

**CALIFORNIA COASTAL COMMISSION**

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Staff: Jack Liebster  
Staff Report: Feb. 29, 2000  
Hearing Date: March 17, 2000  
Commission Action:

**STAFF REPORT: APPEAL****SUBSTANTIAL ISSUE**

LOCAL GOVERNMENT: City of Half Moon Bay

DECISION: Approval with Conditions

APPEAL NO.: A-1-HMB-99-022

APPLICANTS: Ailanto Properties

AGENT: Bob Henry

PROJECT LOCATION: Adjacent to the eastern ends of Grandview Boulevard and Terrace Avenue, north of Highway 92 and east of Highway 1 in the City of Half Moon Bay, San Mateo County

PROJECT DESCRIPTION: As approved by the City of Half Moon Bay, the Pacific Ridge PUD project would subdivide 114 acres into 197 lots, construct detached single family homes on each lot, and provide streets, open space parcels and neighborhood park areas. .

APPELLANTS: Commissioner Sara Wan  
Commissioner Mike Reilly  
Eleanor Wittrup and George Carman

**SUBSTANTIVE FILE DOCUMENTS:**

1. Notice of Final Action on Coastal Development Permit (PDP-11-98) (received March 23, 1999 from City of Half Moon Bay)
2. Local Coastal Program – Land Use Plan; Amended, City of Half Moon Bay, 1993
3. Local Coastal Program –Zoning Code, City of Half Moon Bay, Certified Ap. 10,1996

4. Pacific Ridge at Half Moon Bay Wetland Mitigation and Monitoring Plan, Resource Management International, Inc. (RMI), December 1997
5. Biological Resource Report, Pacific Ridge at Half Moon Bay, LSA Associates, Inc. (LSA), June 15, 1999.
6. Supplemental Traffic Study, Foothill Boulevard Access Alternatives, CCS, December, 1998
7. San Mateo County Countywide Transportation Plan, City/County Association of Governments, San Mateo County (C/CAG), June 1997
8. Draft Environmental Impact Report, Dykstra Ranch, Half Moon Bay, WESCO, April 1998.
9. Final Environmental Impact Report for Dykstra Ranch, WESCO, December 1998
10. All Exhibits attached to this report

SUMMARY OF STAFF RECOMMENDATION:

1. SUMMARY OF STAFF RECOMMENDATION: SUBSTANTIAL ISSUE

The staff recommends that the Commission determine that a substantial issue exists with respect to the grounds on which the appeal has been filed. The project as approved would subdivide 114 acres into 197 lots, construct detached single family homes on each lot, and provide streets, open space parcels and neighborhood park areas. The appellants contend that the project is not consistent with the standards and policies of the City of Half Moon Bay's LCP concerning environmentally sensitive habitat areas, rare and endangered species, traffic, circulation and coastal access, recreational opportunities along drainage courses, visual resources, public notice, environmental review, and the resolution of project approval. Commission staff analysis indicates that, with the exception of public notice and CEQA compliance contentions, there are significant questions regarding whether the project, as approved by the City of Half Moon Bay, is consistent with the criteria and policies of the City of Half Moon Bay's certified LCP regarding these issues.

With the cooperation of the applicant, the City of Half Moon Bay and the appellants, substantial and important progress has been made in addressing the issues raised by the project, especially protection of sensitive habitat areas on the site, and a much greater degree of clarity has been reached on what is needed to resolve remaining issues. In fact, the applicant has significantly revised the project for purposes of any *de novo* hearing on the appealed project. Nevertheless, significant issues concerning traffic and coastal access remain unresolved at this time. Therefore, the staff further recommends that the Commission continue the *de novo* hearing on the appeal to a future date, in order to allow staff to gather additional information on the environmental impacts of the revised project and further analyze the approvability of the revised project as summarized on page 39.

The Motion to adopt the Staff Recommendation of Substantial Issue is found on page 4.

STAFF NOTES:

1. Appeal Process.

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

Section 30603 states that an action taken by a local government on a coastal development permit application may be appealed to the Commission for certain kinds of developments, including developments located within certain geographic appeal areas, such as those located between the sea and the first public road paralleling the sea or within three hundred feet of the mean high tide line or inland extent of any beach or top of the seaward face of a coastal bluff, or those located in a sensitive coastal resource area.

Furthermore, developments approved by counties may be appealed if they are not designated the "principal permitted use" under the certified LCP. Finally, developments which constitute major public works or major energy facilities may be appealed, whether approved or denied by the city or county. The grounds for an appeal are limited to an allegation that the development does not conform to the standards set forth in the certified local coastal program or the public access and public recreation policies set forth in the Coastal Act.

The subject development is appealable to the Commission because the proposed development is located between the sea and the first public road paralleling the sea, and is also within 300 feet of the mean high tide line and the top of the seaward face of a coastal bluff.

Section 30625(b) of the Coastal Act requires the Commission to hear an appeal unless the Commission determines that no substantial issue is raised by the appeal. If the Commission decides to hear arguments and vote on the substantial issue question, proponents and opponents will have three minutes per side to address whether the appeal raises a substantial issue. It takes a majority of Commissioners present to find that no substantial issue is raised. Unless it is determined that there is no substantial issue, the Commission would continue with a full public hearing on the merits of the project, which may occur at a subsequent meeting. Pursuant to Sections 30621 and 30625 of the Coastal Act and Section 13115 of the Commission's regulations, unless the Commission found No Substantial Issue, the Commission shall consider the entire application *de novo*. If the Commission were to conduct a *de novo* hearing on the appeal, because the proposed development is between the first road and the sea, the applicable test for the Commission to consider would be whether the development is in conformity with the certified Local Coastal Program and with the public access and public recreation policies of the Coastal Act.

The only persons qualified to testify before the Commission on the substantial issue question are the applicants, persons who made their views known before the local government (or their representatives), and the local government. Testimony from other persons regarding substantial issue must be submitted in writing.

2. Filing of Appeal.

The appellants filed an appeal to the Commission in a timely manner on April 1, 1999 and April 6, 1999, within ten working days of the City's issuance of the Notice of Final Action, which was received in the Commission's offices on March 23, 1999.

3. Emphasis Added

In various locations in the staff report, **bold type** indicates emphasis added to quoted text.

4. LCP Standards, Policies and Ordinances

The complete texts of the sections of the LCP excerpted or cited in the report are reproduced in their entirety in Appendix A. This appendix is at the very end of the report, and may be pulled off for ease of reference.

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**PART ONE – SUBSTANTIAL ISSUE**

**I. STAFF RECOMMENDATION ON SUBSTANTIAL ISSUE**

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

**MOTION:** I move that the Commission determine that Appeal No. A-1-HMB-99-022 raises NO substantial issue with respect to the grounds on which the appeal has been filed under § 30603 of the Coastal Act.



**STAFF RECOMMENDATION:**

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

**RESOLUTION TO FIND SUBSTANTIAL ISSUE:**

The Commission hereby finds that Appeal No. A-1-HMB-99-022 presents a substantial issue with respect to the grounds on which the appeal has been filed under § 30603 of the Coastal Act regarding consistency with the Certified Local Coastal Plan and/or the public access and recreation policies of the Coastal Act.

**II. FINDINGS AND DECLARATIONS**

The Commission hereby finds and declares:

**A. APPELLANTS' CONTENTIONS.**

The Commission received appeals of the City of Half Moon Bay's decision to approve the project from Commissioner Sara Wan, Commissioner Mike Reilly, and Eleanor Wittrup and George Carman ("the appellants"). The City of Half Moon Bay approved a coastal development permit for the Pacific Ridge PUD to subdivide 114 acres into 197 lots, construct detached single family homes on each lot, and provide streets, open space parcels and neighborhood park areas. The appellants' contentions involve inconsistency with the City's LCP policies regarding environmentally sensitive habitat areas, rare and endangered species, traffic, circulation and coastal access, recreational opportunities along drainage courses, visual resources, public notice, environmental review, and the resolution of project approval. The appellants' contentions are summarized below, and discussed in detail in section D below. The full text of the contentions are included as Exhibit No. 6 and 7.

**1. Environmentally Sensitive Habitat Areas: Wetlands, Streams and Riparian Corridors**

The appellants contend the project as approved by the City of Half Moon Bay did not conform with the requirements of LUP Chapter 3 Policies for Environmentally Sensitive Habitat Areas and LCP Zoning Code Section 18.38 in that the approved project does not accurately delineate sensitive areas, permits housing and road development in wetland and riparian areas, and permits

uses in buffer areas that are not authorized by the LCP (Exhibit 6, items 1,2 and 3; Exhibit 7, items 1 and 2.2).

2. Rare and Endangered Species; Biological Report

Appellants Wittrup and Carman contend that the project approval did not conform to LCP policies and ordinances which require specific procedures for studies, reports, and protection measures for habitat for unique, rare or endangered species such as the endangered red-legged frog and San Francisco Garter snake (Exhibit 7, items 2 and 7).

3. Traffic, Circulation and Coastal Access

Appellants Wittrup and Carman contend that the project approval did not conform to, among others LCP standards, Policy 9-2 requiring adequate road facilities, and Zoning Code 18.16.070(E) requiring the project be connected to Highway 92 with a new Foothill Boulevard extension and to Highway 1 with a new Bayview Drive. The appellants further contend that the approved extension of Terrace Avenue to serve the project did not follow LCP procedures, and that the Terrace Avenue extension, certain internal roads, and the new Foothill Boulevard and Bayview Drive are inconsistent with LCP habitat and buffer requirements. Additionally, the appellants contend that the project as approved would increase congestion on Highways 1 and 92 to unacceptable levels of service and would adversely impact coastal access (Exhibit 7, item 3).

4. Recreational Opportunities Along Drainage Courses

Commissioners Wan and Reilly contend the City's approval of the project does not include any findings or conditions relating to the requirement of LUP Policy 9.3.7.d that major drainage courses be dedicated to protect against erosion and to provide for passive recreational use. They contend that on the contrary Condition No. 5 of the approval requires that a fence be installed at the outer edges of all riparian buffer zones, and that the approved project plan shows fences along four drainage courses that would seem to preclude any passive recreational use in the drainage courses, inconsistent with Policy 9.3.7.d.

5. Visual Resources- Trees, Scenic Hillside, Open Space

Appellants Wittrup and Carman contend the approved project does not conform to LCP standards for protecting notable tree stands and significant plant communities, and for clustering, siting and provision of open space to protect view corridors (Exhibit 7, items 4 and 5).

6. Public Notice

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Appellants Wittrup and Carman contend the City's approval failed to comply with notice requirements of LCP Zoning Code 18.20.060 (Exhibit 7, item 6).

7. Environmental Review

Appellants Wittrup and Carman contend the City's environmental review did not conform with LCP requirements for review under Zoning Code 18.38.050 regarding the California Environmental Quality Act (CEQA), Zoning Code 18.15.035 relating to content of a Planned Unit Development (PUD) Plan, Zoning Code 18.15.040 concerning mandatory findings of fact, and Zoning Code 18.38 requirements for biological and other reports (Exhibit 7, items 7 and 8).

8. Resolution of Approval

Appellants Wittrup and Carman contend the City's resolution of approval for the project did not conform with LUP Policy 1-4 requirements for findings of consistency with the LUP (Exhibit 7, item 9).

**B. LOCAL GOVERNMENT ACTION.**

In 1990, the City of Half Moon Bay Planning Commission and City Council had approved a Vesting Tentative Subdivision Map under the existing General Plan (prior to LCP approval) for a project then called Dykstra Ranch. As reflected in the City's Zoning Code, it adopted a PUD Zoning District for Dykstra Ranch based upon the Vesting Tentative Map on January 4, 1994. This zoning district was included in the Implementing Ordinances certified by the Commission as part of the City's LCP on April 10, 1996.

The City filed an application from Ailanto Properties for a Coastal Development Permit (CDP) for the project, now called Pacific Ridge, providing for 213 single family units, on May 19, 1998. At its December 15, 1998 meeting, the Planning Commission denied the Coastal Development Permit for the Pacific Ridge Project based on the findings that the project did not conform to the Local Coastal Plan. The City Council considered the appeal at public hearings on January 5, 12, 24, and February 9, 1999. The City Council appointed a committee to negotiate a settlement with Ailanto Properties at the Public Hearing on January 24, 1999. Following negotiations with the City Council committee, the project applicant revised the site plan, reducing the total number of residential units at the project site from 213 to 197, and making other changes. The City Council approved the CDP subject to 88 conditions of approval on a 4 to 1 vote on March 16, 1999 (Exhibits 4 and 5).

The Notice of Final Action was sent to the Commission, and received on March 23, 1999. Appeals of the local action were filed on April 1 and 6, 1999, and the Commission requested a

copy of the local record from the City. The record was received by the Commission April 12, 1999. On April 23, 1999, the applicant submitted a waiver of the requirement for a hearing on the appeal within 49 days.

C. **PROJECT SETTING AND DESCRIPTION**

As approved by the City of Half Moon Bay, the project would subdivide 114 acres into 197 lots, construct detached single family homes on each lot, and provide streets, open space parcels and neighborhood park areas.

The entire City of Half Moon Bay is within the California coastal zone. The City has a certified Local Coastal Program, which allows the City to issue Local Coastal Permits. The project contains many areas of wetlands and streams subject to the appeal jurisdiction of the Commission under Public Resources Code (PRC) Section 30603.

The proposed project is on the Dykstra Ranch site, located on a coastal terrace east of Highway 1 and north of Highway 92 at the eastern edge of the City of Half Moon Bay, San Mateo County, approximately one mile west of the Pacific Ocean. A mix of suburban development and vacant former agricultural lands lies between the site and Highway 1. Half Moon Bay High School is located on the southwest boundary of the site.

According to the project's Initial Study, the property has elevations ranging from about 245 feet in the southeast portion of the project area down to about 45 or 50 feet in the northwest corner. The western portion of the project area contains gentle slopes in the 5 percent range. Some ridges, particularly in the northeast, drop off steeply, approaching 28 percent in some cases. The land has been used for grazing cattle and has a history of barley cultivation.

Soils on the site consist of natural deposits of alluvium and artificial fill. The alluvial soils display slight to moderate erosion potential. Soils on the rolling hills in the northwestern part of the site also pose slight to moderate erosion potential. The upland soils on the hillslopes, along the northeastern boundary of the site are moderately to highly erodable. The site contains artificial fills for an earthen dam, embankment and drainage channel berms, relating to previous agricultural activities.

The site lies in the transition area between the foothills along the western flank of the Santa Cruz Mountains and the coastal plain in Half Moon Bay. The closest active earthquake faults are located approximately five miles northeast of the site. The general area is a seismically active region, and is subject to strong seismic ground shaking.

The property contains five drainages, two are ephemeral, or seasonal, and three are intermittent or stormwater drainages. A man-made pond covering approximately 1.6 acres is on the site. It

was created with a 23-foot-high dam and is primarily fed by an offsite drainage basin of approximately 30 acres. The pond outflow is a stream which eventually leads to Pilarcitos Creek. Numerous gullies are located in the area. The site's vegetation has been affected by historic cultivation. Mature eucalyptus and cypress trees exist on portions of the site. The pond and drainages contain willows, cypress and other plants associated with wetlands.

The project as approved by the City is to subdivide the 114 acre site into 197 residential lots, plus open space and access roads. The 197 lots would average approximately 9500 square feet in size and are proposed to be developed with two story houses ranging in size from 2571 square feet to 3547 square feet. The homes would be separated into clusters by an integrated open space network. Approximately 75% of the homes would back up onto open space consisting of a small lake (the converted former pond), creeks, seasonal wetlands and slopes of the eastern foothills. Many of the homes are positioned for views of the ocean. To increase the variation in design, approximately 58% of the houses are proposed to have detached garages.

Infrastructure associated with project construction includes privately-maintained subdivision streets, plus underground lines for the distribution of water, electricity, and sewerage. The project as originally proposed to the City included the creation of Foothill Boulevard both on and off the site and the extension of Grand View Boulevard. However the City's approval left this development unresolved, and specified only the temporary use of Terrace Avenue for project road access. The applicant has participated in a sewer assessment district with the MidCoastside Sewer Authority in the amount necessary to assure sewer capacity for the subdivision. Approximately 5.15 acres of the site is to be dedicated to the City for park use. A homeowners association would maintain subdivision streets, sidewalks, streetlights, monument signs, wetlands, the pond, and open space amenities such as benches, bicycle racks, a tot lot and a gazebo.

Houses are projected to be priced above \$500,000, and to appeal to people purchasing their second or third home. These buyers are expected to be families with children of high school age or older.

Exhibit 5 shows the site plan of the project as approved.

**D. SUBSTANTIAL ISSUE ANALYSIS.**

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

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

## 1. Standard of Review

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

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

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

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

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

In this case, for the reasons discussed further below, the Commission exercises its discretion and determines that the development as approved by the City presents a substantial issue with regard to the appellants' contentions regarding the above-cited LCP-issues, due to issues regarding the factual and legal support for the local government's decision that the development is consistent with the LCP, the extent and scope of the development as approved, and the significance of the coastal resources affected by that approval. The site contains a network of sensitive habitat areas including wetlands and riparian corridors that provide rapidly dwindling habitat for rare and endangered species including the red-legged frog and the San Francisco garter snake. Significant factual and legal questions exist regarding those resources. Factual and legal questions also exist

with regard to road facilities to and within the development as approved. The extent and scope of the approved project is also significant because of its large scale relative to the size of the City and its major effect on the character of the area.

The approved project also raises not only local issues, but issues of regional and statewide significance. The Coastal Act recognizes that driving Highway 1 is a distinct and special coastal experience. In the project area specifically, Highway 1 is a significant regional coastal access route, and its continued ability to operate effectively is critically important to achieving the public access policies of the Coastal Act.

## **2. Appellants' Contentions That Raise a Substantial Issue.**

The contentions raised in the appeal regarding conformance of the project as approved with LCP policies concerning environmentally sensitive habitat areas, rare and endangered species, traffic, circulation and coastal access, recreational opportunities along drainage courses, visual resources and environmental review, present potentially valid grounds for appeal in that they allege the project's inconsistency with policies of the certified LCP. The Commission finds that a substantial issue is raised with regard to these policies.

### **a. Environmentally Sensitive Habitat Areas: Wetlands, Streams and Riparian Corridors**

#### **(1) Appellants' Contentions**

The appellants contend that the Biological Report prepared as the basis for approval of the project did not meet the requirements of LUP Policy 3-5 and Zoning Ordinance section 18.38.035 because it did not map areas within 200 feet of the project site and did not correctly apply the LUP's definition of wetlands; that the project as approved is not consistent with LUP Policies 3-1, 3-3, 3-4 and 3-9 which restrict uses in wetland and riparian areas; and that the approval does not conform to LUP policies 3-11 and 3-12 which respectively require a 100-foot buffer zone for all "ponds and other wet areas," and restrict uses in buffer areas. (Exhibit 6, items 1,2 and 3; Exhibit 7, items 1 and 2.2).

#### **(2) LCP Standards**

The applicable sections of the LCP include the following, which are reproduced in their entirety in Appendix A at the end of this report:

##### **3-1 Definition of Sensitive Habitats**

- (a) Define sensitive habitats as any area in which plant or animal life or their habitats are either rare or especially valuable and as those areas which meet*

*one of the following criteria: (1) habitats containing or supporting "rare and endangered" species ..., (2) all perennial and intermittent streams and their tributaries, ... (6) lakes and ponds and adjacent shore habitat, ...*

*Such areas include riparian areas, wetlands, ..., and habitats supporting rare, endangered, and unique species.*

**LUP APPENDIX A: Special Definitions...WETLAND...**

*Wetland is an area where the water table is at, near, or above the land surface long enough to bring about the formation of hydric soils or to support the growth of plants which normally are found to grow in water or wet ground. Such wetlands can include mudflats (barren of vegetation), marshes, and swamps. Such wetlands can be either fresh or saltwater, along streams (riparian), in tidally influenced areas (near the ocean and usually below extreme high water of spring tides), marginal to lakes, ponds, and man-made impoundments. Wetlands do not include areas which in normal rainfall years are permanently submerged (streams, lakes, ponds and impoundments), nor marine or estuarine areas below extreme low water of spring tides, nor vernal wet areas where the soils are not hydric.*

**Zoning Code Sec. 18.02.040 Definitions**

*...Wetland: The definition of wetland as used and as may be periodically amended by the California Department of Fish and Game, the California Coastal Commission and the US Fish and Wildlife Service.*

**Zoning Code Sec. 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:...*

*E. Wetlands. As defined by the US Fish and Wildlife Service, a wetland is an area where the water table is at, near, or above the land surface long enough to bring about the formation of hydric soils or to support the growth of plants which normally are found to grow in water or wet ground. Such wetlands can include mud flats (barren of vegetation), marshes, and swamps. Such wetlands can be either fresh or saltwater, along streams (riparian), in tidally influenced areas (near the ocean and usually below extreme high water of spring tides), marginal to lakes, ponds, and man-made impoundments. Wetlands do not include areas which in normal rainfall years are permanently submerged (streams, lakes, ponds, and impoundments), nor marine or estuarine areas below extreme low water of spring tides, nor vernal wet areas where the soils are not hydric.*



**3-3 Protection of Sensitive Habitats**

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

**3-4 Permitted Uses**

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

**3-5 Permit Conditions**

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

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

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

**Zoning Code Sec. 18.38.035 Biological Report.**

A. *When Required.* The Planning Director shall require the applicant to submit a Biological Report, prior to development review, prepared by a qualified Biologist for any project located in or within 100 feet of any Sensitive Habitat Area, Riparian Corridor, Bluffs and Seacliff Areas, and any Wetland...

B. *Report Contents.* In addition to meeting the report requirements listed in Section 18.35.030, the Biological Report shall contain the following components:

1. Mapping of Coastal Resources. The Biological Report shall describe and map existing wild strawberry habitat on the site, existing sensitive habitats, riparian areas and wetlands located on or within 200 feet of the project site.

2. Description of Habitat Requirements.

a. *For Rare and Endangered Species:* a definition of the requirements of rare and endangered organisms, a discussion of animal predation and migration requirements, animal food, water, nesting or denning sites and reproduction, and the plant's life histories and soils, climate, and geographic requirements;

b. *For Unique Species:* a definition of the requirements of the unique organism; a discussion of animal food, water, nesting or denning sites and reproduction, predation, and migration requirements; and a description of the plants' life histories and soils, climate, and geographic requirements.

C. *Distribution of Report.* Any Biological Report prepared pursuant to this Title shall be distributed to the US Fish and Wildlife Service, the Army Corps of Engineers, the California Coastal Commission, the State Department of Fish and Game, the Regional Water Quality Control Board, and any other Federal or State agency with review authority over wetlands, riparian habitats, or water resources.

1. The Biological Report shall be transmitted to each agency with a request for comments from each agency with jurisdiction over the effected resource on the adequacy of the Report and any suggested mitigation measures deemed appropriate by the agency.

2. Included within the transmittal of the Biological Report to the various agencies shall be a request for comments to be transmitted to the Planning Director within 45 days of receiving the Report.

**Zoning Code Sec. 18.38.055 Environmental Impact Reports.**

*At the discretion of the Planning Director, a project applicant may use the analysis contained in an Environmental Impact Report prepared under the California Environmental Quality Act or an Environmental Impact Statement prepared under the federal Environmental Policy Act to fulfill the requirements of this Title.*

*A. Use of Environmental Impact Report on Project. The Planning Director may allow an applicant to substitute the analysis in an Environmental Impact Report on a project for a Geological, Biological or Archaeological Report on the same project, if the Planning Director determines that the Environmental Impact Report adequately meets the requirements for Geological, Biological or Archaeological Reports listed in this Title...*

*B. Use of Previously Prepared Environmental Impact Report. The Planning Director may accept the information and analysis contained in a previously prepared Environmental Impact Report required under the California Environmental Quality Act in lieu of a new Geological, Biological, or Archaeological Report if the Planning Director determines that:*

- 1. The Environmental Impact Report adequately meets the requirements for Geological, Biological or Archaeological Reports listed in this Chapter, and*
- 2. The Environmental Impact Report was prepared for either a previous project on the project site or a project on a directly adjoining site.*
- 3. In order to use any previously prepared Biological Report pursuant to this Section, the Biological Report must have been a part of a Certified Final EIR that was accepted as complete and adequate no more than one year prior to the date of submittal...*

### **3-9 Permitted Uses in Riparian Corridors**

- (a) Within corridors, permit only the following uses: (1) education and research, (2) consumptive uses as provided for in the Fish and Game Code and Title 14 of the California Administrative Code, (3) fish and wildlife management activities, (4) trails and scenic overlooks on public land(s), and (5) necessary water supply projects.*
- (b) When no feasible or practicable alternative exists, permit the following uses: ... (3) bridges when supports are not in significant conflict with corridor resources, ..., (5) improvement, repair or maintenance of roadways or road crossings, ...*

**3-11 Establishment of Buffer Zones**

- (a) *On both sides of riparian corridors, from the limit of riparian vegetation extend buffer zones 50 feet outward for perennial streams and 30 feet outward for intermittent streams.*
- (b) *Where no riparian vegetation exists along both sides of riparian corridors, extend buffer zones 50 feet from the bank edge for perennial streams and feet from the midpoint of intermittent streams.*
- (c) *Along lakes, ponds, and other wet areas, extend buffer zones 100 feet from the high water point, except for man-made ponds and reservoirs used for agricultural purposes for which no buffer zone is designated.*

**3-12 Permitted Uses in Buffer Zones**

- (a) *Within buffer zones, permit only the following uses: (1) uses permitted in riparian corridors, (2) structures on existing legal building sites, set back 20 feet from the limit of riparian vegetation, only if no feasible alternative exists, and only if no other building site on the parcel exists, ... (5) no new parcels shall be created whose only building site is in the buffer area except for parcels created in compliance with Policies 3.3, 3.4 and 3.5 if consistent with existing development in the area and if building sites are set back 20 feet from the limit of riparian vegetation or if no vegetation 20 feet from the bank edge of a perennial and 20 feet from the midpoint of an intermittent stream.*

**(3) Analysis**

**(a) Biological Report**

The accurate and complete identification of coastal resources on a site is the foundation for complying with the Half Moon Bay LCP. If the delineation of such resources on a site is inadequate, there can be no assurance that any project on that site conforms to the other LCP Standards for sensitive habitats. LUP policy 3-3 and 3-5 and Zoning Code 18.15.035 require and specify the contents of a Biologic Report to identify such resources. The City cited a variety of biological studies, including the Environmental Impact Report (EIR) certified on August 7, 1990 for a 216 unit subdivision on the property, as the basis for its findings of the project's conformance with the LCP. However as provided in Zoning Code Sec. 18.38.055.B.3:

*In order to use any previously prepared Biological Report pursuant to this Section, the Biological Report must have been a part of a Certified Final EIR that was accepted as complete and adequate no more than one year prior to the date of submittal...*

The project approved by the City was filed on May 19, 1998, eight years after the EIR was certified. Thus, the EIR would not satisfy the LCP requirements for an adequate Biological Report.

However, the Pacific Ridge at Half Moon Bay Wetland Mitigation and Monitoring Plan prepared in December 1997 was also cited by the City in its record of approval. This report was based upon a wetlands survey of the site initially conducted in June 1997. A "wetland delineation" was submitted to the U.S. Army Corps of Engineers (Corps) for confirmation in August 1997. The jurisdictional determination, confirmed by the Corps in October 1997, was mapped in November 1997 and included as an exhibit to the December 1997 Wetland Mitigation and Monitoring Plan. In a January 13, 2000 letter to staff (pg. 14), Mr. Bob Henry, the applicant's agent, confirmed that "the City relied on the Wetland Mitigation and Monitoring Plan (the "WMMP") as the Biological Report required for the issuance of a CDP." The wetland map is attached as **Exhibit 8**. This map and report raise several issues of conformance with the certified LCP. (In fact, recognizing this report's deficiencies, the applicant has worked with Commission staff to prepare new biological documentation consistent with the standards of the certified LCP for purposes of any *de novo* hearing on the appeal. After the City's action on the CDP, a new Biological Resource Report, Pacific Ridge at Half Moon Bay dated June 15, 1999, was submitted to the Commission on June 25, 1999. The latest delineation of sensitive habitats both on and adjacent to the site is depicted in Exhibits 12 and 13). Issues raised by the project as approved include:

(a). Mapping of Coastal Resources and Definition of Wetlands

LUP Policy 3-5 requires the biological report "consider both any identified sensitive habitats and areas adjacent." LCP Ordinance Sec. 18.38.035.B.1, specifies the report must "describe and map ... existing sensitive habitats, riparian areas and wetlands located on or within 200 feet of the project site." Such mapping is necessary to determine any additional development constraints, for example, whether access to the site that avoids near-site wetland and riparian areas and associated buffers is feasible, and whether any buffers for offsite wetland or riparian areas would extend into the project site, possibly into areas proposed for on-site development.

Applying the proper definition of sensitive habitats, including wetlands, is also essential to conforming to the LCP's resource policies. The project approval relied upon the Wetland Mitigation and Monitoring Plan (RMI, 1997) for the determination of the project's conformance with the LCP. That report, however delineates only areas "identified by the Corps as falling within its jurisdiction as wetlands or waters of the United States..." (RMI, 1997, p.2-2). The

LCP's Land Use Plan (LUP) definition of "wetlands" differs from that used by the Corps. The Corps generally considers wetlands to be characterized by the presence of all three wetland indicators: hydrology, hydric soils and hydrophytic vegetation. The LUP contains several definitions of wetlands. Even the more permissive of these definitions (LUP Appendix A, Special Definitions and LCP Zoning Code Sec. 18.38.020.E) requires only the occurrence of two of the above characteristics, i.e., wetland hydrology, and either hydric soils or hydrophytic vegetation to define an area as wetland. LCP Zoning Code Sec. 18.02.040, moreover, states the definition of wetland is:

*...as used and as may be periodically amended by the California Department of Fish and Game, the California Coastal Commission and the US Fish and Wildlife Service.*

The Department of Fish and Game and the Coastal Commission have consistently used the definition that requires the presence of **any one** of the three criteria to delineate wetlands. The difference in definitions contained in the Wetland Plan utilized by the City as the basis for approval and that contained in the LCP raises the issue that the maps and information that were the basis for the approval of the project may not be an accurate representation of all of the site's wetland resources as defined by the certified LCP. Therefore, the project as approved raises a substantial issue with respect to LUP Policy 3-1 and Appendix A-Special Definitions, and LCP Zoning Code Sections 18.02.040 and 18.38.020.E.

(b) Uses In Wetlands

Inaccurate or deficient representation of all riparian and wetland areas on-site and near-site also raises the substantial issue that there may be additional areas on the site that should have been subject to use limitations and standards pertaining to riparian corridors, buffer zones and wetlands.

Even in areas that were delineated as sensitive habitats, the approved project allows uses that are not permitted under the applicable LCP Standards.

Appellants Wittrup and Carman contend the approved project would fill 2.085 acres of wetland (Exhibit 7, item 1.1), a figure which appears to have been derived from the Wetland Mitigation and Monitoring Plan (RMI, 1997, pg.2-2). The City's Condition 19 states the "December 1997 Wetland Mitigation and Monitoring Plan shall be revised to incorporate conditions set forth ... by the U.S. Army Corps of Engineers on December 15, 1998. The potential loss of wetlands and riparian habitat shall be mitigated to the satisfaction of the U.S. Army Corps of Engineers." (Exhibit 4, pg. 8). The Corps' letter indeed authorizes filling "1 acre of jurisdictional wetlands and other waters of the U.S." (Exhibit 15, pg. 1), but since the Corps' delineation of wetlands is, as discussed above, generally less inclusive than that required by the LCP, it is possible that more than one acre of wetlands would be filled by the approved project.

The approved project plan shows the installation of four roadway-associated culverts and one bridge in project site riparian corridors and also shows, in areas that are mapped as wetlands even on the November 1997 Corps wetlands map, portions of eight proposed residential lots (lot #s 130, 131, 155-157, and 174-176), two portions of proposed Silver Surf Road, and also a portion of Red Hawk Road and a portion of Lone Trail Way.

Even if the wetland fill were only the one acre acknowledged by the applicant, there are no findings in the City's approval of the project that explain how the approval of any fill in wetland and riparian areas for street construction or residential development is consistent with the restrictions of LUP Policy 3-4 regarding permitted uses in sensitive habitat areas, including riparian areas and wetlands, and Policy 3-9, (Permitted Uses in Riparian Corridors). Policy 3-4 only allows "resource-dependent or other uses which will not have a significant adverse impact in sensitive habitats." Policy 3-9(b) permits:

- (3) bridges when supports are not in significant conflict with corridor resources,... and*
- (5) improvement, repair or maintenance of roadways or road crossings...,*

but only "when no feasible or practicable alternative exists." There are no findings in the City's approval of the project that demonstrate that the approved uses (new residential structures and roads) in the wetland and riparian areas are either "resource-dependent" or "will not have a significant adverse impact in sensitive habitats," nor are there any alternatives discussed or any substantiated findings that "no feasible or practicable alternative exists." The findings only state, without any evidence cited, that "The Council finds that the project is consistent with permitted uses in riparian corridors since no feasible or practicable alternative exists and therefore permits the following uses: bridges when supports are not in significant conflict with corridor resources, improvement, repair or maintenance of roadways or road crossings."

Furthermore, Policy 3-9(b) does not permit new roads (as approved), but only "the "improvement, repair or maintenance or roadways or road crossings." The project site does not now contain roads to be improved, repaired or maintained in the locations approved; thus Policy 3-9(b) therefore is not applicable to the approved project.

A December 13, 1999 letter from the applicant's attorney responding to the points raised in the appeal did not contest these LCP inconsistencies, but instead referred to the revised plan as correcting them (**Exhibit 10**, pgs. 4-5).

Therefore there is not a high degree of factual or legal support for the City's decision to approve the project as consistent with certified LCP Policy 3-4 or 3-9. Thus, the Commission finds the project as approved by the City raises a substantial issue with respect to conformance of the approved project with the LCP standards regarding permitted uses in wetlands.

(c) Uses in Buffer Areas

LUP Policy 3-11(c) designates a 100-foot buffer zone for wetlands, and Policy 3-12 limits uses in the buffer areas to the same uses permitted in riparian corridors (see Policy 3-9 discussion above) and also prohibits the creation of any "new parcels ... whose only building site is in the buffer area."

Even using the questionable mapping of wetlands upon which the project was approved, the approved project plan shows the development of new roads that include portions that are within 100 feet of wetlands, specifically, in the northwest corner of the project site where Foothill Boulevard would meet Silver Surf Road and also along portions of proposed Lone Trail Way and Silver Surf and Red Hawk Roads.

Furthermore, no portions of the eight lots that contain wetlands (see above) are outside of the wetlands' required buffers. Another approved lot (lot #154) does not contain any mapped wetland but is entirely within a 100-foot buffer area. Fifteen other lots, also not containing any mapped wetlands, are partially within 100 feet of mapped wetlands (lot #s 133-136, 148, 153, 158, 170, 172, 173, 177, 179, 183, 184, and 197); at least eight of these fifteen lots appear to be lots "whose only building site is in the buffer area," or at least would partially be in a required buffer area (lot #s 133-135, 148, 159, 170, 172, and 173).

It is not evident from the City's adopted findings how these roadway and residential lot intrusions into wetland buffer areas are allowable given the restrictions of Policy 3-12, especially, regarding the intrusion of residential lots. The City's approval includes Condition No. 7 that specifically states "No portion of any residential parcel shall be permitted within any established buffer zone on the property," and Condition No. 20 that specifically states that "Lot lines will not be permitted in the wetland and/or riparian buffer zones," but the approved site plan specifically identifies such intrusions.

#### **(4) Conclusion**

As discussed above, therefore, there is not a high degree of factual or legal support for the City's decision to approve the project as consistent with certified LCP Policy 3-11. Thus, the Commission finds the project as approved by the City raises a substantial issue with respect to conformance of the approved project with the LCP standards regarding permitted uses in buffer areas.

#### **b. Rare and Endangered Species Habitats**

##### **(1) Appellants' Contentions**

Appellants Wittrup and Carman contend in part (**Exhibit 7**):



“Background:

The degree of protection afforded to wetlands, streams and riparian corridors depends on the presence or absence of endangered species. If there are endangered species on the site, buffer zones for streams and Riparian corridors go from 30 or 50 feet to a minimum of 100 feet, and no development of any kind, even roads, is permitted...”

2.1 The Presence of Rare Birds and Animals

... Appendix A of the FEIR lists two protected raptors and numerous migratory and resident water associated birds as present on the property. ... No study was conducted or evidence submitted into the public record since 1986, nor was provision made for protection of the habitats of these animals. A very good amateur biologist, Judge Marcus Max Gunkel has given us a declaration (e.g. sworn testimony) that there are a number of rare, endangered and protected species which inhabit the property. ... The permit should be overturned and an honest biological report prepared.

2.2 The Absence of A Biologic Report

LUP policy 3-5 requires all applicants to prepare a biologic report to identify rare and endangered plants and animals, unless such a report (or a substitutable EIR) has been prepared *less than one year previously*. (Zoning Code 18.38.035, 18.38.055) and one was never prepared. The last "on the record" biologic survey of the site was in 1986, and the site had been plowed shortly before. ... It also requires information on all habitat areas within 300 feet of the property. No such information is on the record. No permit may be granted without this biological review.

