causes of action of any nature whatsoever which each of them ever had or may have now or in the future against the other, arising from or in any way related to the course of dealings between the parties described in the Recitals and in the Lawsuit, except as provided in subparagraph (b), below. With that same exception, the Parties each hereby waive the provisions of Section 1542 of the Civil Code of California, which reads as follows:

**"A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which if known by him must have materially affected his settlement with the debtor."**

This release made pursuant to this Paragraph is intended to and shall be binding upon and shall inure to the benefit of the above-described Parties and their legal successors, assigns, grantees, agents, employees, executors, administrators, heirs, devisees, members, partners, spouses (to the extent of community property), attorneys, officers, directors, subsidiaries, affiliates and representatives.

- b. Notwithstanding the release set forth in subparagraph (a), above, nothing contained herein shall prevent Plaintiffs from bringing any future claims related to any property rights (including but not limited to a claim related to the location of Plaintiff's property boundaries or the location of any City easement over Plaintiff's property) or claims for damages accruing after Effective Date of this Agreement, including, but not limited to, claims for trespass, nuisance, erosion and/or inverse condemnation, regardless of whether the Work may have in part caused or contributed to such claims. Plaintiffs also reserve all their rights as members of the public to participate in administrative or other proceedings related to the implementation of the requirements of this Agreement, their property, the Kehoe Watercourse and surroundings, or other matters.

#### 14. General Terms

- a. Compromise. It is understood and agreed that this is a compromise and settlement of disputed claims and that nothing contained herein shall be construed as an admission by the Parties of any liability or responsibility of any kind.
- b. Warranty of Capacity. Each Party represents and warrants that no other person or entity has or has had any interest in the terms and conditions of this Agreement; that each of them has the sole right and exclusive authority to execute this Agreement and receive the consideration specified in this Agreement; and that none of them has sold, assigned, transferred, conveyed or otherwise disposed of any part of the rights referred to herein.
- c. Attorney's Fees. Should any Party hereafter reasonably retain counsel for the purpose of enforcing or preventing the breach of any provision of this Agreement, including, but not limited to, instituting any action or proceeding to enforce any provision of this Agreement, for a declaration of rights or obligations under the Agreement, or for any other judicial remedy, then, if the matter is settled by judicial determination, the prevailing Party shall be entitled to reimbursement from the losing Party for all costs and expenses incurred thereby, including, but not limited to, reasonable attorneys' fees for the services rendered to the prevailing Party.
- d. Construction. All Parties have reviewed the Agreement, and the normal rule of construction, providing that any ambiguities are to be resolved against the drafting party, shall not be employed in the interpretation of the Agreement.
- e. Headings. Paragraph headings or captions contained in the Agreement are used for reference only and shall not be deemed to govern, limit, or extend the terms of the Agreement.
- f. Waiver and Amendment. No breach of any provision of this Agreement can be waived unless done so expressly and in writing. Express waiver of any one breach shall not be deemed a waiver of any other breach of the same or any other provision of this Agreement. The Agreement may be amended or modified only by a written agreement executed by the Parties at the time of the modification.
- g. Entire Agreement. All agreements, covenants, representations and warranties, express and implied, oral and written, between the Parties concerning the subject matter of the Agreement are contained or referred to in the Agreement. No other agreements, covenants, representations or warranties, express or implied, oral or written, have been made by any Party to any other Party concerning the subject matter of the Agreement. All prior and contemporaneous conversations, negotiations, possible and alleged agreements, representations, covenants and warranties concerning the subject matter of the Agreement other than those referred to here are merged into the Agreement.

*JLB*



- h. Independent Advice of Counsel. Both Parties have retained counsel in regard to this matter and represent and declare that in executing the Agreement they rely solely upon their own judgment, belief and knowledge concerning the nature, extent and duration of their rights and claims, have been advised by their own counsel, and that they have not been influenced to any extent whatsoever in executing the Agreement by any representations or statements not expressly contained or referred to in the Agreement.
- i. Counterparts. The Agreement may be executed in counterparts, each of which shall be deemed an original and shall be deemed duly executed and effective upon the signing of the last counterpart by the Parties.
- j. Time of Essence. **TIME IS HEREBY EXPRESSLY DECLARED TO BE OF THE ESSENCE IN THIS AGREEMENT AND OF EACH AND EVERY PROVISIONS THEREOF, AND EACH SUCH PROVISION IS HEREBY MADE AND DECLARED TO BE A MATERIAL, NECESSARY AND ESSENTIAL PART OF THIS AGREEMENT.**

IN WITNESS WHEREOF, each of the Parties has executed this Agreement on the date set forth below.

**"PLAINTIFFS"**

Dated: August 17, 2012

Dated: 8/17/2012

Approved as to form:

WILLOUGHBY, STUART & BENING

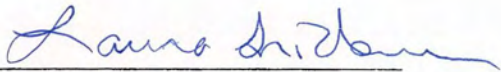
\_\_\_\_\_  
BRADLEY A. BENING  
Attorneys for Plaintiffs

James Lawrence Benjamin  
JAMES LAWRENCE BENJAMIN  
Zoya Dorry Benjamin  
ZOYA DORRY BENJAMIN

"CITY"

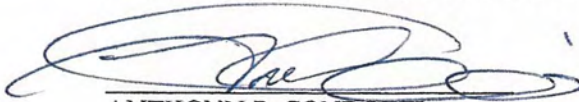
CITY OF HALF MOON BAY

Dated: 8-22-12

By:   
LAURA SNIDEMAN  
City Manager

Approved as to form:

ATCHISON, BARISONE, CONDOTTI & KOVACEVICH



ANTHONY P. CONDOTTI  
City Attorney

ALB

# EXHIBIT A

**FILED**  
SAN MATEO COUNTY

SEP 23 2011

Clerk of the Superior Court  
*[Signature]*  
DEPUTY CLERK

## IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA IN AND FOR THE COUNTY OF SAN MATEO

James Lawrence Benjamin and  
Zoya Dorry Benjamin

Plaintiffs,

vs.

City of Half Moon Bay,

Defendants.

CASE NO. CIV 494372

### STATEMENT OF DECISION

#### I. STATEMENT OF FACTS

The Kehoe Ditch, also known as the Kehoe Watercourse, lies adjacent to petitioner Benjamin's property in Half Moon Bay, California; it is a stream which feeds into the Pilarcitos Creek, and ultimately the Pacific Ocean. The Kehoc Watercourse is located within the Coastal Zone, within the meaning of Public Resources Code section 30103.

In January, 2009, the City of Half Moon Bay contracted with the California Conservation Corps to perform a drainage clearing project of about 2000 feet of the Kehoe Ditch. The contract specifies that the City would secure approvals and permits required by "any other state, federal, or local agency necessary to commence construction or operation of such projects."

1 The work described in the above contract was accomplished from February 9, 2009 to  
2 February 11, 2009 and on a return visit in March, 2009. A chain saw and weed whacker were  
3 employed in the work. Several arroyo willow trees were chopped down and two truckloads of  
4 vegetation were removed. The work was performed without a Coastal Development Permit  
5 issued by the City of Half Moon Bay or the Coastal Commission.

## 6 II. APPLICABLE STATUTES

7 A. California Coastal Act: Public Resources Code sections 30600 et. Seq: Coastal  
8 Development Permit (CDP) required for all "development" located within the coastal  
9 zone.

10 B. Public Resources Code section 30240: Environmentally sensitive habitat areas  
11 protected against any significant disruption of habitat values.

12 C. Half Moon Bay Municipal Code section 18.38.020:

13 A. Environmentally Sensitive Habitat Areas: Habitats containing or supporting  
14 unique species or rare and endangered species defined by the State Fish and  
15 Game Commission

16 B. Riparian Area and Corridor: Any area of land bordering a perennial or  
17 intermittent stream or their tributaries...Riparian corridors are the areas between  
18 the limits of riparian vegetation, where limits are determined by vegetative  
19 coverage, at least fifty percent of which is comprised of a combination of the  
20 following plant species: red alder, jaumea, pickleweed, big leaf maple, narrow-  
21 leaf cattail, arroyo willow, broadleaf cattail, horsetail, creek dogwood, black  
22 cottonwood, and box elder.....

23 E. Wetlands.  
24  
25



1 D. California Code of Regulations section 13252 (Title 14) elaborating on Public  
2 Resources Code section 30610, which exempts repair and maintenance from the  
3 requirement to obtain a Coastal Development Permit:

4 (a) For purposes of Public Resources Code section 30610(d), the following  
5 extraordinary methods of repair and maintenance shall require a coastal  
6 development permit because they involve a risk of substantial adverse  
7 environmental impact:

8 (3) Any repair or maintenance to facilities or structures or work located in an  
9 environmentally sensitive habitat area.....that include:

10 (A) The placement or removal, whether temporary or permanent, of rip-rap,  
11 rocks, sand or other beach materials or any other forms of solid materials

12 (B) The presence, whether temporary or permanent, of mechanized equipment or  
13 construction materials

14 III. FACTS NOT IN DISPUTE

15 The parties are in agreement that:

16 1) The Coastal Act provides a process by which a local government's Local Coastal  
17 Program is adopted and certified and that Half Moon Bay accomplished this by  
18 certification of its LCP and accompanying regulations.

19 2) The California Red-legged Frog and the San Francisco Garter Snake both qualify as a  
20 rare and endangered species as defined by the California State Fish and Game  
21 Commission.

22 FINDINGS:

23 IV. The Court finds that the Kehoe Watercourse is not a "Public Works" facility as defined by  
24 the Coastal Act, Public Resources Code section 30114.

1 V. The Court finds by a preponderance of the evidence, based upon the testimony of Mr. Martin  
2 Trso (Certified Geomorphologist) and Mr. Mark Jennings (Certified Herpetologist) that the  
3 Kehoe Watercourse and adjacent Riparian Area qualify as an Environmentally Sensitive  
4 Habitat Area for purposes of the Coastal Act, the Local Coastal Program of the City of Half  
5 Moon Bay, and the HMB Zoning Ordinance for the following reasons:

6 A) The Kehoe Watercourse and adjacent riparian area contains or supports rare and  
7 endangered species as defined by the State Fish and Game Commission, including the  
8 California Red-Legged Frog and the San Francisco Garter Snake

9 B) The Kehoe Watercourse and adjacent riparian area qualify under the Zoning Ordinance  
10 and LCP as a Riparian Area and Corridor.

11 The Court makes no finding as to whether the Kehoe Watercourse qualifies as a  
12 "wetland."

13 The Court's determination that the Ditch is an Environmentally Sensitive Habitat Area is  
14 supported by documents originating from the 1987 development of the St. John's  
15 Subdivision:

16 1) City of Half Moon Bay Resolution No. 33-88 Approving Final Map of St. John  
17 Subdivision (recorded July 12, 1988) designating the Ditch Area as a "riparian buffer  
18 zone"

19 2) Application for Coastal Development Permit for St. John's Subdivision, December 3,  
20 1987, acknowledging on page 5 that the development is "in or near a sensitive habitat  
21 area."

22 VI. The Court finds that the "repair and maintenance exception" to excuse the necessity of a  
23 Coast Development Permit is inapplicable because of the "presence...of mechanized  
24 equipment", to wit the use of a chain saw in the project. (Statute cited supra.)  
25

1 VII. The very wording of 14 CCR section 13252 specifies the "presence of mechanized  
2 equipment, whether temporary or permanent" as triggering a determination that such  
3 "extraordinary methods of repair and maintenance require a coastal development permit  
4 because they involve a risk of substantial adverse environmental impact" (underscoring  
5 added by the Court). Thus the Court is bound by the language of the statute and need not  
6 make an independent finding as to whether this clearing project specifically involved a risk  
7 of substantial adverse environmental impact.

8 VIII. Accordingly, the Court finds that the Kehoe Watercourse and the adjacent Riparian Area  
9 clearing project required a Coastal Development Permit since it involved removal of  
10 riparian vegetation and alteration of the Kehoe Ditch, an Environmentally Sensitive Habitat  
11 Area, and thus constituted development within the Coastal Zone.

12 IX. The Court further finds that the City of Half Moon Bay was on notice that the proposed  
13 Kehoe Ditch drain clearing project was located in and adjacent to a Environmentally  
14 Sensitive Habitat Area. This ruling is based upon the City's acknowledged receipt and  
15 review of numerous documents and studies related to the area:

- 16 1) Numerous email communications between City officers and plaintiff James Benjamin,  
17 dated September 29-October 3, 2006.
- 18 2) Email string between HMB Planning Director Steve Flint and Kathy Marx , HMB  
19 Project Planner, and Serge Glushkoff of California State Department of Fish and Game,  
20 dated November 9, 2007 to November 13, 2007
- 21 3) March 9, 2007 Biological Assessment for Kehoe Ditch Bank Stabilization Project  
22 prepared for City of Half Moon Bay by Rana Creek Habitat Restoration (Rana Creek)
- 23 4) August 2005 Habitat Assessment for the City of Half Moon Bay Kehoe Ditch Flood  
24 Control Project prepared by Essex Environmental Inc. (Essex)

1 5) May 2006 Biotic Assessment, Phase 3, El Granada Transmission Pipeline Replacement  
2 Project, Half Moon Bay, prepared by Coast Range Biological (Coast Range)

3 6) October 13, 2005 letter from H.T. Harvey and Associates to John Foley, Sewer Authority  
4 Mid-Coastside, re. Biological Constraints Assessment for an area whose northern  
5 boundary is the Kehoe Ditch

6 Though not all these studies or communications were specifically directed to the Kehoe  
7 Watercourse project of 2009, the considerations underlying determination of ESHA were  
8 extensively mentioned and discussed therein in the several years prior to undertaking the  
9 February, 2009 endeavor.

10 X. The Court further finds that the reasoning of the Half Moon Bay Planning Director Steven  
11 Flint that the Kehoe Ditch did not support or contain the Red-Legged Frog or the San  
12 Francisco Garter Snake because "none had ever been seen there" is untenable for the  
13 following reasons:

14 1) a) Rana Creek: pp. 4-5: Though no Red-legged frogs observed at the Kehoe Ditch, it  
15 does provide suitable habitat for the frogs. Several have been recorded within .5 miles,  
16 primarily at the Caltrans mitigation site, and the frogs disperse from breeding sites  
17 "...moving through landscape without apparent regard for vegetation or topography."  
18 The ditch may provide breeding habitat for the RLF, and the open space supplies  
19 "potential upland habitat."

20 b) Rana Creek p. 6: "SFGS may be present along the banks of the ditch in the riparian  
21 vegetation."

22 c) Rana Creek p. 8: "Impact: California red-legged frogs that are potentially present at  
23 the project site may be harassed or harmed in violation of the Endangered Species  
24 Act."  
25

1 2) a) Essex p. 11: "California red-legged frog....likely to occur in the project area.

2 CNDDDB search listed numerous occurrences within 5 miles of the project, with the  
3 closest occurrences within 0.5 mile. Project area provides suitable habitat."

4 b) Essex p. 11. "San Francisco Garter Snake....likely to occur in the project area."

5 c) Essex p. 13: "Based on the suitable habitat available along the ditch..., there is a  
6 high potential for CRLF to occur."

7 d) Essex p. 13: "Due to known occurrences within a 2000-foot radius of the project  
8 site and documentation of movement in excess of 2000 feet of this species....presence  
9 of the San Francisco garter snake should be assumed."

10 3) a) Coast Range p. 8: "Due to the documented occurrences in the vicinity and the  
11 presence of suitable habitat, red-legged frog is considered to have a high potential for  
12 occurrence in the Study Area."

13 b) Coast Range p. 9: "San Francisco garter snake is considered to have a moderate  
14 potential for occurrence on the Study Area."

15 c) Coast Range p. 16: "Foraging and sheltering habitat for California red-legged frog  
16 occurs in.....Kehoe Ditch." "Prior to beginning vegetation removal, a qualified  
17 biologist shall survey the work area for red-legged frogs."

18 d) Coast Range report recommends mitigation measures to be undertaken for potential  
19 presence of both endangered species.

20 4) Harvey p. 5: "California red-legged frogs should be considered to be present within  
21 Kehoe Ditch, and potentially present in upland habitats on the site."

22 XI. The Court further finds untenable and illogical the Mr. Flint's reasoning determining that the  
23 Kehoe Ditch was not a riparian area or corridor for the following reasons:

24 1) There is undisputed evidence that 90% of the vegetation in the Kehoe Ditch is arroyo

25 willow. The definition of a riparian corridor is an area covered by vegetative coverage "at

1 least fifty percent of which is comprised of ....arroyo willow,... (other  
2 plant species)..." Mr. Flint contends that because no other of the designated plant species  
3 were mentioned in the various studies cited above, the vegetation could not be deemed a  
4 "combination" of the specified plants; this contention defies logic and a reasonable,  
5 rational construction of the statute.

6 2) Rana Creek specifically states "The Kehoe Ditch site contains willow riparian" (p. 3)  
7 and furthermore recommends as mitigation efforts for any project "All riparian trees  
8 will be avoided when possible during construction activities. Thinning of trees is  
9 acceptable, but no riparian trees over 4 inches diameter at breast height shall be  
10 removed."

11 3) Essex p. 5: "For purposes of this habitat assessment, the composition of riparian  
12 vegetation is consistent with The City of Half Moon Bay's Zoning Code, Title 18,  
13 Chapter 18.38 definition of a Riparian Area and Corridor.

14 4) Harvey p. 3: "Kehoe Ditch, where mature arroyo willow forms a continuous riparian  
15 canopy...." Uses the term "riparian zone."

16 5) Statement of City Engineer Mo Sharma to the City Council of Half Moon Bay, February  
17 17, 2009: "We also have ivy, this is not native to the riparian area, this is actually harmful  
18 because it kind of overwhelms the riparian zone...."

19 XII. The Court finds questionable the assertion that the Kehoe Ditch project fell under the "repair  
20 and maintenance" exception to the need to obtain a CDP for the work. The Public Works  
21 Director of the City of Half Moon Bay, Mr. Paul Nagengast, in 2006 submitted an  
22 application to the Coastal Commission for a CDP for "repair/reconstruct drainage ditch"  
23 which included the Kehoe Ditch in the scope of its proposed work. A subsequent  
24 memorandum from Mr. Nagengast (August 16, 2006) specifically acknowledges the need for  
25 a CDP for "drainage ditch maintenance". See also September 18, 2006 letter from California

1 Coastal Commission to Public Works Director Nagengast, entitled "Coastal Development  
2 Permitting Requirements for Drainage Ditch Maintenance, which specifically states: "a CDP  
3 is required for any maintenance of the City's drainage ditches located in an environmentally  
4 sensitive habitat area that involves.....the presence, whether temporary or permanent, of  
5 mechanized equipment or construction materials."

6 Half Moon Bay's Planning Director Flint testified that the exception for Repair and  
7 Maintenance (CCR 13252 supra.) was not considered and did not factor into his decision not  
8 to obtain a Coastal Development Permit for the Kehoe Ditch.

9 Nevertheless, in presenting the project to the Half Moon Bay City Council, City Engineer  
10 Mo Sharma represented that all the work would be with hand tools only, in direct  
11 contradiction of the contract under which the work was performed.

12 While Mr. Sharma's misrepresentations may have been inadvertent, these statements  
13 constitute further circumstantial evidence that the Half Moon Bay city officials deliberately  
14 circumvented the requirement of obtaining a Coastal Development Permit for the work on  
15 the Kehoe Ditch.

16 XIII. Accordingly, the Court finds that the City of Half Moon Bay knowingly and intentionally  
17 failed to obtain a CDP for the Kehoe Ditch Project of 2009, thereby depriving the public in  
18 general, and plaintiffs/petitioners in particular, of the ability to be heard concerning the  
19 impacts of this project upon the stream, the environment and the community as a whole.

#### 20 DAMAGES AND PENALTIES

21 XIV. Having found that the City's failure to obtain a CDP was knowing and intentional, the  
22 Court, in imposing appropriate penalties, will take into consideration the factors listed in  
23 Coastal Act section 30820:

- 24 1) Nature, circumstance, extent and gravity of the violation: The work done on the  
25 Kehoe Ditch was not particularly extensive; removal of two truckloads of trees and

1 branches from a 2000-foot ditch does not reflect significant deforestation. The  
2 photographs submitted as exhibits display a substantial amount of vegetation still  
3 remaining or regrown on the project site. The testimony of Mr. Jennings established a  
4 "substantial change to the vegetation" which had the effect of opening the stream,  
5 removing biomass for potential habitats, increasing the water temperature, deleting  
6 food sources for smaller animals and rodents, and potentially opening the area for  
7 predators; though this potential existed, no evidence was presented that these grave  
8 impacts were realized.

9 Mr. Trso testified that the geomorphologic impact of the project was to create visible  
10 erosion of the banks and a destabilization of the soil in the creek bed, with resultant  
11 gullyng. While Mr. Jennings also expressed concern about the disturbance of the  
12 sediment which would dislodge food sources for the frogs, Mr. Trso deemed the  
13 sediment loss to be "relatively minor."

14 2) Sensitivity of the resource; restorability: Since neither the California Red-legged Frog  
15 nor the San Francisco Garter Snake has been located at the Kehoe Ditch, either before  
16 or after the February 2009 project, the Court has no evidence upon which to gauge  
17 either the sensitivity of the resource or the actual impact of the work upon these two  
18 endangered species. With regard to the willow riparian cover, the Court finds that the  
19 City of Half Moon Bay undertook reparative efforts by the replanting of arroyo  
20 willow tree stalks at some point after the work was done; unfortunately many of these  
21 replacement willows have not survived due to the extensive growth of cape ivy.

22 3) Cost to the state of bringing the action: None.

23 4) Voluntary cooperation, past history, and culpability: Evidence was presented that  
24 before the work was done, an educational presentation concerning the habitat and the  
25 protected species was given to the Corpsmen working on the Ditch.

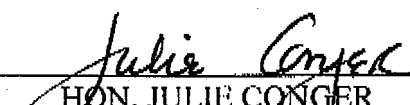


1 XV. In summary, the Court finds that the Kehoe Ditch cleaning project of February, 2009, was a  
2 knowing and intentional violation of the Coastal Act, but that the impact upon the  
3 environment was not substantial. Accordingly, minimum civil penalties of \$1000 for each  
4 day that the violation persists will be imposed per statute.

5  
6 Judgment shall be entered in favor of Petitioners James Lawrence Benjamin and Zoya  
7 Dorry Benjamin.

8  
9 Petitioners/plaintiffs to prepare judgment in accordance with this Statement of Decision.  
10  
11  
12  
13  
14  
15

16 Dated: September 15, 2011

  
17 HON. JULIE CONGER  
18 JUDGE OF THE SUPERIOR COURT  
19  
20  
21  
22  
23  
24  
25



## U.S. Fish and Wildlife Service

### Revised Guidance on Site Assessments and Field Surveys for the California Red-legged Frog



August 2005

#### I. Introduction

The U.S. Fish and Wildlife Service (Service) issued guidance on conducting site assessments and surveys for the California red-legged frog (*Rana aurora draytonii*) (CRF) on February 18, 1997 (1997 Guidance). Since then, the Service has reviewed numerous CRF site assessments and surveys results, accompanied wildlife biologists in the field during the preparation and performance of site assessments and CRF surveys, and consulted with species experts on the effectiveness of the 1997 Guidance. Based on our review of the information, the Service has determined that the survey portion of the 1997 Guidance is less likely to accurately detect CRF than previously thought, especially in certain portions of the species range and particularly where CRF exist in low numbers. In response to the need for new guidance, the Service has prepared this *Revised Guidance on Site Assessment and Field Surveys for the California Red-legged Frog* (Guidance).

Similar to the 1997 Guidance, two procedures are recommended in the new Guidance to accurately assess the likelihood of CRF presence in the vicinity of a project site: (1) an assessment of CRF locality records and potential CRF habitat in and around the project area and, (2) focused field surveys of breeding pools and other associated habitat to determine whether CRF are likely to be present.

Because CRF are known to use aquatic, riparian, and upland habitat, they may be present in any of these habitat types, depending on the time of year, on any given property. For sites with no suitable aquatic breeding habitat, but where suitable upland dispersal habitat exists, it is difficult to support a negative finding with the results of any survey guidance. Therefore, this Guidance focuses on site assessments and surveys conducted in and around aquatic and riparian habitat.

This Guidance was developed by the Service's Sacramento Fish and Wildlife Office in coordination with the Ventura Fish and Wildlife Office. Input by field biologists and scientists experienced in surveying for the CRF was also used in the development of this Guidance.

***If the following Guidance is followed in its entirety, the results of the site assessments and surveys will be considered valid by the Service for two (2) years, unless determined otherwise on a case-by-case basis by the appropriate Service Fish and Wildlife Office. After two (2) years, new surveys conducted under the most current Service Guidance may be required, if deemed necessary by the appropriate Service Fish and Wildlife Office.***

Modifications of this Guidance for specific projects or circumstances may be approved by the appropriate Fish and Wildlife Office; however, we strongly recommend that all modifications be reviewed and approved by the Service prior to implementation.

## **II. Permit Requirements**

Unless otherwise authorized, individuals participating in site assessments and surveys for CRF may **NOT** take the California red-legged frog during the course of site assessments or survey activities. Take may only be authorized via section 7 or section 10 of the Endangered Species Act of 1973, as amended. Typically, take associated with survey activities is authorized via issuance of section 10(a)(1)(A) permits. For reference, an application for a section 10(a)(1)(A) permit is available through the appropriate Fish and Wildlife Office or online at: <http://forms.fws.gov/3-200-55.pdf>.

*The site assessment and survey methods recommended in this Guidance do NOT require the surveyor to have a permit. As stated below, the surveyor must be otherwise qualified to conduct the surveys.*

It is the responsibility of the surveyor to ensure all other applicable permits are obtained and valid (e.g., state scientific collection permits), and that permission from private landowners or land managers is obtained prior to accessing a site and beginning site assessments and surveys.

## **III. Site Assessments**

*To prevent any unnecessary loss of time or use of resources, it is essential that completed site assessments be submitted to the appropriate Service Fish and Wildlife Office for review in order to obtain further guidance from the Service before conducting surveys.*

Surveyors are encouraged to implement the decontamination guidelines provided in Appendix B before conducting a site assessment to prevent the spread of parasites and diseases to CRF and other amphibians.