2.3 The Presence of Endangered Species

... Fish and Game has documented the presence of the San Francisco Garter Snake within five miles of this site, and sightings have occurred on the site, though they have not been confirmed by a certified biologist (See Attachments 2.3(a) and 2.3(b).) In the fall of 1998 U.S. Fish and Wildlife Service Staff Biologist Curt McCasland found that there were red-legged frogs and SF Garter snakes on the property, and negotiated with the developer's representative Steve Foreman at LSA Associates. In the letter of Oct. 2 1998 Mr. Foreman reports that Mr. McCasland suggested a *300 foot buffer zone*, rejects that and proposes mitigation for wetland fill (not allowed in any case) and buffer zones around the pond and stream of *150 feet*, whereas the final map only indicates a 100 foot zone. On the basis of this negotiation FWS issued a take permit for frogs, but not for the snakes. The agreed upon ESA's do not appear on the final map and are contradicted by the resolution. (See attachment 2.3(d).)

If confirmed, the presence of the frog and garter snake changes things. LUP Policy 3-24 requires the preservation of all habitats, and 3-25 says "Prevent *any*

development where there is known to be a riparian location for the SF Garter snake." (emphasis added) That means all the roads which currently cross those areas are prohibited. (See attachment 2.3(d).) Even if the developer were honoring its agreement with USFWS, our LUP does not allow development in this kind of area, so cannot allow mitigation. The City of HMB was not informed of the existence of red-legged frogs or SF Garter Snakes on the site by the developer or USFWS. Had the issue been raised in the Initial Report which it should have been, LUP policy 3-34 requires a specific report on the requirements of any unique species found. The LUP discusses the habitat of the SF Garter snake and says that "the snake has been caught in open grassy areas some distance from riparian or marshy habitats." (p.48) If this is confirmed, it would extend the protected habitat area and buffer zones even further, perhaps to the 300 feet as proposed by Curt McCasland. This permit was illegally granted on the basis of an expired EIR and no *current* information, so should be denied on appeal.

#### 2.4 Summary

In this case it seems clear that there is substantial credible evidence to believe that there are indeed rare and endangered species on the property. This was not taken into account in granting the permit. What we do not know is how many and what kinds of animals are there, and to find out the required reports must be done. The presence of the red-legged frog, San Francisco garter snake and various raptors alters the requirements for buffer zones and permitted uses within them. The project as designed doesn't come close to conforming with the requirements if there are Endangered Species Habitat Areas (ESHA) on the property...

#### (2) LCP Standards

The applicable sections of the LCP include LUP policies 3-1, 3-3 to 3-5, 3-24, 3-25, and Zoning Code section 18.38.035 \_\_\_\_\_ which are reproduced in their entirety in Appendix A at the end of this report.

#### (3) Analysis

The appellants contend that "... If there are endangered species on the site, buffer zones for streams and Riparian corridors go from 30 or 50 feet to a minimum of 100 feet...." They however provide no LCP citation for this claim, and staff has been unable to identify such a requirement.

LUP Policy 3-5 and Zoning Code section 18.38 do, as the appellants contend, require a biologic report, although Zoning Code section 18.38 specifies that the report address habitat areas within 200 feet of the property, not 300 feet as the appellants contend. As discussed previously, the Pacific Ridge at Half Moon Bay Wetland Mitigation and Monitoring Plan prepared in December 1997 stands as the Biologic Report for the project as approved. Section 7 of this report is

entitled "Threatened and Endangered Species," and discusses the California Red-Legged Frog and San Francisco Garter Snake. It makes no mention of the "two protected raptors" the appellants contend were listed in Appendix A of the Final EIR (FEIR) of the approved project. It also does not indicate that any survey or study was conducted to identify other rare and endangered or unique species as prescribed by Zoning Code section 18.38.035(B). In fact, the applicant's response to the appeal contentions refers to surveys done in 1988 and 1990 (Exhibit 10, pg. 7), which do not meet the requirement of Zoning Code section 18.38.055(B)(3) that the report "*must have been a part of a Certified Final EIR that was accepted as complete and adequate no more than one year prior to the date of submittal...*" This lack of complete, timely information about the sensitive species that may be present raises a substantial issue of compliance with the LCP.

The appellants also cite observations by Judge Marcus Gunkel as evidence that other endangered species and raptors are present on the site. The appellants further contend that "LUP Policy 3-24 requires the preservation of all habitats, and 3-25 says 'Prevent *any* development where there is known to be a riparian location for the SF Garter snake.' (emphasis added) That means all the roads which currently cross those areas are prohibited."

LUP Policy 3-24 does require "preservation of all habitats of rare and endangered species..." however, Policy 3-25 does specify an exception to the requirement to "prevent *any* development where there is known to be a riparian location for the San Francisco Garter snake," as highlighted below:

**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.*

The project as approved contains areas where "there is known to be a riparian location for the SF garter snake." Policy 3-25 does not require the demonstrated **presence** of garter snakes, but only

a known riparian location (i.e. **habitat**) for the snakes. The U. S. Fish and Wildlife Service (USFWS) has determined that such habitat exists on the site. In a November 16, 1998 Formal Consultation on the project (**Exhibit 14**, pgs. 2 and 9), the USFWS service advised the U. S. Army Corps of Engineers (Corps):

**"...that the site likely provides habitat for California red-legged frogs and potential habitat for San Francisco garter snakes.** This determination was based on the presence of vegetated water bodies on the site, the widespread distribution of California red-legged frogs -in coastal San Mateo County, and evidence that San Francisco garter snakes are potentially present at any water body in the Half Moon Bay area that supports emergent vegetation and amphibians....

"One permanent pond and 4 unnamed tributaries are within the project site, and there are at least 3 ponds immediately adjacent to the project site, which provide adequate habitat for both California red-legged frogs and San Francisco garter snakes..."

While the site is thus known to be a riparian location for the SF garter snake, the existing pond appears to be greater than ½ acre in surface, triggering the limited exception under Policy 3-25 (a)(2). With this exception, however, come the obligations *"to prevent disruption of not more than one-half of the snake's known habitat in that location..."* and for the developer to *"(b)... make sufficiently detailed analyses of any construction which could impair the potential or existing migration routes of the San Francisco garter snake..."* and undertake *"appropriate mitigation measures ... to provide for appropriate migration corridors."*

As noted in the LUP (pg. 47), the SF garter snake's habitat is not limited to wet areas as it "has been caught in open grassy areas some distance from riparian or marshy habitats." The LUP also notes the snake *"migrates from one habitat to another. As developments occur on the coastside, it is important that migration corridors are maintained. It is likely, by cutting off migration routes, that isolated populations could not continue to exist."* Therefore Policy 3-25 requires the detailed analysis of snake migration routes. Staff has been unable to identify the *"sufficiently detailed analyses of ... migration routes"* in the biological reports prepared by the developer prior to project approval. However, it does appear that the project could cause impacts to these routes. The 1998 USFWS Biological Opinion on the project found:

*"...the proximity of housing lots and the proposed footpath will be significant new impacts to both California red-legged frogs and San Francisco garter snakes. The potential for contaminated runoff entering this pond will be slightly increased as the pond will be surrounded by development and roads.*

Several significant impacts to biological resources from construction of the proposed project are identified. This project will result in a further decrease in the availability of dispersal, foraging, and breeding habitat in the Half Moon Bay area for San Francisco garter snakes and California red-legged frogs. Specifically, insufficient buffer distances

between the riparian corridor of the onsite drainages and existing stock pond **will likely preclude movement of San Francisco garter snakes and California red-legged frogs to and from adjacent habitats.** In addition to blocking dispersal corridors, the project will likely preclude the use of surrounding riparian corridors and adjacent upland habitat due to the proximity of houses..."

(4) Conclusion

In view of this information, the Commission finds there was not evidence before the City to make the findings required by LUP Policies 3-24 and 3-25. Therefore, there is not a high degree of factual or legal support for the City's decision to approve the project as consistent with the certified LCP. Thus, the Commission finds the project as approved by the City raises a substantial issue with respect to conformance of the approved project with the LCP standards regarding protection of habitat for rare and endangered species.

c. Traffic, Circulation and Coastal Access

(1) Appellants' Contentions

Appellants Wittrup and Carman contend that the project approval did not conform to, among others, LCP Policy 9-2 requiring adequate road facilities, and Zoning Code 18.16.070(E) requiring the project be connected to Highway 92 with a new Foothill Boulevard extension and to Highway 1 with a new Bayview Drive. The appellants further contend that the approval of extending Terrace Avenue to serve the project did not follow LCP procedures, and that the Terrace Avenue extension, certain internal roads, the extension of Grandview as an emergency access road, and the new Foothill Boulevard and Bayview Drive are inconsistent with LCP habitat and buffer requirements. Additionally, the appellants contend that the project as approved would increase congestion on Highways 1 and 92 to unacceptable levels of service and would adversely impact coastal access (Exhibit 7, item 3).

(2) LCP Standards

The applicable sections of the LCP include the following, which are reproduced in their entirety in Appendix A at the end of this report:

Policy 9-2:

*... No permit for development shall be issued unless a finding is made that such development can be served with water, sewer, schools, and road facilities, including such improvements as are provided with the development. (See Table 9.3)*

Policy 10-25

*The City will support the use of Level of Service C as the desired level of service on Highways 1 and 92, except during the peak two-hour commuting period and the ten-day average peak recreational hour when Level of Service E will be acceptable.*

Zoning Code 18.16.070 (E)

*E. That Foothill Boulevard shall be constructed with a connection to Highway 1 and all intersection improvements at Foothill Boulevard and State Route 92 and the proposed Bayview Drive and Highway 1 shall be installed prior to the issuance of any building permits for any additional units after the first 100 dwelling units are constructed;*

Zoning Ordinance ("Z.O.") § 18.38.080.E

*E. Permitted Uses within Wetlands Buffer Zones. The Riparian Buffer Zone Uses listed in this Title shall apply to Wetlands Buffer Zones.*

**(3) Analysis**

The conditions of approval for road access to the project (Exhibit 4, pg. 7) provide that:

"Until such time as other permanent access is available, temporary access shall be provided to the site via Terrace Avenue. Within nine months of the approval of the Coastal Development Permit, the City shall determine the permanent primary access to the site, consistent with the Vesting Tentative Map..."

The approved site plan also shows an access road extending east from the present end of Grandview Blvd.

For a number of interrelated reasons, the project as approved does raise issues of conformance with the standards of the LCP which require adequate access to the project, and provide that such access is consistent with other all LCP standards, including the protection of wetlands and other sensitive habitat areas.

On its face, the question of adequate road access to the project was not resolved by the City's approval. That approval required the City to determine the permanent primary access to the site within nine months of its March 16, 1999 approval of the CDP, which has not been done. The City has acknowledged this continuing issue in an October 27, 1999 letter asking the Commission to resolve this question:

... the issue of final permanent access to the development was unresolved at the time the City of Half Moon Bay acted upon Pacific Ridge's Coastal Development Permit...Both alternatives that the City was considering for permanent access, Foothill Boulevard or Bayview Drive, appear to be impacted to varying degrees in their current alignment with wetlands. Therefore, if Terrace Avenue, (an access point that heretofore was not considered for permanent access) is from the Coastal Commission's point of view an environmental superior alternative, or if other routes may have their negative environmental consequences mitigated for, the City of Half Moon Bay would appreciate this guidance or an outright decision from the Commission.

The Coastal Commission via the Coastal Development Permit will be the final decision making body for the Pacific Ridge Subdivision. Access to the subdivision is part and parcel to any potential approval. To guard against a potential second appeal of a Half Moon Bay decision concerning access, I encourage the Commission to take up the issue at this time.

Thus, the City's generally acknowledges a substantial issue exists with respect to the finding required by Policy 9-2 that no permit be issued without the project being served with road facilities.

Another relevant issue is whether relying on Terrace Avenue for project access conforms with Policy 10-25 which specifies acceptable Levels of Service on Highways 1 and 92. The appellants contend:

"The addition of an extension of Terrace Ave was first proposed at the March 16 City Council meeting, and ...was granted without the existence of a Traffic Study (required by Zoning Code 18.20.070 D) for use of Terrace ...Given the findings of the previous studies, the absence of significant differences between the cases (except Terrace has more traffic than Grandview because it serves more houses now) one can guess that the findings for Terrace would be as bad or worse than those for Grandview.

The project as approved does not contain any specific or definite provisions for providing access other than through Terrace. The applicant's attorney states (**Exhibit 10**, pg. 11) that:

"The EIR studied the use of local streets in evaluating potential connections of the on-site portion of Foothill Boulevard to Highway 1. See, EIR, p.103 (the EIR states that Foothill Boulevard's connection to local streets other than Grandview Boulevard and Silver Avenue are possible, but the EIR's analysis of Grandview Boulevard and Silver Avenue as the local connector streets provide sufficient analogous information of impacts."

However, this cited analysis assumes the connection of Foothill Boulevard to Highway 92, a connection not assured in the project as approved. Therefore, there is not a high degree of factual or legal support for the City's decision to approve the project as consistent with the certified LCP.

(4) **Conclusion**

For the reasons stated above, the Commission finds the project as approved by the City raises a substantial issue with respect to conformance of the approved project with the LCP standards regarding adequate road service and LUP Policy 10-25, which specifies LOS "E" as the acceptable minimum.

d. **Inconsistency with LUP Policy 9.3.7.d requirements to provide recreational opportunities along drainage courses.**

(1) **Appellants' Contentions**

Commissioners Wan and Reilly contend the City's approval of the project does not include any findings or conditions relating to the requirement of LUP Policy 9.3.7.d that major drainage courses be dedicated to protect against erosion and to provide for passive recreational use. They contend that on the contrary Condition No. 5 of the approval requires that a fence be installed at the outer edges of all riparian buffer zones, and that the approved project plan shows fences along four drainage courses, which would preclude any passive recreational use in the drainage courses, inconsistent with Policy 9.3.7.d.

(2) **LCP Standards**

The applicable sections of the LCP include the following, which are reproduced in their entirety in Appendix A at the end of this report:

*Policy 9.3.7...*

- d) Existing major drainage courses shall be dedicated, after suitable landscaping, to protect against erosion and to provide for passive recreational use.*

(3) **Analysis**

LUP Policy 9.3.7.d, is one of eight specific "development conditions" the LUP requires for development of the subject site. The City's approval of the project does not include any findings or conditions relating to the dedication of site drainage courses for the provision of passive recreational uses as called for. Condition No. 5 of the City's approval, however, requires that "A



fence not to exceed 42 inches in height shall be installed at the outer edges of all riparian buffer zones on the property at the parcel line to protect riparian corridors." The fence, which is shown along four drainage course on the approved project plan, would seem to preclude any passive recreational use in the drainage courses, inconsistent with Policy 9.3.7.d.

(4) Conclusion

Therefore, as discussed above, the City's approval of the fence along the drainage courses raises a substantial issue of consistency of the approved project with the policies of the LCP regarding protection of passive recreational uses.

e. Visual Resources

(1) Appellants' Contentions

Appellants Wittrup and Carman contend that the approved project does not conform to LCP provisions for protecting notable tree stands and significant plant communities, and for clustering, siting and provision of open space to protect view corridors (Exhibit 7, items 4 and 5).

(2) LCP Standards

The applicable sections of the LCP include the following, which are reproduced in their entirety in Appendix A at the end of this report:

Policy 7-9

*New development shall be sited and designed so as to avoid or minimize destruction or significant alteration of significant existing plant communities identified in the General Plan (which include riparian vegetation along stream banks, and notable tree stands)*

Coastal Act Section 30251

*The scenic and visual qualities of coastal areas shall be considered and protected as a resource of public importance. Permitted development shall be sited and designed to protect views to and along the ocean and scenic coastal areas, to minimize the alteration of natural land forms, to be visually compatible with the character of surrounding areas...*

9.3.2 Specific Planned Development Policies

*The purpose of the Planned Development designation is to ensure well-planned development of large, undeveloped areas planned for residential use in accordance with concentration of development policies. It is the intent of this designation to allow for flexibility and innovative design of residential development, to preserve important resource values of particular sites, to*

*ensure achievement of coastal access objectives, to eliminate poorly platted and unimproved subdivisions whose development would adversely affect coastal resources, and to encourage provision for low and moderate income housing needs when feasible. It is also the intent of the Planned Development designation to require clustering of structures to provide open space and recreation, both for residents and the public. In some cases, commercial development such as convenience stores or visitor-serving facilities may be incorporated into the design of a Planned Development in order to reduce local traffic on coastal access roads or to meet visitor needs.*

*All areas designated in the Land Use Plan for Planned Development shall be subject to the following policies:...*

*Policy 9-9:*

*Use of flexible design concepts, including clustering of units, mixture of dwelling types, etc., shall be required to accomplish all of the following goals:*

- (a) Protection of the scenic qualities of the site;*
- (b) Protection of coastal resources, i.e. habitat areas, archaeological sites, prime agricultural lands, etc., as required by the Coastal Act;...*

*Policy 9.3.7...*

- c) No development shall be permitted on slopes in excess of 25% or above the 160' contour and, as a condition of approval, an open space easement shall be dedicated which ensures the permanent retention of such slopes in open space. Development shall be clustered to the maximum extent feasible on lower slopes...*
- g) Structures shall be sited so as to minimize interruption of views of the upper hillsides from Highway 1 and the public recreation area along the shoreline.*

*Policy 9-12*

*The amount of public, private, and common open space in a Planned Development ... be at least 20% of the gross area. ...*

*Open space shall be defined as follows:*

- (a) Public open space shall include but not be limited to public parks and parking lots, beaches, access corridors such as bike paths, hiking or equestrian trails, usable natural areas, and vista points which are accessible to members of the general*

*public. Public open space shall not include areas which are unusable for recreational purposes.... Environmentally sensitive habitat areas and archaeological sites may be included in public open space only if such areas are usable by the public for light recreation, i.e., walking;*

### (3) Analysis

#### Trees

LUP policy 7-9 requires new development to avoid or minimize cutting down notable tree stands. The appellants contend that the approved development would cut down nearly all the visible stands of trees to build Foothill and so cannot be permitted (Exhibit 7, pg. 11). They also contend these trees may be endangered species habitat, protected by LUP Policies 3-3 and 3-24, as discussed above. In response to this contention, the applicant states (Exhibit 10, pg. 16):

“The Project proposes very little tree removal... As set forth in the Biological Report, despite the appellants' allegations, the Property does not contain any Monterey pines. Finally, as disclosed by past surveys, the tree stands do not support any endangered species. As part of the Biological Report, a raptor survey was conducted and no raptor nests were observed on-site.”

The project's Draft EIR does list Monterey pines on site (WESCO, Ap. 1988, Appndx. A). The Biological Report referred to by the applicant was done for the Commission after the City's project approval, and thus is not part of the local record for determination of substantial issue.

Conclusion: The City's approval does not contain substantial factual evidence in support of the City's decision that the project conforms with Policies 7-9, 3-3 and 3-25. Thus, the Commission finds the project as approved by the City raises a substantial issue with respect to conformance of the approved project with the LCP standards regarding protection of notable tree stands and associated habitat.

#### Views

The appellants contend that:

“LUP policy 9-9 and 9.3.7 (c) and (g) apply specifically... and require that the houses be clustered to allow "view corridors" and located where they are least visible from public view. As planned, they are not clustered,... provide no view through the houses to the hills behind them which are designated "Scenic" on the Visual Resource Overlay of the LUP. That designation indicates a view which is to be preserved... As planned the only people who will be able to see those hillsides are the folks with houses that back onto it.

The story poles erected for the site visit of Feb. 9, 1999 were located in the lowest portion of the back of the property, not on the visible knolls so the City could not adequately evaluate this impact on the site visit. This design violates the specific provisions for it in our LCP, so it cannot be permitted."

LUP Chapter 9.3.7(c); development conditions, provides:

*c) No development...on slopes in excess of 25% or above the 160" contour...an open space easement shall be dedicated...[d]evelopment shall be clustered...,*

Zoning Code 18.02.040 defines development to include "the construction...of any structure." Therefore the phrase "[n]o development ... above the 160 foot contour..." includes any part of a structure (development) higher than the 160' elevation. Since this LCP limitation is intended to protect views, it is reasonable to conclude that it controls structures that may project into such views. The approved project includes homes whose footprint stops at that contour line but whose structures project as much as 30' (the approved height for the two-story homes) above the 160' elevation, thus raising a substantial issue of conformance to section 9.3.7 of the certified LCP.

Conclusion: The City's approval does not contain substantial factual evidence in support of the City's decision that the project conforms with Policies 7-9, 3-3 and 3-25. Thus, the Commission finds the project as approved by the City raises a substantial issue with respect to conformance of the approved project with the LCP standards regarding protection of the scenic quality of the project sites hillsides.

### Open Space

LUP policy 9-12 requires 20% of the gross area of the property be devoted to open space. The appellants contend that (1) no calculation of this currently exists, (2) when protected areas not suitable for walking are excluded this constraint seems to be unmet, (3) the project approval was based on counting all sensitive habitat area as public space, but that Policy 9-12 restricts the kind of ESHA's that can be counted as public open space, and (4) the approved project does not include a designation of public open space and no finding was issued, so the permit must be denied.

In response to the appellant's contentions, the applicant's attorney states (Exhibit 10, pg. 17):

Open space within the Project significantly exceeds [the LCP] requirement. When Ailanto submitted its CDP application to the City, the Project contained 213 homes, with 3 1.1 acres (27% of the Property) designated as homeowners association ("HOA") open

space, 5.6 acres (4.9% of the Property) designated as an HOA park, 1.8 acres (1.6% of the Property) dedicated to the City for a public park and 5.0 acres (4.3% of the Property) dedicated to the HOA to be preserved. In total, 37.8% of the Property was designated as open space. This is nearly double the LCP's requirement for open space. Since the Project as it is proposed to be revised contains merely 150 homes (an almost 25% reduction in homes than when the CDP was approved by the City), the amount of open space will be even further increased. Clearly, the LUP requirements are met and exceeded.

Based on these calculations, the Commission finds with regard to the 20% open space requirement of Policy 9-12, the approved project conforms to the certified LCP. However, as discussed above, substantial issues do exist with regard to other aspects of the LCP's Visual Resource provisions.

**(4) Conclusion**

As discussed above, questions concerning the protection of trees and views raise a substantial issue regarding the approved project's conformance with the Visual Resource provisions of the certified LCP.

**f. Environmental Review**

**(1) Appellants' Contentions**

Appellants Wittrup and Carman contend that:

(1) Zoning Code 18.38.050 makes CEQA compliance an LCP standard because it requires projects within a Coastal Resource Area "be evaluated in an Initial Study and *any necessary subsequent CEQA documents* according to the following general standards (*in addition to those set forth in CEQA guidelines*)," and that

(2) "...the LUP 9.3.7 (a) discussion of this project in particular makes environmental review (AFTER 1990) and compliance with CEQA a condition of approval. Without such compliance there is no reliable way to know just what the effects are going to be, and whether or not the substantive requirements of the LCP are being complied with. We contend that the required information on this project is either seriously lacking or just not there," and that

(3) "Our Zoning Code 18.38.050 requires that an Initial Study meet all CEQA standards and in addition consider 6 other... None of those things are addressed...CEQA 10563 (d) 1-6 requires the Initial Study discuss *ways (e.g, more than one)* to mitigate *all* possible significant effects. It cannot avoid doing so by making a judgment of feasibility about

one way... Alternatives are discussed in the CEIR ... It also requires discussion of whether the project is consistent with existing land use controls. This Initial Study identifies various controls, but does not address them... At the least an EIR should have been prepared, indeed, a draft EIR was prepared. A permit should not have been issued." (Exhibit 7, pgs. 1314).

(2) **LCP Standards**

The applicable sections of the LCP include the following, which are reproduced in their entirety in Appendix A at the end of this report:

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

**A. Development and Land Use:**

1. Shall be **prohibited** when significant adverse impacts on coastal resource areas would occur as a result...

**Policy 9.3.7**

a) *A specific plan shall be prepared for the entire area which incorporates all of the conditions listed below and conforms to all other policies of the Land Use Plan. ... The plan shall be subject to environmental review under City CEQA guidelines.*

*The plan and accompanying environmental documents shall be submitted to the Planning Commission,...*

(3) **Analysis**

Zoning Code section 18.38.050 (Environmental Evaluation Standards) states that "Projects ... shall be evaluated ... according to the following general standards: ... Development and Land Use... Shall be prohibited when significant adverse impacts on coastal resource areas would occur as a result..."

The Draft EIR lists the following under the section "Impacts Which Cannot Be Mitigated To Acceptable Levels":

"Traffic

Impacts: As proposed, without a Foothill-local street connection, the intersections of Highway 92/Main and Highway 1/Main would be severely congested either or both of the peak hours..." (WESCO, April 1998, pg. ix)

The project as approved does not assure a Foothill-local street connection. As an "impact which cannot be mitigated to acceptable levels," the severe congestion that the DEIR found would result from the project without such a connection raises a substantial issue of compliance with Zoning Code section 18.38.050 which requires that developments and land uses with a significant adverse impact be prohibited. Neither the Final EIR, nor the findings of approval on the project address the significant adverse impact identified in the DEIR.

**(4) Conclusion**

Therefore, as discussed above, there is not a high degree of factual or legal support for the City's decision to approve the project as consistent with the certified LCP. Thus, the Commission finds the project as approved by the City raises a substantial issue with respect to conformance of the approved project with the LCP's Environmental Evaluation Standards.

**3. Appellants' Contentions That Do Not Raise a Substantial Issue**

**a. Public Notice**

**(1) Appellants' Contentions**

Appellants Wittrup and Carman contend:

"Members of the public and the Planning Commission were on the record about their concerns with this project, and with the issues pertaining to wetlands in particular. Despite a letter and one person speaking on this, the City Council did not address these issues in their findings. Nor did they give people the opportunity to comment on the final draft of the resolution...

"Zoning Code 18.20.060 requires the City to publish a notice of any review of a CDP application in a newspaper of general circulation 10 days before the hearing, mail notice to all property owners within 100 feet of the site, to post notices on the site and in the adjoining neighborhoods. The notice must have the name of the applicant, a description of the proposed development including its location, and the time, date and place of the hearing among other things. The City held 4 hearings on this project, only one was announced in the HMB Review. None of these required notices occurred and the only

public posting was at the back door of the City Hall and did not have the required information... Had our City Government solicited or indeed allowed our input they might have taken all these things into account and denied the CDP." (Exhibit 7, pgs. 12-13)

(2) **LCP Standards**

The applicable sections of the LCP include Zoning Code Section 18.20.060-Notice Required, which is reproduced in their entirety in Appendix A at the end of this report:

(3) **Analysis**

The applicant's response includes Exhibit 10, pg 12, Exhibit 11, and the following excerpt from Exhibit 10, pg 18:

"Appellants misunderstand the notice requirements. Z.O. § 18.20.060 applies to notices of all applications for CDPs. When Ailanto first applied for a CDP application in the spring of 1998, the required postings of the notice of the application with all of the required information were made at the Project site, and notices to adjoining property owners were given by mail (and by neighborhood postings). Photographs of the posting of the required notices are set forth in Exhibit D to the letter to Mr. Bill Van Beckum from Yuri Won of this firm, dated May 17, 1999. In addition, publication of the Planning Commission hearing on the CDP application occurred 10 days before the first public hearing. When the Planning Commission's decision was appealed, notice of the public hearing for the appeal to be heard by the City Council was made through a newspaper publication. Each of the subsequent public hearings were continued hearings such that no notice was required. When a public hearing has been continued to a date certain, republication of notice of the public hearing is unnecessary. See, Z.O. § 18.20.060.B. 1. The public hearing was closed after the site visit on February 9, 1999. The next meeting at which the City Council considered the appeal, on March 16, 1999, was not a public hearing, but a deliberation session for which no public hearing (and thus no notice) was required. See, e.g., Letter to Mr. Bill Van Beckum from Yuri Won, dated May 17, 1999 [Exhibit 11]..

"... Over the span of more than five months, the City held a total of eight hearings and one meeting on Ailanto's CDP application in which public testimony was permitted. Moreover, certain hearings for the Project made the front page headlines in the local newspaper, the Half Moon Bay Review. Thus, there was ample opportunity for public input on the Project."

Zoning Code 18.20.060 sets out the provisions for notice. Section 18.20.060.B.1. states:



*...If a public hearing is continued to a date and time that is not specified at the public hearing, notice of the continued public hearing shall be published and distributed in the same manner and the same time limits as for the initial notice...*

The applicant has provided evidence of a documented effort by the City's to comply with these notice requirements. Moreover, as noted in Section 18.20.060.B.1 above, where a public hearing is continued to a specific time, separate public notice is not required. In any case, this contention raises a procedural inconsistency and not a substantial or substantive inconsistency of the approved project with the certified LCP. The contention thus raises a local issue relevant to this project and not an issue of regional significance since the City has LCP notification policies in place and the City's decision to approve the permit would not influence the existing LCP standards that include notification provisions. Furthermore, the Commission notes that it's own hearing on this appeal would provide additional opportunities for interested parties to provide comments on the project.

**(4) Conclusion**

Therefore, the Commission concludes that the appeal raises no substantial issue with respect to conformance of the City's approval with the notice provisions of the certified LCP.

**4. Appellants' Contentions That Are Not Grounds For An Appeal.**

**a. CEQA Compliance**

**(1) Appellants' Contentions**

Appellants Wittrup and Carman generally contend the City failed to comply with CEQA in approving the project (Exhibit 7, pgs. 14-15).

**(3) Analysis**

The contention is not a valid ground for appeal. The Commission's appellate jurisdiction is limited to the types of development described in Public Resources Code Section 30603(a) and the grounds described in Section 30603(b). Consequently, on appeal, the Commission considers only whether the appeal raises issues of consistency with the certified Local Coastal Program or the public access policies of the Coastal Act. These are not the grounds asserted by the applicant. Instead, the appellant cites an alleged inconsistency with the California Environmental Quality Act.

**(4) Conclusion**

Therefore, because the appellants fail to raise issue with either an LCP policy or a public access policy of the Coastal Act, the Commission finds that the appellants' above-referenced contention does not constitute a substantial issue or a valid basis for appeal of the project.

## **PART TWO**

### **ISSUES TO BE RESOLVED IN THE REVISED PROJECT**

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

### **REVISED PROJECT**

On October 28, 1999, Stephen K. Cassidy, an attorney for the applicant, submitted a revised site plan for the project amending the CDP application for the purposes of the de novo hearing. The applicant has subsequently further amended that site plan several times. The current site plan of the proposed project is shown in **Exhibit 11**. That plan provides for 145 two-story houses, with an internal road network. Four riparian corridors are set aside for protection, as is an extensive area around the existing pond. Several other areas identified as wetlands, and buffer areas around them are restricted from residential development. Access to the project is initially planned by using Terrace Avenue, but the applicant has further amended the project by submitting a "phasing plan" for future improvements for road access as described in the letter of February 14, 2000 (**Exhibit 12**).

### **INFORMATION NEEDED TO EVALUATE THE REVISED PROJECT DE NOVO**

Largely thanks to hard work and a cooperative, responsive and constructive approach by the City of Half Moon Bay, the applicant and the appellants, significant progress has been made in addressing the issues raised by the project. However, significant issues concerning the conformity of the proposed project with the policies of the certified LCP remain unresolved. Following is a discussion of the information needed to evaluate the revised project in a de novo recommendation to the Commission. Other issues may arise prior to or during the de novo hearing.

#### **1. TRAFFIC, CIRCULATION AND COASTAL ACCESS**

The Commission will need the following additional traffic and cumulative transportation analysis to evaluate the development's conformity with the LCP:

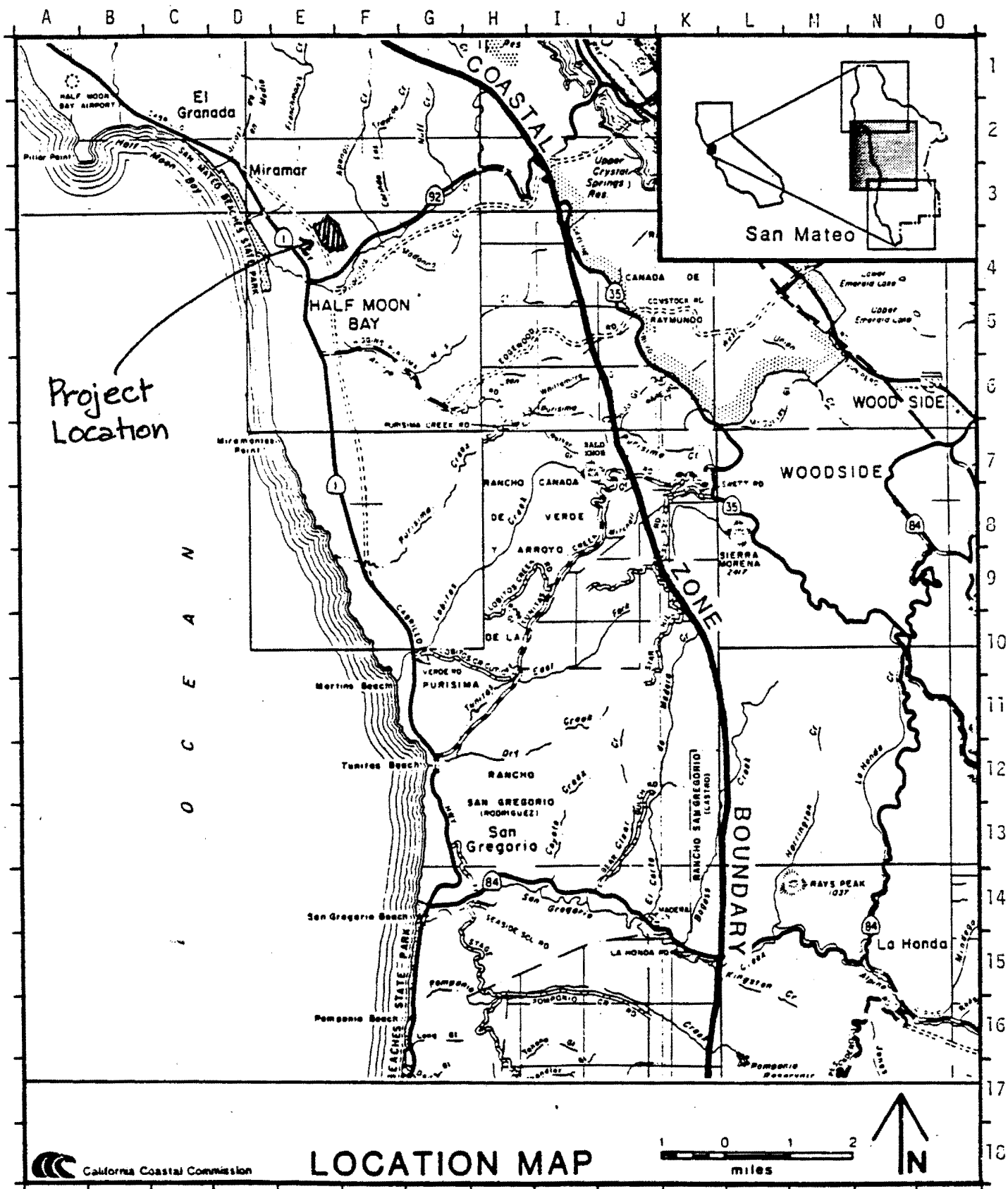
1. Current capacity, conditions and levels of service on Highway 1, 92, and potential access roads to project, identifying critical potential congestion bottlenecks.
2. Information on the level of current development corresponding to the current traffic.
3. Projections (10-year, 20-year, and full buildout) of future development in the area (based on both City and County LCPs and current parcelization [e.g. accounting for areas where existing parcels are smaller than current plans]).
4. Analysis of the effect of such development on traffic, addressing traffic generation specific to the character of the proposed development.
5. Analysis of all alternatives for access, and each one's corresponding impacts on resources (including wetlands in the proposed alignment), traffic capacity and levels of service, with special attention to the standards for recreational travel and commute periods specified in Policy 10-25.
6. Improvements and other means to mitigate traffic, increase transit and other alternatives to auto use per PRC 30252.
7. A specific program for project phasing, tied to the timing of programmed improvements to the regional and local transportation capacity infrastructure (including expansions of Highways 1 and 92), and taking into account the sensitive habitat and resource issues involved.