Careful evaluation of the following information about CRF and their habitats in the vicinity of a project or other land use activities is important because this information indicates the likelihood of the presence of CRF. This information will help determine whether it is necessary to conduct field surveys.

To conduct a site assessment for CRF, complete the data sheet in Appendix D and return it with any necessary supporting documentation to the appropriate Service Fish and Wildlife Office for review prior to initiating surveys. The following information is critical to completing a proper site assessment:

**1. Is the site within the current or historic range of the CRF?**

Since knowledge of the distribution of the CRF is likely to change as new locality information becomes available, biologists are expected to contact the appropriate Fish and Wildlife Office (see section IV below) to determine if a project site is within the range of this species.

**2. Are there known records of CRF at the site or within a 1.6-kilometer\* (1-mile) radius of the site?**

The biologist should consult the California Natural Diversity Data Base (CNDDDB) maintained by the California Department of Fish and Game's (CDFG) Natural Heritage Division as a starting point to determine if there are reported localities of CRF within a 1.6-kilometer (1-mile) radius of the site. Information on the CNDDDB is attached to the end of this document. Data entry into the CNDDDB is not always current nor do all surveyors submit reports to the CNDDDB, thus it is essential that other information sources on local occurrences of CRF be consulted. These sources may include, but are not limited to, biological consultants, local residents, amateur herpetologists, resource managers and biologists from municipal, State, and Federal agencies, environmental groups, and herpetologists at museums and universities. The biologist should report to the Service all known CRF records at the project site and within a 1.6-kilometer (1-mile) radius of the project boundaries. One-point-six (1.6) kilometers (1 mile) was selected as a proximity radius to a project site based on telemetry data collected by Bulger *et al.* (2003), rounded to the nearest whole mile. This distance may be subject to change when new data becomes available, or based on site-specific conditions, so it is advised that surveyors check with the appropriate Service Fish and Wildlife Office to ensure they are using the most up-to-date information.

**\* IMPORTANT:** One-point-six (1.6) kilometers (1 mile) radius is a general guideline. The appropriate Service Fish and Wildlife Office will advise surveyors of the most appropriate distance for each specific project location on a case-by-case basis.

**3. What are the habitats within the project site and within 1.6 kilometers\* (1 mile) of the project boundary?**

In order to properly characterize the habitat within 1.6 kilometers (1 mile) of the project site, individuals conducting site assessments must visit the project site and as much of the surrounding habitat within 1.6 kilometers (1 mile) of the project site as possible. Aerial photographs, maps, and other resources should be consulted as well to ensure all possible accessible habitats are considered. Based on this reconnaissance assessment, the surveyor shall describe the upland and aquatic habitats within the project site and within 1.6 kilometers (1 mile) of the project boundary. The aquatic habitats should be mapped and characterized (*e.g.*, ponds vs. creeks, pool vs. riffle, ephemeral vs. permanent (if ephemeral, give date it goes dry), vegetation (type, emergent, overhanging), water depth at the time of the site assessment, bank full depth, stream gradient (percent slope), substrate, and description of bank). The presence of

bullfrogs (*Rana catesbeiana*) and other aquatic predators such as centrarchid fishes (bass, perch, sunfish) should be documented even though their presence does not negate the presence of CRF.

Upland habitats should be characterized by including a description of upland vegetation communities, land uses, and any potential barriers to CRF movement. The information provided in Appendix A serves as a guide to the features that will indicate possible CRF habitat.

#### **4. Report the results of the site assessment**

A site assessment report shall be provided to the appropriate Fish and Wildlife Office for review. Reports should include, but are not limited to, the following information:

- 1) Copies of the data sheet provided at Appendix D;
- 2) Copies of field notes and all other supporting documentation including:
  - A. A list of all known CRF localities within 1.6 kilometers\* (1 mile) of the project site boundaries;
  - B. Photographs of the project site (photopoints shall be indicated on an accompanying map);
  - C. A map of the site showing all of the habitat types and other important features as well as the location of any species detected during the site assessment within 1.6 kilometers (1 mile) of the project site boundaries. Maps shall be either copies of those portions of the U.S. Geological Service 7.5-minute quadrangle map(s) or geographic information system (GIS) data;
  - D. A description of the project and/or land use that is being proposed at the site.

Based on the information provided in the site assessment report, the Service will provide guidance on how CRF issues should be addressed, including whether field surveys are appropriate, where the field surveys should be conducted, and whether incidental take authorization should be obtained through section 7 consultation or a section 10 permit pursuant to the Endangered Species Act.

#### **IV. Field Surveys**

Surveyors are encouraged to implement the decontamination guidelines provided in Appendix B before conducting surveys to prevent the spread of parasites and diseases to CRF and other amphibians.

*To avoid and minimize the potential of harassment or harm to CRF, no additional surveys will be conducted in an area once occupancy has been established, unless the surveying effort is part of a Service-approved project to determine actual numbers of frogs at a site.*

The Service should be notified in writing (e.g., email) by the surveyor within three (3) working



days once a CRF is detected. The Service will provide guidance to the surveyor regarding the need to collect additional information such as population size, age class, habitat use, *etc.*

## **A. Qualifications of Surveyors**

Surveyors must be familiar with the distinguishing physical characteristics of all life stages of the CRF, other anurans of California, and with introduced, exotic species such as the bullfrog and the African clawed frog (*Xenopus Laevis*) prior to conducting surveys according to this Guidance.

***Surveyors must submit their qualifications to the Service along with their survey results.***

A field guide should be consulted (*e.g.*, Wright and Wright 1949; Stebbins 2003) to confirm the identification of amphibians encountered during surveys. Surveyors also should be familiar with the vocalizations of the CRF and other amphibians found in California. Recordings of these vocalizations are available through various sources (*e.g.*, Davidson 1995). Surveyors that do not have experience with the species are required to obtain training on locating and identifying CRF adult, larval and egg stages before survey results are accepted. Training may include attendance at various workshops that have an emphasis on the biology of the California red-legged frog, accompanied by an appropriate level of field identification training; field work with individuals who possess valid 10(a)(1)(A) permits for the CRF; and experience working with ranids and similar taxa.

In some localities more intensive surveys (*e.g.*, dip-netting larvae and adults) may be desirable to document the presence of CRF. In order to conduct such focused surveys a valid section 10(a)(1)(A) permit is required (refer to introduction section for information on how to apply for a section 10(a)(1)(A) permit). Applicants will be considered qualified for a section 10(a)(1)(A) permit if they meet the Service's most current qualification requirements. At a minimum, prospective applicants must:

- 1) Possess a Baccalaureate degree in biology, ecology, a resource management-related field, or have equivalent relevant experience;
- 2) Have completed course work in herpetology and study-design/survey-methodology or have equivalent relevant experience;
- 3) Have verifiable experience in the design and implementation of amphibian surveys or research or have equivalent relevant experience;
- 4) Have verifiable experience handling and identifying a minimum of 10 CRF, or similar ranid species, comprised of a minimum of 5 adults and a combination of larva and juveniles;
- 5) Obtain a minimum of 40 hours of field experience through assisting in surveys for the CRF during which positive identification is made;
- 6) Have familiarity with suitable habitats for the species and be able to identify the major vegetative components of communities in which California red-legged frog surveys or

research may be conducted.

- 7) Have familiarity with and be able to identify native and non-native amphibians that may co-occur with the listed species.

## **B. Survey Periods**

Surveys may begin anytime during January and should be completed by the end of September. Multiple survey visits conducted throughout the survey-year (January through September) increases the likelihood of detecting the various life stages of the CRF. For example, adult frogs are most likely to be detected at night between January 1 and June 30, somewhere in the vicinity of a breeding location, whereas, sub-adults are most easily detected during the day from July 1 through September 30.

Due to the geographic and yearly variation in egg laying dates, it is not possible to specify a range of dates that is appropriate for egg surveys throughout the range of the CRF. The following table summarizes the best approximated times to survey for CRF egg masses.

<b>Geographic Area</b>	<b>Best Survey Period*</b>
Northern California along the coast and interior to the Coast Range (north of Santa Cruz County)	January 1 and February 28
Southern California along the coast and interior through the Coast Range (south of, and including Santa Cruz County)	February 25 and April 30
Sierra Nevada Mountains and other high-elevation locations	Should not begin before April 15

Site specific conditions may warrant modifications to the timing of survey periods, modifications must be made with the Service's approval prior to conducting the surveys.

## **Survey Methodology**

This Guidance recommends a total of **up to** eight (8) surveys to determine the presence of CRF at or near a project site. Two (2) day surveys and four (4) night surveys are recommended during the breeding season; one (1) day and one (1) night survey is recommended during the non-breeding season. Each survey must take place at least seven (7) days apart. At least one survey must be conducted prior to August 15<sup>th</sup>. The survey period must be over a minimum period of 6 weeks (*i.e.*, the time between the first and last survey must be at least 6 weeks). Throughout the species' range, the non-breeding season is defined as between July 1 and September 30.

***If CRF are identified at any time during the course of surveys, no additional surveys will be conducted in the area, unless the surveying effort is part of a Service-approved project to determine actual numbers of frogs at a site.***

The following methodology shall be followed unless otherwise specified, or approved by the

appropriate Service Fish and Wildlife Office:

- 1) Upon arrival at the survey site, surveyors should listen for a few minutes for frogs calling, prior to disturbing the survey site by walking or looking for eye shine using bright lights. If CRF calls are identified, the surveyor should note this information on the survey data sheet and note the approximate location of the call. Once the survey begins, the surveyor should pay special attention to the area where the call originated in an attempt to visually identify the frog.
- 2) The most common method of surveying for CRF is the visual-encounter survey. This survey is conducted either during daylight hours or at night by walking entirely around the pond or marsh or along the entire length of a creek or stream while repeatedly scanning for frogs. This procedure allows one to scan each section of shore from at least two different angles. Surveyors should begin by first working along the entire shoreline, then by entering the water (if necessary and no egg masses would be crushed or disturbed), and visually scanning all shoreline areas and all aquatic habitats identified in the site assessment. Generally, surveyors shall focus on all open water to at least 2 meters (6.5 feet) up the bank. When wading, surveyors must take maximum care to avoid disturbing sediments, vegetation, or larvae. When walking on the bank, surveyors shall take care to not crush rootballs, overhanging banks, and stream-side vegetation that might provide shelter for frogs. Surveys must cover the entire area, otherwise the remaining survey area must be surveyed the next day/night that weather conditions allow (both visits would constitute one day/night survey).
- 3) Day surveys may be conducted on the same day as a night survey.

The main purpose of day surveys during the breeding season is to look for larvae, metamorphs, and egg masses; the main purpose of day surveys during the non-breeding season is to look for metamorphosing sub-adults, and non-breeding adults. Daytime surveys shall be conducted between one hour after sunrise and one hour before sunset.

4) Night surveys

The main purpose of night surveys is to identify and locate adult and metamorphosed frogs. Conditions and requirements for conducting night surveys are as follows:

- A. Night surveys must commence no earlier than one (1) hour after sunset.
- B. Due to diminished visibility, surveys should not be conducted during heavy rains, fog, or other conditions that impair the surveyor's ability to accurately locate and identify frogs.
- C. Nighttime surveys shall be conducted with a Service-approved light such as a Wheat Lamp, Nite Light, or sealed-beam light that produces less than 100,000 candle watt. Lights that the Service does not accept for surveys are lights that are either too dim or too bright. For example, Mag-Light-type lights and other

types of flashlights that rely on 2 or 4 AA's/AAA's, 2 C's or 2 D batteries. Lights with 100,000 candle watt or greater are too bright and also would not meet Service requirements.

- D. The Service approved light must be held at the surveyor's eye level so that the frog's eye shine is visible to the surveyor.
- E. The use of binoculars is a must in order to effectively see the eye shine of the frogs. Surveys conducted without the use of binoculars may call in to question the validity of the survey.

#### 5) Weather conditions.

Weather and visibility conditions must be consistent throughout the duration of the survey; if weather conditions become unsuitable, the survey must be completed at another time when conditions are better suited to positively locating and identifying frogs. Suitable conditions are as follows:

- A. Air temperature at the survey site must be at least 10 degrees Celsius (50 degrees Fahrenheit). Frogs are less likely to be active when temperatures are below 10 degrees Celsius (50 degrees Fahrenheit).
- B. Wind speed must not exceed 8 kilometers/hour (5 miles/hour) at the survey site. High wind speeds affect temperatures and the surveyor's ability to hear frogs calling.
- C. Surveys must be conducted under clear to partly cloudy skies (high clouds are okay) but not under dense fog or during heavy rain, as stated above. Surveys may be conducted during light rains.

Surveyors should carefully consider weather conditions prior to initiating a survey. Ask yourself, "Can I collect accurate, reliable data under the existing weather conditions" prior to proceeding with the survey. Weather conditions will be taken into account when the data is reviewed by the appropriate Service Fish and Wildlife Service Office.

#### 6) Decontamination of equipment

In an effort to minimize the spread of terrestrial and aquatic pathogens, all aquatic survey equipment including chest waders, wet suits, float tubes, kayaks, shall be decontaminated before entering potential CRF habitat using the guidelines in Appendix B. Careful attention shall be taken to remove all dirt from boots, chest waders, wetsuits, float tubes, kayaks, and other equipment before placing equipment into the water.

#### 7) Unidentified larvae, sub-adults, and adults

If the larval life stage is the only life stage detected and the larvae are not identified to species (or similarly, if sub-adult or adult frogs are observed but not identified to

species), the surveyor must either return to the habitat to identify the frog in another life stage or obtain the appropriate permit (*e.g.*, section 10(a)(1)(A) permit) authorization allowing the surveyor to handle CRF and larvae. In order for the Service to consider a survey to be complete, all frogs encountered must be accurately identified.

#### 8) Reporting results of the surveys

A species survey report shall be provided to the appropriate Fish and Wildlife Office for review. Reports should include, but are not limited to, the following information:

1. Copies of the data sheets provided at Appendix E;
2. Copies of field notes and all other supporting documentation including:
  - A. Photographs of all CRF observed during the survey and of the habitat where each individual was located, if possible without harming or harassing the individual;
  - B. A map of the site showing the location of any species detected during the survey. Maps shall be either copies of those portions of the U.S. Geological Service 7.5-minute quadrangle map(s) *or* geographic information system (GIS) data;

Based on the information provided in the site assessment report and the survey results, the Service will provide guidance on how CRF issues should be addressed through the section 7 or section 10 processes.

All information on CRF distribution resulting from field surveys shall be sent to the California Natural Diversity Database (CNDDDB). CNDDDB forms shall be completed, as appropriate, for each listed species identified during the survey(s) and submitted to the California Department of Fish and Game, Wildlife Habitat Data Analysis Branch, 1807 13<sup>th</sup> Street, Suite 202, Sacramento, California 95814, with copies submitted to the appropriate Service Fish and Wildlife Office. Each form sent to the CDFG shall have an accompanying 1:24,000 scale USGS map (or an exact scale photocopy of the appropriate portion(s) of the map) -or- Global Information System (GIS) data coverage of the site. Copies of the form can be obtained from the CDFG at the above address (telephone: 916-324-3812) or online at: <http://www.dfg.ca.gov/whdab/html/animals.html>. Additional information about the CNDDDB is available in Appendix C.

The Service may not accept the results of field surveys conducted under this Guidance for any of the following reasons:

- A. if the appropriate Service Fish and Wildlife Office was not contacted to review the results of the site assessment prior to field surveys being conducted;
- B. if field surveys were conducted in a manner inconsistent with this Guidance or with



- survey methods not previously approved by the Service;
- C. if field surveys were incomplete;
- D. if surveyors were not adequately qualified to conduct the surveys;
- E. if the reporting requirements, including submission of CNDDDB forms, were not fulfilled.

#### **IV. Service Contacts**

There are three Service Fish and Wildlife Offices within the range of the CRF (see Map 1). The appropriate office to contact regarding site assessments or survey authorization depends on the location where the surveys are to be conducted.

For project sites and land use activities in Santa Cruz, Monterey, San Benito, San Luis Obispo, Santa Barbara, and Ventura Counties, portions of Los Angeles and San Bernardino Counties outside of the Los Angeles Basin, and portions of Kern, Inyo and Mono Counties east of the Sierra Crest and south of Conway Summit, contact:

Ventura Fish and Wildlife Office,  
2493 Portola Road, Suite B  
Ventura, California, 93003  
(805/644-1766).

For project sites and land use activities in all other areas of the State south of the Transverse Ranges, contact:

Carlsbad Fish and Wildlife Office  
Attn: Recovery Permit Coordinator  
6010 Hidden Valley Road  
Carlsbad, California, 92009  
(760/431-9440).

For project sites and land use activities in all other areas of the State, contact:

Sacramento Fish and Wildlife Office  
2800 Cottage Way, Suite W-2605  
Sacramento, California 95825  
(916/414-6600).  
(916/414-6713, fax)

For information on section 10(a)(1)(A) recovery permits, contact:

Regional Office,  
Eastside Federal Complex  
911 N.E., 11th Avenue  
Portland, Oregon 97232-4181  
(503/231-6241)



\* These are independent offices overlapping with the Sacramento Fish and Wildlife Office. Their work primarily focuses on salmonid restoration, fishery monitoring and Forest Plan Implementation.

Map 1. Map of California showing jurisdictional boundaries of Service Fish and Wildlife Offices.

## **References**

- Davidson, C. 1995. Frog and toad calls of the Pacific Coast: Vanishing Voices. Library of Natural Sounds, Cornell Laboratory of Ornithology, Ithaca, New York. 27 pp. +1 cassette.
- Stebbins, R.C. 2003. A field guide to western reptiles and amphibians. Third edition. Houghton Mifflin Company, New York, New York. 533 pp.
- Wright, A.H. and A.A. Wright. 1949. Handbook of frogs and toads of the United States and Canada. Third Edition. Comstock Publishing Company, Ithaca, New York. xii+640 pp.

## **Appendix A.**

### **California red-legged frog identification and ecology.**

#### **1. Identification**

The following information may aid surveyors in the identification of California red-legged frogs and similar species. However, all surveyors are expected to consult field guides (Wright and Wright 1949; Davidson 1995; Stebbins 2003) for further information.

##### *General Description*

The California red-legged frog (*Rana aurora draytonii*), is a relatively large aquatic frog ranging from 4 to 13 centimeters (1.5 to 5 inches) from the tip of the snout to the vent. From above, the California red-legged frog can appear brown, gray, olive, red or orange, often with a pattern of dark flecks or spots. The skin usually does not look rough or warty. The back of the California red-legged frog is bordered on either side by an often prominent dorsolateral fold of skin running from the eye to the hip. The hindlegs are well-developed with large webbed feet. A cream, white, or orange stripe usually extends along the upper lip from beneath the eye to the rear of the jaw. The undersides of adult California red-legged frogs are white, usually with patches of bright red or orange on the abdomen and hindlegs. The groin area can show a bold black mottling with a white or yellow background.

##### *Adults*

Positive diagnostic marks should be used to accurately distinguish California red-legged frogs from other species of frogs that may be observed. A positive diagnostic mark is an attribute of the animal that will not be found on any other animal likely to be encountered at the same locality. The following features are positive diagnostic marks that, if observed, will distinguish California red-legged frogs from foothill yellow-legged frogs (*Rana boylei*) and bullfrogs (*Rana catesbeiana*):

- a. Prominent dorsolateral folds (thick upraised fold of skin running from eye to hip) on any frog greater than 5 centimeters (2 inches) long from snout to vent. Young yellow-legged frogs can show reddish folds; these usually fade as the frogs mature.
- b. Bright red dorsum.
- c. Well defined stripe as described above running along upper lip.



Since California red-legged frogs are often confused with bullfrogs, surveyors should note those features that might be found on bullfrogs that will rarely be observed on California red-legged frogs. These features are:

- a. Absence of the dorsolateral fold.
- b. Bright yellow on throat.
- c. Uniform bright green snout.
- d. Tympanum (ear disc) distinct and much larger than eye.

Please note that some frogs may lack all of the above characteristics given for both California red-legged frogs and bullfrogs. Surveyors should regard such frogs as unidentified, unless it is clearly identified as another species.

California red-legged frogs are cryptic because their coloration tends to help them blend in with their surroundings, and they can remain immobile for great lengths of time. When an individual California red-legged frog is disturbed, it may jump into the water with a distinct “plop.” The California red-legged frog may do this either when the surveyor is still distant or when a surveyor is very near. Bullfrogs exhibit similar behavior but will often emit a “squawk” as they dive into the water. Because a California red-legged frog is unlikely to make such a sound, a “squawk” from a fleeing frog will be considered sufficient to positively identify the frog as a bullfrog.

#### *Larvae*

Tadpoles may be trapped and handled only by those with a valid 10(a)1(A) permit. California red-legged frog larvae range from 14 to 80 millimeters (0.5 to 3.25 inches) in length. They are greenish to generally brownish color with darker marbling and lack distinct black or white spotting or speckling. Large California red-legged frog larvae often have a wash of red coloration on their undersides and a very small single row of evenly spaced whitish or gold flecks along the side where the dorsolateral fold will develop. Other features to look for to identify California red-legged frog larvae include: eyes set well in from the outline of the head (contrasts with treefrogs (*Hyla* spp.)), oral papillae on both the sides of the mouth and the bottom of the mouth (contrasts with *Bufo* spp.), well developed oral papillae on the sides of the mouth (contrasts with other subspecies of red-legged frogs (*Rana aurora* spp.) and spadefoot toads (*Scaphiopus* spp.)), generally mottled body and tail with few or no distinct black spots on tail fins (contrasts with bullfrogs), and two to three tooth rows on the top and bottom (contrasts with foothill yellow-legged frogs).

#### *Eggs*

California red-legged frogs breed during the winter and early spring from as early as late November through April and May. Adults engage in courtship behaviors that result in the female depositing from 2,000 to 6,000 eggs, each measuring between 2 and 3 millimeter (0.1 inches). California red-legged frog eggs are typically laid in a mass attached to emergent vegetation near the surface of the water, where they can be easily dislodged. However, egg masses have been detected lying on the bottom of ponds. The egg mass is well defined and

about the size of a softball. Eggs hatch within 6 to 14 days after deposition at which time the newly hatched larvae are delicate and easily injured or killed. California red-legged frog larvae transform into juvenile frogs in 3.5 to 7 months.

During the time that red-legged frog egg surveys are conducted, other amphibian eggs may be found including those of Pacific treefrogs, spadefoot toads, California tiger salamanders, and newts. Bullfrogs and foothill yellow-legged frogs lay their eggs later in the season. Field guides should be consulted for additional information on egg identification.

## 2. Habitat

California red-legged frogs occur in different habitats depending on their life stage, the season, and weather conditions. Rangewide, and even within local populations, there is much variation in how frogs use their environment; in some cases, they may complete their entire life cycle in a particular habitat (*i.e.*, a pond is suitable for all life stages), and in other cases, they may seek multiple habitat types (U.S. Fish and Wildlife Service 2002).

### *Breeding habitat*

All life history stages are most likely to be encountered in and around breeding sites, which are known to include coastal lagoons, marshes, springs, permanent and semi-permanent natural ponds, ponded and backwater portions of streams, as well as artificial impoundments such as stock ponds, irrigation ponds, and siltation ponds. California red-legged frog eggs are usually found in ponds or in backwater pools in creeks attached to emergent vegetation such as *Typha* and *Scirpus*. However, they have been found in areas completely denuded of vegetation. Creeks and ponds where California red-legged frogs are found most often have dense growths of woody riparian vegetation, especially willows (*Salix* spp.) (Hayes and Jennings 1988). The absence of *Typha*, *Scirpus*, and *Salix* at an aquatic site does not rule out the possibility that the site provides habitat for California red-legged frogs, for example stock ponds often are lacking emergent vegetation yet they provide suitable breeding habitat. California red-legged frog larvae remain in these habitats until metamorphosis in the summer months (Storer 1925; Wright and Wright 1949). Young California red-legged frogs can occur in slow moving, shallow riffle zones in creeks or along the margins of ponds.

### *Summer habitat*

California red-legged frogs often disperse from their breeding habitat to forage and seek summer habitat if water is not available. In the summer, California red-legged frogs are often found close to a pond or a deep pool in a creek where emergent vegetation, undercut banks, or semi-submerged rootballs afford shelter from predators. California red-legged frogs may also take shelter in small mammal burrows and other refugia on the banks up to 100 meters from the water any time of the year and can be encountered in smaller, even ephemeral bodies of water in a variety of upland settings (Jennings and Hayes 1994; U.S. Fish and Wildlife Service 2002).

### *Upland habitat*

California red-legged frogs are frequently encountered in open grasslands occupying seeps and

springs. Such bodies may not be suitable for breeding but may function as foraging habitat or refugia for dispersing frogs. During periods of wet weather, starting with the first rains of fall, some individuals make overland excursions through upland habitats (U.S. Fish and Wildlife Service 2002).

### 3. Movement

California red-legged frogs may move up to 3 kilometers (1.88 miles) up or down drainages and are known to wander throughout riparian woodlands up to several dozen meters from the water (Rathbun *et al.* 1993). Dispersing frogs have been recorded to cover distances from 0.40 kilometer (0.25 mile) to more than 3.2 kilometers (2 miles) without apparent regard to topography, vegetation type, or riparian corridors (Bulger 1998). California red-legged frogs have been observed to make long-distance movements that are straight-line, point to point migrations rather than using corridors for moving in between habitats. Dispersal distances are considered to be dependent on habitat availability and environmental conditions. On rainy nights California red-legged frogs may roam away from aquatic sites as much as 1.6 kilometers (1 mile). California red-legged frogs will often move away from the water after the first winter rains, causing sites where California red-legged frogs were easily observed in the summer months to appear devoid of this species. Additionally, California red-legged frogs will sometimes disperse in response to receding water which often occurs during the driest time of the year.

## References for Appendix A

- Bulger, J. 1998. Wet season dispersal and habitat use by juvenile California red-legged frogs (*Rana aurora draytonii*) in forest and rangeland habitats of the Santa Cruz Mountains. Research proposal.
- Davidson, C. 1005. Frog and toad calls of the Pacific Coast: Vanishing Voices. Library of Natural Sounds, Cornell Laboratory of Ornithology, Ithaca, New York. 27 pp. +1 cassette.
- Hayes, M.P. and M.R. Jennings. 1988. Habitat correlates of distribution of the California red-legged frog. (*Rana aurora draytonii*) and the foothill yellow-legged frog (*Rana boylei*): Implications for management. Pages 144-158 In: R.C. Szaro, K.E. Severson, and D.R. Patton (technical coordinators), Proceedings of the symposium on the management of amphibians, reptiles, and small mammals in North America. United States Department of Agriculture, Forest Service, General Technical Report (RM-166):1-458.
- Jennings, M.R. and M.P. Hayes. 1994. Amphibian and reptile species of special concern in California. Final report to the California Department of Fish and Game, Inland Fisheries Division, Rancho Cordova, California, under contract (8023). iii+255 pp.
- Rathbun, G.B., M.R. Jennings, T.G. Murphy, and N.R. Sipel. 1993. Status and ecology of sensitive aquatic vertebrates in lower San Simeon and Pico Creeks, San Luis Obispo County, California. U.S. Fish and Wildlife Service, National Ecology Research Center, San Simeon, California. Prepared for the California Department of Parks and Recreation. 103 pp.
- Stebbins, R.C. 2003. A field guide to western reptiles and amphibians. Third edition. Houghton Mifflin Company, New York, New York. 533 pp.
- Storer, T. 1925. A synopsis of the Amphibia of California. University of California Publications in Zoology 27:1-342.
- U.S. Fish and Wildlife Service. 2002. Recovery plan for the California red-legged frog (*Rana aurora draytonii*). Portland, Oregon. 173 pp.
- Wright, A.H. and A.A. Wright. 1949. Handbook of frogs and toads of the United States and Canada. Third Edition. Comstock Publishing Company, Ithaca, New York. xii+640 pp.

## **Appendix B.**

### **Recommended Equipment Decontamination Procedures**

In an effort to minimize the spread of pathogens that may be transferred as result of activities, surveyors should follow the guidance outlined below for disinfecting equipment and clothing after entering a pond and before entering a new pond, unless the wetlands are hydrologically connected to one another:

- i. All organic matter should be removed from nets, traps, boots, vehicle tires and all other surfaces that have come into contact with water or potentially contaminated sediments. Cleaned items should be rinsed with clean water before leaving each study site.
- ii. Boots, nets, traps, hands, *etc.* should be scrubbed with either a 75% ethanol solution, a bleach solution (0.5 to 1.0 cup per 1.0 gallon of water), Quat-128™ (1:60), or a 6% sodium hypochlorite 3 solution. Equipment should be rinsed clean with water between study sites. Cleaning equipment in the immediate vicinity of a pond or wetland should be avoided (*e.g.*, clean in an area at least 100 feet from aquatic features). Care should be taken so that all traces of the disinfectant are removed before entering the next aquatic habitat.
- iii. Used cleaning materials (liquids, *etc.*) should be disposed of safely, and if necessary, taken back to the lab for proper disposal. Used disposable gloves should be retained for safe disposal in sealed bags.
- iv. Additionally, the surveyors shall implement the following when working at sites with known or suspected disease problems: disposable gloves should be worn and changed between handling each animal. Gloves should be wetted with water from the site or distilled water prior to handling any amphibians. Gloves should be removed by turning inside out to minimize cross-contamination.

**Appendix C.**  
**General instructions for filling out CNDDDB field survey forms**

The Natural Diversity Data Base (NDDB) is the largest, most comprehensive database of its type in the world. It presently contains more than 33,000 site specific records on California's rarest plants, animals, and natural communities. The majority of the data collection effort for this has been provided by an exceptional assemblage of biologists throughout the state and the west. The backbone of this effort is the field survey form. We are enclosing copies of Natural Diversity Data Base (NDDB) field survey forms for species and natural communities. We would greatly appreciate you recording your field observations of rare, threatened, endangered, or sensitive species and natural communities (elements) and sending them to us on these forms.

We are interested in receiving forms on elements of concern to us; refer to our free publications: *Special Plants List*, *Special Animals List*, and *Natural Communities List* for lists of which elements these include. Reports on multiple visits to sites that already exist in the NDDB are as important as new site information as it helps us track trends in population/stand size and condition. Naturally, we also want information on new sites. We have enclosed an example of a field survey form that includes the information we like to see. It is especially important to include a xeroxed portion of a USGS topographic quad with the population/stand outlined or marked (see back of enclosed example).

Without the map, your information will be mapped less accurately, as written descriptions of locations are frequently hard to interpret. Do not worry about filling in every box on the form; only fill out what seems most relevant to your site visit. Remember that your name and telephone number are very important in case we have any questions about the form.

If you are concerned about the sensitivity of the site, remember that the NDDB can label your element occurrence "Sensitive" in the computer, thus restricting access to that information. The NDDB is only as good as the information in it, and we depend on people like you as the source of that information. Thank you for your help in improving the NDDB.

Copies of the NDDB form can be obtained from the CDFG at the above address (telephone: 916-324-3812) or online at: <http://www.dfg.ca.gov/whdab/html/animals.html>.



**Appendix D.**  
**California Red-legged Frog Habitat Site Assessment Data Sheet**

This data sheet is to assist in the data collection of California red-legged frog habitat in the vicinity of projects or other land use activities, following the August 2005, *Revised Guidance on Site Assessment and Field Surveys for California Red-legged Frogs* (Guidance), issued by the U.S. Fish and Wildlife Service. Prior to collecting the data requested on this form, the biologist should be familiar with and understand the Guidance.

The "Site Assessments" section of the Guidance details the data needed to complete a site assessment. When submitting a complete site assessment to the Service (one that has been done following the Guidance), one data sheet should be included for each aquatic habitat identified. If multiple aquatic habitats are identified within the project site, then multiple data sheets should be completed. A narrative description of the aquatic, riparian, and upland habitats should be provided to characterize the breeding habitat within the project site and the breeding and dispersal habitat within 1.6 kilometers (1 mile) of the project site. In addition to completing this data sheet, field notes, photographs, and maps should be provided to the appropriate Fish and Wildlife Service Office, as requested in the "Site Assessments" section of the Guidance.

**Appendix D.**  
**California Red-legged Frog Habitat Site Assessment Data Sheet**

Site Assessment reviewed by \_\_\_\_\_  
(FWS Field Office) (date) (biologist)

Date of Site Assessment: \_\_\_\_\_  
(mm/dd/yyyy)

Site Assessment Biologists: \_\_\_\_\_  
(Last name) (first name) (Last name) (first name)  
\_\_\_\_\_  
(Last name) (first name) (Last name) (first name)

Site Location: \_\_\_\_\_  
(County, General location name, UTM Coordinates or Lat./Long. or T-R-S ).

**\*\*ATTACH A MAP** (include habitat types, important features, and species locations)\*\*

Proposed project name: \_\_\_\_\_  
Brief description of proposed action:

- 1) Is this site within the current or historic range of the CRF (circle one)? YES NO
- 2) Are there known records of CRF within 1.6 km (1 mi) of the site (circle one)? YES NO  
If yes, attach a list of all known CRF records with a map showing all locations.

**GENERAL AQUATIC HABITAT CHARACTERIZATION**

*(if multiple ponds or streams are within the proposed action area, fill out one data sheet for each)*

**POND:**

Size: \_\_\_\_\_ Maximum depth: \_\_\_\_\_

Vegetation: emergent, overhanging, dominant species: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Substrate: \_\_\_\_\_  
\_\_\_\_\_

**Perennial or Ephemeral** (*circle one*). If ephemeral, date it goes dry: \_\_\_\_\_

**Appendix D.**  
**California Red-legged Frog Habitat Site Assessment Data Sheet**

**STREAM:**

Bank full width: \_\_\_\_\_

Depth at bank full: \_\_\_\_\_

Stream gradient: \_\_\_\_\_

Are there pools (circle one)? YES NO

If yes,

Size of stream pools: \_\_\_\_\_

Maximum depth of stream pools: \_\_\_\_\_

Characterize non-pool habitat: run, riffle, glide, other: \_\_\_\_\_

\_\_\_\_\_

Vegetation: emergent, overhanging, dominant species: \_\_\_\_\_

\_\_\_\_\_

Substrate: \_\_\_\_\_

\_\_\_\_\_

Bank description: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

**Perennial or Ephemeral** (*circle one*). If ephemeral, date it goes dry: \_\_\_\_\_

Other aquatic habitat characteristics, species observations, drawings, or comments:

**Necessary Attachments:**

1. All field notes and other supporting documents
2. Site photographs
3. Maps with important habitat features and species location

## **Appendix E.**

### **California Red-legged Frog Survey Data Sheet**

This data sheet is to assist in the data collection during surveys for California red-legged frogs in areas with potential habitat. This data sheet is intended to assist in the preparation of a final report on the field surveys as detailed in the August 2005, *Revised Guidance on Site Assessment and Field Surveys for California Red-legged Frogs* (Guidance) issued by the U.S. Fish and Wildlife Service (Service). Before completing this data sheet, a site assessment should have been conducted using the Guidance and the Service should have been contacted to determine whether surveys are required. Prior to collecting the data requested on this form, the biologist should be familiar with and understand the Guidance. To avoid and minimize the potential of harassment to California red-legged frogs, all survey activities shall cease once an individual California red-legged frog has been identified in the survey area, unless prior approval has been received from the appropriate Service Fish and Wildlife Office. The Service shall be notified within three (3) working days by the surveyor once a California red-legged frog is detected, at which point the Service will provide further guidance. Surveys should take place in consecutive breeding/non-breeding seasons (*i.e.*, the entire survey period, including breeding and non-breeding surveys should not exceed 9 months). It is important that both the breeding and non-breeding survey be conducted during the time period specified in the Guidance. Site specific conditions may warrant modifications to the timing of survey periods, modifications must be made with the Service's approval. The survey consists of two (2) day and four (4) night surveys during the breeding season and one (1) day and one (1) night surveys during the non-breeding season.

All California red-legged frog life stages should be surveyed for. Surveyors may detect larvae but not be able to identify this life stage to species as handling any life stage of the California red-legged frog necessitates a valid 10(a)(1)(A) permit. If the larval life stage is the only life stage detected and the larvae are not identified to species, the surveyor must either return to the habitat to identify the frog in another life stage or have a valid 10(a)(1)(A) permit allowing the surveyor to handle California red-legged frogs and larvae. In order for the Service to consider a survey to be complete, all frogs encountered must be accurately identified.

**Appendix E.**  
**California Red-legged Frog Survey Data Sheet**

Survey results reviewed by _____ (FWS Field Office) (date) (biologist)
---

**Date of Survey:** \_\_\_\_\_  
(mm/dd/yyyy)

**Survey Biologist:** \_\_\_\_\_  
(Last name) (first name)

**Survey Biologist:** \_\_\_\_\_  
(Last name) (first name)

**Site Location:** \_\_\_\_\_  
(County, General location name, UTM Coordinates or Lat./Long. or T-R-S ).

**\*\*ATTACH A MAP** (include habitat types, important features, and species locations)\*\*

Proposed project name: \_\_\_\_\_

Brief description of proposed action:

<p><b>Type of Survey</b> (circle one): <b>DAY</b> <b>NIGHT</b></p> <p><b>Survey number</b> (circle one):      <b>1</b>    <b>2</b>    <b>3</b>    <b>4</b>    <b>5</b>    <b>6</b>    <b>7</b>    <b>8</b></p> <p><b>Begin Time:</b> _____</p> <p><b>Cloud cover:</b> _____</p> <p><b>Air Temperature:</b> _____</p> <p><b>Wind Speed:</b> _____</p> <p><b>Moon phase:</b> _____</p> <p><b>Description of weather conditions:</b> _____</p> <p>_____</p>	<p><b>BREEDING</b> <b>NON-BREEDING</b></p> <p><b>End Time:</b> _____</p> <p><b>Precipitation:</b> _____</p> <p><b>Water Temperature:</b> _____</p> <p><b>Visibility Conditions:</b> _____</p> <p><b>Humidity:</b> _____</p>
--	---

**Brand name and model of light used to conduct surveys:** \_\_\_\_\_

**Were binoculars used for the surveys** (circle one)?      **YES**    **NO**

**Brand, model, and power of binoculars:** \_\_\_\_\_

**Appendix E.**  
**California Red-legged Frog Survey Data Sheet**

**AMPHIBIAN OBSERVATIONS**

<b>Species</b>	<b># of indiv.</b>	<b>Observed (O) Heard (H)</b>	<b>Life Stages</b>	<b>Size Class</b>	<b>Certainty of Identification</b>

Describe potential threats to California red-legged frogs observed, including non-native and native predators such as fish, bullfrogs, and raccoons: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Other notes, observations, comments, *etc.*

**Necessary Attachments:**

4. All field notes and other supporting documents
5. Site photographs
6. Maps with important habitat features and species locations





LAW OFFICES  
**ATCHISON, BARISONE, CONDOTTI & KOVACEVICH**

A PROFESSIONAL CORPORATION

JOHN G. BARISONE  
ANTHONY P. CONDOTTI  
GEORGE J. KOVACEVICH  
BARBARA H. CHOI  
LAUREN C. VALK  
CASSIE BRONSON  
REED W. GALLOGLY

PO BOX 481  
SANTA CRUZ, CALIFORNIA 95061-0481  
WEBSITE: WWW.ABC-LAW.COM

TELEPHONE: (831) 423-8383  
FAX: (831) 576-2269  
EMAIL: ADMIN@ABC-LAW.COM

January 20, 2015

Stephanie Rexing, Coastal Planner  
California Coastal Commission  
North Central Coast District  
45 Fremont Street, Suite 2000  
San Francisco, CA 94105-2219

Re: Local Coastal Program Land Use Plan and Implementation Plan Amendment to Revise the City's Habitat Areas and Water Resources Overlay Map and Coastal Resource Areas Map to Reflect Areas in the City Found to Contain Sensitive Coastal Resources

Dear Ms. Rexing:

As you will note in the record, there is a comment letter submitted to the City Council by community-member James Benjamin claiming that the above-noted amendment does not meet the City's obligations under its settlement agreement with him (the impetus for this LCP amendment, see Exhibit A) and requests that the City revise the map amendment to make it consistent with the boundaries shown in the site map of CDP-01-096.

The City disagrees with Mr. Benjamin's interpretation of the settlement agreement and maintains that the map amendment approved by the City Council and submitted to you for certification is consistent with the Coastal Act, the City's LCP, and the settlement agreement.

In dispute is the boundary of the area referred to in the settlement agreement as the "Caltrans mitigation project site," which the City committed to designating as habitat supporting or containing rare, endangered, threatened, or unique species, and as wetland. Mr. Benjamin claims that this area must be designated consistently with the boundaries shown in the site map of CDP-01-096. The City disagrees.

The site map of CDP-01-096 shows a 9.8-acre property owned by the Evangelical Lutheran Church in America ("ELCA"). In 1995, the City had plans to purchase and develop that property into a public park, subject to ELCA's remediation of hazardous waste materials contained on the property resulting from the presence of a landfill on the western edge, along Pilarcitos Creek. At the same time, Caltrans was undergoing safety improvements to Highway 92 between Pilarcitos Creek and Highway 35. The EIR for these improvements called for habitat replacement for wetland and riparian impacts resulting from highway improvements. In the search for a viable mitigation site, the City suggested that Caltrans consider the landfill site along Pilarcitos Creek.

The City subsequently entered into a memorandum of understanding (“MOU”) with the San Mateo County Transportation Authority, ELCA, and Caltrans that called for implementation of a plan to remediate hazardous waste materials contained on the property. (See Exhibit B.) Caltrans’ involvement was limited to enhancing wetland areas on the property. The MOU states:

“As part of the CALTRANS’ Highway 92 Safety Improvement Project between Pilarcitos Creek and Highway 35 South CALTRANS is enhancing wetland areas on the property. CALTRANS will, after remediation of the Property and acquisition by HMB, undertake to restore the native riparian and wetland habitat where the Property abuts Pilarcitos Creek as more particularly described in Exhibit C hereto.”

(MOU, at p.1.) Exhibit C to the MOU describes the wetland enhancement as follows:

“The area proposed for biological mitigation is adjacent to Pilarcitos Creek and extends the width of the parcel. The total landfill area is estimated at 1 hectare (2.5 acre) with approximately 70 percent of the fill lying within the Church’s holdings. . . . The total mitigation area would be approximately 0.74 hectare (1.82 acres) that would include about 0.23 ha (0.56 acre) of wetland riparian, 0.44 ha (1.09 acres) riparian, and 0.07 ha (0.17 acres) of upland coastal scrub habitat restoration. Wetlands would be restored by increasing the area of the creek subject to periodic inundation (below the OHWM) and the planting of riparian vegetation.”

(MOU, Exhibit C, at pp. 2 and 4.) This description is consistent with the staff report for CDP-01-096. The staff report explains that only the 2.5 acre landfill area on the ELCA property would be remediated because that portion was funded by the San Mateo County Transportation Authority and the cleanup and vegetation replacement was included as a mitigation measure in the EIR for the Caltrans Highway 92 widening project. Thus, while the City may have had plans to remediate the full 9.8 acre church property, neither Exhibit C to the MOU nor the staff report for CDP-01-096 describe the Caltrans mitigation site as comprising the entire 9.8-acre church property.

Mr. Benjamin points to a past project description that states that the “total site, parcels 1 and 2 shall be cleared of all existing vegetation . . . .” and claims that this shows that the Caltrans mitigation project site was not limited to the area shown on the amendment map or the 2.5 acres former landfill. Mr. Benjamin fails to provide context for the quoted language. The language comes from a scope of work for the church’s remediation of the property. The introduction to that scope of work explains that it is “based upon the Caltrans draft scope of work dated November 1994.” Included in Exhibit B is the Caltrans draft scope of work dated November 1994, which states that Caltrans’ work was limited to “remediation of soil and debris material from a refuse area near Pilarcitos Creek . . . . [which] has become a proposed wetland mitigation site in response to the destruction of wetlands in the widening of State Route 92.”

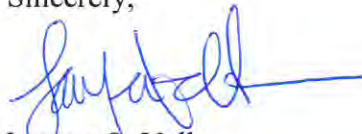


It also would not make sense to designate the entire 9.8-acre church property as habitat supporting or containing rare, endangered, threatened or unique species, or as wetlands. First, had the parties contemplated designating the entire 9.8-acre property as such, the settlement agreement would have included a description of the entire property, including location and parcel number, as it did for the Landstra Parcel. Second, as noted in the City's staff report, the settlement agreement states that the Caltrans mitigation project site was identified as habitat supporting or containing rare, endangered, threatened or unique species, and wetlands in the March and August 2005 studies by Essex Environmental, the March 2007 study by Rana Creek Habitat Restoration, the February 12, 2008 report from Nomad Ecology, and the October 2005 report by H.T. Harvey & Associates.

Of these reports/studies, the only one that references biological resources on the church property (outside of the Caltrans mitigation site) is the Nomad Report from February 2008, which looked at biological constraints for two staging areas for the Phase 3 El Granada Pipeline Replacement Project. (See Exhibit D.) One of the staging areas was located on the church property, at the northwest corner. The report concluded that the staging area did not provide suitable breeding, non-breeding aquatic, dispersal, and marginal upland habitat for the California red-legged frog. While it recognized that there was occupied suitable habitat within Pilarcitos Creek and its riparian corridor, and within the "Caltrans mitigation freshwater wetlands to the southwest," the staging area "due to its disturbed nature, existing dirt access roads, and substantial areas devoid of vegetation, did not provide suitable habitat for California red-legged frogs." The report concluded that the staging area was not suitable upland habitat for the San Francisco garter snake for the same reasons.

Thus, the Nomad Report confirms that the church property is not habitat supporting or containing rare, endangered, threatened or unique species. It also indicates that the parties referred to the church property as the "El Granada Pipeline staging area," separate and distinct from the Caltrans mitigation project site. This is consistent with references to the Caltrans mitigation project site in the other reports identified above, as noted in the City's staff report. In light of the foregoing, we are confident that the LCP amendment, as submitted to you for certification, is consistent with the Coastal Act, LCP and settlement agreement.

Sincerely,



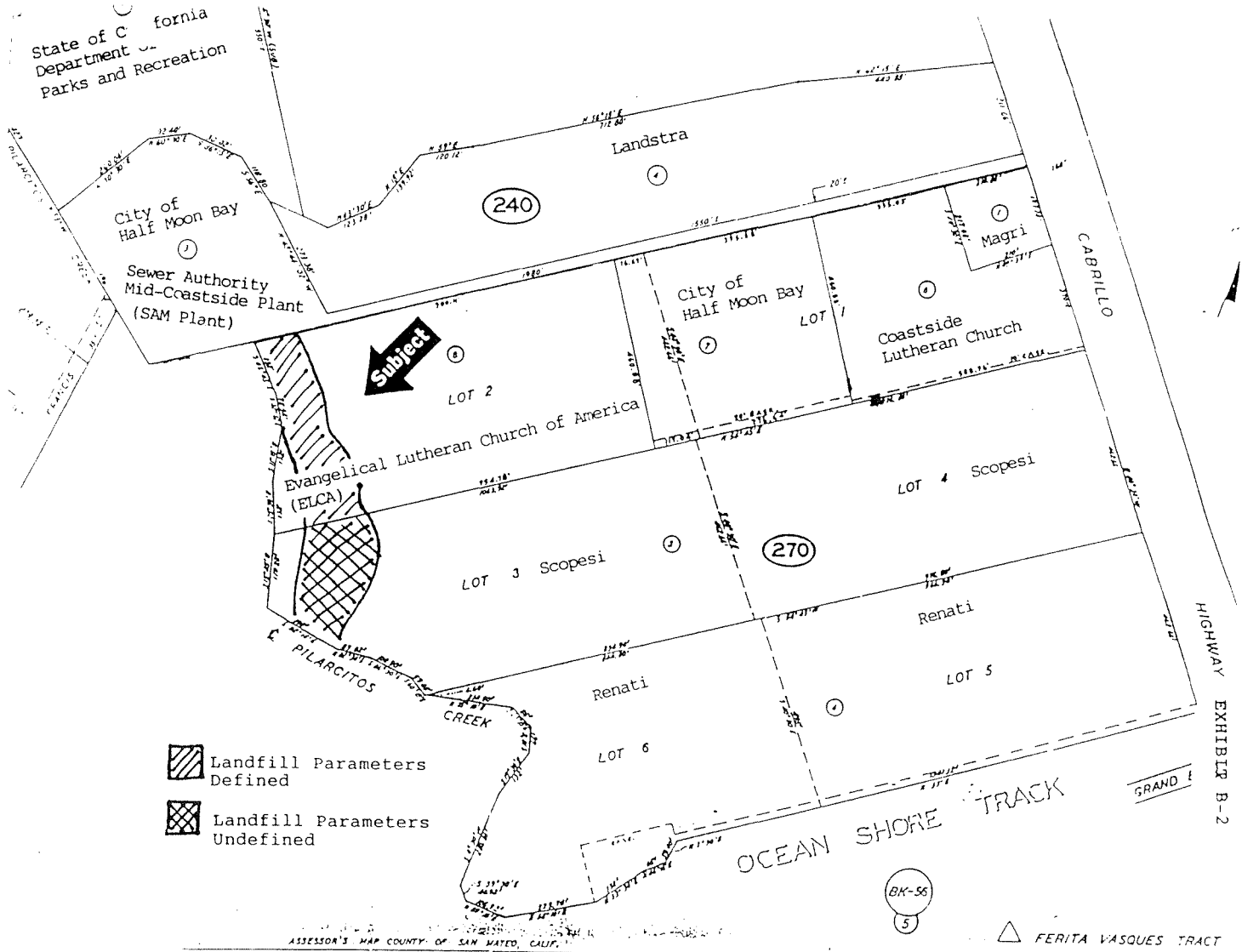
Lauren C. Valk  
Deputy City Attorney

LCV/ak

# City of Half Moon Bay

## Exhibit "A"

Vicinity Map  
CDP-01-96



Vicinity Map  
CDP-01-96

— Habitat as Designated by City

— Additional Habitat per USFWS

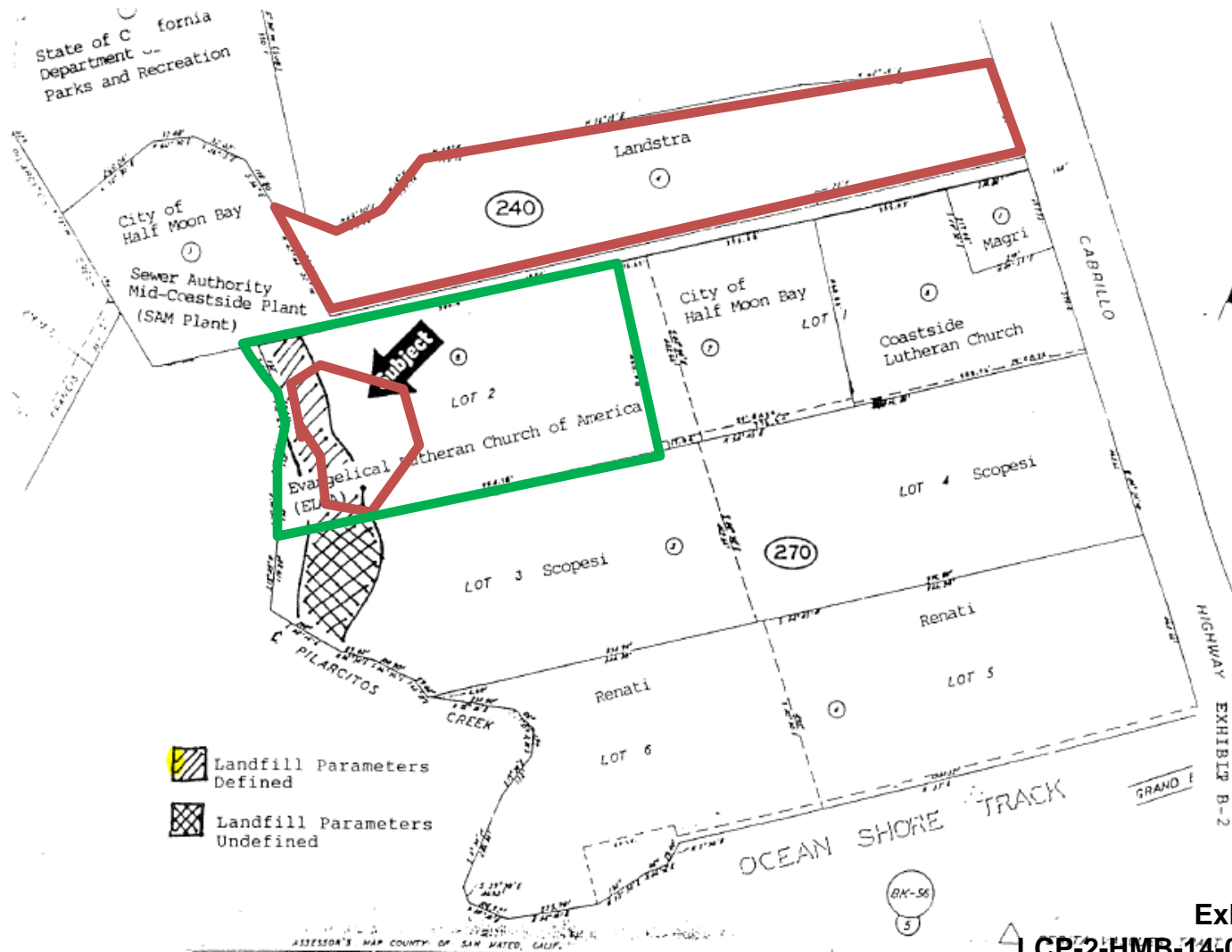


Exhibit 5

LCP-2-HMB-14-0612-1

Page 2 of 2



## United States Department of the Interior

**FISH AND WILDLIFE SERVICE**  
Sacramento Fish and Wildlife Office  
2800 Cottage Way, Room W-2605  
Sacramento, California 95825-1846

IN REPLY REFER TO  
1-1-01-TA-569

December 20, 2000

Mr. Michael Martin  
Associate Planner  
City of Half Moon Bay  
City Hall, 501 Main Street  
Half Moon Bay, California 94019

Subject: Half Moon Bay Public Works Department Maintenance Yard (PDP-74-99), Half Moon Bay, San Mateo County, California

Dear Mr. Martin:

The U.S. Fish and Wildlife Service (Service) received the May 4, 2000, Initial Study and Proposed Mitigated Negative Declaration (Initial Study) for the proposed Public Work Maintenance Yard, on December 8, 2000. We understand that you previously sent the document to our old offices on El Camino Avenue in Sacramento. The Service has reviewed the Initial Study and is concerned about the possible effects of the proposed project on the federally endangered San Francisco garter snakes (*Thamnophis sirtalis tetrataenia*) (garter snake) and the federally threatened California red-legged frog (*Rana aurora draytonii*) (red-legged frog).