## **EXHIBITS**

1. Regional Location
2. Vicinity Map
3. Project Area
4. Notice of Final Action
5. Site Plan as Approved by City of Half Moon Bay
6. Appeal by Commissioners Wan and Reilly
7. Appeal by Eleanor Wittrup and George Carman
8. Wetland Mitigation and Monitoring Plan, Wetland and Culvert Exhibit, December 1997

9. Oct. 28, 1999 "Companion Letter", amended, Anna C. Shimko, applicant's attorney
10. Dec. 23, 1999 Letter from Anna C. Shimko, applicant's attorney
11. May 17, 1999 letter from Yuri Won to Mr. Bill Van Beckum
12. Beachwood Preliminary Wetlands Delineation, Oct. 1999.
13. Jan. 24, 2000 Site Plan, Pacific Ridge
14. November 16, 1998 USFWS Biological Opinion
15. Dec. 15, 1998 Corps letter
16. APPENDIX A - Pacific Ridge Appeal, LCP Standards





Sheet 2 of 3

EXHIBIT NO. 1
APPLICATION NO. A-1-HMB-99-22
Regional Location

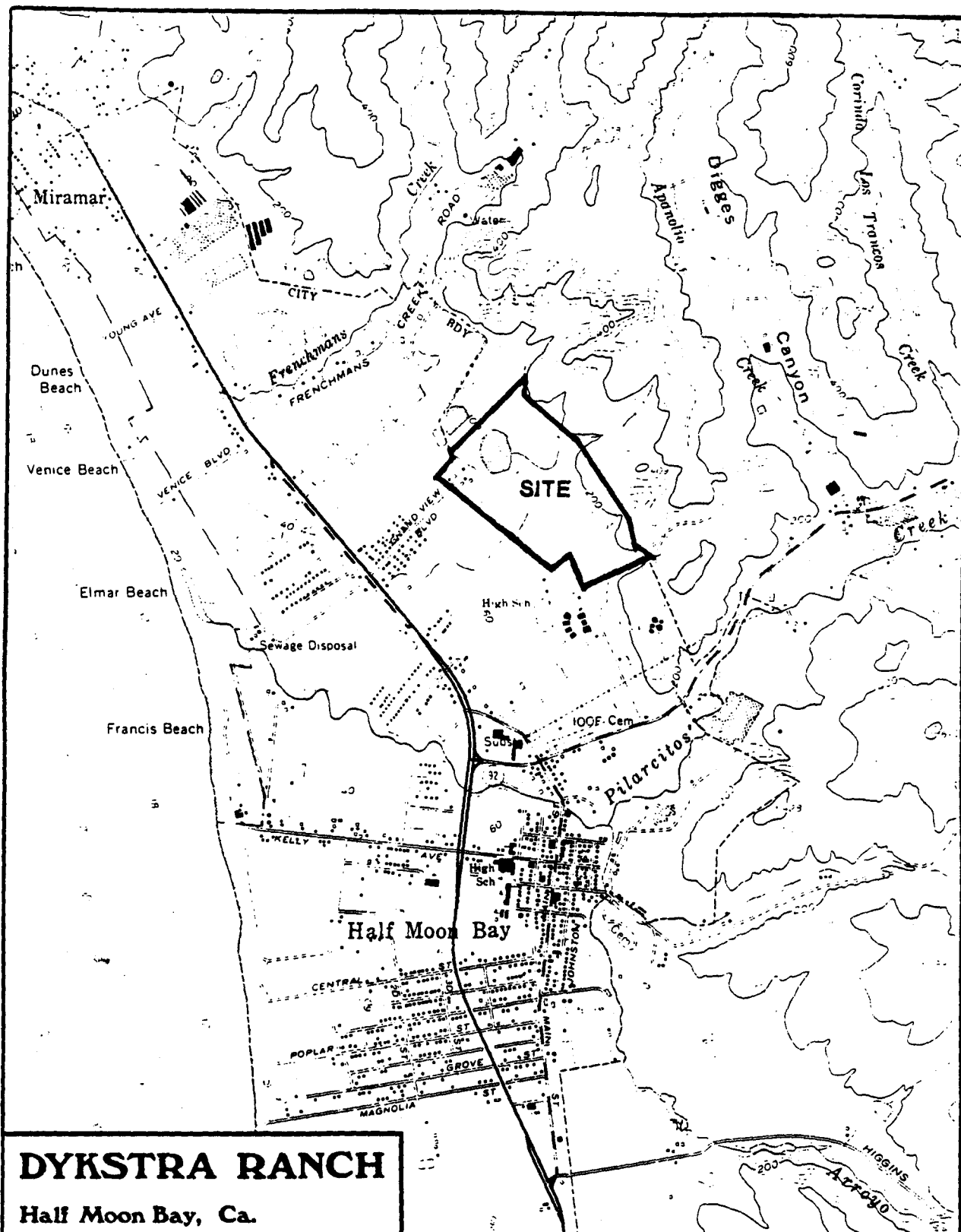


Figure 2.1-2 SITE VICINITY

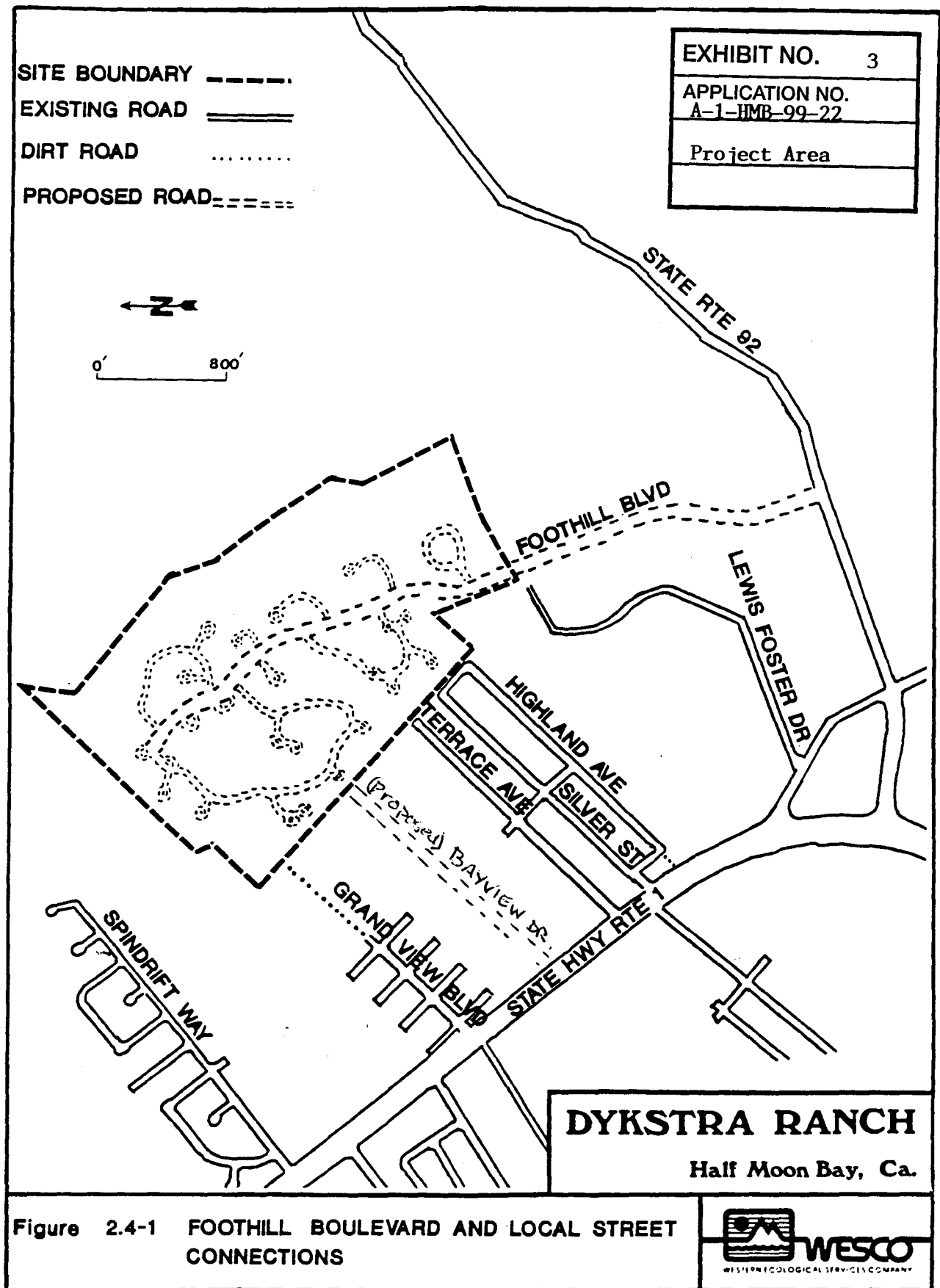


EXHIBIT NO. 2

APPLICATION NO.  
A-1-HMB-99-22

Vicinity Map







## CITY OF HALF MOON BAY

City Hall, 501 Main Street  
Half Moon Bay, CA 94019

March 23, 1999

Mr. Steve Scholl, Executive Director  
California Coastal Commission  
NorthCoast Unit  
45 Fremont, Suite 2000  
San Francisco, CA 94105-2219

RE: PDP-11-98, Pacific Ridge Project

Dear Mr. Scholl:

Pursuant to Section 18.20.060 of the Half Moon Bay Zoning Code we are providing the following Notice of Decision regarding PDP-11-98 for the Pacific Ridge Project:

1. Notice of Final Action and Procedures for Appeal
2. Resolution C-17-99 including findings for approval and conditions
3. Site Plan amended March 5, 1999
4. Description of Project contained in Staff Report to the City Council dated March 16, 1999.

We believe that this submittal completes the items necessary for the Commission to begin the appeal period for this project.

Very truly yours,

Bill Smith, Associate Planner

Cc: Bill Van Beckum  
Yuri Wan

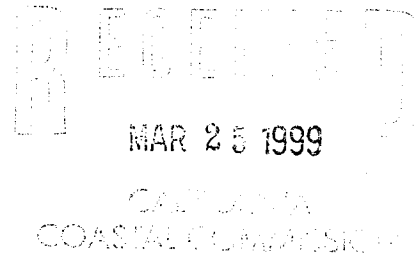


EXHIBIT NO.	4
APPLICATION NO.	A-1-HMB-99-22
Notice of Final Action	

# NOTICE OF FINAL ACTION

Coastal Permit

City of Half Moon Bay Planning Department  
501 Main Street, Half Moon Bay CA 94019  
(650) 726-8250 Fax (650) 726-9389

Date: March 23, 1999 File: PDP-11-98

Applicant: Ailanto Properties, Inc.  
One Kaiser Plaza  
Ordway Building  
Suite 1775  
Oakland, CA 94612

Planner: Anthony J. "Bud" Carney

This notice is being distributed to the Coastal Commission and those who requested notice. The following project is not located within the appealable area of the Coastal Zone. The public hearing on the Coastal Development Permit was conducted by the Planning Commission at its regularly scheduled meeting of December 15, 1998, at which time the application was denied without prejudice. On December 15, 1998 the decision was appealed to the City Council. On March 15, 1999, the City Council adopted a resolution of approval for the project..

Project Description: To subdivide 114 acres into 197 lots for detached, single-family homes and provide streets, open space parcels and neighborhood park areas

Project Location: Adjacent to the east end of Grand View Boulevard.

Assessors Parcel Number: 056-350-010, 048-269-060 & 048-269-070

COASTAL PERMIT APPROVED, BASED UPON Findings for Approval contained in the attached Resolution C-17-99 and Conditions of Approval contained in Exhibit A, as modified by the City Council during the meeting.

**§ 13111. Filing of Appeal.**

(a) An appeal of a local government's decision on a coastal development permit application (or local government equivalent) may be filed by an applicant or any aggrieved person who exhausted local appeals, or any two (2) members of the Commission. The appeal must contain the following information:

- (1) the name and address of the permit applicant and appellant;
- (2) the date of the local government action;
- (3) a description of the development;
- (4) the name of the governing body having jurisdiction over the project area;
- (5) the names and addresses of all persons who submitted written comments or who spoke and left his or her name at any public hearing on the project, where such information is available;
- (6) the names and addresses of all other persons known by the appellant to have an interest in the matter on appeal;
- (7) the specific grounds for appeal;
- (8) a statement of facts on which the appeal is based;
- (9) a summary of the significant question raised by the appeal.

The filing of the notice of appeal should also contain information which the local government has specifically requested or required.

- (b) The appeal must be received in the Commission district office with jurisdiction over the local government on or before the tenth (10th) working day after receipt of the notice of the permit decision by the executive director.
- (c) The appellant shall notify the applicant, any persons known to be interested in the application, and the local government of the filing of the appeal. Notification shall be by delivering a copy of the completed Notice of Appeal to the domicile(s), office(s), or mailing address(es) of said parties. In any event, such notification shall be by such means as may reasonably advise said parties of the pendency of the appeal. Unwarranted failure to perform such notification may be grounds for dismissal of the appeal by the Commission.

**CITY COUNCIL RESOLUTION C-17-99**  
**PDP 11-98, COASTAL DEVELOPMENT PERMIT FOR PACIFIC RIDGE SUBDIVISION**

**WHEREAS**, an application was submitted requesting approval of a Coastal Development Permit for a previously approved Vesting Tentative Subdivision Map and for 216 individual houses in the subdivision; and

**WHEREAS**, environmental review as required by the California Environmental Quality Act has been provided with an EIR certified in 1990 and a July 1998 Initial Study and Negative Declaration being adopted as part of this project action; and

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

**WHEREAS**, the Planning Commission conducted duly noticed public hearings on the matter on October 8, 1998, October 22, 1998, November 12, 1998, December 10, 1998, and December 15, 1998, at which meetings all those in attendance were given an opportunity to be heard on the matter; and

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

**WHEREAS**, the Planning Commission denied the request for approval of the Coastal Development Permit at its meeting of December 15, 1998; and

**WHEREAS**, the applicant has appealed the decision by the Planning Commission denying the approval of the Coastal Development Permit to the City Council, pursuant to section 18.20.073 (B) of the Zoning Ordinance; and

**WHEREAS**, the City Council held duly noticed public hearings on January 12, and 24, 1999, February 9, 1999 and March 16, 1999, at which meetings all those in attendance were given an opportunity to be heard on the matter; and

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

**WHEREAS**, this project is consistent with the development density established by existing zoning, community plan or general plan policies for which an EIR was certified and the City has reviewed the project as necessary to examine whether there are project specific significant effects which are peculiar to the project or its site and based on this review the City has ascertained and responded to all such project-specific significant effects which are peculiar to the project or its site.

**WHEREAS**, the City has determined that none of the events described in CEQA Guidelines Section 15162(a) has occurred and therefore with the exception of the Negative Declaration approved pursuant to this Resolution, no further EIR or Negative Declaration, and no addendum to a previously prepared EIR is required. The Council finds that changes made to the project as a result of the Council's consideration of the CDP have resulted in reduced impacts of the project on wetlands, riparian areas, wildlife habitat and circulation, the Council finds that there is no substantial evidence in light of the whole record that substantial changes have been proposed or are being approved which would create new significant environmental effects or cause a substantial increase in the severity of previously identified effects; the Council further finds that no substantial changes have occurred with respect to the circumstances under which the project is undertaken which would require major revisions of the prior EIR or negative declaration due to the involvement of new significant environmental effects or a substantial increase in the severity of previously identified significant effects; and the Council further finds that there is no new information of substantial importance, which was not known and which could not have been known with the exercise of reasonable diligence at the time the previous EIR was certified as complete or the Negative Declaration was adopted, that shows that the project will have one or more significant effects not discussed in the previous EIR or negative declaration; or that the significant effects previously examined will be substantially more severe than shown in the previous EIR; or that mitigation measures or alternatives previously found not to be feasible would in fact be feasible, and would substantially reduce one or more significant effects of the project; or that mitigation measures or alternatives which are considerably different from those analyzed in the previous EIR would substantially reduce one or more significant effects on the environment.

**WHEREAS**, the City Council has found and determined that:

1. The development, as modified by conditions, conforms to the Local Coastal Program as follows:
  - a. Development is prohibited above the 160-foot contour to avoid slopes with landslide potential and to protect views of the eastern foothills.
  - b. All 197 housing units proposed are to be detached houses, though the Local Coastal Program refers to high-density attached units and apartments being allowed.
  - c. Wetlands, drainage courses and riparian habitat within designated environmentally sensitive areas are to be preserved throughout the project in a system of open space corridors and buffer zones.
  - d. Project grading is to be limited by designing the cut and fill to be placed on the

site.

- e. The development conditions in the Program state that the Planning Commission may reduce the allowable density (228 units) if it is determined that Highway 92 is inadequate to accommodate the amount of proposed residential development. The Plan before the Council has been reduced to 197 units.
2. The development is consistent with the annual population limitation system established in the Local Coastal Program Land Use Plan and Zoning Ordinance.

This development is exempt from the annual population limitation system because a Vesting Tentative Subdivision Map was approved by the city Council in 1990, prior to the limitation system being established.

3. The development is consistent with the use limitation and property development standards of the Planned Unit Development zoning district as well as the other requirements of the Zoning Ordinance. The development is consistent with the use limitation and property development standards of the Planned Unit Development zoning district as well as the other requirements of the Zoning Ordinance. The development is consistent with the Planned Unit Development zoning district in that the development consists of detached single family residential development clustered within dedicated open space areas; does not contain any prohibited uses; complies with the residential development standards, complies with the recreational facilities standards; meets the standards for development adjacent to sensitive habitat and the standards for the preservation of streams, wetlands habitats and pond; is not located above the 160 foot contour; complies with grading, soils, and drainage standards; complies with streets, traffic and circulation standards; and complies with water, sewer and noise standards. The development also complies with the Visual Resource Protection Standards set forth in Chapter 18.37 of the Zoning Ordinance in that no development will occur above the 160-foot contour nor on slopes in excess of 25%. The development also complies with the Coastal Resource Conservation standards set forth in Chapter 18.38 of the Zoning Ordinance in that the development complies with all applicable use limitations and standards pertaining to riparian corridors, buffer zones and wetlands. The Council finds that the project is consistent with permitted uses in riparian corridors since no feasible or practicable alternative exists and therefore permits the following uses: bridges when supports are not in significant conflict with corridor resources, improvement, repair or maintenance of roadways or road crossings.
4. Evidence has been submitted that the proposed development will be provided with adequate services and infrastructure at the time of occupancy in a manner

that is consistent with the Local Coastal Program.

The applicants have submitted letters that indicate adequate water and sewage disposal facilities and services are available for this 197 unit residential development.

5. The Architectural Review Committee has found that the project, as conditionally approved by that body, will not hinder the orderly and harmonious development of the city, nor will it impact the desirability or opportunity to obtain the optimum use and value of the land and the improvements, nor will it impair the desirability of living or working conditions in the same or adjacent areas, nor will it otherwise adversely affect the general prosperity and welfare of the City.

At its regularly scheduled meeting of August 5, 1998, the Architectural Review Committee found that the design of the project is appropriate for these lots in this neighborhood. The Committee also forwarded the following two concerns to the Planning Commission:

- a. The uniform separation of street trees proposed along Foothill Boulevard look too formal and urban, and
- b. In some areas of the subdivision the proposed site setbacks cause the houses to appear too close together.

The Committee's concerns have been considered by the City Council and have been addressed by changes in the design.

- 6 The development as modified by the Conditions of Approval is in substantial conformance to the Vesting Tentative Map approved by the City Council on August 7, 1990.



**NOW, THEREFORE, BE IT RESOLVED** that the Half Moon Bay City Council adopts the Negative Declaration and approves the Coastal Development Permit application (PDP-11-98) subject to the Conditions of Approval in Exhibit "A".

**PASSED AND ADOPTED** by the Half Moon Bay City Council at a meeting held on March 16, 1999, by the following vote:


AYES: Councilmembers Patridge, Ruddock, Stone and Mayor Donovan

NOES Councilmember Coleman

ABSENT \_\_\_\_\_

ABSTAIN \_\_\_\_\_

APPROVED:

  
\_\_\_\_\_  
Jerry C. Donovan, Mayor

PASSED AND ADOPTED AT THE  
COUNCIL MEETING OF

3-16-99  
DR  
CITY CLERK

ATTEST:

  
\_\_\_\_\_  
Dorothy Robbins, City Clerk

**EXHIBIT A**  
**COASTAL DEVELOPMENT PERMIT - PDP 11-98**  
**CONDITIONS OF APPROVAL**

1. The project shall be constructed in substantial compliance with the Coastal Development Permit, the application for which is entitled "Proposed Site Plan Modifications for Pacific Ridge at Half Moon Bay" as shown on the schematic plan prepared by EDI Architecture, Inc. San Francisco dated November 12, 1998, revised March 5 and 9, 1999 consisting of one sheet, and labeled Exhibit "A", incorporated herein and by reference made a part hereof, and on file in the office of the City of Half Moon Bay Planning Department, which site plan has been modified to reflect the conditions set forth herein.
2. All design changes are in substantial conformance with the approved Vesting Tentative Map without amendments, and the applicant's vested rights will be fully preserved by development under this approval.

**COASTAL RESOURCES CONSERVATION STANDARDS**

3. For perennial streams on the property, riparian buffer zones shall be established within 50 feet from the limit of riparian vegetation, or where no riparian vegetation exists, within 50 feet from the bank edge.
4. For intermittent streams on the property, riparian buffer zones shall be established within 30 feet from the limit of riparian vegetation, or where no riparian vegetation exists, within 30 feet from the midpoint of the stream.
5. A fence not to exceed 42 inches in height shall be installed at the outer edges of all riparian buffer zones on the property at the parcel line to protect riparian corridors.
6. A buffer zone shall be established within 100 feet of the high water mark of the existing pond on the property.
7. No portion of any residential parcel shall be permitted within any established buffer zone on the property.
8. In those instances where a home is proposed on a lot adjacent to a riparian buffer zone on the property, and the home can not be moved any farther away from the edge of the established buffer zone without encroaching on the minimum required front yard setback, rear yards setbacks may be reduced to a minimum of 10 feet.
9. The Applicant shall install a vegetative fence (such as a hedgerow) along the northern, eastern and southern boundaries of the property to discourage children

and small animals from crossing property lines.

10. The Applicant shall incorporate language within the CC&Rs to limit the nuisance liability of adjacent property owners who engage in agricultural uses.
11. The Applicant shall install a bridge over the intermittent stream located where Foothill Boulevard is to cross over Drainage #3 near Terrace Avenue.
12. The Applicant shall install silt traps on the property as part of the on-site storm drain system. The homeowners shall be responsible to pay for the on-going maintenance of that portion of the storm drain system necessary for the City to achieve compliance with its NPDES permit. The homeowners may fund this on-going maintenance either through the Homeowner's Association as required by the CC&R's, or through an assessment district.
13. Prior to the start of construction, the Applicant shall conduct a survey to identify any raptor nesting sites on the property or to confirm the absence of such nesting sites. If raptor nesting sites are identified during the survey, specific setback distances shall be established by a qualified biologist, in consultation with the California Department of Fish and Game, based on the species of raptor occupying the nest. The Applicant shall do no work within the established setback distances of any occupied nests during breeding season, and no construction within the established setback shall take place until after all birds in the identified nest have fledged. The Applicant shall conform to Section 3503.5 of the California Fish and Game Code and all relevant provisions of the Migratory Bird Treaty Act as it pertains to raptors.

#### **VISUAL RESOURCE PROTECTION AND DESIGN STANDARDS**

14. The Applicant shall provide a landscaping plan for approval by the Architectural Review Committee that, when implemented, shall effectively screen the project liberally with trees along the western boundary line, and that shall also incorporate additional landscaping as screening for all homes adjacent to the 160-foot contour.
15. All streets on the property shall be illuminated through the use of indirect street lighting.
16. All structures on the property shall utilize muted paint colors and muted roof shingle tones, as previously approved by the Architectural Review Committee.

#### **PROJECT ACCESS**

17. Until such time as other permanent access is available, temporary access shall be provided to the site via Terrace Avenue. Within nine months of the approval of the Coastal Development Permit, the City shall determine the permanent primary access to the site, consistent with the Vesting Tentative Map. Upon selection of the permanent primary access, the Applicant shall be responsible to pay all costs related to providing permanent primary access to the site. However, if other

properties should benefit from this permanent primary access, then they shall pay for their "fair share" of benefit.

18. The Applicant shall construct Foothill Boulevard as shown on the Vesting Tentative Map, except that there will be two drive lanes and a bike lane in-lieu of four drive lanes. The on-site portion of Foothill Boulevard shall terminate at Grandview Boulevard at the north and at Brightwater Road at the south. The Applicant shall dedicate easements from the points of termination to the property boundaries.

## **WETLANDS AND HABITAT RESTORATION**

19. The December 1997 Wetland Mitigation and Monitoring Plan shall be revised to incorporate conditions set forth in the Nationwide Permit 26 issued by the U.S. Army Corps of Engineers on December 15, 1998. The potential loss of wetlands and riparian habitat shall be mitigated to the satisfaction of the U.S. Army Corps of Engineers.
20. Lot lines will not be permitted in the wetland and/or riparian buffer zone. The following restrictions apply:
  21. The setback from riparian corridors shall be 50 feet from the bank edge for perennial streams and 30 feet from the midpoint of intermittent streams, or land on both sides of riparian corridors which extends 50 feet from the bank edge for perennial streams and 30 feet from the midpoint of intermittent streams where no riparian vegetation exists as defined in Section 18.38.075 D of the Zoning Ordinance.
  22. The average setback from wetlands shall be 100 feet from the high point on lakes, ponds and marshes (although no buffer is required on manmade agricultural ponds and reservoirs, as defined in Section 18.38.080 D of the Zoning Ordinance). The pond is intended to be managed as a restored wetland area.
  23. Disturbance or removal of vegetation shall not exceed the minimum necessary to complete operations. The disturbed portions of any stream channel or lake margin within the high water mark of the stream or lake shall be restored to as near their original condition as possible.
  24. Restoration shall include the revegetation of stripped or exposed areas.
  25. Installation of bridges, culverts, or other structures shall be such that water flow is not impaired and upstream or downstream passage of fish is assured at all times. Bottoms of temporary culverts shall be placed at or below stream channel grade. Bottoms of permanent culverts shall be placed below stream channel grade.

26. Plans for design of concrete sills and other features that could potentially impede fish migrations must be approved by Department of Fish and Game.
27. An adequate fish passage facility must be incorporated into any barrier that obstructs fish passage.
28. Equipment shall not be operated in the stream channels of flowing live streams except as may be necessary to construct crossings or barriers and fills at channel changes.
29. When work in a flowing stream is unavoidable, the entire stream flow shall be diverted around the work area by a barrier, temporary culvert, and/or a new channel capable of permitting upstream and downstream fish movement. Construction of the barrier and/or the new channel shall normally begin in the downstream area and continue in an upstream direction, and the flow shall be diverted only when construction of the diversion is completed. Channel bank or barrier construction shall be adequate to prevent seepage into or from the work area. Channel banks or barriers shall not be made of earth or other substances subject to erosion unless first enclosed by sheet piling, rock riprap, or other protective material. The enclosure and the supportive material shall be removed when the work is completed and the removal shall normally proceed from downstream in an upstream direction.
30. Equipment shall not be operated in the lake or its margins except during excavation and as may be necessary to construct barriers or fills. If work in the lake is unavoidable, a curtain enclosure to prevent siltation of the lake beyond the immediate working area shall be installed. The enclosure and any supportive material shall be removed when the work is completed. Wash water containing mud or silt from aggregate washing or other operations shall not be allowed to enter a lake or flowing stream.
31. If operations require moving of equipment across a flowing stream, such operations shall be conducted without substantially increasing stream turbidity. For repeated crossings, the operator shall install a bridge, culvert, or rock-fill crossing as specified in comments below.
32. Structures and associated materials not designed to withstand high seasonal flows shall be removed to areas above the high water mark before such flows occur.
33. No debris, soil, silt, sand, bark, slash, sawdust, rubbish, cement or concrete or washing thereof, oil or petroleum products or other organic or earthen material from any logging, construction, or associated activity of whatever nature shall be allowed to enter into or placed where it may be washed by rainfall or runoff into waters of

the State. When operations are completed, any excess materials or debris shall be removed from the work area. No rubbish shall be deposited within 150 feet of the high water mark of any stream or lake.

34. The operator will notify the Department of Fish and Game of the date of commencement of operations and the date of completion of operations at least five days prior to such completion.
35. Under the terms of the Streambed Alteration Agreement, all work in or near the area covered shall be confined to the period April 15, 1998 through October 15, 1999.
36. The Agreement allows the operator to place roadways over drainage/creek areas as is outlined in the RMI report and letter to Mr. Robert Henry dated 01-30-98.
37. The operator agrees to follow recommendations as outlined in the RMI report which was presented to the Department of Fish and Game.
38. The operator agrees to tree replacement of 3:1 in various sites.
39. All animal relocation will be done after calling the Department of Fish and Game (707-944-5500).
40. The operator agrees to contact the Department of Fish and Game with results of the bull frog control program.
41. The Department of Fish and Game can modify or delay the project based on emergency conditions, which may greatly affect fish and wildlife resources.

#### **SECTION 404 PERMIT CONDITIONS**

42. To ensure compliance with the nationwide permit conditions required by the U.S. Army Corps of Engineers pertaining to endangered species, the following special conditions shall be implemented.
43. To minimize the potential for mortality to California red-legged frogs, Ailanto Properties shall comply with the conditions 44-47.
44. The filling of drainage channels and wetlands shall be confined to July 15 through October 31.
45. Pre-construction surveys for both California red-legged frogs and San Francisco garter snakes in and around stream crossings and adjacent to the existing stock

pond shall be conducted within two prior to the initiation of project construction.

46. The pre-construction surveys in and around stream crossings and the existing stock pond shall be conducted by a qualified biologist with a valid scientific take permit for capturing and handling California red-legged frogs and San Francisco garter snakes and any California red-legged frogs or San Francisco garter snakes found within the project impact area shall be captured and relocated by a qualified biologist to appropriate habitat in the existing stock pond.
47. Direct mortality or injury to San Francisco garter snakes is not authorized with the accompanying incidental take statement.
48. To minimize the likelihood of harassing California red-legged frogs and San Francisco garter snakes, Ailanto Properties shall comply with conditions 49 and 50.
49. A biological monitor shall brief the construction crew on the potential presence of California red-legged frogs and San Francisco garter snakes in the project area, and educate on-site workers in the identification and habitat requirements of California red-legged frogs and San Francisco garter snakes, and the ramifications of direct take of these species.
50. A biological monitor shall be on call throughout the entire construction process to ensure that no California red-legged frogs or San Francisco garter snakes will be harassed by the construction of the housing development. The biological monitor shall have the authority to shut down the construction operation if either California red-legged frogs or San Francisco garter snakes are observed within the construction area.
51. To minimize the impacts of habitat modification or loss to California red-legged frogs and San Francisco garter snakes, Ailanto Properties shall comply with conditions 52-56.
52. Ailanto Properties shall enter into an agreement to endow funds to an escrow account to the amount of \$100,000 for the purposes of purchasing and enhancing a minimum of 5.4 acres of breeding, dispersal, and foraging habitat presently occupied adjacent to occupied California red-legged frog and San Francisco garter snake habitat within 15 miles of the project site. The amount of offsite lands to be acquired will be at a minimum 2:1 ratio of developed buffer habitat impacted within 4150 feet of the stock pond (estimated to be 2.1 acres) and along drainage 3 and 4 (0.6 acres) for a total of 5.4 acres of required mitigation. Such an agreement shall be executed prior to the execution of grading within Corps jurisdiction on the project site so that the Service can review to project to ensure that the conditions set forth in Army Corps of Engineers' nationwide permit 26 are satisfied.

53. Ailanto Properties shall provide the Corps and the U.S. Fish and Wildlife Service with a revised final mitigation plan and final map of the project site before the initiation of construction so that the Service can review the project to ensure that these conditions are met.
54. A conservation easement that is agreed upon by the U.S. Fish and Wildlife Service shall be established over the entire area designated as open space and environmentally sensitive areas (ESAs), to permanently protect habitat for California red-legged frogs and San Francisco garter snakes.
55. The proposed path associated with the existing stock pond shall be fenced off and access to the pond shall only be provided to individuals maintaining the pond and emergency vehicles. The path shall not be paved and shall be located along the north and west side of the pond to facilitate maintenance of the pond.
56. An annual monitoring report shall be submitted by Ailanto Properties to both the Corps and the Service outlining the status and success of the minimization measures. The report shall include: vegetation abundance and diversity, presence and number of California red-legged frogs and San Francisco garter snakes observed, and determination of breeding. In addition, the report shall include the number of bullfrogs detected and eradicated from the existing stock pond. The report will be submitted annually for ten years.

## **WATER QUALITY**

57. As required for projects disturbing five (5) acres or more, the applicant shall submit a Storm Water Pollution Prevention Plan (SWPPP) for review by the City Engineer prior to the issuance of any grading permits. The SWPPP shall be implemented by the general contractor and all subcontractors and suppliers of material and equipment. Construction site cleanup and control of contraction debris shall also be addressed in the SWPPP. The developer is responsible for complying with the SWPPP. Failure to do so will result in the issuance of correction notices, citations or project stop work order.
58. The Storm Water Pollution Prevention Plan shall be prepared and implemented to the satisfaction of the Regional Water Quality Control Board.
59. The May 1990 Dykstra Ranch Pond Water Quality Management Plan shall be revised and implemented to the satisfaction of the San Francisco Regional Water Quality Control Board.



60. Prior to the commencement of any clearing, grading or excavation resulting in a land disturbance greater than five acres, the developer shall provide evidence that a Notice of Intent (NOI) has been sent to the California State Water Resources Control Board.
61. All storm drain inlets shall be labeled "No Dumping - Drains to Bay" using thermoplastic lettering or as approved by the Public Works Director/City Engineer.
62. Street grade along the face of curb shall have a minimum of 0.5%.
63. No drainage shall be directed over slopes.
64. All lots shall be graded so as not drain onto any other lot adjoining property prior to being deposited to an approved storm drainage system.
65. 12" minimum storm drain pipe shall be used.

#### **SOIL ENGINEERING**

66. Project construction shall conform to the recommendations in the February 1997 Soil Engineering Study by Earth System Consultants, of both the overall subdivision and the reservoir pond, which shall be reviewed and accepted to the satisfaction of the City Engineer.
67. The city shall retain a geotechnical firm, at the applicant's expense, to evaluate the potential for debris flow hazards to the Pacific Ridge site from the adjacent property (to the east) to the satisfaction of the City Engineer. If debris flow hazards are identified, the condition shall be corrected or mitigated to the satisfaction of the City Engineer.
68. Grading shall be done under the continuous inspection of the Soils Engineer and in compliance with the grading plans and recommendations of the Soils Engineer. Upon its completion, the Soils Engineer shall submit a declaration to the Director of Public Works/City Engineer that all work has been done in accordance with the recommendations contained in the soils report and the approved grading plans.
69. Any grading, stockpiling, storing of equipment or material on adjacent properties shall require written approval of those property owners affected. Copies of the rights-of-entry shall be furnished to the Director of Public Works/City Engineer.
70. No cut and fill slopes shall exceed 2:1 unless approved by the Director of Public Works/City Engineer.

71. The project civil engineer shall certify that the finished graded building pads are within 0.1 feet in elevation of those shown on the approved grading plans.

## **OTHER CONDITIONS**

72. All fire protection requirements of the Half Moon Bay Fire Protection District shall be met prior to the commencement of construction.
73. If historic or archeological resources are uncovered during grading activities, all work shall stop and the applicant shall retain a qualified archeologist. At the applicant's expense the qualified archeologist will perform an archeological reconnaissance and develop mitigation measures to protect archeological resources.
74. Pursuant to Chapter 14.40 of the Half Moon Bay Municipal Code, the hours of any construction operations shall be limited to 7:00 a.m. to 6:00 p.m. Monday through Friday, 8:00 a.m. to 6:00 p.m. Saturday, and 10:00 a.m. to 6:00 p.m. Sundays and Holidays.

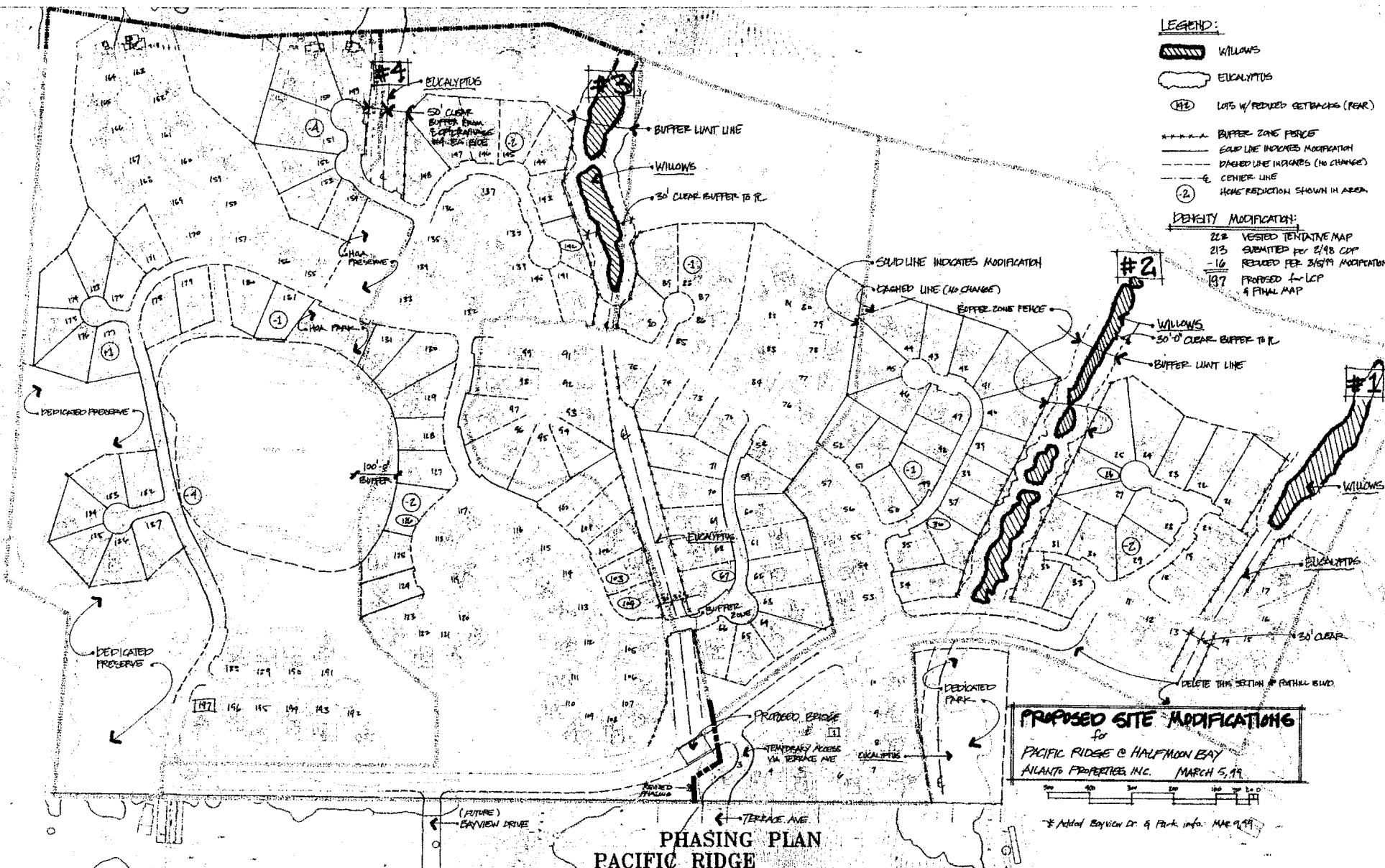
## **GENERAL**

75. Development of the Pacific Ridge subdivision shall conform to all standards and regulations in Zoning Ordinance section 18.16, the Dykstra Ranch PUD.
76. The Conditions of the Vesting Tentative Map approved in 1990, Final Subdivision Map submittal, grading, drainage, traffic circulation, and residential construction are hereby required with the exception of number 35 and the following modification to number 38: Foothill Boulevard shall have 6 inch vertical curb and gutter, in lieu of rolled curb and gutter, and shall be crowned at the centerline with a minimum cross slope of two percent.
77. All structures shall be designed and constructed in compliance with the Uniform Building Code, the Half Moon Bay Municipal Code and the Half Moon Bay Standard Details.
78. Development shall be in substantial conformance with the approved project plans, including the site plan and building elevations, except for any changes that may be required by these conditions of approval. The Planning Director shall review and approve any deviation from the approved plans.
79. The Coastal Development Permit PDP-11-98 shall expire in accordance with the provisions of Zoning Ordinance section 18.20.080 which state as follows: A Coastal

Development Permit shall expire on the latest date applicable to any other discretionary or ministerial permit or approval required for the development, including any extension granted for other permits or approvals. Should the development not require City permits or approvals other than a Coastal Development Permit, the Coastal Development Permit shall expire one year from its date of approval if the development has not begun during that time or one year from the day that the Coastal Commission appeal period ends, unless construction of the project has commenced.

80. The applicant shall revise the site plan to incorporate all mitigation measures required by the U.S. Army Corps of Engineers Section 404 Permit, the California State Department of Fish and Game Agreement Regarding Proposed Stream or Lake Alteration and the Conditions of this approval. These changes shall be incorporated into the Final Map for this project.
81. The applicants shall plant the drainage corridors with willows and coastal scrub vegetation in the riparian corridors.
82. The applicant shall make every effort to insure that wetland mitigation contributions (required by the Corps' permit) are spent in Half Moon Bay, if possible.
83. The applicant shall conduct a survey of the project site to determine the presence of agricultural fuel tanks. If they are located on the site, the applicant shall remove them in accordance with applicable state and federal standards, and submit verification of compliance to the Planning Director.
84. The applicant shall obtain a grading permit to provide parking for all construction workers on site prior to the commencement of grading or construction anywhere else on the site.
85. The applicant shall contact the Police Department 24 hours in advance, if 25 or more workers are to exit Terrace Avenue during the P.M. peak hour to allow the Police Department to provide some form of traffic control at the intersection of Terrace Avenue and Highway 1 if they deem necessary. The applicant shall reimburse the City for any costs related to such traffic control during the construction period.
86. The applicant shall make a best effort to recycle construction materials that are not utilized on the project site.
87. The applicant shall maintain Terrace Avenue free and clear of dirt and debris during the period that construction activities access the site from Terrace Avenue. This maintenance shall be done to the satisfaction of the City Engineer.

88. The applicant shall insure that heavy construction vehicles are placed on the project site from Terrace Avenue during non-peak commute hours. The applicant shall provide the Police Department 24 hours in advance of such activity.



RICHARD C. HANDLEN  
EDI ARCHITECTURE, INC.  
333 BROADWAY  
SAN FRANCISCO, CA 94133  
T 415.362.2000 F 415.394.0767

HALF MOON BAY



CALIFORNIA

97044  
12 NOV 98  
1" = 100'-0"

AILANTO PROPERTIES, INC.

**LEGEND:**

WILLOWS

EUCALYPTUS

LOTS w/ REDUCED SETBACKS (FEAR)

BUFFER ZONE PERCE

SHADLINE INDICATES MODIFICATION

SHADLINE INDICATES (IN CHANGE)

CENTER LINE

HOME PRODUCTION SHOWN IN AREA

**PAVEMENT MODIFICATIONS:**

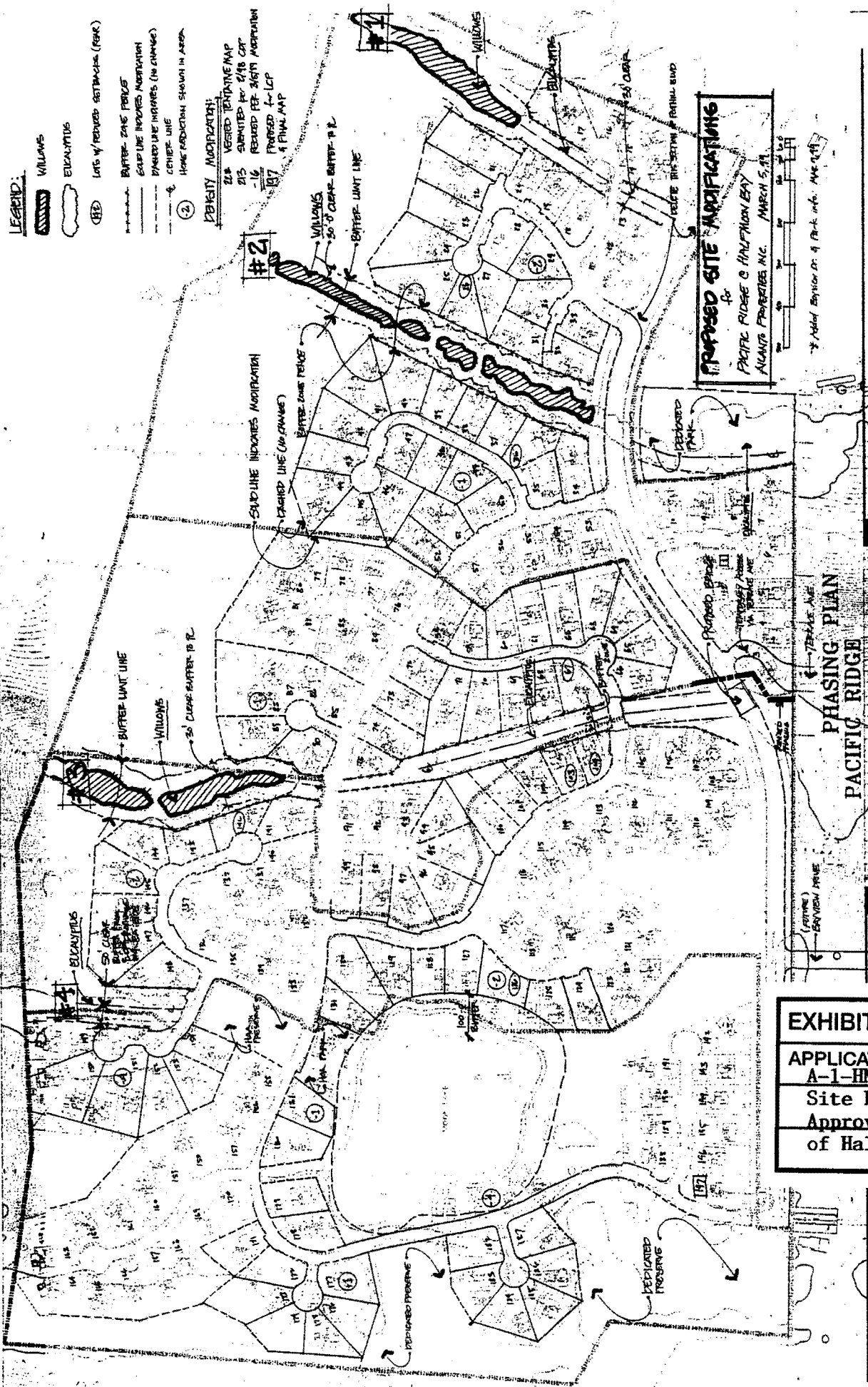
22.8 VERGED TENTATIVE MAP

21.5 SUBMITTED BY 4/15/07

16.6 REDUCED PER 3/6/10 MODIFICATION

16.7 PROPOSED 4-1/2" LCP

16.8 FINAL MAP



**PROPOSED SITE MODIFICATIONS**  
 TO  
 PACIFIC RIDGE & HALF MOON BAY  
 AILANTO PROPERTIES, INC. MARCH 5, 07

\* Added Section Dr. & Park info. May 07

**PHASING PLAN  
 PACIFIC RIDGE**



HALF MOON BAY CALIFORNIA

97044  
 12 NOV 98  
 1" = 100'-0"  
 Home-Approved  
 AILANTO PROPERTIES, INC.

EXHIBIT NO.	5
APPLICATION NO.	A-1-HMB-99-22
Site Plan as Approved by City of Half Moon Bay	

RICHARD C. HANDLEN  
 EDI ARCHITECTURE, INC.  
 333 BROADWAY  
 SAN FRANCISCO, CA 94133  
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APPEAL FROM COASTAL PERMIT  
DECISION OF LOCAL GOVERNMENT

EXHIBIT NO.	6
APPLICATION NO.	A-1-HMB-99-22
Appeal by	Commissioners Wan and Reilly

4/6/99 Appeal by Commissioners Sara Wan and Mike Reilly of Coastal Permit  
Decision of City of Half Moon Bay (PDP-11-98, Ailanto Properties, Inc.)

SECTION IV. Reasons Supporting This Appeal

The City's findings for approval of the project states that "the development complies with the Coastal Resource Conservation standards set forth in Chapter 18.38 of the Zoning Ordinance in that the development complies with all applicable use limitations and standards pertaining to riparian corridors, buffer zones and wetlands." However, in several instances there are no findings that explain discrepancies between the approved development plan and provisions of the certified LCP regarding the review and approval of development proposals. An additional inconsistency exists between the approved project and requirements of the certified LUP regarding the provision of opportunities for passive recreational use along the site's drainage courses, i.e., in the site's riparian corridors. Specifically:

1. Deficiencies in resource mapping required by the LCP.

LUP Policy 3-5 requires the submittal of a biologic report prior to development review that, according to LCP Ordinance Sec. 18.38.035.A. and B.1, must be "prepared by a qualified Biologist for any project located in or within a 100 feet of any Sensitive Habitat Area, Riparian Corridor ... and any Wetland," and that must "describe and map ... existing sensitive habitats, riparian areas and wetlands located on or within 200 feet of the project site."

Following a wetlands survey of the site conducted in June 1997, a "wetland delineation" was submitted to the U.S. Army Corps of Engineers (Corps) for confirmation in August 1997. The jurisdictional determination, confirmed by the Corps, in October 1997, was mapped in November 1997 as an exhibit in a "Wetland Mitigation and Monitoring Plan" report that was prepared for the project in December 1997. Because the wetlands mapped in the report are only project site areas that meet the criteria for wetlands as defined by Corps criteria, the map may not be an accurate representation of all of the site's wetland resources as defined by the certified LCP.

The LCP's Land Use Plan (LUP) definition of "wetlands" does not make any distinction on wetland habitat values based on interpretation by the Corps. The Corps generally considers wetlands to be characterized by a particular hydrology, hydric soils *and* hydrophytic vegetation. The LUP definition of wetlands requires the occurrence of only two of the above characteristics, i.e., a particular hydrology, and *either* hydric soils *or* hydrophytic vegetation (LUP Appendix A, Special Definitions and LCP Zoning Code Sec.18.38.020.E).

In addition to this deficiency in the mapping of wetlands as defined by the LCP, the wetlands mapping is deficient in that it did not include any representation of the presence or absence of riparian areas and wetlands located on or within 200 feet of the project site. Such mapping is necessary to determine any additional development constraints, for example, whether access to the site that avoids near-site wetland and riparian areas and associated buffers is feasible, and whether any buffers for offsite wetland or riparian areas would extend into the project site, possibly into areas proposed for on-site development.

With a possibly inaccurate or deficient representation of all riparian and wetland areas on-site and near-site, it is not possible to verify the City's findings that the development complies with all applicable use limitations and standards pertaining to riparian corridors, buffer zones and wetlands.

2. Inconsistencies with LCP provisions restricting uses in wetland and riparian areas.

The approved project plan shows, in project site riparian corridors, the installation of four roadway-associated culverts and one bridge, and also shows, in areas that are mapped as wetlands on the November 1997 wetlands map, portions of eight proposed residential lots (lot #s 130, 131, 155-157, and 174-176), two portions of proposed Silver Surf Road, and also a portion of Red Hawk Road and a portion of Lone Trail Way.

There are no findings in the City's approval of the project that explain how the approval of any fill in wetland and riparian areas for street construction or residential development is consistent with restrictions of LUP Policy 3-4, Permitted Uses (in sensitive habitat areas, including riparian areas and wetlands) and Policy 3-9, Permitted Uses in Riparian Corridors. Policy 3-4 only allows "resource-dependent or other uses which will not have a significant adverse impact in sensitive habitats," and Policy 3-9(b) permits only:

- (1) education and research, (2) consumptive uses as provided for in the Fish and Game Code and title 14 of the California Administrative Code, (3) fish and wildlife management activities, (4) trails and scenic overlooks on public land(s), and (5) necessary water supply projects.

Policy 3-9(b) does also provide for "(3) bridges when supports are not in significant conflict with corridor resources," and "(5) improvement, repair or maintenance of roadways or road crossings," but only "when no feasible or practicable alternative exists." There are no findings in the City's approval of the project that demonstrate that the proposed uses (home sites and new roads) in the wetland and riparian areas are either "resource-dependent" or "will not have a significant adverse impact in sensitive habitats," nor are there any alternatives discussed or any substantiated findings that "no feasible or practicable alternative exists." The findings only state, without any evidence cited, that "The Council finds that the project is consistent with permitted uses in riparian corridors since no feasible or practicable alternative exists and therefore permits the following uses: bridges when supports are not in significant conflict with corridor resources, improvement, repair or maintenance of roadways or road crossings." Furthermore, Policy 3-9(b) does not permit *new* roads (as proposed), but only "the "improvement, repair or maintenance of roadways or road crossings." The project site does not now contain any roads; Policy 3-9(b) therefore is not applicable to the proposed project, since there are not any existing roads proposed to be improved, repaired or maintained.



3. Inconsistencies with LCP provisions restricting uses in buffer areas for wetlands.

LUP Policy 3-11(c) designates a 100-foot buffer zone for wetlands, and Policy 3-12 limits uses in the buffer areas to the same uses permitted in riparian corridors (see Policy 3-9 discussion above) and also prohibits the creation of any "new parcels ... whose only building site is in the buffer area."

The project plan approved by the City shows the development of new roads that include portions that are within 100 feet of mapped wetlands, specifically, in the northwest corner of the project site where Foothill Boulevard would meet Silver Surf Road (which potentially would connect to the off-site Grandview Boulevard, which connects to Highway 1), and also along portions of proposed Lone Trail Way and Silver Surf and Red Hawk Roads.

Furthermore, no portions of the eight proposed lots that contain wetlands (see above) are outside of the wetlands' required buffers. Another proposed lot (lot #154) does not contain any mapped wetland but is entirely within a 100-foot buffer area. Fifteen other lots, also not containing any mapped wetlands, are partially within 100 feet of mapped wetlands (lot #s 133-136, 148, 153, 158, 170, 172, 173, 177, 179, 183, 184, and 197); at least eight of these fifteen lots appear to be lots "whose only building site is in the buffer area," or at least would partially be in a required buffer area (lot #s 133-135, 148, 159, 170, 172, and 173).

It is not evident from the City's adopted findings how these roadway and residential lot intrusions into wetland buffer areas are allowable given the restrictions of Policy 3-12, especially, regarding the intrusion of residential lots, since the City's approval includes Condition No. 7 that specifically states "No portion of any residential parcel shall be permitted within any established buffer zone on the property," and Condition No. 20 that specifically states that "Lot lines will not be permitted in the wetland and/or riparian buffer zones."

4. Inconsistency with LUP Policy 9.3.7.d requirements to provide recreational opportunities along drainage courses.

LUP Policy 9.3.7.d, one of eight specific "development conditions" the LUP requires for development of the subject site, states that "Existing major drainage courses shall be dedicated, after suitable landscaping, to protect against erosion and to provide for passive recreational use." The City's approval of the project does not include any findings or conditions relating to the dedication of site drainage courses for the provision of passive recreational uses. Condition No. 5 of the City's approval, however, requires that "A fence not to exceed 42 inches in height shall be installed at the outer edges of all riparian buffer zones on the property at the parcel line to protect riparian corridors." The fence, which is shown along four drainage course on the approved project plan, would seem to preclude any passive recreational use in the drainage courses, inconsistent with Policy 9.3.7.d.



CALIFORNIA COASTAL COMMISSION  
NORTH COAST AREA

FREMONT, SUITE 2000  
FRANCISCO, CA 94105-2219  
415) 904-5260

APPEAL FROM COASTAL PERMIT  
DECISION OF LOCAL GOVERNMENT

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

SECTION I. Appellant(s)

Name, mailing address and telephone number of appellant(s):  
ELEANOR WITTRUP & GEORGE CARMAN  
657 TERRACE AVE., HALF MOON BAY, CA 94019  
(209) 946-3095 (W), (408) 577-3163 (W), (650) 560-9330 (H)  
Zip Area Code Phone No.

SECTION II. Decision Being Appealed

1. Name of local/port government: CITY OF HALF MOON BAY, CA

2. Brief description of development being appealed: PACIFIC RIDGE AT HALF MOON BAY (FORMERLY DYKSTRA RANCH) A PLANNED UNIT DEVELOPMENT FOR 197 HOUSES ON 174 ACRES

3. Development's location (street address, assessor's parcel no., cross street, etc.): 056-350-010 & 048-269-060, -070

4. Description of decision being appealed:
- a. Approval; no special conditions: \_\_\_\_\_
  - b. Approval with special conditions: ☒ \_\_\_\_\_
  - c. Denial: \_\_\_\_\_

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

TO BE COMPLETED BY COMMISSION:

APPEAL NO: \_\_\_\_\_

DATE FILED: \_\_\_\_\_

DISTRICT: \_\_\_\_\_

H5: 4/88

EXHIBIT NO.	7
APPLICATION NO.	A-1-HMB-99-22
Appeal by Eleanor Wittrup and George Carman	

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

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

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

6. Date of local government's decision: MARCH 16, 1999

7. Local government's file number (if any): C-17-99

SECTION III. Identification of Other Interested Persons

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

a. Name and mailing address of permit applicant:

AILANTO PROPERTIES, INC  
ONE KAISER PLAZA, DRDWAY BUILDING, SUITE 1775  
OAKLAND, CA 94612 (510) 465-8888

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

- |     |   |   |
|-----|---|---|
| (1) | <u>MR LARRY KAY</u><br><u>12 SUNSET TERRACE</u><br><u>HALF MOON BAY, CA 94019</u>                       | <u>MAILING ADDRESS:</u><br><u>PO BOX 394</u><br><u>MONTARA CA 94037</u> |
| (2) | <u>MR MICHAEL FERRERA</u><br><u>361 CYPRESS POINT ROAD</u><br><u>HALF MOON BAY, CA 94019</u>            |   |
| (3) | <u>MR ERIC FUCHS + MRS KRISTEN FUCHS</u><br><u>699 TERRACE AVENUE</u><br><u>HALF MOON BAY, CA 94019</u> |   |
| (4) | <u>MR MARCUS GUNKEL + MS CINDI ROSSI</u><br><u>530 SILVER AVENUE</u><br><u>HALF MOON BAY, CA 94019</u>  |   |

SECTION IV. Reasons Supporting This Appeal

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

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


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

SEE ATTACHED.

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

SECTION V. Certification

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

  
Signature of Appellant(s) or  
Authorized Agent

Date 03-31-1999

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

Section VI. Agent Authorization

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

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

#### ATTACHMENT TO SECTION IV. Reasons Supporting This Appeal

The subject project (CDP 11-98) does not conform with our LCP, especially those policies which protect wetlands and other sensitive habitat areas. The project does not conform with several other provisions of the LCP, including protecting scenic resources and access. The City failed to follow LCP policies and Zoning Ordinances governing the process of granting such approval. Finally, there are significant changes in circumstance since the project was vested in 1990 that were not considered by the City Council. Please note that our LUP adopts certain Coastal Act policies as "the guiding policies of the Land Use Plan."

1. LUP policies 3-1, 3-3 to 3-5, and 3-7 to 3-12, LUP 1-1, CA 30240, 30231, 30233 require buffer zones for wetlands, riparian areas and streams, and prohibits development in sensitive habitat areas, prohibits filling of wetland, and mandates a certain kind of bridge for streams. This project does not consistently conform to any of these requirements
2. LUP Policy 3-25, LUP policy 3-34, Zoning Ordinance 18.38.035, 18.38.050, 18.38.055, LUP policies 3-1, 3-3 to 3-5 require attention to and protection of threatened, endangered and rare species. They were not studied in reports prepared for this proposal, and no mitigations are included in it.
3. LUP 1-1, CA 30210, 30211 and 30252.6, LCP Policy 10-25, LCP Policy 9-2 The City must not permit a development unless adequate road facilities exist, and must deny it if it impairs coastal access. There are not adequate roads as is, and it is not possible to construct them due to wetlands and riparian corridors.
4. LCP policy 7-9 and CA 30251 say to minimize or avoid cutting significant tree stands. This development cuts almost all the visible trees.
5. LCP policy 9-9 and 9.3.7 (c & g) require clustering of houses, and they are not clustered. LCP 9-12 requires 20% open space and it is not met.
6. Zoning Ordinance 18.20.060 requires the City to publish a notice of any review of a CDP application. The City did not duly notice citizens.
7. Zoning Ordinance 18.15.040 (A), 18.38.030, 18.38.055 A3. require a current biological report, and an Initial Study. The required reports and findings were not made.
8. Zoning Ordinance 18.15.035 requires an Environmental Review, Initial Study consistent with CEQA guidelines. The Initial Study did not conform to the CEQA standards. Nor did any subsequent actions.
9. LUP Policy 1-4 City Council did not and could not make any finding that the development was in conformity with all the LCP policies.

There have been significant Change in Circumstances since the Vesting Tentative Map was Approved in 1990:

- 1) Red-legged Frog has been sighted.
- 2) SF Garter Snake has been sighted.
- 3) Foothill will not be connected to Hwy 92.

Based on all of the above, we respectfully request the California Coastal Commission hear our appeal on the project's lack of conformance with the certified Local Coastal Plan of Half Moon Bay.

### JURISDICTION:

The Pacific Ridge Coastal Development Permit is within the Coastal Commissions jurisdiction, because while it is East of Highway one, there are 3 jurisdictional wetlands, one "1.6 acre stock pond which supports a wetland habitat and seasonal meadow. There are 3 intermittent and 2 ephemeral streams... with associated wetland and riparian corridors" evenly distributed on the property. These areas are evenly distributed throughout the project. A number of these area have been designated Environmentally Sensitive Areas by U.S. Fish and Wildlife Service, so they require extra protection. Protecting these areas according to our LCP would require extensive changes to the project as approved.

### APPEALABLE ISSUES AND EXISTING LAWS:

Our appeal of the Coastal Development Permit for the Pacific Ridge (formerly Dykstra Ranch) Planned Development Permit is based on failure to comply with our Local Coastal Plan (LCP.) Because the entire City is in the Coastal Zone, our LCP includes our Land Use Plan (LUP) and Zoning Ordinances. Our LUP specifically requires (Policy 1-1) conformance with the various Coastal Act policies (30210-30264) cited in it. Zoning Ordinance 18.38.050 requires California Environmental Quality Act (CEQA) guidelines be followed in evaluating environmental impacts, and further requires specific protections above and beyond those mandated in CEQA. Sections of our LUP (9.3.7) and our Zoning Ordinances (18.16) specifically address Dykstra Ranch. Should any of these various regulations conflict, LUP Policy 1-2 says "the policy which is the most protective of the environment shall take precedence." Approval as a Planned Unit Development does not limit review for a Coastal Development Permit (ZO 18.38 exemptions.)

### SUMMARY OF ARGUMENT:

Our argument is summarized as follows: The prescribed permitting process was not followed and the required information is not in the development application and was not presented to the City or the Public. As a result the applicant has not demonstrated compliance with the LCP requirements for protection of wetlands, streams, riparian corridors and rare and endangered species. There are two logical possibilities, either the information available is all that is really necessary, or there is additional information that is important but we don't have. At this point there is no way to know with certainty which is the case. But in either case the project is not in compliance and should be re-examined from the beginning.

*If we have all the required information*, the project as approved obviously violates many LCP policies. For example, the project as approved does not allow for the required buffer zones to protect sensitive habitat, and does not require stream crossings to be built in accordance with zoning requirements. If the project were altered to bring it into compliance the alterations would require substantial alteration of the project. These

alterations would have impacts on other areas of compliance to the LCP, which would require further substantial alterations. These cumulative alterations would make the project substantially different from the vesting tentative map and require a new approval process.

*If we don't have all the required information* (the more likely case given the lack of required reports, and the non-conformance of the Initial Study, and the new information of the presence of protected species on the property) then the project must be looked at again from the very start of the process, this time getting all the required reports and allowing for mandated public review and hearing.

### EXPLANATION OF SPECIFIC CHARGES:

The project and the City's process of approving of this permit failed to conform to our LCP in a number of interlocking ways. Sometimes the same policy is violated in more than one way. Many times if the project were brought into conformity with one policy it would have an impact on conformity with another policy. Our aim is present the areas of non-conformity according to topic, and show the cumulative impact of all the required changes as we go along.

### **1) Wetlands, Streams and Riparian Corridors**

#### Background:

LUP Chapter 3 and ZO Chapter 18.38 are both concerned with providing protection for sensitive habitat areas. These include wetlands, streams and riparian corridors. The Pacific Ridge project as designed does not conform to these standards.

#### **1.1 Wetlands filled and unknown..**

LUP Policies 3-1, 3-3, 3-4, CA 30240, 30231, and 30233, and Zoning Ordinance (ZO) 18.38.080 explicitly prohibit the filling or degradation of wetlands for development of homes and new roads. The Pacific Ridge/Dykstra Ranch project would fill 2.085 acres of wetland. LUP policy 3-11 requires 100 foot buffer zones for all "ponds and other wet areas" measured from the high water mark. The final map shows no buffer zone for the northwest wetland, and indicates that other wetlands would be filled. (See attachment 1.1(a).) We know they intend to do this because they acquired a US Army Corps of Engineers permit to do just that on Dec. 15, 1998 (See attachment 1.1(c).) and its conditions are listed as part of the final Resolution of approval. That this is unacceptable was brought to the attention of the City on Nov. 12, 1998 by Bill Van Beckum of the Coastal Commission. (See attachment 1.1(d).) The City chose to ignore the fact that this action is plainly in violation of our LUP and Zoning Ordinances and has given no explanation.

The existing maps show (1.1(b)) only US Corps of Engineers wetlands. The Corps

defines wetlands more restrictively than our LCP. The Corps requires a specific hydrology, hydrophytic vegetation, and hydric soils. Our LUP requires only the first and one of the other two of the Corps requirements be met for a wetland (LUP Appendix A, Special Definitions) No map exists of the existing wetlands according to the LUP definition. (further discussion of this in 1.3) The map of existing and *created* wetlands comes close however. (See Photos of these areas in 1.2(b) and 1.3(b).) We contend that the sites proposed for wetland creation *are already* wetlands. These wetlands are not however on the final map, and do not have the required buffer zones. The development would have to be substantially redesigned to accomodate the existing wetlands and their buffer zones. (See attachment 1.1(f).)

The issue of filling wetlands and observing buffer zones was raised in various public agency responses in the FEIR including one from the Coastal Commission. (See attachments 1.1 (e).) The Developer seems to think a Corps of Engineers permit allows filling of wetlands. But the permit specifically states it does not supersede or obviate need for local or state approval. (See attachment 1.1(c).) This approval cannot be granted because our LCP prohibits it.

### **1.2 A Road Runs Through It**

LUP Policies 3-1, 3-3, 3-4, 3-9(b)(3) and CA 30231, 30233 [c] and 30236, and ZO 18.38.075 also prohibit alteration of streams for residential development though they do allow the construction of bridges "when supports are not in significant conflict with corridor resources. On the Final Map the stream indicated as #4 has two roads going through it. Stream #3 has one bridge (conforming) and two road crossings, (non-conforming) Stream #2 has a road going through it. Stream #1 has two roads going through it. The buffer zone around stream #4 is ignored by siting what appears to be a public park directly on top of it. (See attachments 1.2 (a)) During the site visit Feb. 9, 1999 there was an ephemeral stream running from stream #3 to the pond that is not indicated on any map. There is also what looks like a permanent stream with associated riparian vegetations (mostly willows) running out of the pond feeding the wetland in the NW corner which does not appear on the site map (See attachments 1.2 (b)), though it does appear in the Hydrology survey map in the original EIR. (See attachments 1.2 (c).) Roads run through both of them. The hydrology report says there are 5 streams on the property, the fifth, in the northeast corner, is also omitted. A Jan. 30 1998 letter from Warden Arnold of USFWS to Robert Henry requires that various additional stream crossings be altered, some to be large enough for deer to pass through. (See attachments 1.2 (d).) The final map indicates none of these changes. Our LCP requires span crossings of all streams and so would disallow the permit, again local compliance is required before this permit can be effective.

In addition, bridges are allowed "only where no feasible alternative exists. Why not build fewer houses over less of the site and have only one crossing of stream #3? Clearly this is a feasible alternative but no mention of this possibility or discussion of it ever occurs after the CEIR. Approval should be denied.



### 1.3 Missing in Action

LUP policies 3-1, and 3-7 to 3-12 require wetlands, streams and riparian corridors be protected by buffer zones. At a minimum they should all show up on the maps. The CEIR site description says there are five streams on the site (p.56), only four appear on the current maps. There is one permanent stream with riparian corridor north of the pond which does not show up on the site map, (See attachment 1.2(b).) Another ephemeral stream in the northeast corner was omitted. Both were documented in the CEIR V. 1. (See attachment 1.3 (a).) In addition the CEIR reports various springs seeps and wet areas. These seem like good candidate for LUP wetlands. Of particular concern is the wet area below the dam for the pond (See attachment 1.3 (b).) Though all wet areas warrant a closer inspection.

These riparian corridors and streams do not have the proper buffers. Setbacks of 30 feet from the center of the stream or dripline of riparian vegetation are required for all intermittent streams. Setbacks of 50 feet from the center of the stream or dripline are required for permanent streams. Stream #5 is omitted. Stream #4 has a park on top of it. (See attachment 1.3(c)) In addition the LUP (Appendix A - Wetland) says that the HMB LUP adapts the USFWS definition of wetland to include riparian areas along streams which support the growth of plants which normally are found to grow in water or wet ground. Many of the streams on the property have riparian growth which includes willow which may reclassify them as wetlands, and thus require a 100 foot buffer zone rather than 30 or 50. In addition no survey of the plants that make up the understory vegetation around the Eucalyptus trees, so that might count as wetland too. The LCP prohibits development of these areas so the permit cannot be upheld.

### 1.4 Nearby resources

LUP policy 3-3 and 3-5 and Zoning Ordinance 18.15.040 require all applicants for a CDP to prepare a biologic report which considers the impact of this development on *adjacent* sensitive habitats, as well as on site habitats. There are identified sensitive habitat areas to the west, (Beechwood wetlands) north (pond) and south (wetlands and Pilarcitos Creek) of the project site. (See attachment 1.4 (a).) The recent very general study for the General Plan Update did not go onto the Dykstra property, but found sensitive Riparian woodland around the pond just to the north. It is indicated on the Sensitive Biological Resources map (See attachment 1.4 (b)&(c).) There is a wetland on the Beechwood site to the West. (See attachment 1.4 (d).) No study was ever done.

#### Summary

If nothing has changed since 1986 and we have all the required information and it is correct, this project does not conform to our LCP. In the next section we will raise one particular issue where there is specific evidence that the information we do have is incorrect. The information we have is also incomplete, because the issue of adjacent habitats has *never* been addressed, and a *proper survey* of wetlands hasn't been done. As

will be shown in the next section, there is substantial evidence that things have changed or are different from the way they are presented by the applicant.

## **2) Rare and Endangered Species Habitats**

### **Background:**

The degree of protection afforded to wetlands, streams and riparian corridors depends on their suitability as habitat for unique, rare, and endangered species. All of these if present trigger further investigation and specially tailored protections. For example, if there are endangered species on the site, buffer zones for streams and Riparian corridors go from 30 or 50 feet to a minimum of 50 feet, and no development of any kind, even roads, is permitted.

### **2.1 The Presence of Rare Birds and Animals**

LUP policies 3-1, 3-3 to 3-5 require the habitat of rare animals be studied and protected. CA 30240, 30231 require the protection of environmentally sensitive areas. "Environmentally Sensitive Areas" are any area where plant or animal life *or their habitats* are rare or especially valuable. Even without the animals documented the habitat must be protected. ZO 18.38.010 states that the purpose of that section is the identification, protection and restoration of sensitive habitats. If unique rare or endangered species are present then further investigation is required *before* the permit is granted. ZO 18.38.035 (A) to ensure their habitat is preserved. Appendix A of the FEIR lists two protected raptors and numerous migratory and resident water associated birds as present on the property. (See attachment 2.1(a)) No study was conducted or evidence submitted into the public record since 1986, nor was provision made for protection of the habitats of these animals. A very good amateur biologist, Judge Marcus Max Gunkel notified the City of his sightings of the federally protected San Francisco garter snake in the area on March 18th, 1999. He has given us a declaration (e.g., sworn testimony) that there are a number of rare, endangered and protected species which inhabit the property. (See attachment (2.1(b).) The permit should be withdrawn and an honest biological report prepared as required by the LCP.

### **2.2 The Absence of A Biologic Report**

LUP policy 3-5 requires all applicants for a CDP to prepare a biologic report to identify rare and endangered plants and animals. The specific section in the LUP on Dykstra Ranch (LUP 9.3.7) says "Such development should occur in a manner which minimizes conflicts with Coastal Act policies with respect to preservation of the natural environment and hillside..." Proposed Development Condition a) says "The plan shall be subject to environmental review under City CEQA guidelines." There is nothing in the Aug. 7 1990 minutes or resolution concerning the PUD for Dykstra Ranch that exempts it from environmental review in the course of applying for a CDP. (See APPENDIX 7.)

There is no indication this development was ever exempted from such review.

The Zoning Ordinances on CDP's is very specific, a biological report must be prepared unless such a report (or a substitutable EIR) has been prepared *less than one year previously*. (Zoning Ordinance 18.38.035, 18.38.055.) This was not done. The last "on the record" biologic survey of the site was in 1986, and the site was plowed the year before the survey, and shortly after as well, significantly disrupting the vegetation for subsequent surveys. (See attachment 2.2 (a)). The vegetation has become established, spread and diversified since then. The marsh area around the pond may have grown since then, (See attachment 1.1(b) notice the shape of the pond.) The stream flowing out of the pond has clearly altered its course.

ZO 18.38.035 The report must contain a map of all the sensitive habitat areas, riparian areas, and wetlands on the site and within 200 feet of the site. This report must be distributed to various public agencies with authority to review actions over these areas for comment. No such information is on the record. No permit may be granted without this biological review.