Section 9 and the implementing regulations in section 4(d) of the Act prohibit the "take" of any federally listed endangered species by any person subject to the jurisdiction of the United States. As defined in the Act, take means "to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or attempt to engage in any such conduct." "Harm" has been further defined to include habitat destruction when it kills or injures a listed species by interfering with essential behavioral patterns such as breeding, foraging, or resting.

### PROJECT IMPACTS AND MITIGATION

Section 9 and the implementing regulations in section 4(d) of the Act prohibit the "take" of any federally listed endangered species by any person subject to the jurisdiction of the United States. As defined in the Act, take means "to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or attempt to engage in any such conduct." "Harm" has been further defined



Mr. Michael Martin

to include habitat destruction when it kills or injures a listed species by interfering with essential behavioral patterns such as breeding, foraging, or resting.

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 may affect a federally listed species. Such consultation would result in a biological opinion addressing 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 federally listed species may be taken as part of the project, then an incidental take permit pursuant to section 10(a) of the Act would need to be obtained. The Service may issue such a permit upon completion of a satisfactory conservation plan for the listed species that would be affected by the project.

## **PROJECT DESCRIPTION**

The proposed project includes the construction of a maintenance yard for the City of Half Moon Bay (City) Public Works Department. The project site is approximately 900 feet long and 460 feet deep. The project would include two metal building each of which is approximately 1,200 square feet and a garage/maintenance shop. It also includes a parking lot for 22 City cars and employee parks, a car wash area, and a landscaped berm along the northern boundary of the property.

The project proposes a 50-foot buffer from the riparian corridor and a 100-foot buffer from any wetland.

### California Red-legged Frog

As noted in the Initial Study, the proposed project is located west of Pilarcitos Creek and the Caltrans' wetland mitigation project. Red-legged frogs are known to occur and breed on the Caltrans' wetland mitigation site. We believe that the project site provides habitat for red-legged frogs. Red-legged frogs disperse over upland areas to reach other breeding sites or retreat to burrows found in upland sites when aquatic habitat dries to such an extent that it becomes temporarily unsuitable. Service staff viewed the project site on December 6, 2000, and observed suitable habitat features (*i.e.* rodent burrows) for red-legged frogs. The project site may also lie within the proposed critical habitat designation for red-legged frogs.

The project proponent proposes to maintain a 50-foot buffer from riparian habitat or sensitive species habitat and a 100-foot buffer from any wetland. As stated above, upland habitat provides important features for red-legged, therefore, the Service recommends a minimum 300-foot buffer from the edge of wetland habitat to provide retreat sites and dispersal capabilities. We believe that the proposed buffers are inadequate to meet the life history requirements of the red-legged frog and would result in adverse impacts to this habitat.

Mr. Michael Martin

3

San Francisco garter snake

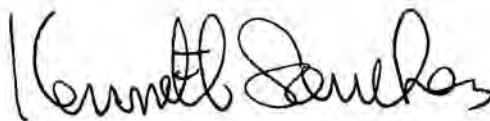
LSA Associates, Inc. (LSA), biological consultants for the project proponent, prepared a biological report for the proposed project. LSA states in their report that Caltrans' mitigation site provide habitat for the garter snake, but that the project site does not provide habitat for garter snakes. LSA appears to base that assumption, in part, on the fact that they did not observe garter snakes on the site during a March walk through survey. Garter snake surveys are generally conducted between the months of May and October. Although garter snakes may be occasionally above ground throughout the year in warmer inland climates, cool weather during the winter and early spring months would make it extremely unlikely that garter snakes would be observe above ground. Given that garter snakes are extremely rare, it is unlikely that a garter snake would be observed during one walk through survey. However, even if garter snakes were not found on the site at the time of the survey, the Service is extremely concerned about the continued loss of habitat for garter snakes, and, that if habitat loss continues without adequate compensation through habitat protection, the chances of recovering the garter snake becomes extremely unlikely.


Garter snakes, like red-legged frogs, typically spend a large portion of their life associated with wetlands and ponds. They are, however, also dependent on upland habitat during certain life stages. Garter snakes hibernate in burrows and other underground feature found in adjacent uplands during the winter, and use may use the same underground features during summer months while shedding their skins or during the last stages of pregnancy prior to giving live-birth.

Garter snakes feed almost exclusively on Pacific treefrogs and red-legged frogs. Therefore, the presence of Pacific tree frogs and red-legged frogs at the Caltrans' mitigation site, combined with the fact that a garter snake has been observed at the mouth of Pilarcitos Creek, makes it extremely likely that garter snakes utilize Pilarcitos Creek and the adjacent upland habitat.

Therefore, the Service believes the project site to constitute garter snake and red-legged frog habitat, and adverse impacts of such habitat requires the applicant to receive the appropriate authorization as described above. Please contact Sheila Larsen or Ken Sanchez at (916) 414-6625 to discuss the proposed project.

Sincerely,

  
for Karen J. Miller  
Chief, Endangered Species Division



cc: C. Wilcox, CDFG, Yountville, CA  
R. Vonarb, Caltrans, Oakland, CA  
S. Foreman, LSA, Pt. Richmond, CA

## Rexing, Stephanie@Coastal

---

**From:** Jimmy Benjamin <jimmyinhmb@gmail.com>  
**Sent:** Tuesday, February 03, 2015 1:24 PM  
**To:** Rexing, Stephanie@Coastal  
**Subject:** FW: CCWD pipeline project

Hi Stephanie,

Here is the note from Dan Cordova concerning the USFWS view that the CCWD staging area is occupied by CRLF.

- Jimmy

**From:** Cordova, Dan [[mailto:dan\\_cordova@fws.gov](mailto:dan_cordova@fws.gov)]  
**Sent:** Tuesday, April 15, 2014 12:12 PM  
**To:** Jimmy Benjamin  
**Cc:** Rexing, Stephanie@Coastal  
**Subject:** Re: CCWD pipeline project

Mr. Benjamin,

The Service does consider the area detailed in your email (and indicated on the GooleEarth link you provided) occupied by the CRLF and SFGS. Your email states there should be "several placemarkers" on the linked image. I can only see one when I open the link. Are there supposed to be more?

Sincerely,

Dan

Dan Cordova  
Fish and Wildlife Biologist  
U.S. Fish and Wildlife Service  
Coast Bay Forest Foothills Division  
Sacramento Fish and Wildlife Office  
2800 Cottage Way  
Sacramento, CA 95825  
916-414-6600

On Mon, Apr 14, 2014 at 4:29 PM, Jimmy Benjamin <[jimmyinhmb@gmail.com](mailto:jimmyinhmb@gmail.com)> wrote:

Dear Mr. Cordova:

Attached to this email please find a GoogleEarth link to an area within the City of Half Moon Bay containing several placemarkers. You are familiar with the Kehoe Watercourse, the Landstra parcel and the Caltrans mitigation wetlands which I understand that the Service considers occupied by the California red-legged frog and San Francisco garter snake.

The purpose of this email is to call attention to an area east of the Sewer Authority Mid-Coastside wastewater treatment plant and south of the road providing access to it. It is marked "Staging Area for CCWD pipeline project" on the linked map. This portion of a City-owned parcel was used in 2008 by the Coastside County Water District to hold equipment and material used in one of their larger projects within Half Moon Bay. At the moment, the area has ruderal vegetation and some agglomerate in which perhaps a dozen plants were placed and allowed to dessicate.

I have sought comments from Coastal Commission staff concerning the City of Half Moon revegetation project for this area, and have sent you a copy of my letter and referenced exhibits. Pursuant to that project, it would be helpful to know the Service considers the CCWD pipeline project area to be occupied by CRLF and SFGS.

Sincerely,

- James Benjamin

## Rexing, Stephanie@Coastal

---

**From:** Larsen, Sheila <sheila\_larsen@fws.gov>  
**Sent:** Wednesday, June 24, 2015 2:32 PM  
**To:** Rexing, Stephanie@Coastal  
**Subject:** Half Moon Bay Property LCP map

Stephanie,

This is to confirm that the Service stands by its determination made in a December 20, 2000 letter stating that the entire 9.8 (approximately) acre parcel west (aka "Landstra Parcel") of Highway 1 and adjacent to the Kehoe Watercourse constitutes habitat for the California red-legged frog (*Rana draytonii*) and San Francisco garter snake (*Thamnophis sirtalis tetrataeni*).

In addition, the entire parcel, APN 048-270-080, identified in the previous attachment as Lot 2 previously owned by Evangelical Lutheran Church of American is California red-legged frog and San Francisco garter snake habitat.



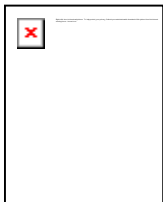
Thank you,  
Sheila Larsen  
Senior Staff Biologist  
U.S. Fish and Wildlife Service  
916.414.6685

Thanks,  
Sheila  
916.414.6685

No trees were killed in the sending of this message, but  
a large number of electrons were greatly inconvenienced.

The wind flew. God told to wind to condense itself and out of the flurry came the horse. But with the spark of spirit the horse flew by the wind itself.

- Marguerite Henry King of the Wind



RANA RESOURCES  
P.O. Box 2185  
Davis, CA 95617-2185

(530) 753-2727  
[RanaResources@aol.com](mailto:RanaResources@aol.com)

#17,388  
June 17, 2015

Stephanie R. Rexing  
California Coastal Commission  
45 Fremont Street, Suite 2000  
San Francisco, CA 94105

Subject: City of Half Moon Bay owned land south of the SAM Plant.

Dear Stephanie:

This letter is in regards to my California red-legged frog (*Rana draytonii*; CRLF) habitat assessment of the City of Half Moon Bay owned land south of the SAM Plant. According to the City, these 9.8 acres of land [=A.P.N. 048-270-080] are not habitat used by CRLF. Based on my familiarity with the adjacent Caltrans CRLF mitigation pond site, Kehoe Ditch, and Pilarcitos Creek, it is my professional opinion that these 9.8 acres are currently being used by juvenile and adult CRLF as foraging habitat, especially during rainfall periods and seasons when the area receives significant ground surface moisture from foggy weather. This is because the parcel in question is immediately adjacent to known occupied CRLF breeding, foraging, and rearing habitat, and there are no barriers to prevent CRLF from moving to and from this parcel. Based on a number well-documented records submitted to the California Natural Diversity Data Base, CRLF have been found foraging in the residential areas to the north of Kehoe Ditch. Since frogs have been found to move this far from Pilarcitos Creek and the adjacent Caltrans CRLF mitigation pond, then they can easily be considered to move a similar distance within the City's parcel to the south and east.

Besides the above, the lands on the parcel that are adjacent to Pilarcitos Creek should also be considered suitable hibernation habitat for San Francisco gartersnakes (*Thamnophis sirtalis tetrataenia*; SFGS). This species is known to inhabit Pilarcitos Creek and probably forages for CRLF in the Caltrans CRLF mitigation pond area. Since upland areas provide hibernation habitats safe from creek side flooding, there is a very high probability that SFGS are utilizing the parcel in question at least for part of the year..

In closing, I would like to point out that my opinions regarding CRLF and SFGS habitat on the parcel in question are nothing new. Other professional biologists have stated over the past 15 years that the parcel is CRLF and SFGS habitat (e.g., see Miller 2000; and H.T. Harvey and Associates 2005). My professional opinion is merely another confirmation in more recent years that previous CRLF and SFGS habitat assessments remain valid for the positive presence of these species.



Stephanie R. Rexing  
June 17, 2015  
Page 2.

Thank you allowing me to provide my comments. Please let me know if you have any questions on the above.

Sincerely,

A handwritten signature in blue ink that reads "Mark R. Jennings". The signature is fluid and cursive, with a long horizontal line extending from the end of the name.

Mark R. Jennings  
President and  
Herpetologist/Fisheries Biologist

#### Documents Cited

- Miller, K J. 2000. December 20, 2000 letter from Karen J. Miller (signed by Kenneth Sanchez) to Michael Martin, Associate Planner, City of Half Moon Bay, regarding Half Moon Bay Public Works Department Maintenance Yard (PDP-74-99). 4 p.
- H. T. Harvey and Associates. 2005. October 13, 2005 letter to John Foley, Sewer Authority Mid-Coastside, Half Moon Bay, from Max Busnardo, H. T. Harvey and Associates, San Jose, regarding the Sewer Authority Mid-Coastside Biotic Constraints Assessment for A.P.N. 048-240-040, J.P.N. 048-024-240-04. 15 p.

## **Rexing, Stephanie@Coastal**

---

**From:** Jimmy Benjamin <jimmyinhmb@gmail.com>  
**Sent:** Thursday, June 05, 2014 10:08 AM  
**To:** Rexing, Stephanie@Coastal; Dan\_Cordova@fws.gov; Deleon, Suzanne@Wildlife; Sheila Steen Larsen  
**Subject:** Another CRLF observation  
**Attachments:** Document.pdf

FYI, attached spring 2014 report of egg masses at Caltrans mitigation pond. I recently spoke with Richard, who mentioned that he saw another young CRLF there just the other day. Additional water from Kehoe Watercourse would certainly boost the biological productivity of this area.

- Jimmy

Mail to:  
California Natural Diversity Database  
California Dept. of Fish & Wildlife  
1807 13<sup>th</sup> Street, Suite 202  
Sacramento, CA 95811  
Fax: (916) 324-0475 email: CNDDDB@wildlife.ca.gov

For Office Use Only

Source Code \_\_\_\_\_ Quad Code \_\_\_\_\_  
Elm Code \_\_\_\_\_ Occ. No. \_\_\_\_\_  
EO Index No. \_\_\_\_\_ Map Index No. \_\_\_\_\_

Date of Field Work (mm/dd/yyyy): 03/15/2014

Reset

California Native Species Field Survey Form

Send Form

Scientific Name: *Rana draytonii*

Common Name: California Red-Legged Frog

Species Found? ☒ Yes ☐ No If not, why? \_\_\_\_\_  
Total No. Individuals 4 Subsequent Visit? ☒ yes ☐ no  
Is this an existing NDDDB occurrence? ☐ no ☐ unk.  
Yes, Occ. # \_\_\_\_\_  
Collection? If yes: \_\_\_\_\_  
Number \_\_\_\_\_ Museum / Herbarium \_\_\_\_\_

Reporter: Richard Vonarb  
Address: Caltrans, P.O. Box 23660, Oakland CA 94623  
E-mail Address: richard\_vonarb@dot.ca.gov  
Phone: (510) 286-6221

Plant Information

Phenology: \_\_\_\_\_% vegetative \_\_\_\_\_% flowering \_\_\_\_\_% fruiting

Animal Information

# adults # juveniles # larvae # egg masses # unknown  
☐ wintering ☐ breeding ☐ nesting ☐ rookery ☐ burrow site ☐ other

Location Description (please attach map AND/OR fill out your choice of coordinates, below)

County: San Mateo Landowner / Mgr.: City of HMB/Caltrans Mit Site For SM-92 Project  
Quad Name: Half Moon Bay Elevation: \_\_\_\_\_  
T<sub>SS</sub> R<sub>SW</sub> Sec \_\_\_\_\_ 1/4 of \_\_\_\_\_ 1/4, Meridian: ☐ H ☐ M ☐ S ☐ Source of Coordinates (GPS, topo. map & type): USGS Topo  
T<sub>SS</sub> R<sub>SW</sub> Sec \_\_\_\_\_ 1/4 of \_\_\_\_\_ 1/4, Meridian: ☐ H ☐ M ☐ S ☐ GPS Make & Model \_\_\_\_\_  
DATUM: NAD27 ☐ NAD83 ☐ WGS84 ☐ Horizontal Accuracy \_\_\_\_\_ meters/feet  
Coordinate System: UTM Zone 10 ☐ UTM Zone 11 ☐ OR Geographic (Latitude & Longitude) ☐  
Coordinates: \_\_\_\_\_

Habitat Description (plants & animals) plant communities, dominants, associates, substrates/soils, aspects/slope:

Animal Behavior (Describe observed behavior, such as territorially, foraging, singing, calling, copulating, perching, roosting, etc., especially for avifauna):

4 egg masses found in the pond area within the mitigation site

Please fill out separate form for other rare taxa seen at this site.

Site Information Overall site/occurrence quality/viability (site + population): ☐ Excellent ☒ Good ☐ Fair ☐ Poor

Immediate AND surrounding land use: Pilarcitos Creek (west), Wastewater Treatment Plant (north), Ag Row Crops (south)

Visible disturbances:

Threats:

Comments: This is an existing NDDDB occurrence. (for some reason the box above did not accept typing) I previously sent in a form dated February 11, 2000.

Determination: (check one or more, and fill in blanks)

- ☒ Keyed (cite reference): Amphibians & Reptiles Of California  
☐ Compared with specimen housed at: \_\_\_\_\_  
☒ Compared with photo / drawing in: Amphibians & Reptiles Of California  
☐ By another person (name): \_\_\_\_\_  
☒ Other: Also identified in subsequent visits by Dr. Samuel McCannis & Hillary Hedge

Photographs: (check one or more) Slide Print Digital  
Plant / animal ☐ ☐ ☐  
Habitat ☐ ☐ ☐  
Diagnostic feature ☐ ☐ ☐

May we obtain duplicates at our expense? yes ☐ no ☐

CDFWBDB1747 Rev. 4/20/13

## **Rexing, Stephanie@Coastal**

---

**From:** Jimmy Benjamin <jimmyinhmb@gmail.com>  
**Sent:** Wednesday, December 17, 2014 12:42 PM  
**To:** Rexing, Stephanie@Coastal  
**Subject:** Half Moon Bay CC adopts resolution amending LCP HAWRO and 18.38.020 sensitive coastal resource maps, and direct staff to xmit to CCC for certification  
**Attachments:** 2014 12 16 comment on staff report.pdf; 2014 12 16 staff report.pdf

Hi Stephanie,

Last night by City Council voted 3-2 to amend its maps to add the Kehoe watercourse and the Landstra parcel to the subject maps. However, only the westernmost part of the Caltrans Mitigation Project site was included in the amendment, notwithstanding the attached 3-page letter and attachments. There was no discussion about the request that public and inter-agency correspondence be included in the record to be transmitted to the Coastal Commission.

The agenda report, including the resolution adopted by the City Council, is also attached.

I ask that the attached and previously forwarded letters be part of the Commission record when the item is reviewed for certification, and would appreciate the chance to discuss at your convenience the process for considering certification of these map changes.

With thanks,

- Jimmy

James Benjamin  
400 Pilarcitos Avenue  
Half Moon Bay, CA 94019  
16 December 2014

The Honorable Mayor Marina Fraser and City Council  
City of Half Moon Bay  
501 Main Street  
Half Moon Bay, CA 94019

Dear Mayor Fraser and members of the City Council:

Council is reconsidering its previously approved LCP amendment resolution to implement this part of the settlement agreement. The revision before the Council tonight addresses most of the original amendment's problems, but I write in support of two previously requested changes to the reintroduced ordinance.

- (1) Please revise amendment Exhibits A-1 and B-1 to show the Caltrans mitigation project site as defined by Caltrans mitigation site project document entitled "Exhibit 'B', Site Map, CDP-01-96.

The amended maps (Council packet pp220, 222) still understate by several acres the size of the 1996 Caltrans mitigation project site, which is clearly identified in that project's documents. The report from City staff instead asserts the 1996 project site is defined by a 2005 study of the Kehoe Watercourse. Tonight's staff report omits and misstates my November 17 and 18, 2014 public comment as calling for only 2.5 ac that was once a refuse site, when in fact comments call for the entire Caltrans mitigation project site to be protected.

- (2) Please ensure the record of evidence that was considered includes the City's written correspondence to and from the public and regulatory agencies, and that this record is transmitted with the resolution requesting certification.

Omission of correspondence from the public record reduces public awareness and discourages public involvement, and weakens the Coastal Commission's record of local consideration used during certification review. The transmission of the record to the Commission should include all written public and agency correspondence with the City during all phases of local consideration:

Aug. 2013: City Council directs the planning commission to consider an amendment.  
Dec. 2013: Planning Commission recommends Council adopt staff's proposed amendment.  
Feb. 2014: City Council adopts  
Apr. 2014: City staff transmits amendment to CCC for certification  
May 2014: CCC staff raises concerns about amendment clarity  
Nov. 2014: City Council introduces revised amendment  
Dec. 2014: City Council considers approval and transmission of amendment to CCC

For the following reasons, I respectfully disagree with staff's abuse of the August 2005 Essex Environmental report to protect an area much smaller than the actual Caltrans mitigation project site:

Caltrans mitigation project site boundary asserted in agenda report and shown on maps is unsupported.

The August 2005 Essex map and text cited in tonight's agenda report imply only that ponds are *part* of the Caltrans mitigation project, not that they are the *entire* Caltrans mitigation project site. Essex did not study and made no claims as to the extent of the Caltrans mitigation project. As noted in tonight's agenda report, Essex "located" the ponds c. 0.5 mi south of the Kehoe drainage they were studying, but the wetlands are only 400-500 ft. from the watercourse. The Essex study is not a definitive map source.

Only the approved 1996 Caltrans mitigation project documents provide an authoritative site description.

Copies of the May 23, 1996 agenda report for the project, CDP-01-96 were obtained from both the City of Half Moon Bay and from the California Coastal Commission. The project was approved as presented by the Planning Commission. Other than changing the schedule for truck departures, the City Council upheld the Planning Commission's decision (i.e., denied an appeal) on July 16, 1996. All documents confirm the Caltrans mitigation project site was larger than the wetland or the remediated refuse area. Written testimony provided at the November 18, 2014 public hearing (and accompanying this letter) include a map (page 8) that clearly shows the Caltrans mitigation project site includes not only the remediated area, but also the location of the old corporation yard and areas further east up to and beyond the location of the CCWD's 2008 pipeline project staging area, and extends the full width of the site.

The mitigation project description states "The total site, parcels 1 and 2 shall be cleared of all existing vegetation and the surface grubbed of all remaining root systems and plant debris.... After clearing and grubbing, the upper 24 inches of topsoil in the non-refuse area will be stripped from the site and stockpiled on the inland adjoining parcel owned by the City of Half Moon Bay." [emph. added]

It is clear that the Caltrans mitigation project site is not limited to the area shown on the amendment map, or to the 2.5 acres former landfill; development occurred over full project area shown on the 1996 CDP site map.

The entire Caltrans mitigation project site of CDP-01-96 is habitat containing or supporting SFGS.

The settlement agreement sentence quoted in the agenda report referring to Essex also cites the Rana 2007 study [Ex. 4], which mentions the San Francisco garter snake observation near the mouth of Pilarcitos Creek within ¼ mi of the ditched portion of the Kehoe Watercourse. As can be seen on the attached map, any location on Pilarcitos Creek within ¼ mi of the ditched portion of the Kehoe Watercourse is even closer to the Caltrans mitigation project site's wetlands, which host a breeding colony of California red-legged frog (CRLF), essential prey for SFGS. Page 6 of the H.T. Harvey study (cited in the same agenda report sentence which invokes the Essex study) states that this presence of CRLF makes it likely that SFGS are present. These studies reinforce that upland parts of the Caltrans mitigation project site of CDP-01-96 contain or support SFGS directly through its use of upland areas for foraging, mating, thermoregulation, and its population of CRLF.