### 2.3 The Presence of Endangered Species

#### ORIGINAL

At least one substantial change in circumstances has occurred since the original EIR which would require a new one be prepared according to CEQA 15162 (2) and (3). (LUP 9.3.7.(a) requires CEQA compliant environmental review of this project.) The LUP on p.67 states that "No threatened and endangered species have been documented in Half Moon Bay." In 1999 there are unique rare and endangered species documented in Half Moon Bay. This is clearly a new and significant difference. U.S.Fish and Wildlife Service has documented the presences of the San Francisco Garter Snake within five miles of this site. Recently there have been sightings on Dykstra Ranch, though they have not been confirmed by a certified biologist (See Attachments 2.1(b).) In the fall of 1998 U.S. Fish and Wildlife Service Staff Biologist Curt McCasland made the opinion that there were red-legged frogs and SF Garter snakes on the property, and negotiated various ESA easements, setbacks and mitigations with the developers representative Steve Foreman at LSA Associates. In the letter of Oct. 2 1998 (attachment 2.3(a)) Mr. Foreman reports that Mr. McCasland suggested a *300 foot buffer zone*, rejects that and proposes mitigation for wetland fill (not allowed in HMB LCP for any reason) and buffer zones around the pond and stream of *150 feet* whereas the final map only indicates a 100 foot zone. On 3/25/99 Mr. McCasland reported that the USFWS had issued an opinion that assumed the red-legged frog and SF garter snake were present on the site. On the basis of this opinion and negotiation USFWS issued a take permit for frogs, but not for the snakes (which are a federally protected endangered species. The agreed upon ESA's do not appear on the final map and are contradicted by the resolution. (See attachment 9(a).) Indeed the permits granted by USFWS and the USACE seem to allow substantial disruption and destruction of habitat areas of ZO 18.38.010 and CA30240(a) seek to avoid altogether.

If confirmed, the presence of the frog and garter snake changes things. LUP Policy 3-

24 requires the preservation of all habitats, and 3-25 says "Prevent *any* development where there is known to be a riparian location for the SF Garter snake." (emphasis added) That means all the roads which currently cross those areas are prohibited. (See attachment 2.3(b).) Even if the developer were honoring its agreement with USFWS, our LUP does not allow development in sensitive habitat area, so cannot allow mitigation. The City of HMB was not informed of the existence of red-legged frogs or SF Garter Snakes on the site by the developer or USFWS. Had the issue been raised in the Initial Report which it should have been, LUP policy 3-34 requires a specific report on the requirements of any unique species found. The LUP discusses the habitat of the SF Garter snake and says that "the snake has been caught in open grassy areas some distance from riparian or marshy habitats." (p 48) If this is confirmed, it would extend the protected habitat area and buffer zones even further, perhaps to the 300 feet as proposed by Curt McCasland. Conversations with Sheila Larson, the wildlife biologist at USFWS expert on the SF garter snake, on 3/29/99 revealed that it is important for this animal to travel *between* riparian areas and ponds. All such access is built over in this project. This permit was illegally granted on the basis of an expired EIR and no *current* information, so should be denied on appeal.

#### PLEASE REPLACE WITH

At least one substantial change in circumstances has occurred since the original EIR which requires a new EIR be prepared according to CEQA 15162 (2) and (3). (LUP 9.3.7.(a) requires CEQA compliant environmental review of this project.) The LUP on p.67 states that "No threatened and endangered species have been documented in Half Moon Bay." In 1999 there are unique rare and endangered species documented in Half Moon Bay. This is clearly a new and significant difference. U.S. Fish and Wildlife Service on Nov 16, 1998 issued a biological opinion that there were red-legged frogs and San Francisco garter snakes on the site. USFWS in negotiations with the developer set a number of conditions for the development of the site, and mitigation of impacts to sensitive habitat areas. Our LUP does not allow any development in these areas, nor does it allow for mitigation. Because all such areas are protected under our LCP one cannot "mitigate" the loss of one by preserving another.

LUP Policy 3-24 requires the preservation of all sensitive habitat areas, and 3-25 says "Prevent *any* development where there is known to be a riparian location for the SF Garter snake." (emphasis added) That means all the roads which currently cross those areas are prohibited. (See attachment 2.3(b). If it is the opinion of USFWS that 300 feet is the appropriate buffer zone, then that must be enforced. In addition, USFWS requires corridors between the riparian areas and the pond which do not appear on the final map. The permits granted by USFWS and the USACE seem to allow substantial disruption and destruction of habitat areas of ZO 18.38.010 and CA30240(a) seek to avoid altogether. Our LCP disallows the measures upon which the agreements with USFWS and USACE are contingent, so those permits ought to be void, and the CDP should be revoked.

Finally, the presence of endangered species is a significant new circumstance, so CEQA requires a new EIR be prepared. Negotiations between the developer and USFWS

on mitigation measures had begun in Nov. of 1977. Two USFWS staff visited the site on March 26, 1998. During this visit the USFWS staff told the developer that the project needed to be scaled back. The developer refused to comply. Inexplicably USFWS began negotiating a less protective set of conditions. These negotiations were ongoing until November 16, 1998 and further correspondence to get the developer to comply with all the conditions was sent as late as Jan. 21, 1999. (All Letters we have in 2.3(a).) The Initial Study was submitted on July 27, 1998 and presents the mitigation plan as complete and unproblematic. This is clearly a misrepresentation at best. The documentary record shows a clear reluctance which may amount to an unwillingness to obey the law with respect to the protection of these unique Coastal resources should make one think carefully about whether this developer can be trusted to act in good faith once there are bulldozers on the ground. This permit was granted in clear violation of our LCP and CEQA and should be voided.

#### Summary

In this case it seems clear that there is substantial credible evidence to believe that there are indeed unique rare and endangered species on the property. This was not taken into account in granting the permit. What we do not know is how many and what kinds of animals are there, and to find out the required reports must be done. The presence of the red-legged frog, San Francisco garter snake and various raptors alters the requirements for buffer zones for wetlands and riparian zones, and disallow all development within them (no roads.) The project as designed doesn't come close to conforming with the requirements if there are Endangered Species Habitat Areas (ESHA) on the property. The impacts of correctly observing these restrictions with or without the presence of endangered species is discussed in part 3 and in both cases would have serious effects on the project's compliance in other areas of the LCP. Whatever the case may be about the frogs and snakes, as written the plan does not comply with our LCP and should be denied.

### **3) Coastal Access & Foothill**

#### Background:

Because no building is permitted in wetlands and ESHA's the connection of Foothill Blvd. to Hwy. 92 was denied a CDP on Jan 12, 1999. Foothill's connection to 92 was an integral part of the original development plan for Pacific Ridge, and is mentioned in both the Zoning Ordinance 18.16 and the LUP 9.3.7 sections written for this development in particular. LCP Policy 9-2 says that no permit shall be issued without adequate road facilities, Zoning Ordinance 18.20.070 (D) and 18.15.040 (E) both require findings of fact that the project has adequate infrastructure. We contend that because Foothill will not be connected to 92 due to wetlands impacts this project does not have adequate infrastructure e.g., roads, and cannot comply with the specific zoning requirements for the site.

### 3.1 Getting to the Development at All.

How will people get to their houses? The original map had connections to Hwy 92 and Hwy 1 via Foothill, Bayview, and Grandview. Foothill is not going to be built past the south border of this property because it would require filling wetlands. (See attachment 1.1(a-b).) The Vesting Tentative Map (3.1(c)) shows Foothill going to connect to highway 92, and connecting to Grandview and Bayview. A connection to Grandview is not included in the final map, and would be difficult given the wetland in the northwestern corner of the property, and on the adjoining property. (See attachment 3.1(d)) Although the connection is still shown on the map, the building of Bayview is not mandated in the final resolution (See attachment 3.1(e) and 8.1(a)), even though building Bayview is required by Zoning Ordinance 18.16.070 (E). The *only* actual planned access to the site is via Terrace Ave. (See attachment 3.1 (d).) This connection is *de facto* permanent given the language in the Resolution. (See attachment 3.1 (f).) We contend that this alone would make the final map inconsistent with the Vesting Tentative Map, and so constitutes grounds for denial.

The addition of an extension of Terrace Ave was first proposed at the March 16 City Council meeting, was not announced, simply appeared as a condition for granting the approval in the draft resolution, and has not been studied. The Final Map shows a permanent connection which is not shown on ANY previous maps. The Vesting Tentative Map shows no connection as required by Zoning Ordinance 18.15.035 (F & G.) This condition was granted without the existence of a Traffic Study (required by Zoning Ordinance 18.20.070 D) for use of Terrace or notification of residents. (See attachment 6.1(b).) Given the findings of the previous studies, (See attachment 3.1(k-p)) the absence of significant differences between the cases (except Terrace has more traffic than Grandview because it serves more houses now) one can guess that the findings for Terrace would be as bad or worse than those for Grandview. LUP 10-31 requires all new development along Foothill to minimize local street connections. The Final Map turns Terrace into the *only* connection to the site, and thus turns a local street into a through street. The City council decided not to allow the Developer to use Grandview as their primary access (See attachment 3.3(i)). As proposed the Terrace extension violates the LUP 3-4 and 3-12 in that it would run through the buffer zones of stream #3 and of an off-site wetland on the proposed Beechwood subdivision just east of Foothill and north of Terrace Ave. (See attachment 1.4 (b)) and *so cannot be built* even if the traffic analysis showed it to be acceptable. *Without Terrace the project is stranded.* Using Terrace is an addition to the project that is A) inconsistent with the Vesting Tentative Map, and B) not allowed under our LUP because it is in a wetland and riparian buffer zone, so the permit should be denied.

### 3.2 Circulation within the Development

If our analysis is correct, there are unidentified wetland on the site, and LCP policies cited in 1 and 2 are obeyed and the wetlands, streams and riparian areas are correctly

protected then circulation within the development must be altered. The main road within the development (Silver Surf Road)(See attachment 3.2) from lot 130 running north to the connection with the north end of Foothill would be in the buffer zones around the pond and associated wetlands, so *cannot be built*. The course of Foothill would have to be altered.

If all the required protections are in place the number of units would have to be substantially reduced and all the roads redesigned. *None* of the houses in the northeast corner or at the south end of the property could be built, because there would not be any place to put a road to access them. A bridge would have to be built to get to the southern houses. Foothill would have to be redesigned. A number of lots moved back, and so those neighborhoods would have to be redesigned. The same laws apply here as in 3.1. Clearly, the design as is inadequate so the permit should be denied, and the project should be rethought from the start.

### **3.3 Illegal Easements**

The Final Map and Resolution requires the retention of easements for Foothill on the north and south end of the property, that go thorough or point at existing wetlands and associated buffer zones (See attachment 8.1(a)) despite the fact that the plan for Foothill has been dropped because it conflicts with the policies cited in 1. (See attachment 3.1 (a) & (b).) Foothill's construction as a bypass for Hwy 1 was an important aspect of the initial approval of the project and the discussion of it in the LUP and ZO. The intentions and requirements of LUP 9.3.7 and Zoning Ordinance 18.16 cannot now be met, so the permit must be denied.

### **3.4 Consequences of Not Building Foothill**

Zoning Ordinance 18.16.070 (E) requires that Foothill be built and connect to Hwy's 92 and 1. One of the conditions of approval in the LUP was participation in building Foothill to mitigate local and coastal traffic problems. LUP policy 9.3.7 (a) says the Planning Commission may reduce the density of the development if they find highway 92 is inadequate to accommodate the additional traffic from the development. LCP Policy 10-25 says the City will support LOS C as the desired level of service on Highways 1 and 92 except during peak commute times. The existing CEIR V. 1 shows a LOS significantly worse. (See Attachment 3.1 (j)-(p).) So it is not allowed under our LCP.

LCP policy 1-1 says that policies of the Coastal Act cited in the LUP shall act as guiding policies of the LUP. CA 30210, 30211 and 30252.6 (adopted in LUP 1-1) require any new residential development maintain or improve public access to the coast, and discussion of the planning issue related to those policies addresses congestion on Highway 1 extensively (LUP p.24-25.) The discussion specifically mentions the need to minimize and avoid conflicts created by future development. This development would substantially impair the public's access to the whole coast of San Mateo County by increasing congestion on Highways 1 and 92 to unacceptable levels of service (LOS E,F

or worse.) In addition, in 1997 the County of San Mateo did a previously impossible analysis of the impact of development on congestion and showed everyone's previous estimates to vastly underestimate the problem. (See Attachment 3.1 (q).) This is a finding which is a substantial change in circumstance since the original EIR and Vesting Tentative Map were approved in 1990 which ought to have triggered a new EIR. Without Foothill all the analyses show significant unavoidable and unmitigatable adverse impacts on local traffic and Coastal Access for the public. As there is no suggested benefit of allowing the development which would offset the costs, it should not be approved. The impact of this development would violate the requirements of our LCP as it, if it were brought into conformity on the issue of wetlands, it would cause problems which would be worse.

#### Summary

Because of the richness of the area with wetlands, even complying with LCP requirements for the existing (inadequate) maps would seriously alter the project. Compliance with habitat protections would force widespread redesign of the project. If stream 2 with willows does in fact meet our LCP definition of wetland, then houses south of that could not be built, because no road could be built to get to them. (LUP 3-4) The only remaining area suitable for development would be north of stream 2, south of the pond and associated wetlands, and divided in the middle by stream 3. The development's only access will be from Highway 1, on the yet to be built Bayview Drive. This is a significant difference from the vesting map, and it is not at all clear that even this would be allowed under our LCP. Given the gravity of these concerns the project should be denied.

### **4) Visual Resources - General**

#### Background:

A number of significant plant communities are located within the buffer zones of the wetlands and extend beyond them. These plant communities include a unique species (the monterey pine) which gets special consideration. They also provide potential habitat for the unique, rare and endangered birds mentioned in section 2. Consideration of these policies is entirely omitted in the staff report and final resolution.

#### **4.1 Notable Tree Stands and Significant Plant Communities**

LUP policy 7-9 and CA 30251 require new development to avoid or minimize cutting down notable tree stands. ZO 18.37.035 D requires tree stands be preserved where ever possible. ZO 18.37.045 1c and 2b define significant plant communities as Riparian vegetation adjacent to all bodies of water, and groupings of native trees such as Monterey pine and says they *shall* be preserved whenever possible. In section B it requires an evaluation and report on these communities and trees. These tree stands may also be endangered species habitats (See section 2.1.) This development would cut down nearly



all the visible stands of trees to build Foothill (See attachment 4.1(a) (b).) and so cannot be permitted.

## **5) Visual Resources - Specific**

### **5.1 Protecting the Scenic Hillside on Dykstra Ranch**

LUP policy 9-9 and 9.3.7 (c & g) apply specifically to Dykstra Ranch/Pacific Ridge and requires that the houses be clustered to allow "view corridors" and located where they are least visible from public view. As planned they are not clustered, (See attachment 5.1 a) provide no view through the houses to the hills behind them which are designated "Scenic" on the Visual Resource Overlay of the LUP. That designation indicates a view which is to be preserved. (See attachment 5.1(b)-(d).) As planned the only people who will be able to see those hillsides are the folks with houses that back onto it. The story poles erected for the site visit of Feb. 9, 1999 were located in the lowest portion of the back of the property, not on the visible knolls so the City could not adequately evaluate this impact on the site visit. (See attachment 5.1 (e).) This design violates the specific provisions for it in our LCP, so it cannot be permitted.

### **5.2 Provision of Open Space**

LUP policy 9-12 requires 20% of the gross area of the property be devoted to open space. No calculation of this currently exists, and when protected areas not suitable for walking are excluded this constraint seems to be unmet. Though it is hard to tell from the existing map. (See attachment 5.2) Most are unsuitable for walking as they are wetlands. The original finding was based on counting all sensitive habitat area as public space. But the policy also limits the kind of ESHA's that can be counted as public open space. The Final Map does not include a designation of public open space and no finding was issued, so the permit must be denied.

#### **Summary**

These are all clear violations of our LCP. Fixing them would require basically starting from scratch. The permit should be denied.

## **6) Public Notice**

#### **Background**

Members of the public and the Planning Commission were on the record about their concerns with this project, and with the issues pertaining to wetlands in particular. Despite a letter and one person speaking on this, the City Council did not address these issues in their findings. Nor did they give people the opportunity to comment on the final draft of the resolution.

## **6.1 Content and Provision of Notice**

Zoning Ordinance 18.20.060 requires the City to publish a notice of any review of a CDP application in a newspaper of general circulation 10 days before the hearing, mail notice to all property owners within 100 feet of the site, to post notices on the site and in the adjoining neighborhoods. The notice must have the name of the applicant, a description of the proposed development including its location, and the time, date and place of the hearing among other things. The City held 4 hearings on this project, only one was announced in the HMB Review. None of these required notices occurred and the only public posting was at the back door of the City Hall and did not have the required information. (See Attachments 6.1 (a)-(c).) Had our City Government solicited or indeed allowed our input they might have taken all these things into account and denied the CDP.

### **Summary**

Approval of this permit was in violation of our own LCP process and the Brown Act and should not be upheld.

## **7) Environmental Review - Initial Study**

### **Background:**

Zoning Code 18.38.050 requires projects within a Coastal Resource Area "be evaluated in an Initial Study and *any necessary subsequent CEQA documents* according to the following general standards (*in addition to those set forth in CEQA guidelines*):" So our Zoning Code requires compliance with CEQA. Indeed the LUP 9.3.7 (a) discussion of this project in particular makes environmental review (AFTER 1990) and compliance with CEQA a condition of approval. Without such compliance there is no reliable way to know just what the effects are going to be, and whether or not the substantive requirements of the LCP are being complied with. We contend that the required information on this project is either seriously lacking or just not there.

### **7.1 Missing Documents**

Zoning Ordinance 18.15.035 requires a 17 things be submitted as part of a PUD Plan. Eight of them are omitted (C, D, E, G, I, L, M, N, P) (See ZO 18.15 in Zoning) Of particular concern are the lack of a map with all ESHA's within 300 feet of the site, and an Initial Study consistent with LCP requirements. The Planned Unit Development Plan is required for review before a permit is approved, a complete plan was not submitted and so the permit should not have been approved.

### **7.2 No EIR, Biological or Geologic Reports**

Zoning Ordinance 18.15.040 (A) says that the permit shall not be approved unless a

finding of fact that the project conforms to all the applicable zoning ordinances is made. This finding of fact could not have been made, so the project should not have been approved. Zoning Chapter 18.38 clearly applies to Pacific Ridge because there are sensitive habitat areas on the site. 18.38.030 requires biological and geological reports. A certified EIR may be substituted for these if they address the issues *and* in the case of the biological report the EIR was accepted as complete *no more than one year prior to the date of submittal*. (18.38.055 A3) This FEIR was ten years old, so could not be substituted. (See appendix 3) With no evidence in the record, a finding of fact could not be made.

### **7.3 Incomplete Initial Study**

Our Zoning Ordinance 18.38.050 requires that an Initial Study meet all CEQA standards and in addition consider 6 others (in section B.) (See Zoning 18.38 p.9.) None of those things are addressed. (See Appendix 5) CEQA 10563 (d) 1-6 requires a number of things the submitted Initial Study fails to do. For example, #4 requires the Initial Study discuss *ways (e.g., more than one)* to mitigate *all* possible significant effects. This initial study does not discuss any alternatives. (See attachment 7.3(b) or Appendix 5 p.13-14.) Alternatives are discussed in the CEIR (See attachment 3.1.) CEQA also requires (item 5) discussion of whether the project is consistent with existing land use controls. This Initial Study identifies various controls, but does not address them (See attachment 7.3(d).) At the least an EIR should have been prepared, indeed, a draft EIR was prepared. (See appendix 4) A permit should not have been issued.

### **7.4 Impossible Findings in Initial Study**

CEQA 15063 states that the purpose of an Initial Study is "to determine if the project *may* have a significant effect on the environment". That is clearly its role in our LCP mandated process. In the discussion of this section of CEQA it explains that part of the purpose of an Initial Study is to determine whether an existing EIR is still adequate, thus it cannot simply parrot the results of the previous EIR, it must make independent findings.

Since there was a ten year old final EIR on this project evidence of possible significant effects, *had to be found*. The CEIR found there was one significant unmitigatable impact. Indeed, as all evidence presented was in support of or actually based on the CEIR and there was no new analysis, it was the only possible conclusion to be drawn. Amazingly, the Initial Study submitted July 9, 1998 found the project "had no significant environmental impacts which cannot be mitigated" (Appendix 5 p.18 or 7.4(a)), and the only substantive document or study it cites is the 1990 FEIR (prepared in 1988) which says explicitly that it does have such an effect (Appendix 3, p. ix or 7.4 (b).) It could not have found there was mitigation without new evidence or analysis, but there is none.

In 1990 the original EIR was declared final despite the unanswered objections of Fish

and Wildlife (See attachment 1.1 (f)) and the Coastal Commission. To evaluate the previous EIR at a minimum the evaluator must have a current (and *required by* Zoning Ordinance 18.15.030 ) biologic report. This development clearly could have significant effects ( 7.3 (c) - CEQA Appendix G, (a), (c), (d), (l), (n), (t)) on wildlife, habitat, and traffic. If the Initial Study had conformed to the CEQA recommended review format (Compare 7.3(d) and (f)) a much clearer and more accurate picture would have been presented. The original EIR found one significant unmitigatable effect, so how can an initial study based entirely on it and an unmodified Vesting Tentative Map make a finding of no significant unmitigatable impacts? No new evidence of recent studies, reports or surveys are cited, so how can an assessment be made or this difference in conclusion be justified?

## **8) Environmental Review - Findings after the Initial Study**

### **8.1 Addressing Significant Effects**

If a possible significant impact is found in an Initial Study, then either an EIR, Negative Declaration(ND), or Mitigated Negative Declaration(MND) must be prepared which specifically addresses the significant effects identified and the mitigations if any. (CEQA 15064.) Given the incompleteness of the Initial Study, any subsequent action based entirely on it has to be incorrect. The Negative Declaration or MND must be circulated for public review, be noticed and considered along with the public input. (CEQA 15071-3 attachment 7.3(e).) The resolution passed does not do any of this, nor does it address the reasons for the Planning Commission's denial of the project (See attachment 8.1(a)-(c) In fact the City Council seemed unclear about what a negative declaration was. (See Attachment 8.1(d).)

### **8.2 Illegal Adoption of a Negative Declaration**

If the City Council was voting on a negative declaration and a conditional approval for the project it was not done legally. Our LUP and Zoning Ordinances require CEQA compliance to obtain a CDP. CEQA 15072 requires Notice of intent to Adopt a Negative Declaration or a Mitigated Negative Declaration and CEQA 15073 requires a public review period of at least at least 20 days before the hearing, 30 days if it is submitted to the State Clearinghouse (which this one was not but ought to have been.) Notice was not given, nor a public review period allowed. (See attachment 6.1 (a)-(c).) In addition A Negative Declaration was not appropriate in this case. Given the only supported finding of significant unmitigatable impact, there had to be an EIR and a resolution conforming to CEQA 15091- 15093 standards (See attachment 8.3 (a).) If the Council thought they were passing a Mitigated Negative Declaration, (which it seems they are in Claim 2 of 8.1(c)) they still did not follow the CEQA mandated process. They did not give their evidence and reasons for thinking these mitigations successful. Further, they failed to address the issues raised in the Planning Commission's denial or present any evidence to support the new finding that this project was in compliance and did not have significant effects.

Clearly this should not have been approved, it is not clear that what exists really counts as approval.

## **9) Problems with the Resolution**

### **9.1 Failure to Make Findings**

LUP Policy 1-4 says "Prior to the issuance of any development permit required by this Plan, the City shall make the finding that the development meets the standards set forth in all applicable Land Use Plan policies." A "finding" as defined in the LCP requires presentation of evidence. No evidence is cited in the final resolution/negative declaration. Indeed, looking at the record it is difficult to see what evidence they COULD cite. And in this case a Negative Declaration, mitigated or otherwise is inappropriate, since there is no evidence that the significant negative impact on traffic can be mitigated at all. This would require an approval that cited some balancing public benefit, and none is even suggested. In addition, the final resolution says that the project *is* in compliance with the LCP, but then attaches a number of conditions which are requirements of the LCP. It is hard to see how one can find that a project *does* meet a condition and then require as an *additional* condition that they make sure it does it in the future. If the project is already in compliance, why mention it at all? It also attaches conditions for filling wetlands (required by the Corps of Engineers permit) and working in streams and riparian corridors (required by the Fish and Wildlife service) for actions which are not allowed under our LCP.

Although they were informed repeatedly of violations of the LCP Council members chose to ignore them. (See attachment 8.1 (d).) The lack of conformity of the final map with LCP policies is overwhelming (see attachment 3.2 with Orange.)

### **9.2 Discrepancies in the Draft and Final Resolution**

The final Resolution differed substantially from the draft that was passed. (See attachment 9.2 (a)-(c).) The final Resolution does not conform to the LCP/LUP. (See attachment 9.2 (d).) Only permits which conform to the LCP/LUP may be approved.

## **Final Summary**

Due to the widespread failures to conform to the LCP, the failure to follow the process specified in the LCP and Zoning Ordinances, the lack of the required reports, the substantial changes in circumstance and the failure of the City to properly notice abutters

and HMB residents generally, we respectfully ask the Commission to consider the application for a Coastal Development Permit for the Pacific Ridge Project *de novo*.

April 1, 1999

Dear Coastal Commission,

We would like to bring two additional non-appealable issues to your attention which we feel are important in this case, and which are important for the granting of CDP's by the City of Half Moon Bay generally..

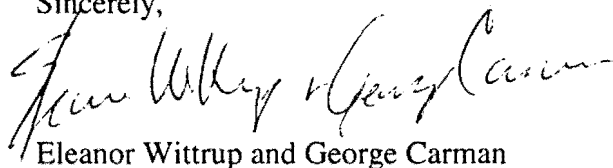
Though not specifically prohibited by our LCP, secret negotiations, or subcommittee findings which are not reported out to the full council in public hearings such as took place prior to the March 16 City Council Meeting are clearly against the spirit of CEQA 10201 "Public participation is an essential part of the CEQA process" and the Coastal Act (30004) justifies the creation of LCP/LUP's "to achieve maximum ...accountability and public accessibility." CA 30006 states that "the public has a right to fully participate in decisions affecting coastal planning, conservation and development; that achievement of sound coastal conservation and development is dependent upon public understanding and support; and that the continuing planning and implementation of programs for coastal conservation and development should include the widest opportunity for public participation." Indeed the Commission itself is governed by strict rules of publicity. Surely a local government acting as proxy for the Coastal Commission under a certified LCP can be required to do no less. (See attachment 4.5)

Given the widespread failure of the process, we would like to suggest that the Commission consider doing something unusual. If you decide to review the permit *de novo*, could the Commission conduct a kind of "model review" in Half Moon Bay? We are a small town, and our elected officials are almost all part time, and not professionals in this area. I think part of our problem is that they just don't know how it SHOULD be done. If you could come and show them a good example, allowing meaningful public participation, reviewing the permit application in an orderly way, it might save a lot of mistakes and subsequent appeals in the future. I don't know that every permit they have approved has been appealed to you, but a substantial portion have, or are in the process. Our moratorium on building has been lifted, and I am afraid if things continue the way they have been going, your agenda is going to be chock full of Half Moon Bay errors for a long time to come.

Please do consider having a Model Review in town here. If that is simply out of the realm of possibility we would like to request that if our appeal is granted it be scheduled in one of your locations in the area, so as many of our city officials and the public can go as possible.

Thank you for your consideration of this matter.

Sincerely,

A handwritten signature in cursive script, appearing to read "Eleanor Wittrup and George Carman".

Eleanor Wittrup and George Carman





October 29, 1999

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CALIFORNIA  
COASTAL COMMISSION

VIA HAND DELIVERY

Steve Scholl  
Chris Kearn  
California Coastal Commission  
45 Fremont Street, Suite 2000  
San Francisco, CA 94105

Re: Pacific Ridge; Appeal No. A-1-HMB-99-022

Dear Messrs. Scholl and Kearn:

In our separate letter, dated October 29, 1999, on behalf of Ailanto Properties, Inc. ("Ailanto"), we set forth the consistency of the revised Pacific Ridge project (the "Project") with the relevant portions of the City of Half Moon Bay's Local Coastal Program ("LCP"). We submit this companion letter to explain our disagreement with the Coastal Commission staff's legal interpretations on the extent of the Coastal Commission's jurisdiction and of various LCP policies and requirements.

In our other October 29, 1999, letter, we analyzed the Project's consistency with the LCP based on the Coastal Commission staff's interpretation of jurisdictional issues and various LCP policies solely for the purpose of showing the Project's consistency with the LCP. However, we strongly

Attorneys at Law

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EXHIBIT NO.	9
APPLICATION NO.	A-1-HMB-99-22
Oct. 28, 1999 "Companion Letter", amended, Anna C. Shimko, Attorney	

Messrs. Scholl and Kearn  
October 29, 1999  
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disagree with the Coastal Commission staff's interpretation on key legal issues pertinent to the referenced appeal. We are particularly alarmed that the Coastal Commission staff has chosen improperly to ignore the plain language of the Coastal Act and the regulations thereunder (at 14 Cal. Code of Regs. § 13000 et seq.; the "Regulations"), as well as past practices of the Coastal Commission, that limit the Coastal Commission's jurisdiction on this appeal. In addition, the Coastal Commission staff has interpreted certain buffer zone requirements of the LCP in a manner not supported by the LCP itself. We set forth below the basis of our objections.

I. The Coastal Commission's Jurisdiction on This Appeal is Limited.

A. The Coastal Commission Has Jurisdiction Only Over Development Within 100 feet of Certain Wetlands and Streams on the Project Site.

The Coastal Commission staff has taken a new position unsupported by law or precedent that, in this appeal, the entire Project is subject to the Coastal Commission's jurisdiction *de novo*, not just the 100 feet of development within the wetlands and streams on Project site (the "Property"), as staff initially

indicated to us.<sup>1</sup> This position is erroneous and contrary to the plain language of the Coastal Act and the Regulations.

The entire Property is located east of Highway 1, the first road parallel to the sea in the City of Half Moon Bay. Coastal Act § 30603 provides that after certification of its LCP, a local government's action on a CDP application is appealable only for certain types of developments, including projects located between the sea and the first public road paralleling the sea and other developments located "within 100 feet of any wetland, estuary or stream." Public Resources Code § 30603(a) and (b). The Coastal Commission has heretofore properly interpreted the latter appeal jurisdiction under § 30603 of the Coastal Act to include only those elements of proposed development that are located within 100 feet of a wetland, estuary, or stream where the development is located east of the first road paralleling the sea.

Consistent with this interpretation, the Regulations provide a scheme to determine the exact boundaries of the Coastal

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<sup>1</sup> We find the Coastal Commission staff's newfound interpretation of the Coastal Act surprising and alarming in that staff has maintained from the outset of this appeal that the Coastal Commission has jurisdiction only over development within 100 feet of wetlands, estuaries and streams since the Property lies east of Highway 1. In point of fact, Steve Scholl was quoted and paraphrased in a newspaper article in the Half Moon Bay Review, dated September 8, 1999, as having said exactly that.

Messrs. Scholl and Kearn  
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Commission's jurisdiction on appeal that is clearly rooted in the mandates of Coastal Act § 30603. See, Regulation § 13577(Criteria for Permit and Appeal Jurisdiction Boundary Determination). The Regulations provide that for streams, the precise jurisdictional area is determined by measuring "100 feet from the top bank of any stream mapped by USGS on the 7.5 quadrangle series, or identified in a local coastal program." Regulations § 13577(a). Similarly, for wetlands, the Regulations provide that the precise jurisdictional area is determined by measuring "100 feet from the upland limit of the wetland." Regulations § 13577(b). Regulation § 13577 does not provide, as the Coastal Commission staff urges, that the entirety of any development that happens to contain a wetland, stream or estuary is subject to the Coastal Commission's appeal jurisdiction.

The Coastal Commission staff interpretation completely ignores the Coastal Act's differentiation between development located within and outside of the area between the sea and the first road parallel to the sea. Moreover, staff's interpretation is unequivocally inconsistent with and contrary to the plain language of Regulation § 13577. Under staff's interpretation, the entirety of any project located outside of the first road

Messrs. Scholl and Kearn  
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paralleling the sea would (as with any project within the first road paralleling the sea) be subject to the Coastal Commission's jurisdiction on appeal *de novo* so long as any part of the overall property contained a wetland, estuary or stream, regardless of whether any development was taking place within 100 feet of the jurisdictional coastal resources. That is not what the Coastal Act, or the Regulations, state.

The Coastal Commission staff's interpretation is not only contrary to the plain language of the Coastal Act, but we understand that it is wholly inconsistent with the Coastal Commission's long-established precedent as well.

B. Certain Wetlands on the Property Are Exempt From The Coastal Commission's Jurisdiction.

The Coastal Commission staff has also opined that all wetlands on the Property are subject to the Coastal Commission's jurisdiction on appeal, contrary to a very clear exemption provided by the Regulations. Under the Regulations, wetlands created by the presence of and associated with agricultural ponds are exempt. Specifically, Regulation § 13577(b) states, in relevant part:

For the purposes of this section [establishing the Commission's appeal jurisdiction over wetlands], the term "wetland" shall not include wetland

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habitat created by the presence of and associated with agricultural ponds and reservoirs where:

- (A) the pond or reservoir was in fact constructed by a farmer or rancher for agricultural purposes; and
- (B) there is no evidence (e.g., aerial photographs, historical survey, etc.) showing that wetland habitat pre-dated the existence of the pond or reservoir. Areas of drained hydric soils that are no longer capable of supporting hydrophytes shall not be considered wetlands.

As we have made clear to staff in our prior letters, dated June 24, 1999, and October 4, 1999, and have discussed in detail at meetings with staff members, certain wetlands on the Property were created by the presence of and associated with a large agricultural stock pond located on the Property. Specifically, Wetlands A, E, and G (as identified in the map submitted herewith at Exhibit A) are exempt under Regulations § 13577 because they were unequivocally created by the presence of and associated with the agricultural pond and there is not a scintilla of evidence that these wetlands pre-dated the existence of the pond (in fact, we have submitted proof positive evidence that these wetlands did not exist prior to the construction of the agricultural pond on the Property). Yet the Coastal

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Commission staff has chosen to ignore (indeed, effectively to rewrite) this limitation, stating that no wetlands on the Project site are exempt because this exemption applies only when a property will continue to be used for agriculture, but not when residential development is proposed. Such a preposterous and unsupportable interpretation that arbitrarily adds requirements to the plain language of § 13577 of the Regulations should not be allowed to stand.

C. The Coastal Commission's Jurisdiction In This Appeal Is Limited to the Area Within 100 feet of Wetlands B, C, D, F, F1, and H, and Drainage 3.

Based on the clear legal framework and requirements set forth above, the only areas subject to Coastal Commission jurisdiction are Wetlands B, C, D, F, F1, and H, as well as Drainage 3, as described in the map attached hereto as Exhibit B, and the development within 100 feet of these resources. See, also, Letter to Steve F. Scholl, et al., from Stephen K. Cassidy, dated June 24, 1999.

II. The LCP Requires Wetland Buffer Zones Only for Lakes, Ponds and Marshes.

The Coastal Commission staff has stated to us that the LCP requires 100 foot buffer zones around all wetlands on the

Messrs. Scholl and Kearn  
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Property. This position is contrary to the plain language of the LCP.<sup>2</sup>

The LCP's Land Use Plan ("LUP") Policy 3-11(c) (Establishment of Buffer Zones) requires a 100 foot buffer zone from the high water point of "lakes, ponds and other wet areas," except man-made agricultural ponds and reservoirs. Zoning Ordinance ("Z.O.") § 18.38.080(D) (part of the LCP certified by the Coastal Commission) implements Policy 3-11(c) and requires a 100 foot buffer surrounding "lakes, ponds and marshes," measured from the high water point, except for man-made agricultural ponds and reservoirs. Thus, only lakes, ponds (except certain agricultural ponds) and marshes require a 100 foot buffer.

The only lakes, ponds or marshes existing on the Property are Wetland A and the agricultural pond; however, even under the staff's interpretation, the agricultural pond is exempt from the Commission's jurisdiction under Zoning Ordinance § 18.38.080(D), which does not require buffers around agricultural ponds, because the pond will continue to be used for

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<sup>2</sup> We reiterate our position that Wetlands A, E and G are exempt from the Coastal Commission's jurisdiction.



Messrs. Scholl and Kearn  
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agricultural purposes -- a community garden.<sup>3</sup> The Project incorporates a 100 foot buffer around Wetland A, except where a permitted emergency vehicle access road ("EVA") encroaches slightly within the buffer zone.

A map of what we believe are the legally required buffer zones around those wetlands and riparian corridors subject to the Coastal Commission's jurisdiction is set forth on Exhibit B, attached hereto.

### III. Conclusion.

In view of the fact that staff's legal interpretations involve important issues affecting this and future developments, we urge staff to reconsider its interpretations and, failing alteration of staff's view, request that the Commission consider these issues prior to finalizing any determination about the Project. If you would like to discuss these issues further,

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<sup>3</sup> Wetland A is one of the wetlands that we maintain was created by the presence of and associated with the agricultural pond and is thus exempt from the Coastal Commission's jurisdiction under Regulations § 13577.

Messrs. Scholl and Kearn  
October 29, 1999  
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please do not hesitate to contact the undersigned, Anna Shimko or  
Yuri Won.

Very truly yours,

CASSIDY, CHEATHAM, SHIMKO & DAWSON,  
a Professional corporation

By: 

Stephen K. Cassidy  
Attorneys for Ailanto Properties,  
Inc.

cc: John Dixon  
Ann Cheddar  
Robert Henry  
Nancy Lucast  
Steve Foreman  
Anna Shimko  
Yuri Won

CASSIDY  
CHEATHAM  
SHIMKO &  
DAWSON

A Professional Corporation

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CALIFORNIA  
COASTAL COMMISSION

November 4, 1999

VIA HAND DELIVERY

Steve F. Scholl  
Chris Kearn  
California Coastal Commission  
45 Fremont Street, Suite 2000  
San Francisco, CA 94105

Re: Pacific Ridge; Appeal No. A-1-HMB-99-022

Dear Messrs. Scholl and Kearn:

We are writing on behalf of our client, Ailanto Properties, concerning the above appeal. Included herewith are clearer exhibits to our letters to you of last Friday, October 29, 1999, as follows:

1. A replacement Exhibit B (the revised updated wetlands delineation) and Exhibit C (a map showing the resources on the Pacific Ridge property) for the letter to you pertaining to the consistency of the Revised Plan with the applicable policies of the City of Half Moon Bay Local Coastal Program (the "Primary Letter").
2. A replacement Exhibit A (the revised updated wetlands delineation) and Exhibit B (the map of the areas that we believe are within the Coastal Commission's jurisdiction) for the companion letter pertaining to our legal analyses of the extent of the Coastal Commission's jurisdiction in this appeal and the applicable standards (the "Companion Letter").

Also, we wish to correct two factual errors contained in the Primary Letter:

Attorneys at Law

Messrs. Scholl and Kearn  
November 4, 1999  
Page 2

1. Page 25 states that the revised Project will include 50 foot buffer zones around Drainage 4. In actuality, the Project incorporates a 30 foot buffer zone around Drainage 4 since it is an intermittent stream with no riparian vegetation. This is consistent with the City's Zoning Ordinance § 18.38.075(D) (2).
2. The second sentence in Section IV on page 36 should read as follows: "All street drainage runoff from the Project would be routed away from the pond to avoid degradation of the pond and adjacent areas."

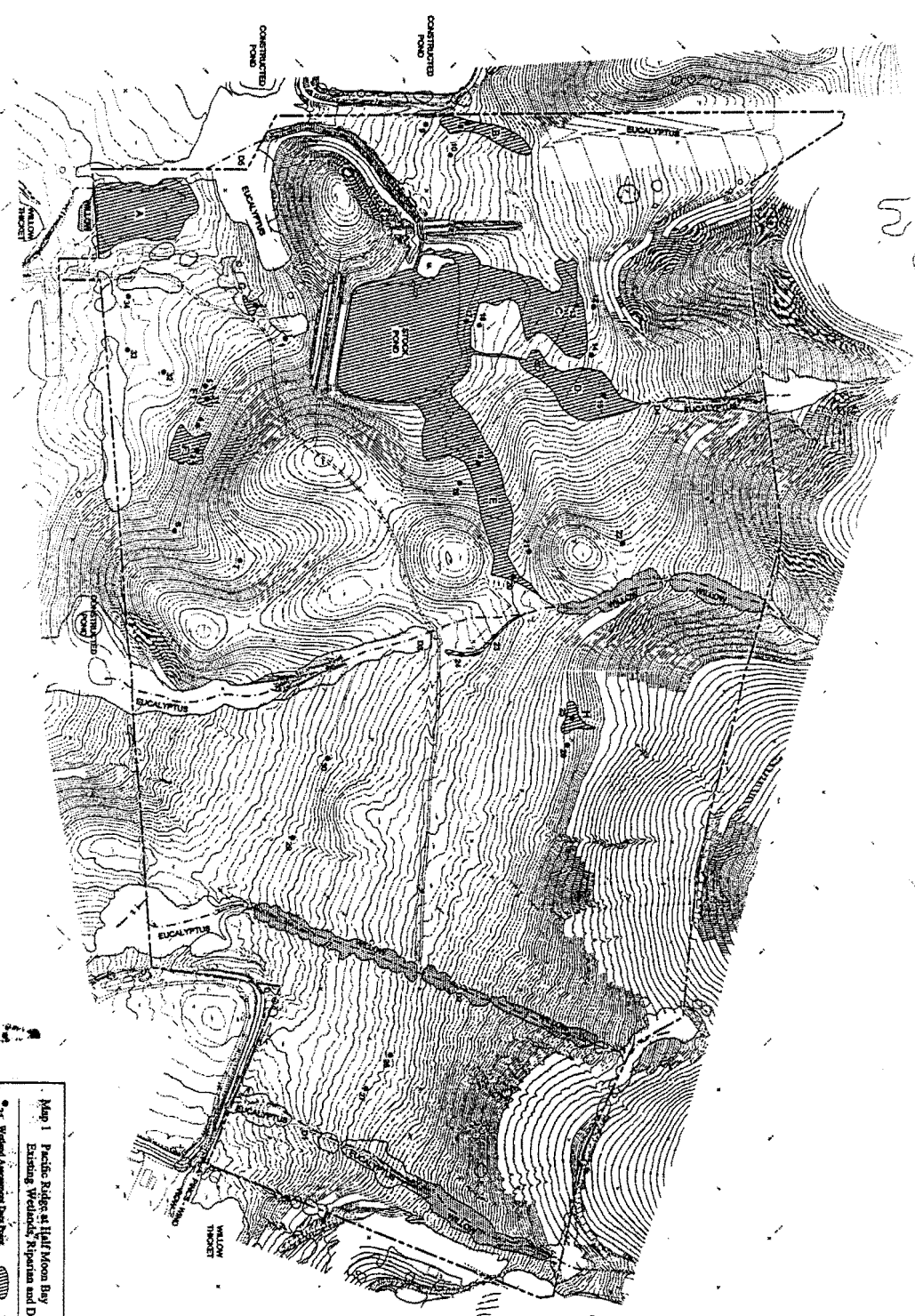
We apologize for any inconvenience that these corrections may cause. If you have any questions regarding the foregoing, please do not hesitate to contact the undersigned, Steve Cassidy or Yuri Won.

Very truly yours,

CASSIDY, CHEATHAM, SHIMKO & DAWSON,  
a Professional corporation

By: Anna C. Shimko  
Anna C. Shimko  
Attorneys for Ailanto Properties,  
Inc.

cc: John Dixon (w/o encl.)  
Ann Cheddar (w/o encl.)  
Robert Henry (w/ encl.)  
Nancy Lucast (w/ encl.)  
Steve Foreman (w/ encl.)  
Stephen K. Cassidy (w/o encl.)  
Yuri Won (w/o encl.)



Map 1 Pacific Ridge at Half Moon Bay  
Existing Wetland Resources and Drainages

- Wetland Boundary
- Wetland Vegetation
- Drainage Channel
- Wetland Thicket
- Wetland
- Wetland Boundary
- Wetland Vegetation
- Drainage Channel

LSA



Map 3 Pacific Ridge at Half Moon Bay  
Existing Conditions Within Coastal Commission Jurisdiction

- Wetland Assessment Data Point
- Drainage Boundary
- Wetland Jurisdiction
- Wetland Boundary
- Regional Vegetation
- Drainage Channel
- Coastal Commission 100-foot Jurisdiction Band
- Regional Buffer Zone

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CASSIDY  
CHEATHAM  
SHIMKO &  
DAWSON

A Professional Corporation

December 23, 1999

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DEC 23 1999

VIA HAND DELIVERY

Steve F. Scholl  
Jack Liebster  
California Coastal Commission  
45 Fremont Street, Suite 2000  
San Francisco, CA 94105

CALIFORNIA  
COASTAL COMMISSION

Re: Pacific Ridge; Responses To Issues Raised in  
Appeal No. A-1-HMB-99-022

EXHIBIT NO.	10
APPLICATION NO.	A-1-HMB-99-22
Dec. 23, 1999 Letter from Anna C. Shimko	
applicant's attorney	

Dear Messrs. Scholl and Liebster:

We are writing on behalf of Ailanto Properties, Inc., with respect to the above-referenced appeal by appellants Commissioner Sara Wan and Commissioner Mike Reilly and Eleanor Wittrup and George Carman (the "Appeal"). In the event that the Coastal Commission conducts a de novo hearing in connection with this Appeal, then many of the issues and purported deficiencies raised in the Appeal will become moot by virtue of the de novo hearing. Likewise, a considerable number of the points raised in the Appeal are no longer relevant in light of the proposed revisions to the Pacific Ridge project (the "Project") submitted to you on October 28, 1999. Nonetheless, for the record and in order to assist you in analyzing the Project, we submit with this letter a point-by-point response to each of the allegations raised in the Appeal.

If you have any questions regarding the attached, please do not hesitate to contact the undersigned, Steve Cassidy or Yuri Won of this firm.

Very truly yours,

CASSIDY, CHEATHAM, SHIMKO & DAWSON,  
a Professional corporation

By: Anna C. Shimko  
Anna C. Shimko  
Attorneys for Ailanto Properties, Inc.

cc: Chris Kern  
John Dixon  
Ann Cheddar

Attorneys at Law

20 CALIFORNIA STREET, SUITE 500, SAN FRANCISCO, CA 94111 TELEPHONE: (415) 788-2040 FACSIMILE: (415) 788-2039

Responses to Issues Raised by Appellants Sara Wan and Mike Reilly<sup>1</sup>

I. Deficiencies in Resource Mapping

- A. Issue: An adequate biological report was not prepared, as required by LUP Policy 3-5 and Zoning Ordinance ("Z.O.") § 13.38.035(A) and (B)(1), because (1) the wetlands mapping in connection with the Wetland Mitigation and Monitoring Plan ("WMMP") did not map areas located on or within 200 feet of the project site (the "Property") and (2) the WMMP was not prepared using the LUP's definition of "wetlands."

Response: Numerous biological reports have been prepared for the Project. First, a biological report was prepared in connection with the environmental impact report for the Project, which was certified by the City of Half Moon Bay (the "City") in 1990 (the "EIR"). Second, a biological report in the form of a wetland delineation was completed in 1990 for the U.S. Army Corps of Engineers (the "Corps"). Another wetland delineation, which comprehensively dealt with biological issues on the Property, was undertaken in 1997, resulting in the WMMP. In connection with these reports, Ailanto identified and took into consideration off-site coastal resources within 200 feet of the Property in designing the Project (for instance, the Project's wildlife corridors are a result of taking off-site resources into consideration), although these reports did not specifically discuss off-site resources. In any event, Ailanto submitted to the Coastal Commission a Biological Report on June 24, 1999 (the "Biological Report"), augmenting the WMMP and specifically identifying all off-site coastal resources within 200 feet of the Property. See, Biological Report, pages 22 to 23 and Figure 2, for off-site resource within 200 feet of the Property.

Regarding the use of the LUP's definition of "wetlands" for the WMMP, as the Biological Report explains, use of the Corps definition of "wetlands" yields the same wetlands delineation as use of the LUP's definition. Thus, the differences in the definition of wetlands between the LUP and the Corps are irrelevant as they apply to the Project. Nevertheless, the updated wetlands delineation submitted with the Biological Report uses the LUP's definition of wetlands. We note that the only reason that the latest wetlands delineation shows more wetlands than previously is that new wetlands have formed as a result of actions by the tenant

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<sup>1</sup> All of appellants' issues, as we have summarized them, are categorized under appellants' headings.



Steve F. Scholl  
Jack Liebster  
California Coastal Commission  
December 23, 1999  
Page 2

cc cont'd:

Robert Henry  
Nancy Lucast  
Steve Foreman  
Stephen K. Cassidy  
Yuri Won

rancher to divert water through a ditch he excavated from drainage 3 into the pond and the above normal rainfall associated with the El Niño conditions over the last couple of years.<sup>2</sup>

II. Inconsistencies with LCP Provisions Restricting Uses in Wetland and Riparian Areas.

- A. Issue: There are no findings explaining how the installation of four culverts and a bridge in riparian corridors and the filling of wetlands for 8 lots and 2 portions of Silver Surf Road, a portion of Red Hawk Road and a portion of Lone Trail Way are consistent with LUP Policies 3-4 and 3-9. There are no findings that such uses are either resource-dependent or will not have a significant impact on sensitive habitats. LUP Policy 3-9 prohibits the construction of new roads within riparian corridors.

Response: On October 28, 1999, we submitted on behalf of Ailanto a proposed revised Project plan that addresses these issues. Under that revised plan, if it is approved by the Coastal Commission, there will be no filling of any wetlands on the Property and no lots or roads would be located within wetlands. Similarly, no lots would be within wetland buffer zones. Evidence to support the limited and vital elements of Project infrastructure proposed for riparian corridors and wetland and riparian buffer zones is set forth in our Primary Letter.

III. Inconsistencies with LCP Provisions Restricting Uses in Buffer Zones for Wetlands.

- A. Issue: Portions of roads are within 100 feet of a mapped wetland, such as the marsh area near the intersection of Foothill Boulevard and Silver Surf and portions of Lone Trail Way, Silver Surf Road and Red Hawk Road.

Response: While we believe that the LCP requires a 100 foot buffer zone only around "lakes, ponds, and marshes" (see, letter to Steve Scholl, et al., from Stephen K. Cassidy, dated October 28, 1999, accompanying the Primary Letter [the "Companion Letter"]), the Project as proposed to be revised will avoid all development within wetland buffer zones, except for the emergency vehicle access road within the buffer zone for Wetland A, the road extending from Bayview Drive near Wetland F, and a bridge within the common buffer zone for Wetlands E and I. These uses are permitted in the buffer zones for wetlands, as explained in more detail in the Primary Letter.

- B. Issue: There are lots within the 100 foot buffer zone for wetlands.

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<sup>2</sup> See, Letter to Steve Scholl from Stephen K. Cassidy, dated October 28, 1999 (the "Primary Letter") and exhibits thereto for designation of drainages and wetlands on the Project site.

Response: See, Response III(A), above.

- C. Issue: It is unclear from City's findings how a road and lot intrusion into wetland buffer zones are consistent with LUP Policy 3-12 and City's Conditions of Approval Nos. 7 and 20, which prohibit any portion of a residential lot to be within an established buffer zone.

Response: See, Response III(A), above.

IV. Inconsistency with LUP Policy 9.3.7.d Requirements to Provide Recreational Opportunities Along Drainage Courses.

- A. Issue: City's approval does not contain findings relating to the dedication of site drainage courses for the provision of passive recreation, as required by LUP Policy 9.3.7.d. The fence required in Condition of Approval No. 5 would preclude passive recreation.

Response: The referenced LUP section 9.3.7.d is not a formal LUP policy; rather it is a *proposed* development condition for the Property. See, LUP p. 167. The purpose of this proposed condition will be well served by the Project. Ample passive recreation opportunities to the general public will be provided by a trail network throughout the Property, including the drainage courses. The drainage courses, along with other open space on the Property, will be dedicated to and managed by the homeowners association. This will assure maximum protection of the drainage courses by allowing them to be retained and managed in a comprehensive fashion via implementation of the Project's overall drainage plan, including the Stormwater Pollution Prevention Program.

The City imposed a condition when it approved the CDP for the Project requiring Ailanto to fence the outer edges of riparian buffer zones to protect riparian corridors. Ailanto objected to this requirement and now proposes to dispense with fencing of riparian buffer zones in connection with the proposed revised Project.

**Responses to Issues Raised by Appellants Eleanor Wittrup and George Carman.**

I. Wetlands, Streams and Riparian Corridors

- A. Issue: The Project would fill 2.085 acres of wetlands and filling is prohibited by the LCP. LUP Policy 3-11 requires a 100 foot buffer zone around all ponds and "other wet areas" measured from the high water mark, and the Project does not propose this required buffer zone for the northwest wetland.

Response: Although in truth the LCP does not prohibit any filling of wetlands, the Project, as revised, does not involve the filling of any wetlands. For clarity,

however, we note that the Project, as approved by the City, involved the filling of less than one acre of wetlands, not 2.085 acres.

With respect to wetland buffer zones, please see Response III(A), above, to Issues Raised by Sara Wan and Mike Reilly. In some wetland areas, such as portions of the pond, the proposed buffer zones are significantly over 100 feet.

- B. Issue: The Corps wetlands delineation is inadequate because it does not use the LCP's definition of wetlands.

Response: See, Response I(A), above, to Issues Raised by Sara Wan and Mike Reilly.

- C. Issue: Wetlands to be created as part of the Project, as approved by the City, should be treated as existing wetlands subject to buffer zone requirements.

Responses: No wetlands would be created as part of the Project, as proposed to be revised. In any event, nowhere does the LCP require the treatment of future wetlands as existing wetlands. The purpose of LCP wetlands provisions is to safeguard existing wetlands.

- D. Issue: The maps show that the Project, as approved by the City, has two road crossings through streams #1 and #3 and one road crossing through stream #2, even though the LCP prohibits alteration of streams for residential development. The buffer zone around stream #4 is ignored by siting a public park on it. Not all of the streams on the Property are indicated on any map, such as the stream from stream #3 to the pond and the stream from the pond to the northwest corner of the Property. The LCP requires span crossings of all streams.

Response: The Project, as proposed to be revised, does not include road crossings through streams, but proposes only bridges, including oversized arched culverts, that span the entire width of streams. The LCP permits bridges, including oversized arched culverts, through riparian corridors. See, Primary Letter. The Project never included a public park near stream #4 and, indeed, as proposed to be revised, includes a 30 foot buffer zone around stream #4. All drainages, or riparian corridors, on the Property are correctly reflected in the updated wetlands delineation maps submitted to the Coastal Commission. That delineation has been reviewed and approved as adequate by John Dixon, a Coastal Commission biologist. Contrary to the appellants' claim, there is no stream from stream #3 to the pond. Rather, this area between stream #3 and the pond is now a wetland and is being protected as such.

- E. Issue: A letter from the U.S. Fish and Wildlife Service (the "USFWS") requires stream crossings to be altered, with some stream crossings altered to be large

enough for deer to pass through, and the Project does not incorporate such measures.

Response: The USFWS did not require in any letter that stream crossings be altered to be large enough for deer to pass through. In fact, the Project has always been specifically designed so that there would be no property line fences that would impede migration of large mammals and movement of numerous other species. The Project also includes wildlife corridors and rolled street curbs to allow movement of wildlife.

- F. Issue: Bridges are allowed across riparian corridors only when there is no feasible alternative. The alternative of fewer homes is not discussed.

Response: Bridges are allowed across riparian corridors, and there is no requirement to demonstrate that there is no feasible or practical alternative to such bridges. See, Primary Letter, footnote 5. Nonetheless, there is no feasible or practical alternative other than to locate bridges across riparian corridors in order to develop the Property with residential homes, as specifically intended by the LCP adopted by the City and certified by the Coastal Commission. As reflected in the LCP, the policy makers have determined that homes should be built on the Property in order to meet local and regional housing needs, and that such placement of homes is a superior alternative to developing more rural lands and lands with significant coastal resources. See, Primary Letter; see, also, LUP, pp. 134, 166.

In terms of the alternative of fewer homes, Ailanto has gone further than merely discussing such option: it has actually proposed to revise the Project to include considerably fewer homes. The LCP allows 228 homes on the Property, yet Ailanto scaled back the Project to 216 homes in connection with the City Council's 1990 approval of the Vesting Tentative Map and the Dykstra Ranch Planned Unit Development Ordinance (the "PUD Ordinance"). Ailanto further reduced the number of homes to 197 in connection with the City Council's 1999 approval of the CDP for the Project. Now, in connection with the recent proposed revised plan for the Project, Ailanto has further reduced the number of homes to 150. The Project, as proposed to be revised, contains approximately 35% fewer homes than allowed in the LUP (i.e., 228), approximately 30% fewer homes than approved by the City in 1990 (i.e., 197), and approximately 25% fewer homes than approved by the City in connection with the CDP in 1999 (i.e., 197).

- G. Issue: The maps do not show all of the streams on the Property. Seeps and wet areas may be wetlands.

Response: There has never been a question as to the number of streams on the Property, and all of the streams on the Property have been correctly indicated on

previous biological reports and maps. All streams on the Property are again reflected in the updated wetlands delineation submitted to the Coastal Commission.

- H. Issue: Not all of the riparian corridors have proper buffer zones. Many of the streams on the Property have riparian growth, such as willows, that may classify them as wetlands, thus requiring a 100 foot buffer zone rather than a 30 or 50 foot buffer zone. No survey of the understory vegetation around the eucalyptus trees was done, so these areas might be wetlands as well.

Response: For the purpose of interpreting Coastal Act policies, the Coastal Commission makes a specific distinction between riparian and wetlands habitats. See, Appendix D, Technical Criteria for Identifying and Mapping Wetlands and Other Wet Environmentally Sensitive Habitat Areas in the Coastal Commission's Procedural Guidance for the Review of Wetland Projects in California's Coastal Zone. The Coastal Commission Procedural Guidance defines riparian vegetation as, "*that association of plant species which grows adjacent to freshwater courses, including perennial and intermittent streams, lakes, and other freshwater bodies.*" The LUP further defines riparian corridors and riparian vegetation for the purposes of defining buffer zones. Riparian vegetation is defined as requiring a 50 percent cover of some combination of the following listed species in Policy 3-7 of the LUP: red alder, jaumea, pickleweed, big leaf maple, narrowleaf cattail, arroyo willow, broadleaf cattail, horsetail, creek dogwood, black cottonwood, and box elder. In essence, the LUP distinguishes riparian vegetation composed of a predominance of native riparian species from stream side or water body vegetation dominated by introduced species such as eucalyptus, which is prevalent on sections of watercourses on the Property.

Ailanto, with the assistance of its biologist, has always correctly interpreted the Coastal Commission Procedural Guidance and LCP policies with respect to the distinction between wetlands and riparian habitats, and incorporated all of the appropriate buffer zones for riparian habitats.

- I. Issue: The LCP requires a biological report in connection with the issuance of the CDP that identifies coastal resources off-site.

Response: See, Response I(A), above, to Issues Raised by Sara Wan and Mike Reilly.

## II. Rare and Endangered Species Habitats

- A. Issue: There are rare and endangered species within the Property for which no study was conducted since 1986. No provision for the protection of the habitats of these species is provided.

Response: Numerous surveys were conducted in the last ten years, and no red-legged frogs, garter snakes or other endangered species have ever been found on the Property. The first rare and endangered species survey was conducted in connection with the EIR prepared in 1988. A second rare and endangered species survey was prepared for the Corps in 1990. Last year, another rare and endangered species survey was conducted. In addition, a separate raptor survey (in which no nesting raptors were found on the Property) was prepared in connection with the Biological Report. Each of the surveys was conducted using established USFWS protocols, with the findings forwarded to that agency for review.

Appellants' allegation that no provision has been made for the protection of habitats of rare and endangered species is completely wrong. Ailanto formally consulted with the USFWS regarding measures to protect and enhance potential habitat for the red-legged frog and San Francisco garter snake, even though none of the surveys disclosed their presence on the Property. Ailanto incorporated into the Project design all of the USFWS's suggested conditions, such as the provision of wildlife corridors, conservation easements around environmentally sensitive areas, off-site habitat mitigation, and a bull frog eradication program to allow for the future viability of red-legged frogs on the Property. These conditions are currently being re-reviewed for necessity by the USFWS in connection with the proposed revised Project. So far, our client's communications with the USFWS have indicated that the USFWS is generally pleased with how the Project has been further revised. See, Response II(D), below.

With respect to the purported observations of an amateur biologist, Max Gunkel, please refer to the Biological Report, which explains why it is unlikely that Mr. Gunkel's observations would prove to be accurate. Biological Report, p.28-29.

- B. Issue: The USFWS determined that there are red-legged frogs and San Francisco garter snakes within the Property and required mitigation for impacts to such species in its Biological Opinion. Mitigation of impacts is contrary to the LUP's policy of preservation of all sensitive habitat areas, including known riparian locations for the garter snake, under LUP Policies 3-24 and 3-25.

Response: The USFWS did not determine that there are rare and endangered species on the Property. Rather, it concluded that the pond and movement corridors nearby may be potential habitat for the California red-legged frog (despite the prevalence on the Property of bull-frogs and fish, which are predators of the red-legged frog) and the San Francisco garter snake. The USFWS nonetheless required certain measures to enhance these potential habitat areas (such as the bull-frog eradication program) to increase the viability of the red-legged frogs and garter snakes in these areas. See, Response II(A), above, to Issues Raised by Appellants Eleanor Wittrup and George Carman. The purpose

of these measures is not to mitigate for any harm created by the Project, but rather to try and create a future condition that will be more favorable for rare and endangered species. In any event, mitigation of impacts is not contrary to the LCP's policies of protection of sensitive habitat areas. For example, Policy 3-25 allows for mitigation measures in connection with construction activities to ensure protection of migration corridors of the San Francisco garter snake. Therefore, this prohibition is inapplicable.

- C. Issue: The LUP prohibits development in riparian locations containing San Francisco garter snakes. This means the roads across riparian corridors are prohibited.

Response: The LUP Policy 3-25(a) precludes "development where there is known to be a riparian location for the San Francisco garter snake," subject to certain exceptions. None of the numerous surveys disclosed the presence of San Francisco garter snakes on the Property.

- D. Issue: The Project does not comply with the USFWS's 300 foot buffer zone requirements or the corridor requirements between riparian areas and the pond.

Response: The USFWS never required 300 foot buffer zones. It did, however, erroneously require a 150 foot buffer zone around the pond after agreeing that a 100 foot buffer zone is sufficient and requiring off-site mitigation for the loss of potential habitat between 100 feet and 150 feet from the pond. This issue of buffer zones required by the USFWS is now moot in light of the manner in which the Project is proposed to be revised. The USFWS is currently revisiting its prior conditions in light of the proposed revised Project. Thus far, in the informal consultation with the USFWS representatives, the agency has expressed general satisfaction with the revised Project, although the consultation is not complete and there remain issues to be addressed (with the input of the Coastal Commission staff), such as the location of the loop road on top of the dam near the pond. With respect to the wildlife corridors, the USFWS staff has been pleased with the wildlife corridors shown in the revised Project, although the location of three homes needs to be resolved.

- E. Issue: The permits granted by the Corps and USFWS allow "substantial disruption and destruction" of habitat areas, and is contrary to the LCP. The Corps and USFWS permits should be voided and the CDP revoked.

Response: Only the Corps granted a permit (and the Coastal Commission has no authority to void such a permit). The USFWS has no permitting authority over the Project; the agency was merely consulted in connection with the Corps permit. Obtaining a Corps permit was an express condition of the PUD Ordinance, which has been certified by the Coastal Commission as part of the LCP. While the



Corps permit allowed for the filling of wetlands (which is no longer part of the Project as proposed to be revised), it also required mitigation measures for any disruption and destruction of potential habitat areas. Thus, the LCP policies to protect sensitive habitat were achieved. With the Project as proposed to be revised, there will be further protection of these areas.

- F. Issue: The presence of endangered species is a significant new circumstance, requiring a new EIR.

Response: None of the surveys for rare and endangered species revealed the presence of these species, and therefore no subsequent EIR is warranted. See, Response II(A), above, to Issues Raised by Eleanor Wittrup and George Carmen.

- G. Issue: Ailanto has refused to comply with the USFWS conditions to scale back the project, as late as January 21, 1999. The July 27, 1998, Initial Study inaccurately represents that the mitigation plan is complete and unproblematic.

Response: The USFWS never required that the Project be scaled back. The USFWS, however, did erroneously impose a 150 foot buffer zone around the pond after agreeing to a 100 foot buffer zone and requiring off-site mitigation for the area between 100 feet and 150 feet from the pond. In any event, this issue is no longer relevant since the Project is proposed to be revised, and the USFWS is therefore re-evaluating its recommended conditions. See, Response II(D), above, to Issues Raised by Appellants Eleanor Wittrup and George Carman.

Contrary to the appellants' claim, the Initial Study accurately represents the mitigation measures ultimately adopted and required by the Corps after its consultation with the USFWS.

### III. Coastal Access and Foothill Boulevard

- A. Issue: Foothill Boulevard south of the Property to Highway 92 cannot be constructed because of wetlands and therefore the City denied a CDP for Foothill Boulevard on January 12, 1999. Foothill's connection to Highway 92 was an integral part of the original development plan for the Project. Because Foothill Boulevard will not be connected to Highway 92, the Project does not have adequate infrastructure to serve it.

Response: It is most reasonable to assume that Foothill Boulevard to the south of the Property will be constructed in the future since it is part of the LCP and the General Plan's Circulation Element. In fact, a substantial portion of Foothill Boulevard to the south of the Property is already used as a road. The fact that wetlands may be present somewhere along the Foothill Boulevard alignment, even if proven to be true, does not automatically preclude construction of the

road. Studies must be done to determine whether any such wetlands could be avoided in constructing the part of Foothill Boulevard that is south of the Property, and it appears likely that the road's alignment could be shifted to accommodate both the road and the wetlands resource. In fact, at its December 7, 1999 meeting, the City Council directed City staff to return to the City Council with data on the presence of wetlands affecting the construction and alignment of the portion of Foothill Boulevard to the south of the Property, and information on alternatives for routing Foothill Boulevard to sufficiently clear any such wetlands.

Contrary to appellants' assertion, no CDP was ever considered, much less denied, for the construction of Foothill Boulevard. The only action that the City Council took on January 19, 1999 (not January 12, 1999, as claimed by appellants), with respect to Foothill Boulevard was to opt not to fund the Foothill Boulevard/Highway 92 intersection as part of the Highway 92 widening project. Such action dealt with the mechanisms for financing various roadway improvements, but in no way affected the City's policies concerning future roads, including Foothill Boulevard.

The Project is not dependent on the construction of Foothill Boulevard to the south of the Property. Contrary to the appellants' assertion, the Project would be served by adequate infrastructure even without the construction of Foothill Boulevard south of the Property. Terrace Avenue abuts the Property and is adequate to serve the Project. In fact, since the Property is adjacent to Terrace Avenue, our client has a legal right to access the Property via Terrace Avenue. In addition, Bayview Drive, which is part of the General Plan's Circulation Element as a future road, is slated for construction in connection with the Beachwood subdivision (and indeed, could proceed in advance of the Beachwood subdivision if the City decided to pursue the road's immediate construction). Grandview Boulevard, which accesses the Property on its northern end, will serve as an emergency vehicle access road for the Project. Clearly, ample roads will serve the Project with or without the City's construction of Foothill Boulevard between the Property and Highway 92.

- B. Issue: Foothill Boulevard is not going to be constructed to the south of the Project site because of wetlands. The Vesting Tentative Map shows Foothill Boulevard connecting to Highway 92 and connecting to Grandview Boulevard and Bayview Drive. The final map, however, does not show a connection to Grandview Boulevard, which connection would be difficult because of the wetlands on the northwest portion of the site. Nor does the final City resolution mandate the construction of Bayview Drive, as required by Z.O. § 18.16.070(E), leaving Terrace Avenue as a de facto permanent access road to the Project site. These changes are inconsistent with the Vesting Tentative Map and are grounds for denial of the final map.

Response: No "final map" has yet been approved. Even if it had been, that would not be germane to the consideration of a CDP application because consistency of a final subdivision map to the Vesting Tentative Map is not a criterion for issuance of a CDP. In any event, however, the Project is in substantial conformance to the Vesting Tentative Map. For example, the Vesting Tentative Map shows a connection of the on-site portion of Foothill Boulevard with Grandview Boulevard and the Project retains such a connection, with Grandview Boulevard extended onto the Property as an emergency vehicle access road. The Project also retains a Foothill Boulevard right of way on-site, as was required by the City in connection with the Vesting Tentative Map.

Contrary to appellants' assertion, the Vesting Tentative Map does not show Foothill Boulevard connecting to Highway 92 or to Bayview Drive as part of the Project. Rather, it shows Foothill Boulevard to the south of the Property as the "Proposed Foothill Boulevard per assessment district." Similarly, Bayview Drive is referenced as the "future Bayview Drive" in the Vesting Tentative Map. (We note that Bayview Drive is designated as a future road in the General Plan's Circulation Element.) Thus, the Vesting Tentative Map merely indicates that these roads are future roads to be constructed not as a part of the Project, but rather as separate projects to be undertaken either by a different property owner or by a funding mechanism such as an assessment district.

- C. Issue: Use of Terrace Avenue was never shown on any previous map and the Vesting Tentative Map shows no Terrace Avenue connection to the Project, as required by Z.O. § 18.15.035 (F) and (G). Use of Terrace Avenue was not studied in a traffic study. Residents were not noticed regarding the use of Terrace Avenue.

Response: While the use of Terrace Avenue is not shown on the Vesting Tentative Map, Terrace Avenue abuts the Property and Ailanto has legal abutter's rights to use this street. The fact that the use of Terrace Avenue is not shown on the Vesting Tentative Map is of no import as this is but a minor change that is permitted under the Subdivision Map Act. Tentative maps are, as their name implies, tentative. Appellants' reference to Z.O. § 18.15.035(F) and (G) for the proposition that no changes to a tentative map can be made is misplaced; these sections merely refer to information that must be presented in a planned unit development application or amendment. Ailanto long ago submitted a planned unit development application, which resulted in the PUD Ordinance.

The EIR studied the use of local streets in evaluating potential connections of the on-site portion of Foothill Boulevard to Highway 1. See, EIR, p. 103 (the EIR states that Foothill Boulevard's connection to local streets other than Grandview Boulevard and Silver Avenue are possible, but the EIR's analysis of Grandview

Boulevard and Silver Avenue as the local connector streets provide sufficient analogous information of impacts).

With respect to notice issues, all of the residents were properly noticed of the Project. On this issue, we refer you to the letter to Mr. Bill Van Beckum, dated May 17, 1999, from Yuri Won of this firm, that sets forth in detail, with exhibits, how the notice requirements were followed. In fact, contained in Exhibit D of that submittal is a picture of the notice posted on street light poles on Terrace Avenue. Thus, any claim that the Terrace Avenue residents did not receive notice is wholly unsubstantiated.

- D. Issue: LUP Policy 10-31 requires all development along Foothill Boulevard to minimize local street connections. The City Council decided to prohibit the use of Grandview Boulevard as primary access for the Project.

Response: LUP Policy 10-31 states that Foothill Boulevard "shall provide for through-traffic and local street connections shall be minimized *to the extent feasible* and on-street parking shall not be allowed." The purpose of this policy is to ensure that Foothill Boulevard serves the function for which it was intended: as a free-flowing coastal access and bypass route. This does not preclude any local street connections. In fact, the LUP's Access and Circulation Concept Map shows Foothill Boulevard connecting to Highway 1 via two local connector streets. See, LUP p. 226. Thus, allowing Foothill Boulevard on-site to connect to Terrace Avenue and/or Bayview Drive is not inconsistent with LUP Policy 10-31 or its intent.

During consideration of the CDP for the Project, the City Council never formally decided to prohibit the use of Grandview Boulevard as access for the Project.

- E. Issue: Use of Terrace Avenue as access to the Project is prohibited because it would run through buffer zones around stream #3 and an off-site wetland on the proposed Beachwood subdivision. Thus, the Project is stranded.

Response: The information presented in the Biological Report was obtained by reviewing aerial photographs of the lands within 200 feet of the Property, by public records, and by direct observations from the Property. In November, 1999, Ailanto's biologist was able to review the preliminary wetland delineation for the Beachwood property prepared by Wetlands Research Associates and submitted to the City of Half Moon Bay. While this delineation shows a possible wetland which was not apparent on the aerial photographs reviewed for the Biological Report in the southeastern corner of the Beachwood property, this wetland is more than 100 feet from Terrace Avenue and its extension to the Property. The existing, undeveloped and padded/graded lots on the north side of Terrace Avenue are approximately 110 feet deep, putting any undeveloped land on Beachwood

more than 100 feet from Terrace Avenue. Finally, neither Terrace Avenue nor its extension onto the Property is within the required buffer zone for stream #3.

- F. Issue: The circulation system within the Project must be altered to protect coastal resources.

Response: The Project's circulation has always been designed with the intent to protect coastal resources. Since the Appeal was filed, however, our client has proposed Project revisions, including changes to the circulation system, to further protect coastal resources.

- G. Issue: The Project retains Foothill Boulevard on-site even though it encroaches on wetlands and their buffer zones and the City Council has decided not to go forward with Foothill Boulevard. The construction of Foothill Boulevard was an important aspect of the initial approval of the Project.

Response: Contrary to appellants' claims, the on-site portion of Foothill Boulevard will not encroach on wetlands or their buffer zones. In addition, as set forth in Response III(A), above, to Issues Raised by Eleanor Wittrup and George Carman, the City Council has made no decision not to go forward with Foothill Boulevard. In fact, as explained in Response III(A), above, the City Council recently directed City staff to investigate the wetlands along Foothill Boulevard to the south of the Property and to provide information on whether such wetlands could be avoided in constructing Foothill Boulevard.

The construction of Foothill Boulevard to the south of the Property was not part of the Project as approved in 1990. Rather, because Foothill Boulevard has been a longstanding LCP policy, the City took its first step to implement Foothill Boulevard by requiring Ailanto to construct those portions of Foothill Boulevard on the Property that are necessary for internal circulation and to reserve a right of way for this future road on the Property to be used if and when the City proceeds to undertake construction of Foothill Boulevard from Highway 92 through the Property. While the construction of Foothill Boulevard as a coastal access and bypass route was envisioned when the Project was approved in 1990, it was always understood that its construction would have to undergo its own separate approval process and that the City would have to secure the necessary financing for it. Thus, while the construction of Foothill Boulevard was envisioned, it was not assumed as part of the Project since Foothill Boulevard required its own environmental review and requisite approvals.