The entire Caltrans mitigation project site of CDP-01-06 is habitat containing or supporting CRLF.

Even after overestimating the distance from Caltrans wetland ponds to the Kehoe Watercourse, the Essex text highlighted excerpted the agenda report continues, "These ponds support a healthy breeding population of CRLF (McGinnis, 2005). Based on suitable habitat available along the ditch and near the project site, there is a high potential for CRLF to occur within the [Kehoe Watercourse] project area.

The H.T. Harvey & Associates report also states that CRLF regularly forages 300 feet from aquatic habitat, and can disperse through upland habitats of up to 1.25 miles or more between aquatic habitats.

The Essex and H.T. Harvey reports clearly show the foraging, aestivation and dispersal habitat value of the Caltrans mitigation project site mapped in CDP-01-96 documents.

A portion of the Caltrans mitigation project site is to be natively re-vegetated under the agreement.

The coastal development permit to be obtained by the City under of the settlement agreement includes the restoration of an eastern portion of the Caltrans mitigations project site used in 2008 as a staging area for a CCWD pipeline project. The project restoration is intended to better address the needs of the CRLF. This will further enhance habitat value of the Caltrans project, and is consistent with the settlement agreement's clear intention to protect the area.

After the November meeting at which this amendment was reintroduced, 1996 CDP documents, City Attorney Condotti said he could not see how the CCWD staging area could have been part of the 1996 project, because of the decomposed granite he sees there. Accompanying this letter please find pictures of the project site when it was scraped to construct the staging area. The pictures show some of the many aggregate materials that were graded onto the site prior to the use of heavy construction machinery. I am not aware of any other approved activities taking place on that site since the 1996 project.

### **Conclusion**

Although this amendment may be certified as proposed, it does not meet the City's obligations under settlement agreement paragraph D4. Prior to adoption and submittal to the Coastal Commission for certification, the maps should made consistent with the Caltrans mitigation project boundaries shown in the site map of CDP-01-96.

Following Council approval of the resolution, the request to the Coastal Commission for amendment certification should include the complete public record, including correspondence. This will clarify the concerns raised during local consideration, and incorporate into the public record all documents cited in that correspondence.

The City has already received the full benefits of the agreement settling our legal dispute, and I appreciate the City's accelerating effort to address the amendment section of the agreement. I hope that you will revise the Caltrans mitigation project sites shown in amendment exhibits A-1 and B-1 to match the Caltrans mitigation project site shown on the Caltrans mitigation project site map approved as part of CDP-01-96.

Respectfully,

James Benjamin



## City of Half Moon Bay

---

### STAFF REPORT

**HEARING DATE:** May 23, 1996  
**TO:** Planning Commission  
**FROM:** Amy French  
**SUBJECT:** Coastal Development Permit CDP-01-96

#### A. PROJECT DATA

1.	Owner/Agent:	Evangelical Lutheran Church of America
2.	Type of Request:	Coastal Development Permit CDP-01-96, to allow remediation of old landfill and restoration of riparian vegetation.
3.	Location:	North Half Moon Bay landfill site near Pilarcitos Creek
4.	Application Date:	May 3, 1996
5.	Existing Zoning:	(PS) Public Service
6.	Surrounding Zoning:	(UR) Urban Reserve (OSA) Open Space Active
7.	LUP Designation:	Public Facilities and Institutions
8.	C.E.Q.A. Status:	Categorically Exempt, Section 15304, land alterations

#### B. BACKGROUND

The City of Half Moon Bay has entered into an agreement with the Evangelical Lutheran Church of America to purchase 9.8 acres of land for park purposes subject to the clean-up of an old landfill which covers two and one-half acres of the site. The City currently leases a small portion of the site for the corporation yard. The private landfill, called the North Half Moon Bay Landfill, extends to Pilarcitos Creek and also south of the parcel, onto the Scopesi parcel. The landfill is comprised of domestic garbage with small amounts of contaminants that will require varying amounts of Class I, II, and III disposal.

At this time, only the 2.5 acre landfill area on the ELCA parcel will be remediated, because this remediation project has been funded by the San Mateo County Transportation Authority and the clean-up of this site and vegetation replacement is included as a mitigation measure in the EIR for the CalTrans Highway 92 widening project. The City anticipates receiving final approval of matching grant funding from the State Integrated Waste Management Board on May 23, 1996.

## City of Half Moon Bay

---

The Integrated Waste Management Board were approached by the Scopesi parcel representatives, who have protested the award of funding for the 2.5 acres because they were not included in the City's request for funding. The Scopesi parcel landfill remediation is not a part of this project because the property owners have yet not defined the parameters of the landfill on their property, which was a requirement for requesting such funding. At their meeting on May 10, the Integrated Waste Management Board Committee determined, after consideration was given to the Scopesi representative's letter of protest, that the funding should be awarded for the partial landfill clean-up and placed on the Consent Agenda for the Board's May 23rd meeting. Grant funding for the remediation of the Scopesi property may be made available in the future, and the City is still interested in assisting the Scope's in pursuing such funding.

At their meeting on May 7, 1996, the City Council awarded contract for the remediation project. No site-work can be performed until a Coastal Development Permit has been issued. The City of Half Moon Bay recently received Coastal Permitting authority, and this is the first such permit to be reviewed by the City.

The site was posted, notices were mailed to adjoining property owners, and a public notice was sent to the Half Moon Bay Review for publication on May 8, 1996. The State Department of Fish and Game, State Integrated Waste Management Board, Army Corps of Engineers and San Mateo County Environmental Health Division have provided concept approvals for the project.

### **C. SUBJECT PROPERTY/PROJECT DESCRIPTION**

The 9.8 acre parcel is bounded by Pilarcitos Creek to the west, the Scopesi property to the south, the City's five acre parcel to the east, and the access road to the Sewer Authority Mid-Coastside treatment plant to the north. The site is mainly agricultural land overgrown with brush, with a portion of the site used for the City corporation yard, and a portion adjacent to the creek which contains riparian vegetation. The creek is currently eroding the bank of the old dump site and exposing waste material.

A 1994 site investigation showed that the refuse consisted of scrap metal, motor oil containers, household garbage, 55-gallon drum lids, white goods, glass, plastics, concrete, and construction debris. The objective of the remediation is to remove an estimated 14,000 cubic yards of waste in the 2.5 acre and replace the excavated area with clean fill so that CalTrans can restore the riparian and wetland habitat along the creek, and the City can then develop the site as a City park.

The City has awarded contract to HSR, Inc. to perform the remediation work. Before cleanup begins, the contractor will prepare a final work plan. The site work includes brush removal along the bank of Pilarcitos Creek, the temporary removal and stockpiling of 13,000 cubic yards of topsoil, excavation testing, stockpiling, recycling and

## City of Half Moon Bay

---

disposal of 14,000 cubic yards of waste material; installation of a perimeter security fence; installation of a barrier wall or impermeable membrane along the two parcels; placement of rip-rap along the south end of the creek; replacement and compaction of clean fill. The contractor is currently preparing a health, safety and work plan for review and approval by the San Mateo County Environmental Health Division and by the Integrated Waste Management Board.

After the landfill remediation is completed, CalTrans will restore the site with 1.5 acres of wetlands and 1/5 acre of upland coastal scrub habitat. CalTrans is currently awaiting final approval of the EIR from the County Board of Supervisors, and expect to implement the project either this year prior to the winter rainy season (beginning October 15, 1996) or next summer. The City is currently working with CalTrans to ensure that the erosion control measures will be in place before the onset of the rainy season. The City will be expanding the contract with HSR to include these measures, in the event that CalTrans is unable to proceed this year.

CalTrans will be transporting approximately 30,000 cubic yards of clean fill to the 9.8 acre parcel in the summer of 1997. The parcel is very low and does not have good drainage, and the fill will help the City in raising the level of the parcel to allow for good drainage of ball fields and berming to screen parking areas, etc. The City will be working with CalTrans to coordinate the timing of trucks transporting this soil. Also, the Sewer Authority Mid-coastside has promised the City that approximately 10,000 cubic yards of clean fill from the treatment plant expansion project will be donated to the City and placed on the site. Grading permits will be processed for these related projects before they commence.

### D. PROJECT ANALYSIS

The project will result in the reduction of potential threat to surface waters, Pilarcitos Creek and the Pacific Ocean, from erosion of the old landfill into the creek. A notice of exemption was filed with San Mateo County recorder's office in March 1996 for this project, because CEQA determination was required as a part of the City's grant application for Waste Board funding. City Staff determined that the project was categorically exempt because it was an excavation with replacement with material compatible with natural features of the site and grading on land with a slope less than ten percent.

Nevertheless, conditions can be placed upon the project as a part of the issuance of a Coastal Development Permit, for the mitigation of any potential adverse impacts due to the proposed project. The scope of work attached to this report is referenced in the conditions of approval for the Coastal Development Permit. The scope of work includes mitigation measures requiring the contractor to provide a health, safety and work plan, which will require approval from the City, San Mateo County Environmental

## City of Half Moon Bay

---

Division, and the State Integrated Waste Management Board. This Work Plan will include all required environmental protection measures.

The key issues are (1) relocation of the City's corporation yard, (2) temporary removal of riparian vegetation, (3) circulation of debris and soil trucks on the access road from Highway One, (4) excavation and disposal of contaminated and hazardous materials, (5) safety of personnel and site security, (6) protection of the creek bank, (7) dust and potential odors which may be emitted during the landfill clean-up, and (8) noise from the project activities. The scope of work addresses these items and mitigation measures are included as conditions of the Coastal Development permit.

### 1. Relocation of the City's Corporation Yard

The Corporation Yard has been approved for relocation onto the City's five acre parcel just east of the 9.8 acre parcel. However, the project may proceed prior to the relocation of the yard. Staff is currently negotiating with an adjoining property owner for temporary relocation of the yard, so that the design of the five acre and 9.8 acre park sites can be finalized.

### 2. Removal of Riparian Vegetation

The vegetation removal will result in a temporary elimination of riparian habitat. CalTrans is working towards the replacement of that habitat before the onset of the rainy season this year. However, CalTrans' progress may be impeded by delays in CalTrans' and San Mateo County EIR permit processing, and it may be necessary for them to wait until 1997 to install the riparian vegetation.

### 3. Circulation of Soil and Debris Trucks

The transportation of 14,000 cubic yards of debris off the site and import of an equal amount of clean fill onto the site will require the movement of traffic to and from Highway One. This issue will be addressed in the Work Plan.

### 4. Contaminated and Hazardous Materials

All refuse material will be transported to a facility permitted to accept the materials, and the contractor will be responsible for profiling the materials and selecting the disposal facility. All precautions will be taken in the excavation and transport of hazardous materials to disposal sites, as required by the San Mateo County Environmental Division and State Integrated Waste Management Board. This issue will be addressed in the Work Plan.

## City of Half Moon Bay

---

### 5. Safety and Security

The contractor will employ personnel trained in hazardous materials excavation work. The excavation area will be an exclusion zone, and permanent fencing will be installed around the entire 9.8 acre parcel during excavation, monitoring and site rehabilitation. The San Mateo County Environmental Division standards for safety and security shall be adhered to. This issue will be addressed in the Work Plan.

### 6. Creek Bank Protection

The exposed slope will be stabilized, protected and sealed with a slurry wall, impene-trable membrane, compacted soil and rock rip-rap cover. The contractor has a regis-tered Civil Engineer on staff. These measures will be adequate until such time as CalTrans is able to install the replacement riparian vegetation.

### 7. Dust and Odor

The contractor is required to implement dust control activities and provide on-site en-vironmental monitoring personnel to monitor the air quality for the duration of the remediation project. The Work Plan will include specific mitigation measures for dust control and air quality monitoring.

### 8. Noise from Project Activities

The activities associated with this project will be required to adhere to the City's per-mitted hours of construction. The Work Plan will address this issue.

## E. **PLANNING COMMISSION DELIBERATIONS**

The Planning Commission has the authority to take one of three actions on the appli-cation:

- Order approval. If the application, as submitted, meets all State and City regu-lations the Planning Commission may approve it unconditionally.
- Order conditional approval. If the application can be reasonably amended to meet all State and City regulations the Planning Commission may approve it stipulating conditions of approval.
- Order denial. If the application fails to comply with any State or City regulation or fails to serve the public interest, the Planning Commission may deny ap-proval.

**F. FINDING OF FACT**

A Coastal Development Permit has been deemed an adjudicative act by the California Coastal Commission. A finding of fact is required before a decision can be made on the application.

**G. STAFF RECOMMENDATION**

Staff recommends that the Planning Commission approve this Coastal Development Permit.

**H. PLANNING COMMISSION ACTION**

If approval is warranted, the Planning Commission may move and second the resolution recommending approval, along with the attachments as presented by staff, or as modified during the course of the public hearing.

If denial is warranted, the Planning Commission may move and second a resolution recommending denial, along with a finding of fact supporting denial.

**I. ATTACHMENTS**

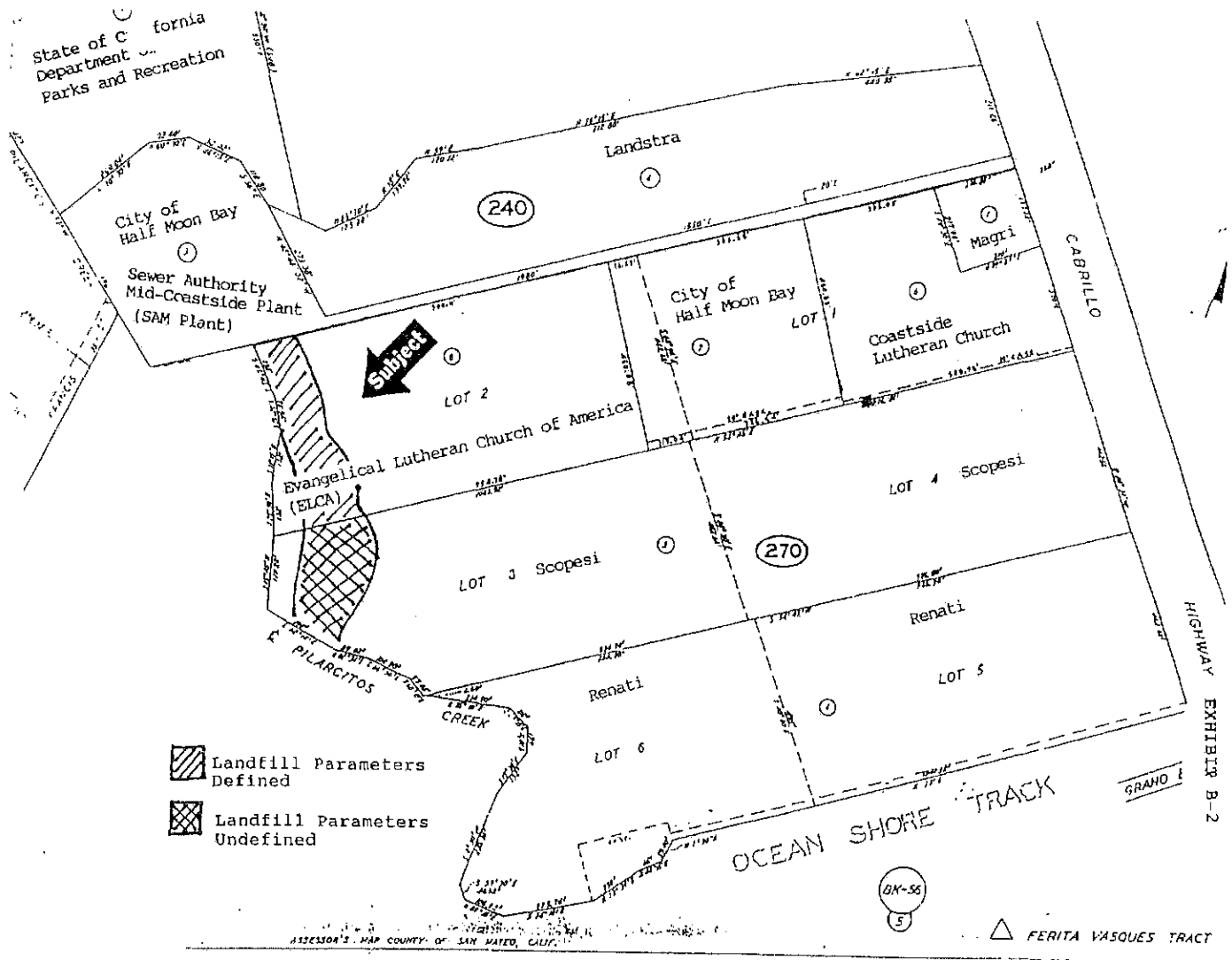
- Exhibit A Vicinity Map
- Exhibit B Site Map
- Exhibit C Draft Resolution, with Attachment 1 and Attachment 2
- Exhibit D Scope of Services and CalTrans Draft Conceptual Mitigation Report
- Exhibit E Notice of Exemption

FILE: disk cdp0196R

# City of Half Moon Bay

## Exhibit "A"

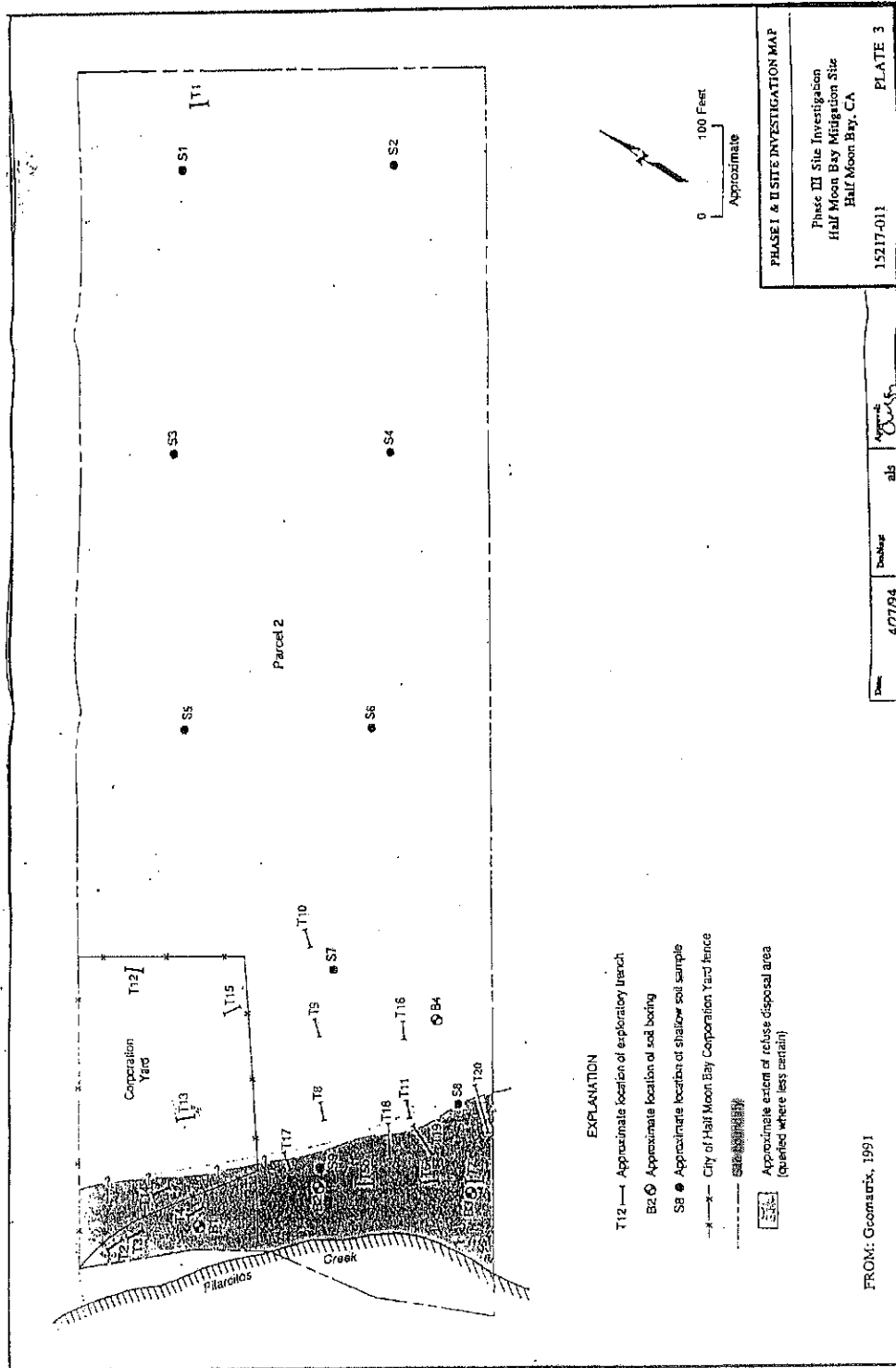
### Vicinity Map CDP-01-96



# City of Half Moon Bay

## Exhibit "B"

### Site Map CDP-01-96



CDP-01-96

Exhibit 7

LCP-2-HMB-14-0612-1 (Map Revisions)

Page 16 of 40



## INTRODUCTION

This scope of work for remediation of soil and debris from an old landfill and refuse area near Pilarcitos Creek in Half Moon Bay, California was prepared by a registered civil engineer and two hazardous waste remediation contractors and has been reviewed and approved by environmental counsel. The scope of work is based upon the CalTrans draft scope of work dated November 1994 attached as EXHIBIT A prepared by a registered civil engineer and an assistant civil engineer.

The refuse area is presently owned by the Mission Investment Fund of the Evangelical Lutheran Church in America (ELCA) of Chicago, Illinois. The refuse area has become a proposed wetlands mitigation site in response to the destruction of wetlands in the widening of State Route 92, and is subject to the Memorandum of Understanding (MOU) attached as EXHIBIT B among the San Mateo County Transportation Authority, the City of Half Moon Bay, the California Department of Transportation, and ELCA.

Attached as EXHIBIT C is the TRC Environmental Corporation May 3, 1994 report titled "Phase III Site Investigation, Remedial Action Options Report, Proposed Half Moon Bay Mitigation Site". The purpose of the report was to determine the vertical and lateral extent of refuse at the site and assess if hazardous or contaminated constituents are present in the soil or refuse material. The proposed method of remediation is excavation, transportation and disposal of all material within the fill area. Also included is the devegetation of the whole parcel and removal and stockpiling of topsoil to facilitate remediation of the refuse area and testing of the devegetated area, and the protection of the exposed slope resulting from the excavation at the south edge of the ELCA property. Soil samples will be taken after removal of the refuse and vegetation to confirm that the native soil remaining does not pose a threat human or ecological health and safety.

The scope of work will be incorporated into control plan sheets and specifications and will be performed in accordance with the attached Schedule of Work.

## SCOPE OF WORK

1. Health, Safety and Work Plan - the hazardous waste remediation contractor shall prepare a detailed health, safety and work plan for all site activities in accordance with the Department of Toxic Substances Control and Cal-OSHA regulations. The Health, Safety and Work Plan shall include the health and safety procedures which will be followed by all on site personnel, decontamination procedures for personnel and equipment, a complete description of all activities for the site remediation, an air monitoring plan. The Health, Safety and Work Plan will be submitted to the ELCA, the San Mateo County Environmental Health Division and Caltrans for review and approval. The Health, Safety and Work Plan shall be approved by the contractor's registered civil engineer, and by an industrial hygienist certified by the American Conference of Governmental Industrial Hygienists (ACGIH).

2. Safety - Prior to performing any work, all personnel shall complete a safety training program which meets 29 Code of Federal Regulations (CFR) Section 1910.120 and 8 CCR Section 5192 covering the potential hazards identified in the Phase III investigation. The excavation area is outlined in the site map (Plate 4) in the site investigation report. The excavation area shall become the exclusion zone. Areas adjacent to the exclusion zone will be available for decontamination. A suitable permanent fence is required around Parcels 1 and 2 to provide security during remediation and continuing monitoring and site rehabilitation.

3. Permits and Licenses - The contractor shall procure all permits and licenses, pay all charges and fees, and give all notices necessary and incident to the due and lawful prosecution of work, including registration for transporting vehicles carrying the contaminated material and the hazardous material. The contractor shall comply with the California Environmental Quality Act (CEQA) of 1970 (Chapter 1433, Stats. 1970), as amended by Chapter 1154 Stats. 1972, for all permits, licenses and authorizations from all agencies in connection with performing the work of the contract.

4. Contaminated and Hazardous Material Excavation - All refuse material located on the ELCA parcel, including contaminated and hazardous material, shall be transported to a disposal facility permitted to accept such material. Additional profiling of the refuse will be conducted to profile in detail the extent and types of refuse and to select the appropriate disposal sites. All refuse removed will be disposed of as Class I, Class II, or Class III. The selected bidder will be responsible for profiling and selecting the appropriate disposal facilities.

- Refuse containing contaminants that are considered to be a designated waste as defined by State of California regulations will most likely be disposed at a Class I disposal facility such as Kettelman Hills landfill owned by Chemical Waste Management. The TRC Phase III Site Investigation Report estimated 2500 cubic yards as Class I material.

- Refuse that is considered not contaminated or hazardous will most likely be disposed of at a Class III landfill such as Ox Mountain landfill in Half Moon Bay owned by Browning Ferris Industries (BFI). The TRC Phase III Site Investigation Report estimated 7130 cubic yards as Class III material.

- Refuse that is contaminated but not hazardous as defined by State of California regulations will most likely be disposed at a Class II facility such as Remco disposal facility in Richmond or Forward landfill in Stockton. The TRC Phase III Site Investigation Report estimated 4000 cubic yards as Class II material.

5. Refuse Excavation and Transportation - Refuse material may be separated into three separate stockpiles within the excavation area and the devegetation area after removal of the topsoil. This will allow for further characterization and profiling prior to transportation to a disposal facility. The contractor shall have a total of 15 working days to profile all stockpiles for disposal to a facility permitted to accept such material. It is anticipated that the refuse excavation, stockpiling and loading for disposal will be conducted with loaders and backhoes. The following safety precautions shall be adhered to:

- Dust Control Activities

- Air Monitoring - The air quality will be continuously monitored during excavation operations.