- H. Issue: Z.O. § 18.16.070(E) requires that Foothill Boulevard be built and connect to Highways 92 and 1. A condition of approval in the LUP is for the participation in the building of Foothill Boulevard to mitigate local and coastal traffic problems.

Response: Z.O. § 18.16.070(E) does not require Foothill Boulevard to be built and connect to Highway 92 as any condition pertaining to the Project. Rather, it requires Foothill Boulevard to be constructed on-site with a connection to Highway 1, and that the intersection improvements at Foothill Boulevard/Highway 92 and Bayview Drive/Highway 1 be installed prior to the issuance of more than 100 building permits for the Project. If the City were not to proceed with the construction of Foothill Boulevard, then the requirement to improve the intersection of Highway 92 and Foothill Boulevard would cease to exist by operation of law. See, e.g., Gov. Code § 66462.5; see, also, Munns v. Stenman, 152 Cal.App.2d 543 (a local agency is without power to impose conditions that require actions by third parties over which the developer has no control).

Appellants' reference to a condition of approval in the LUP presumably refers to LUP Policy 10-31 (which technically is not a condition of approval). LUP Policy 10-31 requires that property owners near the Foothill Boulevard alignment participate in an assessment district for its construction. The Project is not inconsistent with this policy. If and when construction of Foothill Boulevard proceeds, the nearby property owners (including Ailanto Properties) will be required to participate in the assessment district.

- I. Issue: The EIR shows that the traffic level of service ("LOS") from the Project exceeds the recommended LOS in LUP Policy 10-25. LUP Section 9.3.7 permits reduction in density if Highway 92 does not accommodate additional traffic from the development. The Project would substantially impair the public's access to the whole coast of San Mateo County by increasing congestion on Highways 1 and 92 to unacceptable levels, thereby violating the LCP coastal access policies.

Response: LUP Policy 10-25 states that the desired level of service on Highways 1 and 92 is LOS C, except during the peak commute hours where LOS E is acceptable. The EIR fully examined traffic impacts of the Project, concluding that the Project alone would not cause significant LOS deterioration. The EIR found that, with the Project, the level of service would be LOS E or better during the peak commute hours without any roadway improvements and with one local connection to Highway 1. The EIR concluded that with cumulative development, traffic levels of service may deteriorate to LOS F at peak commute hours; however, this cumulative condition is not inconsistent with LCP. LUP Policy 10-25 does not mandate levels of service, but rather suggests "desired" levels of service. In any event, the City found these impacts acceptable in approving the Vesting Tentative Map and the PUD Ordinance, which the Coastal Commission certified as part of the LCP.

With respect to reduction in density, LUP Section 9.3.7. states, as a proposed development condition, that at the time that a specific plan (i.e., the PUD

Ordinance) for the Project is considered and environmental review conducted for that plan, the Planning Commission may reduce the Project's density if Highway 92 is "inadequate to accommodate the amount of proposed residential development." The timing for such a density reduction decision was plainly in 1990, when the PUD Ordinance and the Vesting Tentative Map were approved, taking into consideration the Project EIR. No such density limitation was imposed on the Project at that time. Regardless, we note that the density of the Project, as proposed to be revised, will be reduced from the 228 units allowed in the LCP to 150 units, which would cut by almost one-third any of the Project's traffic impacts shown in any previous traffic study. Moreover, capacity on Highway 92 is not an issue of concern as the City is currently undertaking efforts to widen Highway 92.

Finally, the Project will not impact coastal access. The Coastal Act's coastal access protection provisions relate primarily to coastal access between the first road parallel to the sea (here, Highway 1) and the sea. See, Public Resources Code § 30210, 30211 and 30212. Accordingly, LUP policies pertain more to ensuring that there is adequate signage designating access routes on Highway 1; requiring lateral easements to the shore; and ensuring that structures that would preclude access are not built by the shoreline. See, LUP Policies 2-1 to 2-11. None of the LUP policies specifically relate to capacity on Highways 1 and 92. Nonetheless, even if capacity on Highways 1 and 92 were a coastal access issue, the City recently completed a Caltrans Project Study Report to widen Highway 1, held neighborhood workshops, and the City Council will make a final decision regarding the widening in the near future.<sup>3</sup> Similarly, the City is already in the midst of widening Highway 92 to ensure adequate capacity.

- J. Issue: In 1997, the County of San Mateo analyzed the impact of development, and found that previous congestion impacts were underestimated. This is a substantial change in circumstance requiring a new EIR.

Response: Even if what appellants state is true, since an EIR has been prepared for the Project, the relevant issue is whether there exist circumstances requiring the City to prepare a subsequent EIR when it approved the CDP for the Project. The City did not prepare a subsequent EIR because it properly found in its Initial Study that the Project would not result in significant impacts beyond those identified in the EIR (such as cumulative traffic impacts). In terms of traffic impacts, it must be underscored that the Project, as proposed to be revised, contains significantly fewer homes (in fact, fewer by 30% than when approved by

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<sup>3</sup> The City has long recognized the need to improve and widen Highway 1. See, EIR p. 95. The City, however, did not impose any such condition on the Project when it approved the Vesting Tentative Map because Project impacts did not warrant such measures.

the City in 1990) such that the traffic impact of the development will be less than previously studied.

In any event, the issue of the City's CEQA compliance will be moot if the Coastal Commission considers the Project de novo because the Coastal Commission's current review of the Project and its written documentation of the same will be the functional equivalent of a CEQA document.

- K. Issue: Without Foothill Boulevard, all of the analyses show overall significant and unavoidable unmitigable adverse impacts on local traffic and coastal access.

Response: Overall traffic conditions within the City are outside the scope of this Appeal and the Coastal Commission's consideration of the CDP. Whether City can construct Foothill Boulevard to the south of the Property is currently being investigated, and the Project can proceed with or without Foothill Boulevard. See, Response III(A) and (G), above, to Issues Raised by Eleanor Wittrup and George Carmen.

#### IV. Visual Resources

- A. Issue: Nearly all visible tree stands will be cut down to build Foothill Boulevard contrary to the LCP's policy to avoid or minimize cutting notable tree stands, such as Monterey pine. Tree stands may be endangered species habitat.

Response: Appellants are wrong. The Project proposes very little tree removal. Appellants fail to understand that the Property is grazing land (and at one point, farmed land) such that there are very few trees, notable or otherwise, on the Property. As set forth in the Biological Report, despite the appellants' allegations, the Property does not contain any Monterey pines. Finally, as disclosed by past surveys, the tree stands do not support any endangered species. As part of the Biological Report, a raptor survey was conducted and no raptor nests were observed on-site.

- B. Issue: The houses are not clustered to allow view corridors, nor are they located where they are least visible from public view, as required by LUP Policy 9-9 and Section 9.3.7 of the LUP. Only people whose houses are directly adjacent to the hillside will have a view of the upland slopes, which is designated as scenic in the Visual Resources Overlay of the LUP. Story poles erected for the public site visit on February 9, 1999, were misleading.

Response: The PUD Ordinance, which flows from the approved Vesting Tentative Map, expresses an intent that the Project "be a detached single-family residential development clustered within dedicated open space areas." This is implemented through the specific design and development standards in the PUD Ordinance,



such as the prohibition of development above the 160 foot contour. Accordingly, the Project is clustered on the lower slopes of the Property at or below the 160 foot contour line, preserving the maximum amount of open space, such as the eastern foothills on and above the Property. Furthermore, there is no way physically to further cluster the homes without violating the setback requirements in the PUD Ordinance, which is part of the LCP. Thus, there can be no finding other than that the Project is clustered.

The Project will not impact views of the eastern hills on and above the Property. Since the eastern hills reach an elevation of 530 feet, it is absurd to allege that the Project, whose homes are limited to below the 160 foot elevation, will impact views of these eastern hills. Moreover, the EIR for the Project contained a comprehensive visual analysis, which concluded that the Project would not affect views of the eastern hills. Nothing has changed since certification of the EIR to alter this conclusion. In fact, the Project, as revised, will have even less visual effect because fewer homes will be built. Furthermore, Ailanto prepared visual simulations in connection with the City's 1999 consideration of the CDP for the Project. These simulations demonstrated that there will be no visual impacts from Highway 1. Thus, Appellant's allegation that only those people whose houses are adjacent to the hillside will be able to view the hillside is unsubstantiated and false.

Story poles erected for the public site visit on February 9, 1999, were not misleading, but were properly placed at the highest point of those structures nearest to the 160 foot contour in order to show the maximum potential visual effect.

- C. Issue: LUP Policy 9-12 requires 20% of the gross area of the Property to be open space. There are no calculations of open spaces and this policy seems to be unmet.

Response: LUP Policy 9-12 requires that the amount of public, private and common open space in a planned development must be at least 20% of the gross area. Open space within the Project significantly exceeds this requirement. When Ailanto submitted its CDP application to the City, the Project contained 213 homes, with 31.1 acres (27% of the Property) designated as homeowners association ("HOA") open space, 5.6 acres (4.9% of the Property) designated as an HOA park, 1.8 acres (1.6% of the Property) dedicated to the City for a public park and 5.0 acres (4.3% of the Property) dedicated to the HOA to be preserved. In total, 37.8% of the Property was designated as open space. This is nearly double the LCP's requirement for open space. Since the Project as it is proposed to be revised contains merely 150 homes (an almost 25% reduction in homes than when the CDP was approved by the City), the amount of open space will be even further increased. Clearly, the LUP requirements are met and exceeded.

V. Public Notice and Process

- A. Issue: Z.O. § 18.20.060 requires the City to publish notice of any review of a CDP application, mail notice to adjoining property owners and post notices on the site. The City held four hearings on the Project and notice of only one hearing was published in the newspaper and there was only one public notice posting, which did not contain the required information.

Response: Appellants misunderstand the notice requirements. Z.O. § 18.20.060 applies to notices of all applications for CDPs. When Ailanto first applied for a CDP application in the spring of 1998, the required postings of the notice of the application with all of the required information were made at the Project site, and notices to adjoining property owners were given by mail (and by neighborhood postings). Photographs of the posting of the required notices are set forth in Exhibit D to the letter to Mr. Bill Van Beckum from Yuri Won of this firm, dated May 17, 1999. In addition, publication of the Planning Commission hearing on the CDP application occurred 10 days before the first public hearing. When the Planning Commission's decision was appealed, notice of the public hearing for the appeal to be heard by the City Council was made through a newspaper publication. Each of the subsequent public hearings were continued hearings such that no notice was required. When a public hearing has been continued to a date certain, republication of notice of the public hearing is unnecessary. See, e.g., Z.O. § 18.20.060.B.1. The public hearing was closed after the site visit on February 9, 1999. The next meeting at which the City Council considered the appeal, on March 16, 1999, was not a public hearing, but a deliberation session for which no public hearing (and thus no notice) was required. See, e.g., Letter to Mr. Bill Van Beckum from Yuri Won, dated May 17, 1999.

The appellants' claim that there was no public input is, like all of their other claims, totally misinformed. Over the span of more than five months, the City held a total of eight hearings and one meeting on Ailanto's CDP application in which public testimony was permitted. Moreover, certain hearings for the Project made the front page headlines in the local newspaper, the Half Moon Bay Review. Thus, there was ample opportunity for public input on the Project.

VI. Environmental Review

- A. Issue: The submittals for a planned unit development plan under Z.O. § 18.15.035 were not submitted.

Response: Z.O. § 18.15.035 does not apply to already approved planned unit developments such as the Project.

- B. Issue: The finding that the Project conforms to applicable Z.O. provisions could not be made, as required under Z.O. § 18.15.40.A. No biological and geological reports were submitted, and the Final EIR is more than one year old such that it cannot act as a substitute.

Response: Z.O. § 18.15.40.A does not apply to already approved planned development projects such as the Project. The Project was previously found to be consistent with the applicable Z.O. provisions when the City approved the PUD Ordinance in 1990. The Coastal Commission thereafter reviewed the PUD Ordinance as part of the Implementation Plan and certified it as part of the LCP.

A new biological report was submitted to the Coastal Commission to augment the WMMP. Under Z.O. § 18.38.045.A., no geological report is required because the Project does not include any shoreline structures, any structure within 100 foot of a bluff edge, any wall or cliff-retaining structure, or any substantial alteration of waterways, nor is the Project being developed in areas of known geologic hazards. Despite this, in connection with the City's consideration of the CDP, a geotechnical report was prepared that concluded that there are no geologic hazards. That geotechnical report further supplemented the reconnaissance studies and the EIR that were prepared before the Vesting Tentative Map and the PUD Ordinance were approved in 1990.

- C. Issue: The Initial Study is incomplete and its findings of no significant impact are erroneous, especially since the EIR concluded that there are significant and unavoidable impacts. A new EIR must have been prepared due to significant impacts. The City Council's adoption of the Negative Declaration was inappropriate and adopted without proper findings. There was no public review of the Negative Declaration.

Response: The City properly complied in all respects with CEQA. The Initial Study was prepared to determine if the analyses in the Final EIR for the Project remained valid. The Negative Declaration was adopted based on the finding that the Project would not generate any new significant impacts beyond those identified in the Final EIR. The City's adoption of the Negative Declaration and its findings in support thereof are proper and supported by substantial evidence in the record. The City also properly noticed the Negative Declaration for public review in accordance with CEQA, and numerous members of the public commented on the Negative Declaration as a result. Regardless, whether the City properly complied with CEQA (which it did) in terms of processing and adopting the Negative Declaration is irrelevant because the Coastal Commission is now acting on the CDP for the Project. The Coastal Commission has a certified regulatory program under Public Resources Code § 21080.5 and § 15251 of the CEQA Guidelines (at 14 California Code of Regulations § 15000 et seq.) so that

its consideration of a CDP under the Coastal Act will be the functional equivalent of CEQA review for the CDP.

VII. Resolution C-17-99

- A. Issue: Resolution C-17-99 lacks findings that the project meets the standards set forth in the LUP. The final Resolution C-17-99 differs from the draft.

Response: If the Coastal Commission holds a de novo hearing on the Project, the sufficiency of the City's findings will be moot. We note, however, that the final Resolution C-17-99 differs from the draft merely because the City Council authorized staff to make minor revisions to the Resolution consistent with the City Council's determinations at the public hearing approving the CDP.

CASSIDY  
CHEATHAM  
SHIMKO &  
DAWSON

A Professional Corporation

EXHIBIT NO. 11

APPLICATION NO.  
A-1-HMB-99-22

May 17, 1999 letter  
from Yuri Won to  
Bill Ban Beckum

May 17, 1999

VIA U.S. MAIL

Bill Van Beckum  
Coastal Planner  
California Coastal Commission  
45 Fremont Street, Ste. 2000  
San Francisco, CA 94105

Re: Pacific Ridge/Notices Sent in Connection With The City of Half Moon  
Bay's Action on Ailanto Properties, Inc.'s ("Ailanto") CDP Application  
and Appeal

Dear Bill:

As we have discussed, attached is information regarding the notices that were posted, mailed and published in connection with the Planning Commission's consideration of Ailanto's CDP application and the City Council's consideration of Ailanto's appeal.

As required by Zoning Ordinance § 18.20.060, the City published a notice of the Planning Commission hearing ten days before the hearing on October 8, 1998. See, Exhibit A attached hereto. Notices were also mailed to persons within 300 feet of the development (although only persons within 100 feet of the development were entitled to notice), as well as other individuals and public agencies. See, Exhibit B attached hereto. Notices for the November 12, 1998, December 10, 1998, and December 15, 1998, Planning Commission public hearings were not published or mailed as each of these hearings was conducted on a date certain continued from the preceding hearing. See, Exhibit A. When items are continued from one public hearing to a date certain, re-noticing via newspaper or mailing is not required. Id. This is consistent with Zoning Ordinance § 18.20.060.B, which states that "[i]f a public hearing is continued to a date and time that is not specified at the public hearing, notice of the continued hearing shall be published and distributed in the same manner and the same time limits as for the initial notice." Zoning Ordinance § 18.20.060.B (emphasis added).

The same procedures were used to notice the City Council public hearings on Ailanto's appeal. Notice of the first public hearing on January 12, 1999, was published and mailed in a timely manner; the public hearings on January 24, 1999, and February 9, 1999, were continued public hearings, the dates of which were announced at the preceding public hearing. See, Exhibit A. The public hearing was closed after the public hearing on February 9, 1999. Accordingly, as I have confirmed with the City Attorney, the March 16, 1999, City Council meeting was not a public hearing but a deliberative hearing requiring no notice. (In fact, the City Council was not even required to take public testimony on that date.) The January 24, 1999, transcript makes clear what occurred. At the end of that hearing, City Manager Blair King stated that the City Council would have to meet to deliberate, but after it ascertained all of the facts and

Attorneys at Law

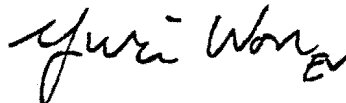
Bill Van Beckum  
May 17, 1999  
Page 2

part of that was the site visit on February 9, 1999. See, Exhibit C attached hereto. He further clarified that the City Council would have to convene sometime after the site visit to deliberate. Id. The March 16, 1999, meeting was precisely such deliberative meeting.

In addition to the above, Ailanto also posted notices of its CDP application on the project site when the City finally agreed to accept Ailanto's CDP application. See, Exhibit D attached hereto.

The above and the attached materials should make it clear that despite appellant Mr. Carman's claims, proper noticing occurred. If you have any questions, please do not hesitate to contact me.

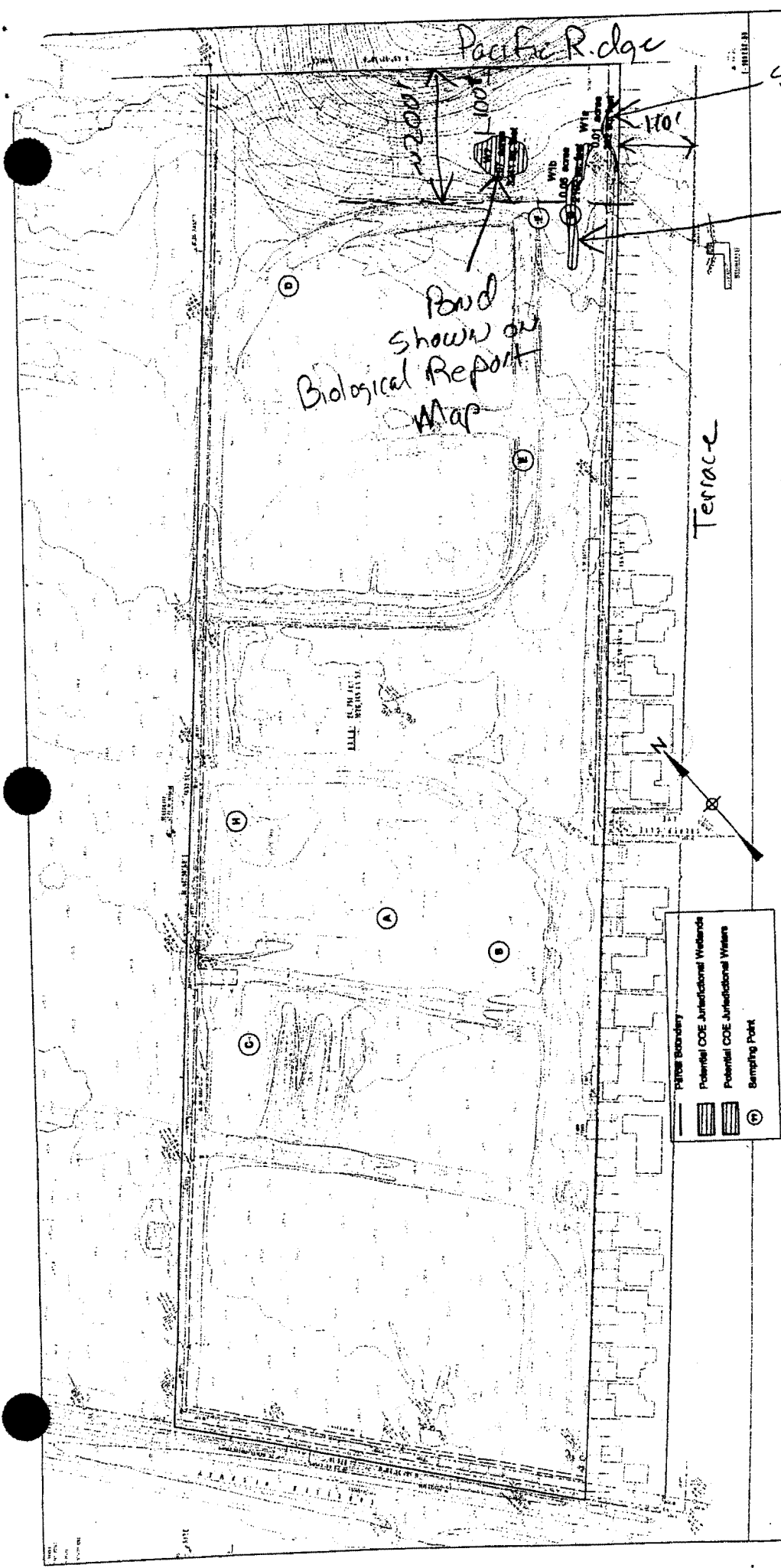
Very truly yours,



Yuri Won

encl.

cc: Steve Cassidy  
Anna Shimko  
Bob Henry



LOCATION: Half Moon Bay, CA  
 COUNTY: San Mateo  
 APPLICATION BY: Beachwood Subdivision  
 SOURCE: Base Map - Brian Kargus Foulk  
 DATE: OCTOBER 1999

Figure 12. Potential COE Jurisdictional Wetlands and Waters at the Beachwood Subdivision

Beachwood Preliminary Delineation  
 Wetlands Research Associates, Inc.  
 October 1999.

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CALIFORNIA  
 COASTAL COMMISSION

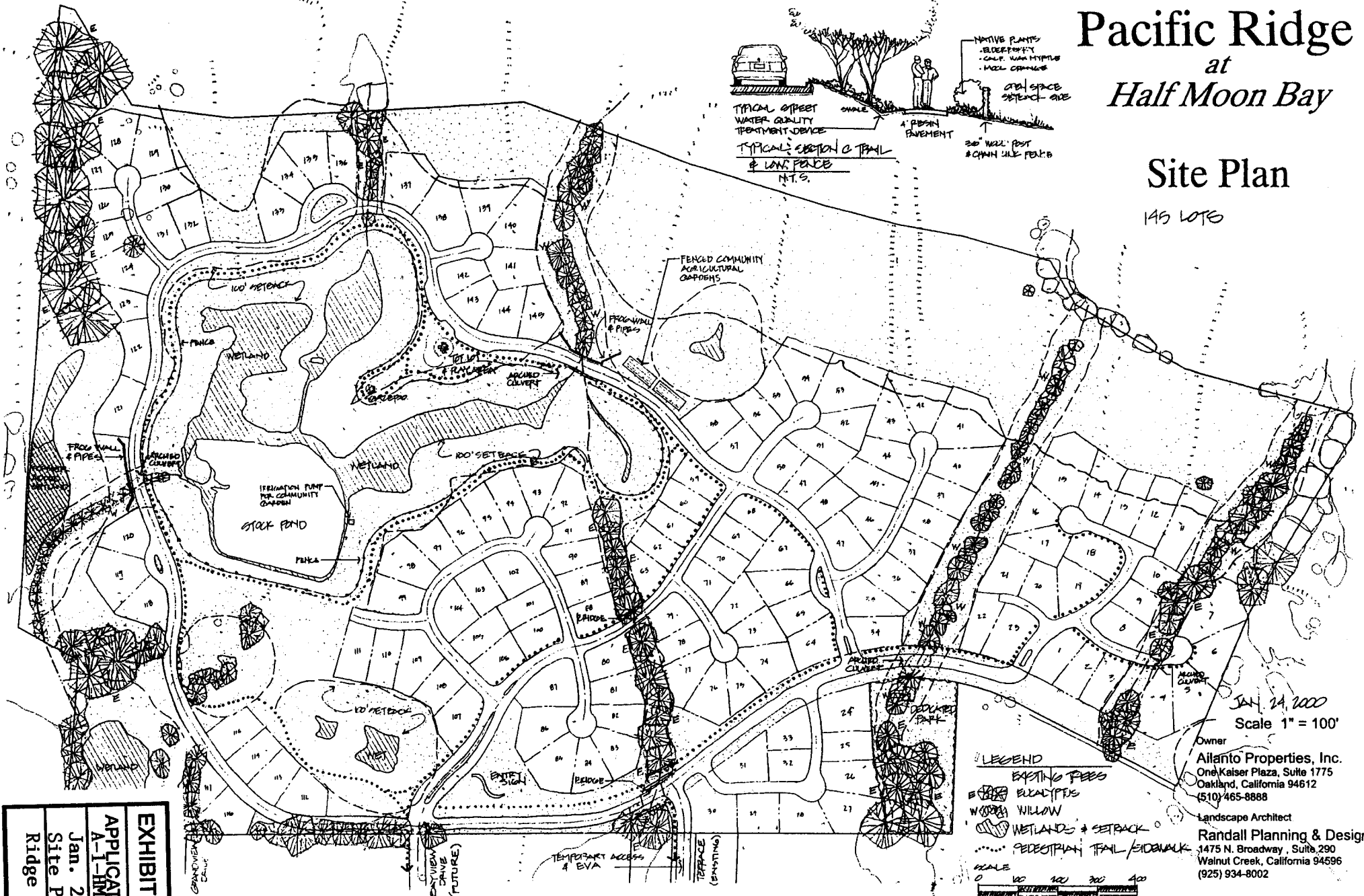
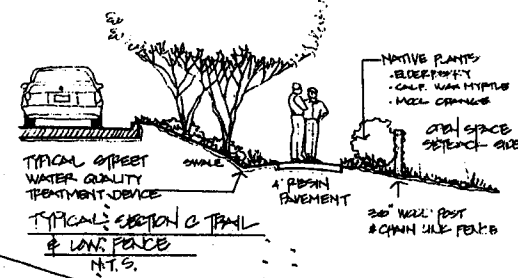
EXHIBIT NO. 12

APPLICATION NO.  
 A-1-HMB-99-22

Beachwood Preliminary  
 Wetlands

Delineation,  
 October 1999

145 LOTS



JAN. 24, 2000  
Scale 1" = 100'

Owner  
Ailanto Properties, Inc.  
One Kaiser Plaza, Suite 1775  
Oakland, California 94612  
(510) 465-8888

**Landscape Architect**  
**Randall Planning & Design**  
1475 N. Broadway, Suite 290  
Walnut Creek, California 94596  
(925) 934-8002

**EXHIBIT NO. 13**

APPLICATION NO  
A-1-HMB-99-22

Jan. 24, 2000  
Site Plan, Pacific  
Ridge





IN REPLY REFER TO:  
1-1-98-F-78

## United States Department of the Interior

FISH AND WILDLIFE SERVICE  
Sacramento Fish and Wildlife Office  
3310 El Camino Avenue, Suite 130  
Sacramento, California 95821-6340

November 16, 1998

Mr. Calvin C. Fong  
Chief, Regulatory Branch  
(Attn: Mark D'Avignon)  
U.S. Army Corps of Engineers  
San Francisco District  
333 Market Street  
San Francisco, California 94105-2197

Subject: Formal Consultation on the Proposed Pacific Ridge Development Project,  
Half Moon Bay, San Mateo County, California (PCN 23053S).

Dear Mr. Fong:

This document transmits the U.S. Fish and Wildlife Service's (Service) biological opinion on the proposed Pacific Ridge housing development project in Half Moon Bay, San Mateo County, and effects of this project on the federally threatened California red-legged frog (*Rana aurora draytonii*) and the federally endangered San Francisco garter snake (*Thamnophis sirtalis tetrataenia*). This biological opinion is provided in accordance with section 7 of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 et seq.) (Act). Your March 17, 1998, request to initiate consultation was received in our office on March 20, 1998. bis. opinion

This biological opinion is based on information provided in: (1) the August 20, 1997, site assessment and survey results for California red-legged frogs at Dykstra Ranch by Resource Management Inc. (RMI); (2) the November 26, 1997, correspondence from Mike Westphal of my staff to Timothy Lacy of RMI; (3) the December 1997, *Pacific Ridge at Half Moon Bay Wetland Mitigation and Monitoring Plan*, by RMI; (4) the March 26, 1998, site visit with Steve Foreman of RMI, Bob Henry of Ailanto Properties, and Dan Buford and Curt McCasland of my staff; (5) the May 26, 1998, correspondence from Steve Foreman of LSA (formerly of RMI) to Dan Buford of my staff; (6) the July 27, 1998, correspondence from LSA to Curt McCasland of my staff; and (7) the October 2, 1998, correspondence from LSA to Curt McCasland. No biological assessment was provided for this project. A complete administrative record of this consultation is on file in the Sacramento Fish and Wildlife Office.

EXHIBIT NO.	14
APPLICATION NO.	A-1-HMB-99-22
Nov. 16, 1998	
USFWS Biological	
Opinion	

## CONSULTATION HISTORY

On August 20, 1997, Tim Lacey of RMI sent to the Service the results of a site assessment and California red-legged frog survey for the Dykstra Ranch Property in Half Moon Bay. In this correspondence RMI requested technical assistance from the Service to determine if any additional information was required in order to make a determination regarding the presence of California red-legged frogs on the site. On November 26, 1997, the Service responded in writing to RMI's letter stating that the site likely provides habitat for California red-legged frogs and potential habitat for San Francisco garter snakes. This determination was based on the presence of vegetated water bodies on the site, the widespread distribution of California red-legged frogs in coastal San Mateo County, and evidence that San Francisco garter snakes are potentially present at any water body in the Half Moon Bay area that supports emergent vegetation and amphibians. Given the potential impacts to federally listed species, the Service recommended formal consultation pursuant to section 7 of the Act be initiated.

On March 17, 1998, the U.S. Army Corps of Engineers (Corps) initiated formal consultation. On March 26, 1998, Dan Buford and Curt McCasland of my staff met with Steve Forman of RMI (now of LSA) and Bob Henry of Ailanto Properties at the project site to discuss avoidance and minimization measures that could be used to reduce impacts to San Francisco garter snakes and California red-legged frogs. During this field visit, members of my staff were shown two ponds adjacent to the project site that were proposed as mitigation for project impacts. These two ponds were not in the ownership of Ailanto Properties. At this point, my staff explained that the size of the project still represented a significant impact and needed to be scaled back, which included providing a larger buffer distance between the proposed development and aquatic habitat and the removal of a proposed public path around the existing stock pond. However, Bob Henry indicated that the project would not be scaled back, but they would continue to pursue the proposed mitigation property. At the end of the meeting, we expressed satisfaction with the proposed mitigation site, but still stressed the need to provide an adequate buffer between the existing habitat and the proposed housing development.

On May 26, 1998, we received a letter from LSA stating that the project proponent had redesigned the project such that 3 lots were eliminated, a larger buffer area was placed around the onsite stock pond, and the size of movement corridors between drainages were increased. In addition, this correspondence indicated that the path would not be eliminated, and the proposed mitigation property could not be purchased. Based on this letter and a small project map sent with the letter, it was assumed that the project proponent had redesigned the project to provide adequate buffers around the pond and drainages as requested by my staff. During several phone calls between Curt McCasland of my staff and Steve Foreman, it was agreed that the project proponent would place money into a mitigation fund which would be used to purchase approximately 10 acres of California red-legged frog and San Francisco garter snake habitat based upon 5 acres of impacts at a 2:1 ratio, and the proposed path would be only used as emergency vehicle access. This offsite mitigation, in conjunction with the perceived project avoidance measures, was considered acceptable by my staff. On August 31, 1998, we received a map of the proposed project, which delineated back lot lines within 50 feet of the pond and all of

the drainages. Within the May 26, 1998, letter from LSA, the buffer distances were described as being a minimum of 100 feet in width, however, this distance incorporated the back yards of the proposed lots within the determination of the buffer distance, a method that was never agreed upon by members of my staff. Upon receiving the August 31, 1998, project map, and reviewing the May 26, 1998, letter, Curt McCasland contacted Steve Foreman and discussed our continued concerns over the buffer distances provided for aquatic habitats and stated that the proposed distances were not acceptable.

On October 2, 1998, we received a letter from LSA summarizing the project proponents' final mitigation offer. This included the establishment of environmentally sensitive areas (ESAs) around portions of the property including the existing stock pond and drainages, as well as an assessment of 2.7 acres of impacts to upland habitat associated with inadequate buffer size (this value of 2.7 acres differs from the approximately 5 acres of impact provided in earlier conversations). Finally, on October 7, 1998, we received a letter from LSA relating to outstanding issues, specifically the inadequacies of the existing buffer zone and the proposed public path. Mr. Foreman asserted that the project proponent has provided the maximum practicable avoidance and setbacks from the pond, and that their proposal for providing funding for acquisition of off-site habitat is in recognition of the potential impacts associated with the reduction in the desired buffer habitat widths. He further stated the proposed path would be placed at the back of the housing lots and reduced in width.

## BIOLOGICAL OPINION

### Description of the Proposed Action

Ailanto Properties is proposing to construct 213 lots on approximately 114 acres within the Pacific Ridge at Half Moon Bay development, in Half Moon Bay, San Mateo County. The proposed project is located within the city limits of Half Moon Bay, approximately 1 mile north of Highway 1 and approximately 1 mile east of the Pacific Ocean. The project site is bordered to the west by urban development, and to the north, south, and east by undeveloped open space. The uplands on the project site are primarily non-native annual grassland. Several ponds, springs, and drainages are present within one square mile of the project area. The project will include the construction of homes, roadways, and related utilities. The project proponent has proposed to fill 43,560 square feet (1.0 acre) of jurisdictional wetland and other waters of the United States and to develop land within 300 feet of both sides of several unnamed drainages and two ponds, which will result in the direct loss of riparian and upland habitat suitable for California red-legged frogs and San Francisco garter snakes.

The project proponent has proposed several measures to offset the adverse effects of the project on California red-legged frogs and San Francisco garter snakes. These measures include minimizing impacts by preserving and enhancing habitat for California red-legged frogs, as well as offsite activities. The loss of 1.0 acre of wetlands would be minimized by the onsite creation of 2.1 acres of wetlands. The residential areas will be clustered into distinct neighborhoods and

an integrated system of open space will separate the neighborhoods. The upper hillsides and existing agricultural pond will be preserved and kept as wildlife habitat and an arched culvert with a native soil substrate will be used to ensure that an unimpeded path will exist between the preserved pond onsite and the two agricultural ponds to the north. Approximately 90 percent of the housing lots will be only rough graded and existing contours will be used to create a natural effect. For the rough graded lots, a drill rig will drill 10-foot deep, 12-inch diameter holes in which concrete will be poured for piers to support the housing foundations. The undeveloped portions of the lots surrounding the existing agricultural pond (lots 147-156, 189-197, and 204-207), along drainage 4 (lots 156-158, 166-167, 189, and 120-122), the upper portions of drainage 3 (lots 83-85 and 113-115), and the knoll northwest of the existing agricultural pond (lots 198-203) will be legally established as environmentally sensitive areas (ESAs), which can be legally established as deed restrictions under the existing City of Half Moon Bay zoning code for this development project. In the designated ESAs, the ordinance prohibits all land from alteration, vegetation or soil removal, and introduced landscaping.

The project proponent has also proposed to create 2.1 acres of wetlands onsite which includes wet meadow areas and intermittent stream courses. Coastal scrub vegetation will also be planted around the pond, and a bullfrog (*Rana catesbeiana*) control program will be developed to eradicate bullfrogs from the existing stock pond. This plan will be coordinated with the Service and California Department of Fish and Game, and will include the removal and eradication of bullfrogs, and biennial draining of the pond. Preconstruction surveys will also be conducted by a qualified wildlife biologist with field experience in surveying both California red-legged frogs and San Francisco garter snakes. Training of all construction workers will be conducted by a qualified biologist with knowledge of both species. Each worker will also be provided with a brochure that summarizes the information and be used as a future reference.

### Species Account

#### *San Francisco garter snake*

The San Francisco garter snake was listed as a Federal endangered species in March 1967 (32 FR 4001). The garter snake is an extremely colorful snake. It is identified by a burnt-orange head, yellow to a greenish-yellow dorsal stripe edged in black, and its red lateral stripe which may be continuous or broken with black blotches and edged in black. The belly color varies from greenish-blue to blue. Large adults can reach three feet in length.

The garter snakes' preferred habitat is a densely vegetated pond near an open hillside where it can sun itself, feed, and find cover in rodent burrows. They are extremely shy, difficult to locate and capture, and quick to flee to water or cover when disturbed. Adult snakes may seek cover in rodent burrows during summer months when ponds may dry. On the coast snakes hibernate during the winter, but further inland, if the weather is suitable, snakes may be active year round. Although highly vagile, adults spend considerable time after emergence in their hibernacula. They have been seen breeding at entrances to these burrows shortly after emergence from hibernation (Keel, pers. comm.) and may spend the majority of each day during the active season

in the same burrows. San Francisco garter snakes breed in the spring or late fall and bear live young from May through October, with an average litter size of 12-18 (Stebbins 1985).