6. Decontamination Procedures -

- Personnel Decontamination - A personnel decontamination area will be constructed outside of the exclusion and devegetation zone. All personnel exiting the zones will be required to decontaminate any field equipment or personnel protective equipment.

- Vehicle/Equipment Decontamination - Decontamination of vehicles and excavation equipment will be performed during and at the completion of the soil excavation and loading activities.

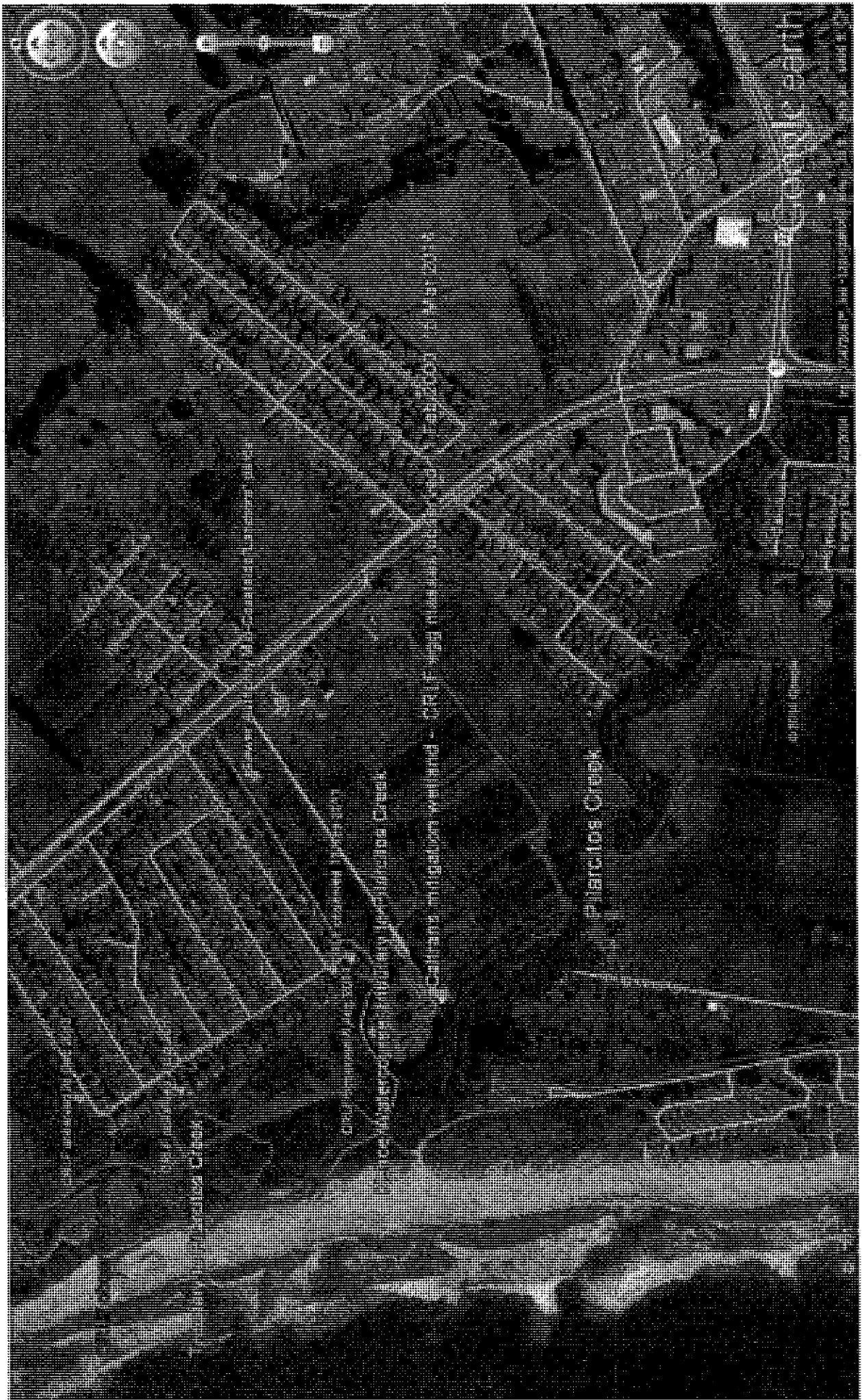
7. Sampling and Analysis - The refuse material to be excavated or located in a stockpile shall be tested for any additional acceptance requirements by the disposal facility. Sampling and analysis shall be performed using the sampling and analysis procedures required by the disposal facility. The laboratory shall be certified by the California Department of Health Services.

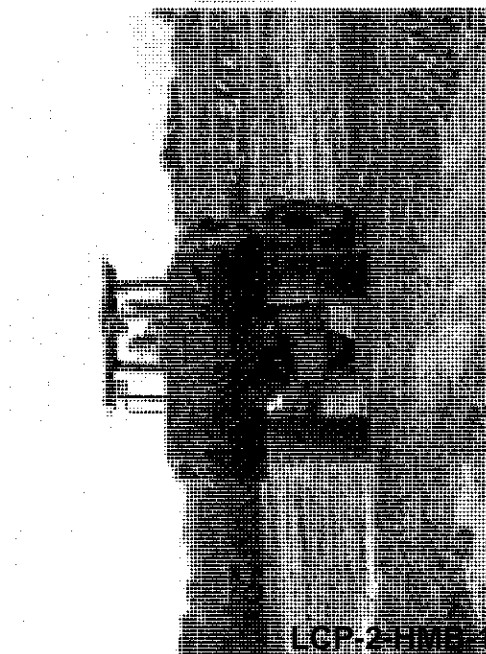
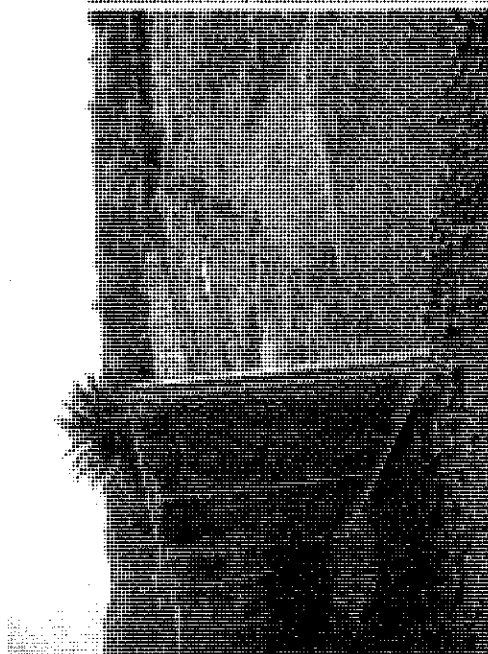
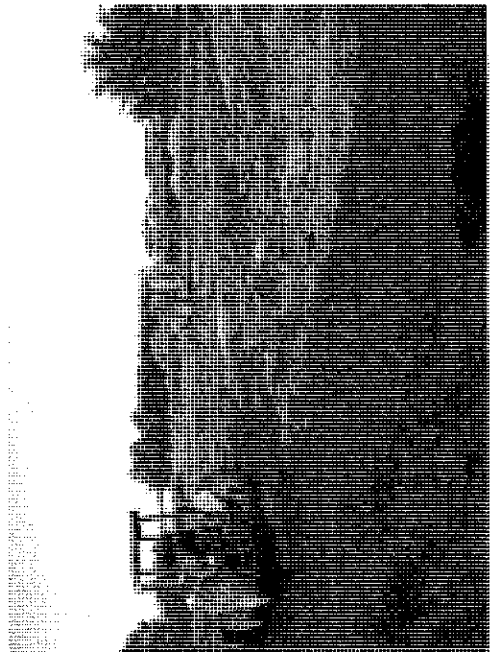
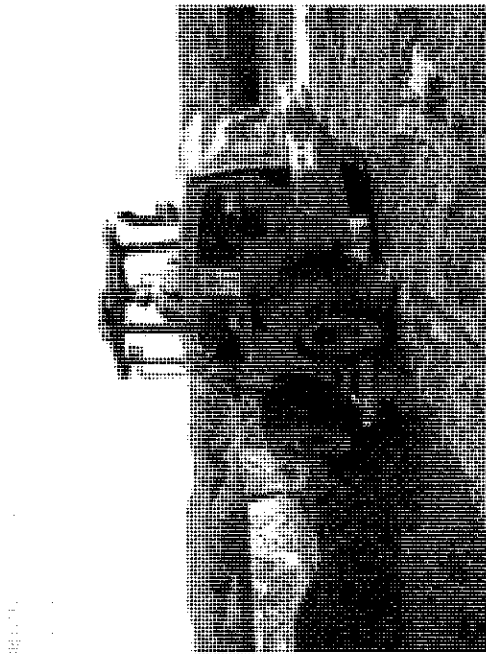
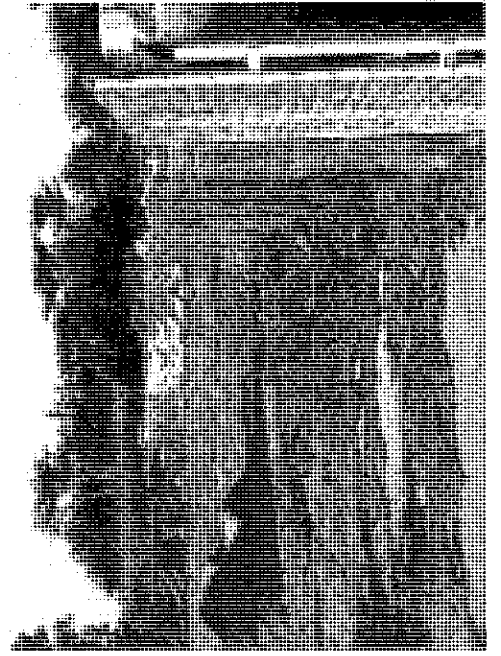
8. Confirmation Sampling - Confirmation samples shall be collected in the excavated areas. One confirmation sample shall be collected for every 1000 square feet of surface area. It is estimated that 50 confirmation samples will be collected. Samples shall be collected by hand-driving precleaned stainless steel or brass tubes into the selected sample locations. The tubes shall be labeled, sealed with plastic end caps and placed into an ice chest cooled to 4 degrees Celsius. All samples shall be transported and handled following proper chain-of-custody protocol. The samples collected for confirmation purposes shall be transported to a laboratory and analyzed using EPA methods 6010 for total metals and (418.1) for total recoverable petroleum hydrocarbons. Quality control/quality assurance (QA/QC) samples will be collected for every 10 samples obtained. The QA/QC samples shall consist of one blank sample and one split sample collected for every 10 samples.

55.20

9. Clearing and Grubbing - The total site, parcels 1 and 2 shall be cleared of all existing vegetation and the surface grubbed of all remaining root systems and plant debris. The material generated during clearing and grubbing may be disposed of at a Class III disposal site. After clearing and grubbing, the upper 4" layer of topsoil in the remaining area will be stripped from the site and stockpiled on the north adjacent parcel owned by the City of East Palo Alto. The removal of any material remaining in the excavation yard will be included under this item.

10. Slope Protection - Because the area of refuse is thought to continue to the south in an uphill direction, the slope created by the refuse removal on the ELCA site must be protected. The exposed slope which may contain refuse should be stabilized and protected by use of a slurry wall, an impermeable membrane cover, a blanket of impermeable soil placed over the membrane cover and compacted, and a suitable rock rip-rap cover. This measure must be carried out to seal the slope until the adjacent land is remediated.





## BUSINESS OF THE COUNCIL OF THE CITY OF HALF MOON BAY

### AGENDA REPORT

For meeting of: December 16, 2014

---

**TO:** Honorable Mayor and City Council

**VIA:** Magda Gonzalez, City Manager

**FROM:** Dante Hall, Community Development Director  
Bruce Ambo, Planning Manager  
Lauren Valk, Deputy City Attorney

**TITLE:** **RE-ADOPTION OF LOCAL COASTAL PROGRAM LAND USE PLAN AND IMPLEMENTATION PLAN AMENDMENT TO REVISE THE CITY'S HABITAT AREAS AND WATER RESOURCES OVERLAY MAP AND COASTAL RESOURCE AREAS MAP TO REFLECT AREAS IN THE CITY CONTAINING SENSITIVE COASTAL RESOURCES IN THE U-R, URBAN RESERVE, AND P-S, PUBLIC SERVICE, ZONING DISTRICTS**

---

#### RECOMMENDATION

Re-adopt an ordinance amending the City's Local Coastal Program (LCP) Land Use Plan and Implementation Plan by revising the Habitat Areas and Water Resources Overlay map and Coastal Resource Areas map to reflect areas in the City containing sensitive coastal resources in the U-R, Urban Reserve, and P-S, Public Service, zoning districts.

#### FISCAL IMPACT

The proposed ordinance will amend the City's LCP by revising the Habitat Areas and Water Resources Overlay Map and Coastal Resource Areas Map to reflect sensitive coastal resource areas within the City. The extent of that impact is undetermined at this time.

#### BACKGROUND:

On November 18, 2014, the City Council re-introduced Ordinance No. C-2014-01 amending the City's Local Coastal Program (LCP) Land Use Plan and Implementation Plan by Revising the Habitat Areas and Water Resources Overlay Map and Coastal Resource Areas Map to Reflect Areas in the City Containing Sensitive Coastal Resources in the U-R, Urban Reserve, and P-S, Public Service, zoning districts. The ordinance was re-introduced to address comments received from Coastal Commission staff after the ordinance was adopted by the City Council the first time.

Ordinance No. C-2014-01 is before the City Council tonight for final adoption.

At last month's meeting, the City Council received comments from community member James Benjamin explaining that staff had misidentified the "Caltrans Mitigation Project Site"—an area

required to be included on the amended maps pursuant to a settlement agreement between the City and Mr. Benjamin. He claims that the site is actually the entire 2.5 acre parcel adjacent to where the City has identified the Caltrans mitigation project site. Staff has confirmed that the amended maps accurately reflect the Caltrans mitigation project site defined in the settlement agreement. As Mr. Benjamin's comment letter points out, the settlement agreement defines the "Protected Area" as follows (emphasis added):

4. City acknowledges that the following areas have been identified as habitat supporting or containing rare, endangered, threatened or unique species in the March and August 2005 studies by Essex Environmental, the March 2007 study by Rana Creek habitat Restoration, the February 12, 2008 report from Nomad Ecology, and the October 2005 report by H.T. Harvey & Associates:
  - (a) The Kehoe Watercourse (also as a riparian area and corridor); and
  - (b) Caltrans mitigation project site (also as a wetland).

In addition, the City acknowledges that the following has been identified as likely habitat supporting or containing rare, endangered, threatened or unique species [in] the October 2005 report by H. T. Harvey & Associates:

- (c) the vacant Sewer Authority Mid-Coastside parcel located immediately south of the Kehoe watercourse (APN 048-240-040, commonly known as the "Landstra Parcel").

The City identified the Caltrans mitigation project site pursuant to Figure 1 in the August 2005 study by Essex Environmental, which shows the "CalTrans Mitigation Ponds" (see attached Figure 1), and page 13, which describes the area as follows:

Downstream of Highway 1, Kehoe Ditch has some meanders in the channel that provide slow backwater pools of suitable foraging depth along with emergent and streamside vegetation. A wetland mitigation area constructed for the California Department of Transportation is located approximately 0.5-mile south of the project area.

Being consistent with the description taken from the Essex studies, the proposed amendment to the Habitat Areas and Water Resources Overlay Map and Coastal Resource Areas Map complies with the terms of the settlement agreement.

Staff recommends that the City Council re-adopt the ordinance and direct staff to transmit the ordinance to the California Coastal Commission for certification as an amendment to the City's LCP Land Use Plan and Implementation Plan.



**ATTACHMENTS**

1. Ordinance No. C-2014-01 amending the City's Local Coastal Program (LCP) Land Use Plan and Implementation Plan by Revising the Habitat Areas and Water Resources Overlay Map and Coastal Resource Areas Map to Reflect Areas in the City Containing Sensitive Coastal Resources in the UR, Urban Reserve, and P-S, Public Service, zoning districts.
2. Figure 1: Kehoe Ditch Flood Control Project Vicinity Map (Essex Environmental, August 2005).

ORDINANCE NO. C-2014-\_\_\_\_\_

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF HALF MOON BAY AMENDING THE CITY'S LOCAL COASTAL PROGRAM LAND USE PLAN AND IMPLEMENTATION PLAN BY REVISING THE HABITAT AREAS AND WATER RESOURCES OVERLAY MAP AND COASTAL RESOURCE AREAS MAP TO REFLECT AREAS IN THE CITY FOUND CONTAINING SENSITIVE COASTAL RESOURCES IN THE U-R, URBAN RESERVE AND P-S, PUBLIC SERVICE, ZONING DISTRICTS**

**WHEREAS**, the City of Half Moon Bay is committed to the maximum public participation and involvement in matters pertaining to the General Plan and its Elements, the Local Coastal Program, and the Zoning Code; and

**WHEREAS**, the Planning Commission, as the Advisory Board to the City Council, conducted a duly noticed public hearing on December 10, 2013 where all those in attendance desiring to be heard were given an opportunity to speak on this application; and

**WHEREAS**, following the close of the public hearing, the Planning Commission voted unanimously to recommend that the City Council amend the Local Coastal Program's Land Use Plan and Implementation Plan to revise the Habitat Areas and Water Resources Overlay map and Coastal Resource Areas map to reflect areas in the City found likely to contain sensitive coastal resources; and

**WHEREAS**, the City Council conducted a duly noticed public hearing to re-introduce an ordinance to amend the LCP Land Use Plan and Implementation Plan on November 18, 2014, at which time all those desiring to be heard on the matter were given an opportunity to be heard; and

**WHEREAS**, the City Council considered all written and oral testimony presented for consideration; and

**WHEREAS**, section 15265 of the CEQA Guidelines provides that responsibility for environmental review of Local Coastal Programs lies with the California Coastal Commission;

**NOW, THEREFORE**, the City Council does ordain as follows:

**Section 1.**     **Amendment of Local Coastal Program Land Use Plan.** The Habitat Areas and Water Resources Overlay map of the Half Moon Bay Local Coastal Program Land Use Plan is hereby amended as shown in the attached Exhibit A.

**Section 2.**     **Amendment of Local Coastal Program Implementation Plan.** The Coastal Resource Areas Map of section 18.38.020 of the Half Moon Bay Municipal Code is hereby amended as described in the attached Exhibit B.

**Section 3.**     **Submission to California Coastal Commission for Certification.** The City Clerk is hereby directed to transmit a copy of this ordinance to the California Coastal Commission for certification. The City Council of the City of Half Moon Bay hereby certifies that the Local Coastal program, as amended, is intended to be carried out in a manner fully in conformity with the California Coastal Act.

**Section 4. Effective Date.** This ordinance amending the LCP shall take effect immediately upon its certification by the California Coastal Commission or upon the concurrence of the Commission with a determination by the Executive Director that the ordinance adopted by the City is legally adequate.

\*\*\*\*\*

**INTRODUCED** the 18<sup>th</sup> day of November, 2014

**ADOPTED** the 16<sup>th</sup> day of December 2014, by the following votes:

AYES: \_\_\_\_\_  
NOES: \_\_\_\_\_  
ABSENT: \_\_\_\_\_  
ABSTAIN: \_\_\_\_\_

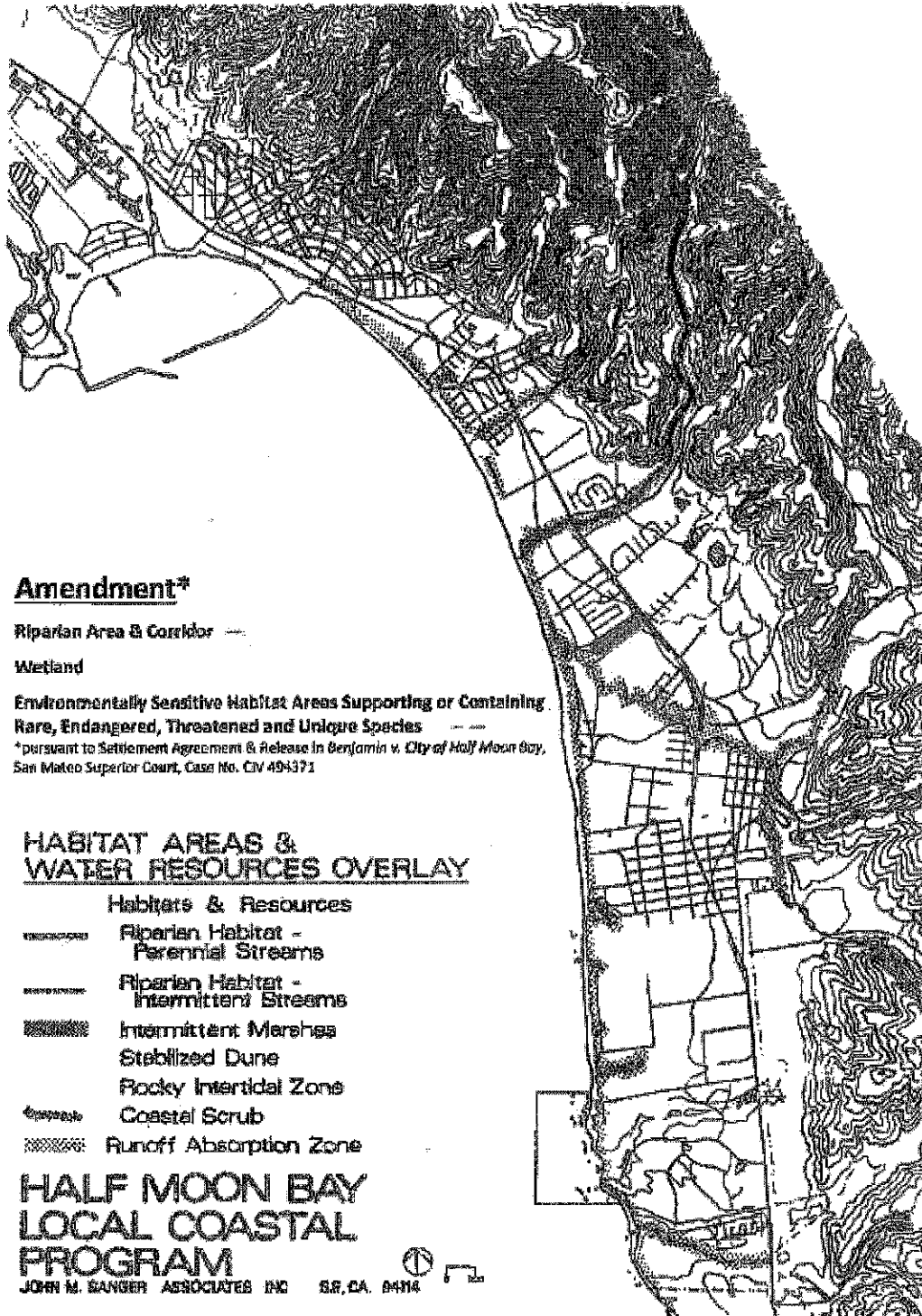
ATTEST:

APPROVED:

\_\_\_\_\_  
Siobhan Smith, City Clerk

\_\_\_\_\_  
John Muller, Mayor

EXHIBIT A



215

123

**EXHIBIT A-1**

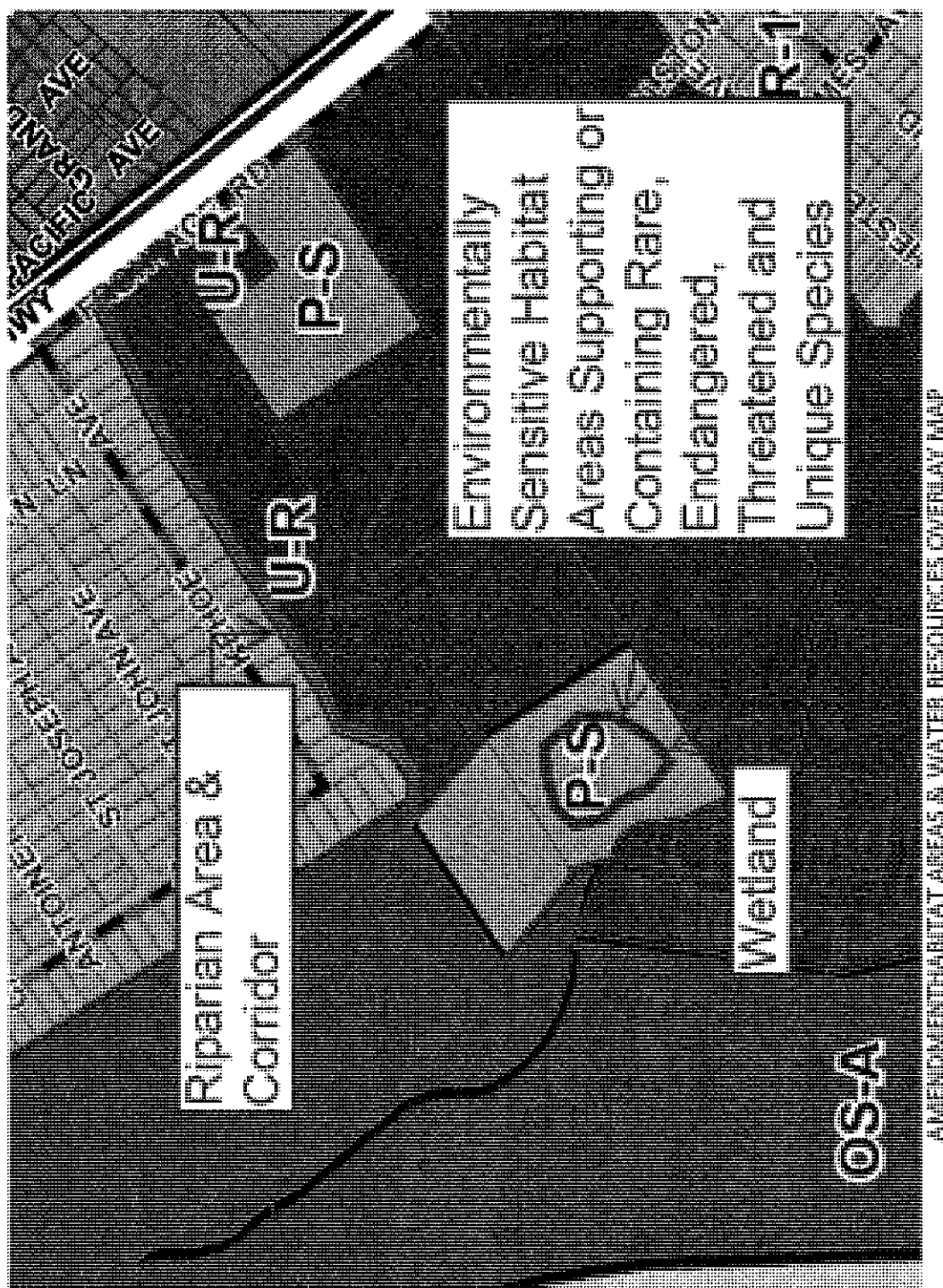
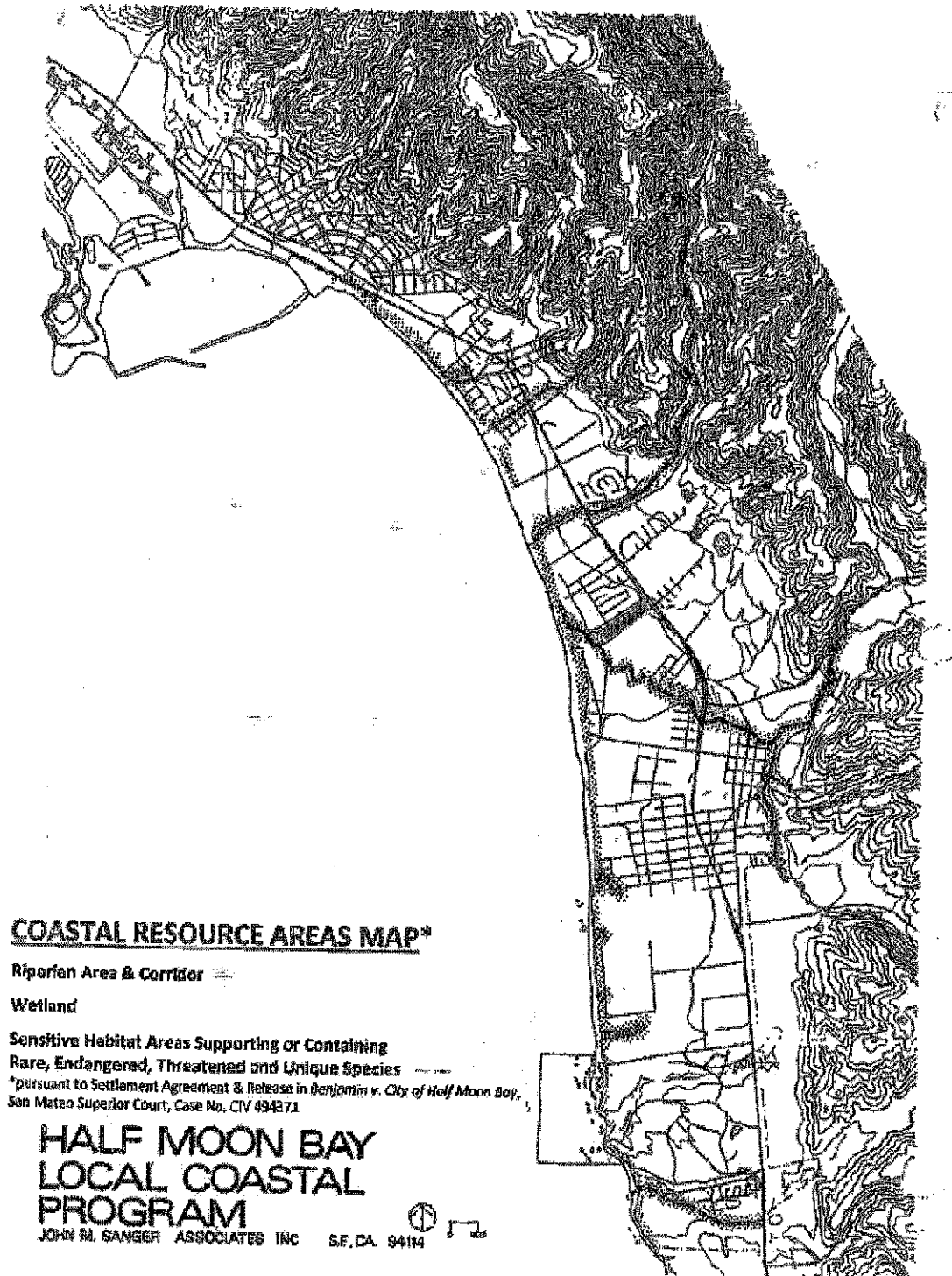
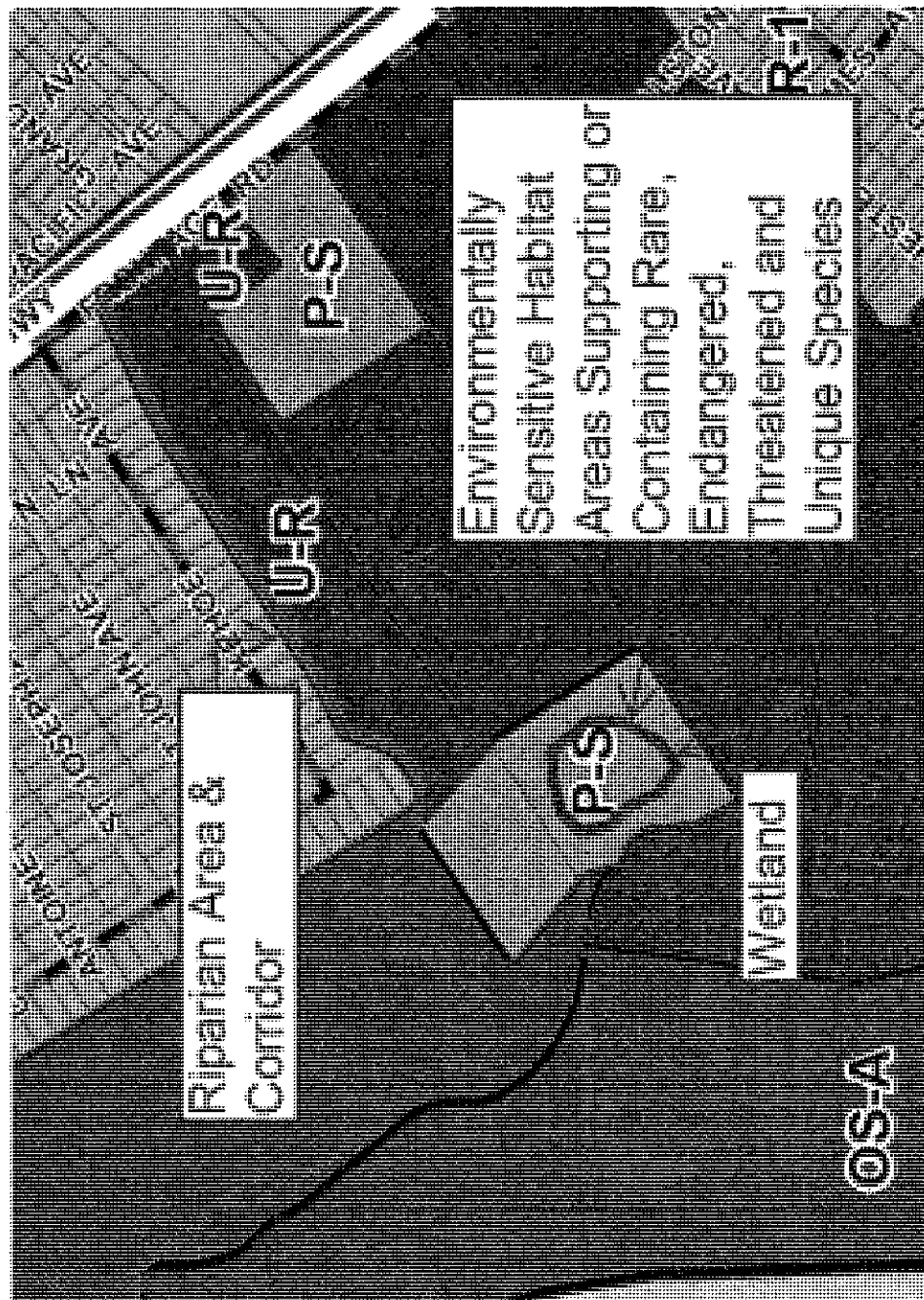


EXHIBIT B



**EXHIBIT B-1**  
AMENDMENT  
 COASTAL RESOURCES AREAS MAP









# Habitat Assessment

Species	Listing Status	Habitat Association	Potential in Project Area
Sharp-shinned hawk ( <i>Accipiter striatus</i> )	CSC	Inhabits and nests in trees in mixed woodlands.	Has potential to occur and nest in trees near the project area. A regularly occurring species in winter. The CNDDB search listed no occurrences within 5 miles of the project area. Breeding documented just north of Half Moon Bay in 1993.
Cooper's hawk ( <i>Accipiter cooperii</i> )	CSC	Nests mainly in deciduous riparian forests; forages in open woodlands.	Has potential to occur in trees near the project area. Unlikely to nest near the project area due to the lack of riparian forest. Regularly occurring species in Half Moon Bay in the winter. The CNDDB search listed no occurrences within 5 miles of the project area.
Northern harrier ( <i>Circus cyaneus</i> )	CSC	Nests on the ground and shrubs in ungrazed grassland, savanna, wet meadow, and marsh areas with good foraging.	Has potential to occur and nest in grasslands south of Kehoe Ditch. The CNDDB search listed no occurrences within 5 miles of the project area.
Short-eared owl ( <i>Asto flammeus</i> )	CSC	Inhabits brush and trees associated with marshland. Nests on the ground in prairie, meadow, savanna, and marsh areas.	Has potential to occur but is unlikely to nest near the project area due to the lack of marshland habitat. The CNDDB search listed no occurrences within 5 miles of the project area.

Source: CNDDB, 2005

## U.S. FISH AND WILDLIFE SERVICE

FT Federally listed, threatened  
FE Federally listed, endangered  
CH Critical habitat

## CALIFORNIA DEPARTMENT OF FISH AND GAME

SE State listed, endangered  
CSC California species of special concern  
CFP California fully protected

## California Red-legged Frog

The California red-legged frog (CRLF) is a federally threatened species and a California species of special concern. The project area is within the San Mateo-Northern Santa Cruz critical habitat unit for this species. The CNDDB documents several occurrences of CRLF within 2 miles of the project area. This frog prefers dense, shrubby, or emergent riparian vegetation that grows near deep, still, or slow-moving water. However, they may also be found in ephemeral creeks, drainages, culverts, and ponds without riparian vegetation. Existing animal burrows, rocks, and organic and industrial debris may be used as retreat sites. During the dry season, frogs may disperse up- and downstream of creeks and drainages and, during the wet season they may randomly disperse overland to get to new breeding sites. Downstream of Highway 1, Kehoe Ditch has some meadows in the channel that provide slow backwater pools of suitable foraging depth along with emergent and streamside vegetation. A wetland mitigation area constructed for the California Department of Transportation is located approximately 0.5 mile south of the

August 2005  
12

Kehoe Ditch Flood Control Project  
Habitat Assessment

project area. These ponds support a healthy breeding population of CRLF (McGinnis, 2005). Based on the suitable habitat available along the ditch and near the project site, there is a high potential for CRLF to occur within the project area.

### San Francisco Garter Snake

The San Francisco garter snake (*Thamnophis sirtalis tetrataenia*) is a federally and state endangered species. The project area is within the historical range of the snake and the CNDDDB documents two occurrences of San Francisco garter snake within 3 miles of the project area. Ideal habitat for this species is ponds with densely vegetated edge and near an open hillside where the snake can feed on frogs and retreat into existing rodent burrows. The dense vegetation in and around the project site and the year round flow within the ditch may provide suitable habitat for this snake. The snake feeds exclusively on Pacific tree frogs (*Hyla regilla*) and the CRLF. The ditch provides suitable habitat for tree frogs, which may also breed in the ditch. In 1988, the U.S. Fish and Wildlife Service (USFWS) directed Dr. Samuel M. McGinnis to conduct a three-month trapping protocol survey for the San Francisco garter snake along the upper bank at the mouth of Pilarcitos Creek. During this time period, two San Francisco garter snakes were trapped and released. Due to known occurrences within a 2000-foot-radius of the project site and documentation of movement in excess of 2000 feet of this species (McGinnis, 2005), presence of the San Francisco garter snake should be assumed.

### Central California Coast Steelhead

The Central California Coast steelhead (*Oncorhynchus mykiss*) is a federally threatened and California species of special concern. The project area is within the San Mateo hydrologic unit of proposed critical habitat for this species. This fish requires cool, deep pools for holding through the summer prior to spawning in the winter. It is generally found in shallow areas, with cobble or boulder bottoms at the tails of pools. Kehoe Ditch provides marginal habitat for steelhead in that it provides year-round flow and is a tributary of Pilarcitos Creek, which terminates into the Pacific Ocean, thus providing the opportunity for steelhead migration. However, due to the low quality of steelhead habitat found within the ditch and the lack of known historical occurrences in Kehoe Ditch and Pilarcitos Creek, it is unlikely that steelhead will occur in the project area.

### Saltmarsh Common Yellowthroat

The saltmarsh common yellowthroat (*Geothlypis trichas sinusa*) is a federal species of concern and California species of special concern. The CNDDDB documents one occurrence of saltmarsh common yellowthroat within 1 mile of the project site (CNDDDB, 2005). This songbird requires thick, continuous cover down to water surface for foraging; tall grasses, tule patches, and willows for nesting. Potential nesting habitat for the yellowthroat is available in the dense willows along Kehoe Ditch.

### Yellow Warbler

The yellow warbler (*Dendroica petechia*) is a California species of special concern. A summer resident in the north and winter migrant to the south, its habitat includes riparian deciduous woodlands and montane shrubs in open conifer forests. Elevation ranges include coastal and

## **Rexing, Stephanie@Coastal**

---

**From:** Jimmy Benjamin <jamben@pacbell.net>  
**Sent:** Tuesday, April 28, 2015 2:18 PM  
**To:** Rexing, Stephanie@Coastal  
**Subject:** FW: 4/15/2015 correspondence re PDP-73-13  
**Attachments:** CCC Response Letter 5 on PDP-073-13 SAM ESHA Parcel LCP Map Amendment.pdf;  
2008-02-29 Nomad Ecology addl condition.pdf

Hi Stephanie,

I just this morning received a copy of the City's letter of April 15, 2015 concerning the Caltrans project area in the LCP map update. In addition to ignoring the City's commitment at the time of the Caltrans mitigation project to restore the upper area after it was scrapped and grubbed, the City's attempt to use the 2008 Nomad Ecology evaluation shades ignores the Feb 29, 2008 supplementary comments by Nomad Ecology calling for revegetation of the staging area east of the wetlands. The initial analysis by Nomad did not take into consideration the Kehoe Watercourse. Under the mistaken assumption that northward dispersal would need to reach Frenchmans Creek, the biologist reasoned that the upland parts of the city-owned parcel that was used as a staging area had no dispersal habitat value. After considering the presence of the Kehoe Watercourse, the biologist called for revegetation to improve habitat quality on the staging area site – effectively acknowledging its habitat value.

This area was also the subject of testimony during the 2009 trial because of the nexus to the Kehoe Watercourse. I would be glad to provide details.

- Jimmy Benjamin

---

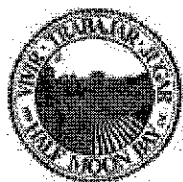
**From:** Bruce Ambo [<mailto:BAambo@hmbcity.com>]  
**Sent:** Tuesday, April 28, 2015 8:26 AM  
**To:** Jimmy Benjamin  
**Cc:** Dante Hall; Tony Condotti; Lauren Valk; Siobhan Smith  
**Subject:** RE: 4/15/2015 correspondence re PDP-73-13

Hi Jimmy,

Here is a copy of the response letter.

Thanks - Bruce

**Bruce Ambo, AICP**  
Planning Manager  
Phone: 650-726-8251  
Email: [BAambo@hmbcity.com](mailto:BAambo@hmbcity.com)



City of Half Moon Bay  
501 Main Street

Half Moon Bay, CA 94019  
[www.hmbcity.com](http://www.hmbcity.com)

---

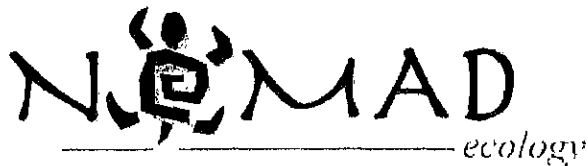
**From:** Jimmy Benjamin [<mailto:jamben@pacbell.net>]  
**Sent:** Monday, April 27, 2015 7:06 PM  
**To:** Bruce Ambo  
**Cc:** Dante Hall  
**Subject:** 4/15/2015 correspondence re PDP-73-13

Hi Bruce,

In the Project Tracking and Status Report, I see that the City sent the CCC a response dated April 15, 2015 to address staff concerns about PDP-73-13, the City-initiated LCP ESHA map amendment. Could you please email me an electronic copy of this response, including any attachments?

Thank you,

- Jimmy Benjamin



February 29, 2008

Steve Flint  
City of Half Moon Bay  
510 Main Street  
Half Moon Bay, CA 94019

Re: Comment Letter Received from James Benjamin, 400 Pilarcitos Avenue, Half Moon Bay, CA 94019-1475 dated February 25, 2008.

Dear Steve:

The purpose of this letter is to address comments and questions posed by James Benjamin, resident at 400 Pilarcitos Avenue, Half Moon Bay, CA 94019-1475, in a letter dated February 25 2008 sent directly to our firm. A copy of the letter is attached.

**Comment 1.**

"First, did your survey of adjacent habitat included the unnamed stream north of the project (on the north side of Bev Cunha Country Road) that has been identified in recent surveys as potential habitat for the California red-legged frog (CRLF) and the San Francisco garter snake (SFGS)? Since this stream is easily within the dispersal range of the CRLF subpopulation south of the SAM plant, but is on the other side of Staging Area 1, I was unclear why the dispersal corridor value of this site was dismissed. As you know, the Draft Recovery Plan for the California Red-Legged Frog cites habitat fragmentation as one of the reasons for decline and threats to survival of the CRLF. As recently as yesterday we have received substantial rains have that could facilitate migration to this stream. Unfortunately, Staging Area 1 has just been constructed and appears to be fragmenting the CRLF habitat. Does your list of recommended [impact] avoidance and minimization efforts include post-project restoration of this area to a more suitable migratory corridor?"

**Response 1.**

We did consider the effects of adjacent aquatic habitats including Frenchmans Creek to the north (0.7-mile from the project-site) and ponds to the northeast (0.65-mile from the project site), among others, on the behavior (e.g., dispersal and use of upland habitat) of California red-legged frogs and San Francisco garter snakes. We concluded that the two staging areas were unlikely to function as dispersal corridors based on the presence of the two residential housing developments to the north (along Kehoe Avenue) and northeast (along Grandview Blvd.). These developments constrain movement of frogs and snakes dispersing to the north and northeast. That is not to say that individuals could not attempt to disperse from Pilarcitos Creek to these aquatic habitats through the staging areas; however, they would ultimately have to circumvent these residential developments. It would be more likely that frogs and snakes would disperse to these areas by heading north through the open habitat along the coastline west of Pilarcitos Avenue and east across Highway 1 through the undeveloped land between Grandview Blvd. and Terrace Avenue.

Our concern focused more on the use of the staging areas by frogs and snakes during upland foraging bouts based on their proximity to occupied habitats in Pilarcitos Creek and the adjacent mitigation ponds. However, given the use of Staging Area 1 in the past for equipment and supply staging, the disturbed nature of both sites, and implementation of the avoidance and minimization measures recommended in our letter, we determined that the risk of "take" as defined by the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 et seq.) (Act) was minimal. We could not entirely rule out the possibility of take of California red-legged frogs and San Francisco garter snakes, and to our knowledge, a Biological Opinion, which includes incidental take of federally listed species, has not issued for this project.

We did recommend the staging areas be restored to pre-project conditions, but did not make recommendations for post-project restoration of this area to improve habitat quality beyond the existing conditions. We will add an additional measure to guide the applicant toward restoration of the site to more favorably meet the habitat requirements of the California red-legged frog and San Francisco garter snake.

- Following project completion, Staging Areas 1 and 2 should be revegetated with an appropriate assemblage of native vegetation characteristic of Coastal grasslands present within project vicinity. A restoration and monitoring plan should be prepared that includes, but is not limited to, the species to be used, restoration techniques, planting specifications, appropriate timing of restoration planting, monitoring and success criteria, adaptive management strategies, and remedial actions if the success criteria are not achieved.

**Comment 2.**

"Second, did your survey include the aestivation habitat value of depressions south and west of the site?"

**Response 2.**

As identified in the *Existing Conditions* for Staging Area 1 (page 4, paragraph 1) and *Habitat Assessment and Occurrence in the Project Area* for California red-legged frogs (page 7) and San Francisco garter snake (page 9), the swales and depressions running along the western, southern and northeast boundaries of Staging Area 1 were evaluated for their value and potential use by such species as non-breeding aquatic and upland foraging habitat. We determined that they do provide suitable non-breeding aquatic and upland foraging habitat, but given the disturbed nature of these sites and the lack of vegetation, especially along the southern swale, that provides refugia during use of uplands, use of these areas by either species could increase their risk to predation by raccoons, skunks, herons, and raptors.

**Comment 3.**

"Third, the list of regulatory frameworks cited on page 2 of your letter includes portions of the Clean Water Act, the California Fish and Game Code, CEQA guidelines, and various other city and county codes, as enforced by the U.S. Army Corps of Engineers, California Regional Water Quality Control Board, California Department of Fish and Game, lead agency and/or various cities or counties. The Coastal Act and the Half Moon Bay Local Coastal Program (LCP), as enforced by the City of Half Moon Bay or the California Coastal Commission, were not specifically cited. The "Field Investigation" section of your letter suggests that the survey was focused on vegetation communities that were in bloom or otherwise recognizable, and did not include the identification of wetlands pursuant to the Half Moon Bay LCP, and therefore would not have identified avoidance and minimization efforts for avoiding impacts to and maintaining buffers from such environmentally sensitive habitat areas. If this correct, is the City aware of this limitation in your report?"

**Response 3.**

As stated on page 3 under Field Investigation, the field evaluation included an examination of all vegetation communities within the study area, which "were evaluated for their potential to support

sensitive biological resources". Sensitive biological resources include habitat for special-status plant species, habitat for special-status wildlife, and sensitive natural communities. The Local Coastal Program identifies several sensitive communities including riparian area and corridor, wetlands (as defined by the California Coastal Commission), wild strawberry habitat, sand dunes, and sea cliffs. The survey work included surveys for all sensitive communities, including wetlands as defined by the LCP. The omission of the LCP from the regulatory frameworks section was an oversight.

As reported in the section on Evaluation Findings under Sensitive Natural Communities, we stated that "No sensitive natural communities, nor wetlands, were observed within Staging Area 1." This definition of sensitive natural communities includes those identified in the LCP. We did identify outside of the proposed staging area, to the west and east, two swales that are likely wetlands as defined by the LCP, and potentially wetlands as defined by the US Army Corps of Engineers. These two swales are shown on the map provided with the letter. The staging area will avoid these areas. In addition, the implementation of erosion control Best Management Practices (California Red-Legged Frog Mitigation Measure 7) will further ensure that impacts to the off-site swales will be avoided.

Please feel free to contact me at (925) 228-1027 if you have any questions.

Sincerely,



Erin L. McDermott  
Principal  
ISA Certified Arborist – WE7318A  
Botanist, Wetland & GIS Specialist  
Nomad Ecology

Enclosure: Letter from Mr. James Benjamin



## **Land Use Plan Policies**

### ***LCP Policy 1-2***

*Where policies within the Land Use Plan overlap or conflict, on balance, the policy which is the most protective of coastal resources shall take precedence.*

### ***LCP Policy 1-5***

*The textual discussion is intended as elaboration of and justification for the Plan policies and map designations. Therefore, the text shall be considered a part of the Land Use Plan, serving as the findings justifying the specified policies and Land Use Maps. Appendices A and B are hereby incorporated into the Plan.*

### ***LCP Policy 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 as defined by the State Fish and Game Commission, (2) all perennial and intermittent streams and their tributaries, (3) coastal tidelands and marshes, (4) coastal and offshore areas containing breeding and/or nesting sites and coastal areas used by migratory and resident water-associated birds for resting and feeding, (5) areas used for scientific study and research concerning fish and wildlife, (6) lakes and ponds and adjacent shore habitat, (7) existing game and wildlife refuges and reserves, and (8) sand dunes.*

*Such areas include riparian areas, wetlands, sand dunes, marine habitats, sea cliffs, and habitats supporting rare, endangered, and unique species.*

### ***LCP Policy 3-2 Designation of Sensitive Habitats***

*(a) Designate sensitive habitats as those, including but not limited to, shown on the Habitat Areas and Water Resources Overlay.*

### ***LCP Policy 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 environmentally sensitive habitats. All uses shall be compatible with the maintenance of biologic productivity of such areas.*

### ***LCP Policy 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 and State Department of Fish and Game regulations.*

### ***LCP Policy 3-5 Permit Conditions***

*(a) Require all applicants to prepare a biologic report by a qualified professional selected jointly by the applicant and the City to be submitted prior to development*

*review. The report will determine if significant impacts on the sensitive habitats may occur, and recommend the most feasible mitigation measures if impacts may occur. The report shall consider both any identified sensitive habitats and areas adjacent.*

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

*(b) When applicable, require as a condition of permit approval restoration of damaged habitat(s) when, in the judgment of the Planning Director, restoration is partially or wholly feasible.*

***LCP Policy 3-8 Designation of Riparian Corridors***

*(a) Establish riparian corridors for all perennial and intermittent streams and lakes and other bodies of fresh water in the Coastal Zone. Designate those corridors shown on the Habitat Areas and Water Resources Overlay and any other riparian area as sensitive habitats requiring protection, except for manmade irrigation ponds over 2, 500 square feet surface area.*

***LCP Policy 3-21 Designation of Rare and Endangered Species***

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

***LCP Policy 3-22 Permitted Uses***

*(a) Permit only the following uses: (1) education and research, (2) hunting, fishing, pedestrian and equestrian trails that have no adverse impact on the species or its habitat, and (3) fish and wildlife management to restore damaged habitats and to protect and encourage the survival of rare and endangered species.*

*(b) If the critical habitat has been identified by the Federal Office of Endangered Species, permit only those uses deemed compatible by the U. S. Fish and Wildlife Service in accordance with the provisions of the Endangered Species Act of 1973, as amended.*

***LCP Policy 3-23 Permit Conditions***

*(a) Require, prior to permit issuance, that a qualified biologist prepare a report which defines the requirements of rare and endangered organisms. At minimum, require the report to discuss: (1) animal food, water, nesting or denning sites and reproduction, predation and migration requirements, (2) plants' life histories and soils, climate, and geographic requirements, (3) a map depicting the locations of plants or animals and/or their habitats, (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.*

***LCP Policy 3-24 Preservation of Critical Habitats***

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

### **3-25 San Francisco Garter Snake**

*(a) Prevent any development where there is known to be a riparian location for the San Francisco garter snake with the following exception: (1) existing man-made impoundments smaller than 1/2-acre in surface, and (2) existing man-made impoundments greater than 1/2-acre in surface, providing mitigation measures are taken to prevent disruption of not more than one half of the snake's known habitat in that location in accordance with recommendations from the State Department of Fish and Game.*

*(b) Require developers to make sufficiently detailed analyses of any construction which could impair the potential or existing migration routes of the San Francisco garter snake. Such analyses will determine appropriate mitigation measures to be taken to provide for appropriate migration corridors.*

### **LCP Policy 3-32 Designation of Habitats of Unique Species**

*a) In the event the habitat of a unique species is found to exist within the City, revise the Habitat Areas and Water Resources Overlay to show the location of such habitat. Any habitat so designated shall be subject to Policies 3-33 through 3-36.*

### **LCP Policy 3-33 Permitted Uses**

*(a) Permit only the following uses: (1) education and research, (2) hunting, fishing, pedestrian and equestrian trails that have no adverse impact on the species or its habitat, and (3) fish and wildlife management to the degree specified by existing governmental regulations.*

### **LCP Policy 3-34 Permit Conditions**

*(a) Require, as a condition of permit approval, that a qualified biologist prepare a report which defines the requirements of a unique organism. At minimum, require the report to discuss: (1) animal food, water, nesting or denning sites and reproduction, predation, and migration requirements, and (2) plants' life histories and soils, climate, and geographic requirements.*

### **LCP Policy 3-35 Preservation of Habitats**

*(a) Require preservation of all critical habitats using the policies of this Plan and Implementing Ordinances of the City.*

## **Implementation Plan Sections**

### **IP Section 18.38.020 Coastal resource areas.**

*The planning director shall prepare and maintain maps of all designated coastal resource areas within the city. Coastal resource areas within the city are defined as follows:*

*A. Sensitive Habitat Areas. Areas in which plant or animal life or their habitats are either rare or especially valuable, and/or as designated on the habitat areas and water resources overlay map. Areas considered to be sensitive habitats are listed below.*

*Sensitive Habitat*

1. *Sand dunes.*
2. *Marine habitats.*
3. *Sea cliffs.*
4. *Riparian areas.*
5. *Wetlands, coastal tidelands and marshes, lakes and ponds and adjacent shore habitats.*
6. *Coastal and off-shore areas containing breeding and/or nesting sites or used by migratory and resident water-associated birds for resting and feeding.*
7. *Areas used for scientific study and research concerning fish and wildlife, and existing game or wildlife refuges and reserves.*
8. *Habitats containing or supporting unique species or any rare and endangered species defined by the State Fish and Game Commission.*
9. *Rocky intertidal zones.*
10. *Coastal scrub community associated with coastal bluffs and gullies...*

***IP Section 18.38.025 Amendments to coastal resource area maps.***

*Amendments to coastal resource area maps shall be made as prescribed for amendments to zoning district boundaries in this title. (1996 zoning code (part)).*

**From:** Jimmy Benjamin [<mailto:jimmyinhmb@gmail.com>]  
**Sent:** Thursday, July 02, 2015 1:47 AM  
**To:** Rexing, Stephanie@Coastal  
**Subject:** Letter of support for staff recommendation

Hi Stephanie,

Attached please find a letter of support for the record.

It occurred to me that the pictures of the scraped area did not scan into B&W very well. I can send you electronic copies of the picture I took in 2008 if they would be helpful.

The City will be a better steward of the Coastal Act if the amendment as modified is supported by the Commission and accepted by the City.

Heartfelt thanks to you and the district for preparing such a careful report.

- Jimmy

2 July 2015

**Item W17a**  
**Support Staff Recommendation**

Chair Steve Kinsey and Commissioners  
California Coastal Commission  
45 Fremont Street, Suite 2000  
San Francisco, CA 94105

Subj: City of Half Moon Bay Amendment LCP-2-HMB-14-0612-1 (Map Revisions)

Dear Chair Kinsey and Commissioners:

I write to express full support for the report recommendation to approve the amendments with suggested modifications per your staff. The map revisions would be the first habitat for listed species to be mapped on the Habitat and Water Resources Overlay (HAWRO) of the City's Local Coastal Program since it was certified in 1993.

The City has been notified multiple times by the U.S. Fish and Wildlife Service and other biological consultants that the subject parcels should be considered habitat occupied by the California red-legged frog (CRLF) and the San Francisco garter snake (SFGS). Under the U.S. Endangered Species Act, the CRLF is listed as threatened, and the SFGS is listed as endangered. SFGS is also considered endangered and is fully protected under the California Endangered Species Act.

The existence of a breeding colony of California red-legged frog has been confirmed on the parcel south of the wastewater treatment plant, and a cursory reading of their life history reveals that they use adjacent upland habitat to estivate, take refuge, forage and disperse. San Francisco garter snakes uses upland habitat to forage, hibernate, thermoregulate, reproduce and take refuge. The distinguished herpetologist Mark Jennings joins other biologists who confirm that the parcel's uplands as well as its wetlands are habitat which support these listed species.

Despite being advised of SFGS and CRLF habitat value in 2000, in 2008 a portion of this parcel was scraped clean of vegetation, covered with aggregate, and used as a staging area for a water district pipeline project, based on an incomplete biological report. After the damage was done, the biologist revised the report and added conditions to restore and enhance its habitat value to listed species. Updated versions of these maps and the text modifications recommended by your staff will help the City prevent similar occurrences in the future.

Members of the Commission may have been surprised to learn that the City was unable to locate the coastal resource maps of section 18.38.020 of the certified LCP's implementation plan. The initial version of that map should accurately reflect the habitat on the parcels that are the subject of this amendment.

The suggested modifications also protect taxpayers by creating important counter-arguments to potential takings lawsuits based on claims that investor-backed expectations were damaged by incomplete maps.

The goals of the Coastal Act are advanced by these LCP map updates and the text modifications suggested by your staff. I strongly encourage you to support them.

Respectfully,

James Benjamin  
400 Pilarcitos Avenue  
Half Moon Bay, CA 94019



COMMITTEE FOR  
GREEN FOOTHILLS



W17a

July 2, 2015

Item W17a

Support Staff Recommendation

Chair Steve Kinsey and Commissioners  
California Coastal Commission  
45 Fremont Street, Suite 2000  
San Francisco, CA 94105

**Re: Item W17a: City of Half Moon Bay Amendment Number LCP-2-HMB-14-0612-1 (Map Revisions)**

Dear Chair Kinsey and Commissioners,

On behalf of Committee for Green Foothills (CGF), and the Loma Prieta Chapter, Sierra Club, we write in strong support of the staff recommendation for approval of the above referenced Amendment with the suggested modifications 1 through 5 per staff.

As described in the staff report, the LUP's Habitat Areas and Water Resources Overlay ("HAWRO") map and the coastal resource maps of the IP Section 18.38.020 do not include all sensitive habitats including habitats of rare, endangered, or unique species, as well as other environmentally sensitive habitat areas that are located within the City of Half Moon Bay. Indeed, the HAWRO map is woefully inadequate, as it is over 20 years old, and is very poor quality black and white with grossly generalized indications of various habitat type locations, making it almost unreadable. In addition, we are informed that the City cannot locate the coastal resource map for IP Section 18.38.020.

Despite the requirement per LUP Policy 3-21 for the City to revise and update its HAWRO map whenever a rare, endangered, or unique species is found within the City, these periodic updates have not been done. The City has had many opportunities to attend to these revisions and updates, as there have been numerous sensitive habitat delineations on specific properties as the basis of approval of Coastal Development Permits. Most of these identified sensitive habitat areas are also permanently protected by Conditions of Approval and/or Settlement Agreements, so it is unfortunate that this essential information has not been regularly incorporated into the HAWRO map. Key LCP Policies include:

***Policy 3-21: "In the event the habitat of a rare and endangered species is found to exist within the City, revise the Habitat Areas and Water Resources Overlay to show the location of such habitat. Any habitat so designated shall be subject to Policies 3-22 through 3-31."***

***Policy 3-32: "In the event the habitat of a unique species is found to exist within the City, revise the Habitat Areas and Water Resources Overlay Map to show the location of such habitat. Any habitat so designated shall be subject to Policies 3-33 through 3-36."***

COMMITTEE FOR  
GREEN FOOTHILLS

3921 E. Bayshore Road  
Palo Alto, CA 94303

650.968.7243 ext. 600  
650.968.8931 fax

info@GreenFoothills.org  
www.GreenFoothills.org

The city's lack of adherence to LUP Policy 3-21 and 3-32 has resulted in confusion on the part of landowners and applicants, as well as members of the public. The suggested modifications will ensure that the habitats are indeed protected.

We recognize that sensitive habitats may change over time, so it may not be the best guidance to rely solely on the HAWRO map, even if it had previously been, or will be updated in the future.

We therefore strongly support the suggested modifications #s 2 and 3 that clarify that any habitat of a rare, endangered, or unique species, regardless of whether it is mapped, shall be subject to the relevant policies of the LCP.

We also strongly support the disclaimer in suggested modification #4 that the IP Coastal Resource Areas maps per IP Section 18.38.020 ***"are not the only determinant of such areas"***, and that they ***"may be determined as part of the LCP planning and permitting process even if not yet mapped"***.

Finally, and importantly, we support the further disclaimer in suggested modification #5 that informs interested persons that ***"the information on this map is subject to revision"***, that ***boundaries of sensitive habitat areas may change over time***, and that ***"this map does not establish any final boundary line or constraints on the City's ability to identify, map, or regulate sensitive habitat areas or coastal resources."***

We commend the staff for its thorough analysis and clarifying modifications to this important Map Revisions and LCP Policy Amendment. We urge your approval per the suggested modifications.

Sincerely,

signature on file

signature on file

Lennie Roberts, Legislative Advocate  
Committee for Green Foothills

Michael J. Ferreira, Conservation Chair,  
Loma Prieta Chapter, Sierra Club





July 2, 2015

Item W17a

*Comments sent via electronic mail on 7/2/2015 to Stephanie.Rexing@coastal.ca.gov*

Chair Steve Kinsey and Commissioners  
California Coastal Commission  
45 Fremont Street, Suite 2000  
San Francisco, CA 94105

**Re: Comments on the City of Half Moon Bay Amendment LCP-2-HMB-14-0612-1 (Map Revisions) - Item W17a.**

These comments are submitted on behalf of the Center for Biological Diversity ("Center") on the City of Half Moon Bay's Proposed Amendment on the Local Coastal Program's Land Use Plan ("LUP") Habitat Areas and Water Resources Overlay Map and the Implementation Plan ("IP") Coastal Resource Areas Map. The Center is a national, nonprofit conservation organization with more than 900,000 members and online activists dedicated to the protection of endangered species and wild places. The Center and its members are concerned with the conservation of imperiled species, including the California red-legged frog and the San Francisco garter snake, and the effective implementation of environmental laws.

We ask that the Commission accept all of its staff recommendations on this Item, as found in the June 26, 2015 Staff Report. We support a NO vote on both the LUP Amendment and the IP Amendment, as submitted. We are in agreement with the Coastal Commission's Staff suggested modifications and are supportive of a vote to Certify both amendments, if and only if this approval requires adoption of all of the suggested modifications from the Staff Report.

Thank you for your consideration of the Center's comments on the City of Half Moon Bay's Proposed Map Amendment.

Sincerely,

signature on file

Jennifer Loda  
Amphibian and Reptile Staff Attorney  
Center for Biological Diversity  
1212 Broadway, Suite 800  
Oakland, CA 94612

LAW OFFICES

**ATCHISON, BARISONE, CONDOTTI & KOVACEVICH**

A PROFESSIONAL CORPORATION

PO BOX 481

SANTA CRUZ, CALIFORNIA 95061-0481

WEBSITE: WWW.ABC-LAW.COM

JOHN G. BARISONE

ANTHONY P. CONDOTTI

GEORGE J. KOVACEVICH

BARBARA H. CHOI

LAUREN C. VALK

CASSIE BRONSON

REED W. GALLOGLY

TELEPHONE: (831) 423-8383

FAX: (831) 576-2269

EMAIL: ADMIN@ABC-LAW.COM

July 6, 2015

***Sent Via E-mail***

California Coastal Commission  
North Central Coast District Office  
45 Fremont Street, Suite 2000  
San Francisco, CA 94105-2219

Re: City of Half Moon Bay Amendment Number LCP-2-HMB-14-0612-1 (Map Revisions):  
Local Coastal Program Land Use Plan and Implementation Plan Amendment to Revise  
the City's Habitat Areas and Water Resources Overlay Map and Coastal Resource Areas  
Map to Reflect Areas in the City Found to Contain Sensitive Coastal Resources

Dear Commissioners:

This letter is written on behalf of the City of Half Moon Bay ("City") regarding its request for certification of an amendment to its Local Coastal Program's ("LCP's") Land Use Plan ("LUP") Habitat Areas and Water Resources Overlay Map and the Implementation Plan Coastal Resource Areas Map. The City has reviewed the Commission's staff report dated June 26, 2015 ("Staff Report") and requests that the Commission reject staff's suggested modifications and certify the LCP amendment as submitted by the City.

As stated in the Staff Report, the City proposes to amend the LCP maps to reflect certain additional areas in the City that the City has found to contain and/or support sensitive habitat areas supporting or containing rare, endangered, threatened, and unique species. Coastal Commission staff concurs that these areas should be added to the maps and that the amendment is consistent with the LCP and Coastal Act, but recommends that the Commission deny the City's request for certification of the LCP amendment unless the City modifies it to include additional areas on the LCP maps and new language in its LCP policies. Because the LCP amendment as submitted is consistent with the LCP, the Coastal Act, and the California Environmental Quality Act ("CEQA"), the City finds that Commission staff's suggested modifications exceed the Commission's jurisdiction, and requests the Commission to approve the City's LCP amendment as submitted. If the Commission desires to make further amendments to the LCP, it may initiate an LCP amendment with the City consistent with the requirements of the City's municipal code, or recommend corrective action to the City during the Commission's periodic review of the LCP, as required under the Coastal Act. That way, both the City and the Commission can be satisfied that there is evidence to support the modifications

proposed by Commission staff and that the public has been afforded proper notice and hearing before any additional amendments to the LCP are adopted.

**The Commission May Not Deny the City's Request for Certification Because the Proposed LCP Amendment Is Consistent with the Coastal Act.**

The Coastal Act states that the Coastal Commission **shall** certify a land use plan, or any amendments thereto, if it finds that a land use plan meets the requirements of, and is in conformity with, the policies of Chapter 3 of the Coastal Act (commencing with Section 30200). (Pub. Resource Code, §§ 30512(c), 30514 (b).) The City's LCP amendment is consistent with the policies of Chapter 3 of the Coastal Act, as stated in the Staff Report:

“Updating the existing certified LUP resource map as the City proposes in this action is consistent with Coastal Act Sections 30107.5 and 30240 because identifying habitats that are known to support or contain rare, endangered, threatened or unique species will provide additional notice to the public and ensure that these areas are treated as sensitive habitat areas, and more specifically rare, endangered and unique species habitat areas. Further LUP Policies 3-3 and 3-4, which apply to areas designated as sensitive habitats and areas mapped, prohibit land use or developments that would have significant adverse impacts on sensitive habitats and allow only resource dependent uses in designated areas. Limiting development uses in such designated areas ensures environmentally sensitive habitats are protected from significant disruption of habitat values. Further, updating the map in this manner will ensure that LUP Policies 3-22 through 3-31 and 3-33 through 3-36 apply to these areas that further limit activities within these areas to resource-dependent activities such as education, research, and management or restoration, and require preservation of these habitats, consistent with Section 30240 of the Coastal Act.”

(Staff Report, p. 12.)

Notwithstanding the foregoing consistency conclusion, Staff recommends approval of the proposed LCP amendment only if it is modified as follows: (1) **map additional areas** in order to protect all currently known rare, endangered, and unique species habitat that exist in association with the area dictated by the lawsuit settlement agreement (“Suggested Modification 1”); (2) **add provisions to the relevant LUP sections** that make clear that rare, endangered and unique species habitats that exist within the City, whether they have been designated on LUP maps or not, are still considered sensitive habitats and protected as such, including with regard to restrictions on types of development appropriate within such habitats as required by LUP Policies 3-22 through 3-31 and 3-33 through 3-36 as applicable (“Suggested Modifications 2 and 3”); (3) **modify IP Policy 18.38.020** to make clear and explicit that sensitive habitats that are found to exist within the City's coastal zone, whether they have already been identified and designated on maps or not, are still considered sensitive habitats and shall be restricted from development as such (“Suggested Modification 4”); and (4) **require a clear label on revised, updated, or additional maps** that Coastal Area Resources Maps may be revised and do not provide a final determination

of the boundary lines of sensitive habitats (“Suggested Modification 5”). (Staff Report, pp. 3-6, 12-14.)

These modifications are changes that Coastal Commission staff feel are needed to assure proper implementation of the City’s LCP; however, they are not necessary to making a finding that the City’s proposed LCP amendment is consistent with the Coastal Act. Because the City’s proposed LCP meets the requirements and is in conformity with the Coastal Act, the Commission must certify it as submitted.

**Staff’s Suggested Modifications Exceed the Coastal Commission’s Jurisdiction Because They Amount to Drafting the LCP.**

The Coastal Act expressly vests in local governments, rather than the Commission, the responsibility for determining the content of their LCPs. The Coastal Commission can approve or deny certification of an LCP, but it cannot itself draft any part of the coastal plan. (*Yost v. Thomas* (1984) 36 Cal.3d 561, 572-573; *Security National Guaranty, Inc. v. California Coastal Commission*, 159 Cal.App.4th at pp. 420-421; *City of Chula Vista v. Superior Court* (1982) 133 Cal.App.3d 472, 488.)

“The Commission’s review of the LUP is limited by statute to the Commission’s administrative determination that the land use plan . . . does, or does not, conform with the requirements of Chapter 3 (commencing with Section 30200.) ‘*In making this review, the commission is not authorized by any provision of this division to diminish or abridge the authority of a local government to adopt and establish, by ordinance, the precise content of its land use plan.*’ (§ 30512.2, subd. (a), italics added.) Similarly, the Commission may only reject the local government’s implementing actions ‘on the grounds that they do not conform with, or are inadequate to carry out, the provisions of the certified land use plan.’ (§ 30513.)” (*Security National Guaranty, Inc. v. California Coastal Commission*, 133 Cal.App.3d at p. 420; see also Pub. Resources Code, § 30500, subd. (c) [“The precise content of each local coastal program shall be determined by the local government . . . .”])

The City has processed an LCP amendment that is consistent with its LCP and the Coastal Act. Staff’s suggested modifications expand the scope of the proposed LCP amendment in a direct attempt to draft the City’s LCP beyond the changes desired by the City at this time.

Suggested Modification 1 includes requiring the City to include additional land on its Habitat Areas and Water Resources Overlay Map beyond what is included in the proposed LCP Amendment that was initiated, noticed, and reviewed by the public, the City Planning Commission, and the City Council. The City has requested certification of the proposed LCP amendment updating the Habitat Areas and Water Resources Overlay Map because it has confirmed through biological reports and a San Mateo County Superior Court decision that the areas included in the City’s updated map constitutes areas supporting or containing rare, endangered, threatened or unique species sensitive habitat, consistent with the City’s LCP

policies and Coastal Act section 30240. Commission staff's suggested modification to include additional land on the LCP maps amounts to drafting the LCP itself and abridges the authority of the City to adopt and establish the precise content of the plan.

The following reasons support the City's position that the Commission must reject Staff's Suggested Modification 1:

(1) As stated above, the LCP as submitted is consistent with the Coastal Act; it is not necessary to include the additional land on the Habitat Areas and Water Resources Overlay Map to make this finding.

(2) The evidence that underlies the modification is unsubstantiated. Commission staff seeks to expand the proposed map amendment based on brief, conclusory correspondence from USFWS and a letter from a Rana Resources stating that they consider the additional land to be habitat for the California red legged frog. However, neither of these sources, nor the City or Commission staff have conducted any recent surveys or biological studies for the subject property (any previous studies that were conducted were for parcels adjacent to the subject area). The City cannot include the additional land on the Habitat Areas and Water Resources Overlay Map until it has proper evidence to support that action.

(3) The City may not include the additional land in its LCP amendment because it has not provided the public proper notice and opportunity for hearing consistent with its municipal code. Given the severe land use restrictions for areas designated on the Habitat Areas and Water Resources Overlay Map and land adjacent to those designated areas, the public must be afforded this due process.

(4) If the Commission, or any other resource agency and/or stakeholder wishes to include the additional land on the City's Habitat Areas and Water Resources Overlay Map, it may do so by initiating an LCP amendment with the City, at which time the City will review the application, gather evidence, and hold the appropriate noticed public hearings.

(5) The appropriate time for the Coastal Commission to suggest these changes is during its periodic review of the City's LCP as required under Section 30519.5, subdivision (a) of the Coastal Act. The Coastal Act requires the Commission to review every certified LCP at least once every five years to determine whether the program is being implemented in conformity with Coastal Act policies. (Pub. Resources Code, § 30519.5, subd. (a).) If the Commission finds that a certified LCP is not being carried out in conformity with the Coastal Act, it must recommend corrective actions to the local government, which may include recommended amendments to the certified LCP. (*Ibid.*) Even so, the statute gives the Commission no power either to make the amendments itself or to compel the local government to make them. Instead, the law requires the affected local government to report to the Commission the reasons that it has not taken the recommended corrective action. (*Id.* at subd. (b).) The Commission may

then review the local government's report and where appropriate, report to the Legislature and recommend legislative action necessary to assure effective implementation of the relevant policy or policies of the Coastal Act. (*Ibid.*; *Security National Guaranty, Inc. v. California Coastal Commission*, 133 Cal.App.3d at p. 422.)

Suggested Modifications 2, 3 and 4 add language to the relevant LCP sections that make clear that rare, endangered, and unique species habitats that exist within the City, whether they have been designated on LUP maps or not, are still considered sensitive habitats and protected areas as such. Requiring the City to approve these modifications is impermissible for the reasons stated above: the Commission may not use the City's request for LCP amendment as an opportunity to make other changes to the LCP it feels are necessary to assure consistency with the Coastal Act. The proposed modifications are not necessary to make the LCP amendment as submitted consistent with the LCP and the Coastal Act, the Coastal Commission cannot itself draft any part of the LCP, substantive and procedural due process will not have been afforded to the public, and the City does not desire to make these changes at this time. In fact, the City will be reviewing its LCP in the next few years as part of its General Plan Update. At that time, the City will consider necessary changes to clarify its LCP and/or designate additional land on its Habitat Areas and Water Resources Overlay Map. If the Commission wishes to expedite these changes, the Commission may do so under the appropriate process outlined under section 30519.5 of the Coastal Act.

Suggested Modification 5 requires a clear label on revised, updated, or additional maps that Coastal Area Resource Maps may be revised and do not provide a final determination of the boundary lines of sensitive habitats. The City opposes this suggested modification for the same reasons stated above for Suggested Modifications 1, 2, 3, and 4.

### **The Proposed LCP Meets the Requirements of CEQA.**

The Commission's LCP review and approval of the City's proposed LCP amendment must conform with Public Resources Code section 21080.5(d)(2)(A), which states that the proposed amendment will not be approved or adopted if there are feasible alternative or feasible mitigation measures available which would substantially lessen any significant adverse impact which the activity may have on the environment. The Staff Report states that correspondence from USFWS and Rana Resources "contain written responses to significant environmental points raised during the Commission's evaluation of the land use plan and implementing action amendments" and "incorporates its findings on Coastal Act and Land use Plan conformity into [its] CEQA finding." (Staff Report, p. 15.) Neither of these reasons speak to the environmental impacts of the **City's proposed LCP amendment** and Commission staff has made no finding, nor can any finding be made, that the City's proposed LCP amendment will result in any significant adverse impacts on the environment. The evidence staff sets forth for CEQA compliance with respect to the amendment as modified holds true for the amendment submitted by the City: "As the amendments add further protections for environmentally sensitive habitat areas, and the amendments create no potential for significant adverse environmental impacts. . . . there are no other feasible alternatives or mitigation measures under the meaning of CEQA which would

California Coastal Commission

July 6, 2015

Page 6 of 6

further reduce the potential for significant environmental impacts.” (Staff Report, p. 15.)  
Therefore, the proposed LCP amendment complies with CEQA.

Sincerely,

Lauren C. Valk  
Deputy City Attorney

Cc: Tony Condotti, City Attorney  
Magda Gonzalez, City Manager  
Half Moon Bay City Council  
Carol Groom, San Mateo County Board of Supervisors/Coastal Commission