Although primarily a diurnal species, captive snakes housed in an outside enclosure were observed foraging at night on warm evenings. Adult snakes feed primarily on California red-legged frogs, and may also feed on juvenile bullfrogs (*Rana catesbeiana*). In laboratory studies, Larsen (1994) fed adult San Francisco garter snakes 2 year old bullfrog tadpoles and found that only the largest adults could eat and digest the tadpoles; smaller adults regurgitated partially digested tadpoles, apparently unable to fully digest them. Larsen (1994) also observed that when these smaller adult snakes were fed bullfrogs and California red-legged frogs of comparable size, they were unable to hold and eat the bullfrogs although they had no trouble with the California red-legged frogs. Newborn and juvenile San Francisco garter snakes depend heavily upon Pacific treefrogs (*Hyla regilla*) as prey (Larsen 1994), and young snakes may not survive if they are unavailable.

Many of the threats that led to the listing of the San Francisco garter snake in 1967 continued to impact the species in 1985 when the Recovery Plan was written. These included loss of habitat from agricultural, commercial and urban development and collection by "reptile fanciers and breeders" (USFWS 1985).

The historical threats to the species remain, but there are now additional threats to the species, such as the documented decline of the California red-legged frog (an essential prey species) and the introduction of bullfrogs into San Francisco garter snake habitat. Bullfrogs are capable of preying on both garter snakes and California red-legged frogs. Extirpation of California red-legged frogs in San Francisco garter snake habitat is likely to cause localized extinction of garter snakes.

#### *California red-legged frog*

The California red-legged frog was federally listed as threatened on May 23, 1996, (61 FR 25813) effective June 24, 1996. This species is the largest native frog in the western United States (Wright and Wright 1949), ranging from 4 to 13 centimeters (1.5 to 5.1 inches) in length (Stebbins 1985). The abdomen and hind legs of adults are largely red; the back is characterized by small black flecks and larger irregular dark blotches with indistinct outlines on a brown, gray, olive, or reddish background color. Dorsal spots usually have light centers (Stebbins 1985), and dorsolateral folds are prominent on the back. Larvae (tadpoles) range from 14 to 80 millimeters (0.6 to 3.1 inches) in length, and the background color of the body is dark brown and yellow with darker spots (Storer 1925).

California red-legged frogs have paired vocal sacs and vocalize in air (Hayes and Krempels 1986). Female frogs deposit egg masses on emergent vegetation so that the egg mass floats on the surface of the water (Hayes and Miyamoto 1984). California red-legged frogs breed from November through March with earlier breeding records occurring in southern localities

(Storer 1925). Individuals occurring in coastal drainages are active year-round (Jennings *et al.* 1992), whereas those found in interior sites are normally less active during the cold season.

Adult California red-legged frogs prefer dense, shrubby or emergent riparian vegetation closely associated with deep (>0.7 meter), still, or slow-moving water (Hayes and Jennings 1988). However, frogs also have been found in ephemeral creeks and drainages and in ponds that may or may not have riparian vegetation. The largest densities of California red-legged frogs currently are associated with deep pools with dense stands of overhanging willows and an intermixed fringe of cattails (*Typha latifolia*) (Jennings 1988). California red-legged frogs disperse upstream and downstream of their breeding habitat to forage and seek sheltering habitat. Sheltering habitat for California red-legged frogs includes potentially all aquatic, riparian, and upland areas within the range of the species and any landscape features that provide cover, such as existing animal burrows, boulders or rocks, organic debris such as downed trees or logs, and industrial debris. Agricultural features such as drains, watering troughs, spring boxes, abandoned sheds, or hay ricks may also be used. Incised stream channels with portions narrower than 18 inches and depths greater than 18 inches may also provide important summer sheltering habitat. Accessibility to sheltering habitat is essential for the survival of California red-legged frogs within a watershed, and can be a factor limiting frog population numbers and survival. During winter rain events, juvenile and adult California red-legged frogs are known to disperse up to 1-2 km (Rathbun and Holland, unpublished data, cited in Rathbun *et al.* 1991).

Egg masses contain about 2,000 to 5,000 moderate sized (2.0 to 2.8 mm [0.08 to 0.11 inches] in diameter), dark reddish brown eggs and are typically attached to vertical emergent vegetation, such as bulrushes (*Scirpus* spp.) or cattails (Jennings *et al.* 1992). California red-legged frogs are often prolific breeders, laying their eggs during or shortly after large rainfall events in late winter and early spring (Hayes and Miyamoto 1984). Eggs hatch in 6 to 14 days (Jennings 1988). In coastal lagoons, the most significant mortality factor in the pre-hatching stage is water salinity (Jennings *et al.* 1992); eggs exposed to salinity levels greater than 4.5 parts per thousand result in 100% mortality (Jennings and Hayes 1990). Increased siltation during the breeding season can cause asphyxiation of eggs and small larvae. Larvae undergo metamorphosis 3.5 to 7 months after hatching (Storer 1925, Wright and Wright 1949, Jennings and Hayes 1990). Of the various life stages, larvae probably experience the highest mortality rates, with less than 1 percent of eggs laid reaching metamorphosis (Jennings *et al.* 1992). Sexual maturity normally is reached at 3 to 4 years of age (Storer 1925, Jennings and Hayes 1985). California red-legged frogs may live 8 to 10 years (Jennings *et al.* 1992).

The diet of California red-legged frogs is highly variable. Hayes and Tennant (1985) found invertebrates to be the most common food items. Vertebrates, such as Pacific tree frogs (*Hyla regilla*) and California mice (*Peromyscus californicus*), represented over half the prey mass eaten by larger frogs (Hayes and Tennant 1985). Hayes and Tennant (1985) found juvenile frogs to be active diurnally and nocturnally, whereas adult frogs were largely nocturnal. Feeding activity probably occurs along the shoreline and on the surface of the water (Hayes and Tennant 1985). Larvae likely eat algae (Jennings *et al.* 1992).

Several researchers in central California have noted the decline and eventual disappearance of California red-legged frog populations once bullfrogs (*R. catesbeiana*) became established at the same site (L. Hunt, in litt. 1993, S. Barry, in litt. 1992, S. Sweet, in litt. 1993). This has been attributed to both predation and competition. Twedt (1993) documented bullfrog predation of juvenile California red-legged frogs, and suggested that bullfrogs could prey on subadult red-legged frogs as well. In addition to predation, bullfrogs may have a competitive advantage over California red-legged frogs: bullfrogs are larger, possess more generalized food habits (Bury and Whelan 1984), possess an extended breeding season (Storer 1933) where an individual female can produce as many as 20,000 eggs during a breeding season (Emlen 1977), and larvae are unpalatable to predatory fish (Kruse and Francis 1977). In addition to competition, bullfrogs also interfere with California red-legged frog reproduction. California red-legged frogs have been observed in amplexus with (mounted on) both male and female bullfrogs (Jennings and Hayes 1990, Twedt 1993, M. Jennings, in litt. 1993, R. Stebbins in litt. 1993). Thus, bullfrogs are able to prey upon and out-compete California red-legged frogs, especially in sub-optimal habitat.

### Environmental Baseline

The environmental baseline used in this analysis includes past and ongoing impacts of all Federal, State, Tribal, and private actions and other human activities in the vicinity of the project that have impacted, or are impacting the listed species.

California red-legged frogs have been extirpated or nearly extirpated from over 70 percent of their former range. Historically, this species was found throughout the Central Valley and Sierra Nevada foothills. As of 1996, California red-legged frogs were known to occur in approximately 240 streams or drainages from 23 counties, primarily in central coastal California. Monterey, San Luis Obispo, and Santa Barbara counties support the largest extent of currently occupied habitat. The most secure aggregations of California red-legged frogs are found in aquatic sites that support substantial riparian and aquatic vegetation and lack non-native predators. Several researchers in Central California have noted the decline and eventual local disappearance of California red-legged frogs in systems supporting bullfrogs (Jennings and Hayes 1990, Twedt 1993), red swamp crayfish (*Procambarus clarkii*), signal crayfish (*Pacifastacus leniusculus*), and several species of warm water fish including sunfish (*Lepomis* spp.), goldfish (*Carassius auratus*), common carp (*Cyprinus carpio*), and mosquitofish (*Gambusia affinis*) (L. Hunt, in litt. 1993, S. Barry, in litt. 1992, S. Sweet, in litt. 1993). Habitat loss, non-native species introduction, and urban encroachment are the primary factors that have adversely affected the California red-legged frog throughout its range.

The final rule listing the California red-legged frog as threatened identifies five geographic areas, called recovery units, which the Service considers vital to the conservation and recovery of the species. The project area is within the central Coast Range recovery unit, which extends from San Mateo and Santa Clara counties south to Ventura and Los Angeles counties. This recovery unit is at the core of the remaining distribution of the frog. The project site is located at the base of the Coast Range hills which rise up just east of the property. Large portions of land

surrounding the project area are undeveloped, and support primarily annual grassland and coastal sage scrub. At least 4 ponds, several tributaries, and 2 seeps are found within 1 mile of the project site. Given the numerous water bodies surrounding the project site, it is likely that this habitat is utilized as hydration, dispersal, and breeding habitat. The presence of vegetated water bodies on and adjacent to the project site provides suitable habitat for California red-legged frogs and San Francisco garter snakes.

The Recovery Plan for the San Francisco garter snake (Service 1985) identified six significant populations. These were West of Bayshore (W-O-B), San Francisco State Fish and Game Refuge (Refuge), Laguna Salada (Pacifica), Pescadero Marsh Natural Preserve (Pescadero) and Año Nuevo State Reserve (Año Nuevo) populations, and an isolated population north of Half Moon Bay. Of the six populations existing in 1985, the Pacifica population was heavily impacted in 1989 and is no longer considered significant, four have declined drastically (W-O-B, Refuge, Pescadero and Año Nuevo). The status of the Half Moon Bay population is unknown, however small developments have occurred and ongoing threats such as drawing down agricultural ponds to irrigate croplands, over grazing, the conversion of coastal scrub habitat to agricultural land continue to occur. Furthermore, populations of exotic species such as bullfrogs and exotic fish have been established within the area, likely resulting in the chronic predation of juvenile San Francisco garter snakes as well as the reduction in snake prey items such as California red-legged frogs.

Of the declining populations, the Año Nuevo population appears to have the slowest rate of decline. Recent recovery actions at Año Nuevo may be further slowing the decline of that population. However, current land management practices outside of State park lands are impacting the Año Nuevo population. It is unknown whether or not recovery efforts made by the California State Parks will be sufficient to change the trend in that population.

The Refuge population is found on San Francisco Water Department lands in the area encompassing the Upper and Lower Crystal Springs and San Andreas Reservoirs. This population is highly dispersed throughout the reservoir and is heavily impacted from predation by introduced fishes, reservoir fluctuations and dewatering, bullfrogs, and loss of seasonal wetlands.

The most significant decline in population numbers of San Francisco garter snakes (apart from Pacifica) is the decline of the W-O-B population. Data on this population has shown a dramatic downward trend in numbers over the past several years. Larsen (1994) trapped the population between 1990 and 1992, and detected a possible population decline greater than 70 percent from the 1983 to 1985 population census completed by Wharton (1989). In approximately eight site visits made by the Service from November 1994 to present, one dead garter snake (apparently run over by a vehicle), one paralyzed San Francisco garter snake, and two apparently healthy garter snakes have been found.



One permanent pond and 4 unnamed tributaries are within the project site, and there are at least 3 ponds immediately adjacent to the project site, which provide adequate habitat for both California red-legged frogs and San Francisco garter snakes. One pond lies immediately east of the project site and is hydrologically connected to the onsite pond by an unnamed drainage. The 2 remaining ponds are located immediately to the north of the project site and are within a fenced area that has not been recently grazed. The habitat surrounding these ponds primarily consists of coastal scrub species, and both ponds possess ample amounts of emergent vegetation.

The Environmental Impact Report (EIR) for this project was finalized in 1988, however the project was stalled until the City of Half Moon Bay had sufficient wastewater capacity to accommodate new development. Highway 92, which links Half Moon Bay with the surrounding metropolitan areas of San Mateo and San Francisco counties, is currently being widened. The improvements to the city's wastewater facility and highway improvements will facilitate and expand the amount of development in the Half Moon Bay area.

#### Effects of the Proposed Action

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The proposed preservation and enhancement of onsite habitat as minimization for project impacts is considered part of the project evaluated by the Service in this biological opinion. Any change in these plans or their implementation that might adversely affect listed threatened or endangered species requires reinitiation of consultation with the Service, as set forth in the final paragraphs of this letter.

Currently there is one large perennial pond site at the northern end of the project site. The proposed enhancement and management of the pond, including the planting of scrub species around the pond and eradication of bullfrogs, should increase foraging opportunities and reproductive success of both San Francisco garter snakes and California red-legged frogs. However, the proximity of housing lots and the proposed footpath will be significant new impacts to both California red-legged frogs and San Francisco garter snakes. The potential for contaminated runoff entering this pond will be slightly increased as the pond will be surrounded by development and roads.

Several significant impacts to biological resources from construction of the proposed project are identified. This project will result in a further decrease in the availability of dispersal, foraging, and breeding habitat in the Half Moon Bay area for San Francisco garter snakes and California red-legged frogs. Specifically, insufficient buffer distances between the riparian corridor of the onsite drainages and existing stock pond will likely preclude movement of San Francisco garter snakes and California red-legged frogs to and from adjacent habitats. In addition to blocking dispersal corridors, the project will likely preclude the use of surrounding riparian corridors and adjacent upland habitat due to the proximity of houses. This will reduce the quality of the surrounding habitat as foraging and breeding habitat. Specifically, California red-legged frog and San Francisco garter snake habitat losses include 1.0 acre of wetlands and 2.7 acres of impacts associated with loss of an adequate buffer area between the proposed development and breeding and foraging habitat.

Effects to San Francisco garter snakes and California red-legged frogs include direct effects to individuals and dispersal and breeding habitat that may occur during construction, indirect effects to habitat within the project area and vicinity, and cumulative effects to the local California red-legged frog and San Francisco garter snake populations resulting from the project once build-out occurs.

Direct effects of the project include the potential for harassment, injury and/or mortality of individual adults and juveniles during construction. This includes the risk of incidental take from pre-construction surveys and potential relocation of individuals, crushing of individuals by heavy equipment, and disturbance to habitat from grading and fill activities. The project will result in alteration of dispersal, breeding, and foraging habitat; specifically, 1.0 acre of wetlands and drainages will be filled and 2.7 acres of riparian and adjacent upland habitat will be graded and developed.

The potential for adverse effects is largely restricted to the development of road crossings and inadequate buffers around the existing stock pond and the drainages. However, the species may inhabit any areas that support standing water or are sufficiently moist at the time of construction.

Adverse indirect effects include the potential for sedimentation of stream channels or existing stock ponds as a result of the construction activities. Sedimentation may alter the physical characteristics of the foraging and breeding areas, making them unsuitable for use by either species. Construction activities may interfere with the movement of dispersing California red-legged frogs and San Francisco garter snakes between breeding habitat and the riparian habitat, adjacent seeps, and ponds. Urban pollutants in runoff from impervious surfaces within the development may discharge into the existing stock pond or drainages. Pollution may result in mortality or chronic and deleterious effects to California red-legged frogs. Introduced exotic predators (*i.e.*, bullfrogs, crayfish, and/or sunfish) may prey upon or out-compete the species, especially in areas near development. Increases in the abundance of predators such as raccoons (*Procyon lotor*) and domesticated pets such as cats are likely to occur in relation to the development and result in higher predation rates of all life stages of California red-legged frogs and San Francisco garter snakes. Although the controlling of rodent populations will not be allowed by the homeowners association, the occurrence of pets and the use of rodenticides within individual houses is likely to occur. This will result in a decrease of native rodents which will reduce the value of the upland habitat for San Francisco garter snakes. Furthermore, the majority of lowland habitat bordering the project area within the immediate vicinity of the project area has been developed. This project further decrease the amount of low elevation habitat available, forcing both California red-legged frogs and San Francisco garter snakes to increasingly inhabit suboptimal habitat.

#### Cumulative Effects

Cumulative effects include the effects of future State, Tribal, local, or private actions reasonably certain to occur in the action area considered in this biological opinion. Future Federal actions

unrelated to the proposed action are not considered in this section because they require separated consultation pursuant to section 7 of the Act.

Several impacts described in the environmental baseline section have adverse cumulative effects on California red-legged frogs and San Francisco garter snakes within the project vicinity. Ongoing impacts to the Half Moon Bay populations of California red-legged frogs and San Francisco garter snakes include: ongoing habitat destruction, alteration of hydrology, and isolation of individuals between suitable habitat types (e.g., road construction). Ponds within the Half Moon Bay area will continue to be used to irrigate crops and will be subjected to unpredictable water level fluctuations and dewatering which may prevent the completion of metamorphosis for California red-legged frogs and result in the loss of foraging opportunities for San Francisco garter snakes.

Furthermore, the inadequate buffer distances associated with the proposed project will likely result in chronic problems associated with pets and predators associated with urban development (e.g., raccoons). Homeowners will own pets which will likely roam throughout the undeveloped open space. In addition, predators that can readily adapt to urban areas will be able to move in and establish populations at a higher carrying capacity than currently possible with the augmentation of food resources (i.e., trash and pet food). Exotic species will likely remain within the project area, regardless of an eradication program. Exotic species such as bullfrogs will continue to compete with and prey upon California red-legged frogs which will result in a decrease in the preferred prey item for San Francisco garter snakes, and introduced fish species will continue to prey upon both California red-legged frogs and juvenile San Francisco garter snakes. The overgrazing of grasslands may continue to result in the erosion of riparian areas and prevent the establishment of coastal scrub adjacent to wetlands used by San Francisco garter snakes to forage, which results in lack of upland cover for the species.

### Conclusion

After reviewing the current status of the species, the environmental baseline for the action area, the effects of the proposed action and the cumulative effects, it is the Service's biological opinion that the development of Pacific Ridge housing development, including the avoidance and minimization measures proposed, is not likely to jeopardize the continued existence of the California red-legged frog or San Francisco garter snake. No statutory critical habitat has been designated for this species, therefore, none will be affected.

### INCIDENTAL TAKE STATEMENT

Section 9 of the Act and Federal regulation pursuant to section 4(d) of the Act prohibit the take of endangered and threatened species, respectively, without special exemption. Take is defined as harass, harm, pursue, hunt, shoot, wound, kill, trap, capture or collect, or to attempt to engage in any such conduct. Harass is defined by the Service as an intentional or negligent act or omission which creates the likelihood of injury to a listed species by annoying it to such an

extent as to significantly disrupt normal behavioral patterns which include, but are not limited to, breeding, feeding, or sheltering. Harm is defined by the Service to include significant habitat modification or degradation that results in death or injury to listed species by impairing behavioral patterns including breeding, feeding, or sheltering. Incidental take is defined as take that is incidental to, and not the purpose of, the carrying out of an otherwise lawful activity. Under the terms of section 7(b)(4) and section 7(o)(2), taking that is incidental to and not intended as part of the agency action is not considered to be prohibited taking under the Act provided that such taking is in compliance with this Incidental Take Statement.

The measures described below are non-discretionary, and must be implemented by the agency so that they become binding conditions of any grant or permit issued to the applicant, as appropriate, in order for the exemption in section 7(o)(2) to apply. The U.S. Army Corps of Engineers (Corps) has a continuing duty to regulate the activity covered by this incidental take statement. If the Corps (1) fails to require the applicant to adhere to the terms and conditions of the incidental take statement through enforceable terms that are added to the permit or grant document, and/or (2) fails to retain oversight to ensure compliance with these terms and conditions, the protective coverage of section 7(o)(2) may lapse.

#### Amount or Extent of Take

The Service expects that incidental take of California red-legged frogs and San Francisco garter snakes will be difficult to detect or quantify for the following reasons: The aquatic nature of the organisms and the relatively small body size of the California red-legged frog make the finding of a dead specimen unlikely, the secretive nature of the species, losses may be masked by seasonal fluctuations in numbers or other causes, and the species occurs in habitat that makes them difficult to detect. Due to the difficulty in quantifying the number of California red-legged frogs that will be taken as a result of the proposed action, the Service is quantifying take incidental to the project as the number of acres of habitat that will become unsuitable for the species as a result of the action. Therefore, the Service estimates that 3.7 acres of California red-legged frog habitat will become unsuitable as a result of the proposed action. Mortality or injury of San Francisco garter snakes associated with the completion of this project is not authorized. The Service has developed the following incidental take statement based on the premise that the reasonable and prudent measures will be implemented. Upon implementation of the following reasonable and prudent measures, incidental take associated with the Pacific Ridge housing development on 3.7 acres of habitat will become exempt from the prohibitions described under section 9 of the Act for direct impacts, and incidental take associated with the Pacific Ridge housing development on 3.7 acres of habitat will be exempt from the prohibitions described under section 9 of the Act for indirect impacts as a result of the management activities described.

#### Effect of the Take

The Service has determined that this level of anticipated take is not likely to result in jeopardy to either California red-legged frogs or San Francisco garter snakes or destruction or adverse modification of critical habitat.

### Reasonable and Prudent Measures

The Service believes the following reasonable and prudent measures are necessary and appropriate to minimize the impacts of take on the listed species:

1. Minimize mortality of California red-legged frogs and San Francisco garter snakes.
2. Minimize the likelihood of harassing California red-legged frogs and San Francisco garter snakes.
3. Minimize harm to California red-legged frogs and San Francisco garter snakes as a result of habitat modification or loss.

### Terms and Conditions

In order to be exempt from the prohibitions of section 9 of Act, the Corps must comply with the following terms and conditions, which implement the reasonable and prudent measures described above. These terms and conditions are nondiscretionary.

1. To minimize the potential for mortality to California red-legged frogs the Corps shall ensure that Ailanto Properties complies with the following:
  - a. The filling of drainage channels and wetlands shall be confined to July 15 through October 31.
  - b. Pre-construction surveys for both California red-legged frogs and San Francisco garter snakes in and around stream crossings and adjacent to the existing stock pond shall be conducted within two days prior to the initiation of project construction.
  - c. The pre-construction surveys in and around the stream crossings and the existing stock pond shall be conducted by a qualified biologist with a valid scientific take permit for capturing and handling California red-legged frogs and San Francisco garter snakes and any California red-legged frogs or San Francisco garter snakes found within the project impact area shall be captured and relocated by the qualified biologist to appropriate habitat in the existing stock pond.
  - d. Direct mortality or injury to San Francisco garter snakes is not authorized with the accompanying incidental take statement.

2. To minimize the likelihood of harassing California red-legged frogs and San Francisco garter snakes the Corps shall ensure that Ailanto Properties complies with the following:
  - a. A biological monitor shall brief the construction crew on the potential presence of California red-legged frogs and San Francisco garter snakes in the project area, and educate onsite workers in the identification and habitat requirements of California red-legged frogs and San Francisco garter snakes, and the ramifications of direct take of these species.
  - b. A biological monitor shall be on call throughout the entire construction process to ensure that no California red-legged frogs or San Francisco garter snakes will be harassed by the construction of the housing development. The biological monitor shall have the authority to shut down the construction operation if either California red-legged frogs or San Francisco garter snakes are observed within the construction area.
3. To minimize the impacts of habitat modifications or loss to California red-legged frogs and San Francisco garter snakes, the Corps shall ensure that Ailanto Properties complies with the following:
  - a. Ailanto Properties shall enter into an agreement to endow funds to an escrow account to the amount of \$100,000 for the purposes of purchasing and enhancing a minimum of 5.4 acres of breeding, dispersal, and foraging habitat presently occupied or adjacent to occupied California red-legged frog and San Francisco garter snake habitat within 15 miles of the project site. Such an agreement shall be executed prior to the execution of grading within the project area.
  - b. No development, including grading, shall occur within 150 feet of the existing stock pond.
  - c. The Corps shall provide the Service with a revised final mitigation plan and final map of the project site before the initiation of construction so that the Service can review the project to ensure that these conditions are met.
  - d. A conservation easement that is agreed upon by the Service shall be established over the entire area designated as open space and ESAs, to permanently protect habitat for California red-legged frogs and San Francisco garter snakes.
  - e. The proposed path associated with the existing stock pond shall be fenced off and access to the pond shall only be provided to individuals maintaining the pond and emergency vehicles. The path shall not be paved and shall be located along the north and west side of the pond to facilitate maintenance of the pond.

- f. An annual monitoring report shall be submitted by Ailanto Properties to both the Corps and the Service outlining the status and success of the minimization measures. The report shall include: vegetation abundance and diversity, presence and number of California red-legged frogs and San Francisco garter snakes observed, and determination of breeding. In addition, the report shall include the number of bullfrogs detected and eradicated from the existing stock pond. The report will be submitted annually for 10 years.

The reasonable and prudent measures, with their implementing terms and conditions, are designed to minimize the impact of incidental take that might otherwise result from the proposed action. With implementation of these measures, the Service believes that no more than 3.7 acres of California red-legged frog and San Francisco garter snake habitat will be directly lost through project construction activities.

If during the course of the action, this level of incidental take is exceeded, such incidental take represents new information requiring review of the reasonable and prudent measures provided. The Corps must immediately provide an explanation of the causes of the taking and review with the Service the need for possible modification of the reasonable and prudent measures.

#### Reporting Requirements

The Service must be notified within 24 hours of the finding of any injured or dead California red-legged frog or San Francisco garter snake, or any unanticipated damage to the species habitats associated with project construction, mitigation, or operation. Notification must include the date, time, and precise location of the specimen/incident, and any other pertinent information. The Service contact person is the Chief, Endangered Species Division in the Sacramento Fish and Wildlife Office, at (916) 979-2725. Any dead or injured specimens will be repositied with the Service's Division of Law Enforcement, 3310 El Camino Avenue, Suite 140, Sacramento, California 95821-6340, telephone (916) 979-2987.

Provide copies of annual reports on the status and success of the mitigation actions to the Chief, Endangered Species Division, in the Service's Sacramento Fish and Wildlife Office.

#### CONSERVATION RECOMMENDATIONS

Section 7(a)(1) of the Act directs Federal agencies to utilize their authorities to further the purposes of the Act by carrying out conservation programs for the benefit of endangered and threatened species. Conservation recommendations are discretionary agency activities to implement recovery actions, to help implement recovery plans, to develop information, or otherwise further the purposes of the Act.

In order for the Service to be kept informed of actions minimizing or avoiding adverse effects or benefitting listed species or their habitats, the Service requests notification of the implementation of any conservation recommendations. We have the following recommendations:

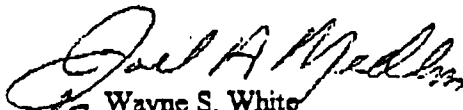
1. Synthesize the results of all monitoring reports submitted to the Corps' San Francisco District on the status of California red-legged frogs and San Francisco garter snakes to identify and report on the effects of permitted actions on California red-legged frog and San Francisco garter snake populations.
2. Study and report on the success of habitat preservation and enhancement for California red-legged frogs and San Francisco garter snakes.
3. Study and report on the dispersal patterns, habitat use, and necessary buffer size between urban development and California red-legged frog and San Francisco garter snake habitat.

#### REINITIATION--CLOSING STATEMENT

This concludes formal consultation on the actions outlined in the request. As provided in 50 CFR §402.16, reinitiation of formal consultation is required where discretionary Federal agency involvement or control over the action has been maintained (or is authorized by law) and if: (1) the amount or extent of incidental take is exceeded; (2) new information reveals effects of the agency action that may affect listed species or critical habitat in a manner or to an extent not considered in this opinion; (3) the agency action is subsequently modified in a manner that causes an effect to the listed species or critical habitat that was not considered in this opinion; or (4) a new species is listed or critical habitat designated that may be affected by the action. In instances where the amount or extent of incidental take is exceeded, any operations causing such take must cease pending reinitiation.

If you have any questions regarding this opinion, please contact Curtis McCasland or Ken Sanchez at (916) 979-2752.

Sincerely,

  
Wayne S. White  
Field Supervisor



Mr. Calvin C. Fong

cc: AES, Portland, OR  
CDFG, Yountville, CA (Carl Wilcox), Yountville, CA  
Ailanto Properties (Robert Henry), Oakland, CA  
LSA Associates (Steve Foreman), Pt. Richmond, CA

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- Jennings, M.R. 1988. Natural history and decline of native ranids in California. Pages 61-72 In: H.P. DeLisle, P.R. Brown, B. Kaufman, and B.M. McGurty (editors). Proceedings of the conference on California herpetology. Southwestern Herpetologists Society, Special Publication (4):1-143.
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- Jennings, M.R., M.P. Hayes, and D.C. Holland. 1992. A petition to the U.S. Fish and Wildlife Service to place the California red-legged frog (*Rana aurora draytonii*) and the western pond turtle (*Clemmys marmorata*) on the list of endangered and threatened wildlife and plants. 21 pp.
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DEPARTMENT OF THE ARMY  
SAN FRANCISCO DISTRICT, CORPS OF ENGINEERS  
333 MARKET STREET  
SAN FRANCISCO, CALIFORNIA 94105-2197

DEC 15 1998

REPLY TO  
ATTENTION OF:

Regulatory Branch (1145b)

SUBJECT: File Number 23053S

Mr. Robert Henry  
Ailanto Properties, Inc.  
One Kaiser Plaza  
Ordney Building, Suite 1775  
Oakland, California 94612

OPTIONAL FORM 98 (7-90)

## FAX TRANSMITTAL

# of pages 4

Dept./Agency

Phone #

Fax #

Fax #

NSN 7540-01-317-7368

SC99-101

GENERAL SERVICES ADMINISTRATION

Dear Mr. Henry:

This is in reference to your submittal of December 22, 1997, concerning Department of the Army authorization to fill 1 acre of jurisdictional wetlands and other waters of the U.S. in association with the construction of the 114-acre Pacific Ridge at Half Moon Bay housing development in Half Moon Bay, San Mateo County, California.

Based on a review of the information you submitted, your project qualifies for authorization under Department of the Army Nationwide Permit 26, Headwaters and Isolated Waters Discharges, (61 FR 65874, Dec. 13, 1996), pursuant to Section 404 of the Clean Water Act (33 U.S.C. 1344). All authorized work shall be carried out in accordance with the plans and drawings submitted in your permit application dated December 16, 1997 as modified by written correspondence from LSA dated May 26, July 13, July 27, and October 2, 1998.

The project must be in compliance with the General Conditions cited in Enclosure 1 and all Special Conditions specified in this letter for the nationwide permit authorization to remain valid. **Upon completion of the project and all associated mitigation requirements, you shall sign and return the enclosed Certification of Compliance, Enclosure 2, verifying that you have complied with the terms and conditions of the permit.** Non-compliance with any condition could result in the revocation, suspension or modification of the authorization for your project, thereby requiring you to obtain an individual permit from the Corps. This nationwide permit authorization does not obviate the need to obtain other State or local approvals required by law.

This authorization will remain valid until **September 15, 1999**, at which time Nationwide Permit 26 is scheduled to expire. If you have commenced work or are under contract to commence work prior to the suspension, or revocation of the nationwide permit and the project would not comply with the resulting nationwide permit authorization, you have twelve (12) months from that date to complete the project under the present terms and conditions of the nationwide permit.

EXHIBIT NO. 15

APPLICATION NO.  
A-1-HMB-99-22December 15, 1998  
Corps letter

This authorization will not be effective until you have obtained Section 401 water quality certification or a waiver of certification from the San Francisco Bay Region Regional Water Quality Control Board (RWQCB). If the RWQCB fails to act on a valid request for certification within two (2) months after receipt, the Corps will presume a waiver of water quality certification has been obtained. You shall submit a copy of the certification or waiver to the Corps prior to the commencement of work.

To ensure compliance with the nationwide permit, the following special conditions shall be implemented to ensure compliance with the terms and conditions set forth in the U.S. Fish and Wildlife Service's Biological Opinion dated November 16, 1998 (copy attached) issued pursuant to Section 7 of the Endangered Species Act:

1. To minimize the potential for mortality to California red-legged frogs, Ailanto Properties shall comply with the following conditions:
  - a. The filling of drainage channels and wetlands shall be confined to July 15 through October 31.
  - b. Pre-construction surveys for both California red-legged frogs and San Francisco garter snakes in and around stream crossings and adjacent to the existing stock pond shall be conducted within two days prior to the initiation of project construction.
  - c. The pre-construction surveys in and around the stream crossings and the existing stock pond shall be conducted by a qualified biologist with a valid scientific take permit for capturing and handling California red-legged frogs and San Francisco garter snakes and any California red-legged frogs or San Francisco garter snakes found within the project impact area shall be captured and relocated by the qualified biologist to appropriate habitat in the existing stock pond.
  - d. Direct mortality or injury to San Francisco garter snakes is not authorized with the accompanying incidental take statement.
2. To minimize the likelihood of harassing California red-legged frogs and San Francisco garter snakes, Ailanto Properties shall comply with the following:
  - a. A biological monitor shall brief the construction crew on the potential presence of California red-legged frogs and San Francisco garter snakes in the project area, and educate on-site workers in the identification and habitat requirements of California red-legged frogs and San Francisco garter snakes, and the ramifications of direct take of these species.
  - b. A biological monitor shall be on call throughout the entire construction process to ensure that no California red-legged frogs or

San Francisco garter snakes will be harassed by the construction of the housing development. The biological monitor shall have the authority to shut down the construction operation if either California red-legged frogs or San Francisco garter snakes are observed within the construction area.

3. To minimize the impacts of habitat modifications or loss to California red-legged frogs and San Francisco garter snakes, Ailanto Properties shall comply with the following:

a. Ailanto Properties shall enter into an agreement to endow funds to an escrow account to the amount of \$100,000 for the purposes of purchasing and enhancing a minimum of 5.4 acres of breeding, dispersal, and foraging habitat presently occupied or adjacent to occupied California red-legged frog and San Francisco garter snake habitat with 15 miles of the project site. The amount of offsite lands to be acquired will be at a minimum 2:1 ratio of developed buffer habitat impacted within 150 feet of the stock pond (estimated to be 2.1 acres) and along drainages 3 and 4 (0.6 acre) for a total of 5.4 acres of required mitigation. Such an agreement shall be executed prior to the execution of grading within Corps jurisdiction on the project site.

b. Ailanto Properties shall provide the Corps and the U.S. Fish and Wildlife Service with a revised final mitigation plan and final map of the project site before the initiation of construction so that the Service can review the project to ensure that these conditions are met.

c. A conservation easement that is agreed upon by the U.S. Fish and Wildlife Service shall be established over the entire area designated as open space and environmentally sensitive areas (ESAs), to permanently protect habitat for California red-legged frogs and San Francisco garter snakes.

d. The proposed path associated with the existing stock pond shall be fenced off and access to the pond shall only be provided to individuals maintaining the pond and emergency vehicles. The path shall not be paved and shall be located along the north and west side of the pond to facilitate maintenance of the pond.

e. An annual monitoring report shall be submitted by Ailanto Properties to both the Corps and the Service outlining the status and success of the minimization measures. The report shall include:

4

vegetation abundance and diversity, presence and number of California red-legged frogs and San Francisco garter snakes observed, and determination of breeding. In addition, the report shall include the number of bullfrogs detected and eradicated from the existing stock pond. The report will be submitted annually for 10 years.

You may refer all questions to Mark D'Avignon of our Regulatory Branch at 415-977-8446. All correspondence should reference the file number 25053S.

Sincerely,

ORIGINAL SIGNED

By

Calvin C. Fong

Calvin C. Fong

Chief, Regulatory Branch

Enclosures

Copies Furnished:

Mr. Steve Foreman, LSA, 157 Park Place, Pt. Richmond, California 94801  
US F&WS, Sacramento, CA  
CD F&G, Yountville, CA  
CA RWQCB, Oakland, CA

CF:

CESPN-CO-RS  
CESPN-DE Rdg File  
CESPN-CO Rdg File  
CESPN-CO R Rdg File

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WYLIE  
CESPN-CO-RS

FONG  
CESPN-CO-R

**APPENDIX A - Pacific Ridge Appeal  
LCP Standards**

**EXHIBIT NO. 16**

**APPLICATION NO.  
A-1-HMB-99-22**

**APPENDIX A - Pacific  
Ridge Appeal, LCP  
Standards**

(Page numbers, where included, refer to the respective LCP document)

**Policy 1-1**

*The City shall adopt those policies of the Coastal Act (Coastal Act Sections 30210 through 30264) cited herein, as the guiding policies of the Land Use Plan.*

**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.*

**APPENDIX A: Special Definitions...**  
**WETLAND...**

*Wetland is an area where the water table is at, near, or above the land surface long enough to bring about the formation of hydric soils or to support the growth of plants which normally are found to grow in water or wet ground. Such wetlands can include mudflats (barren of vegetation), marshes, and swamps. Such wetlands can be either fresh or saltwater, along streams (riparian), in tidally influenced areas (near the ocean and usually below extreme high water of spring tides), marginal to lakes, ponds, and man-made impoundments. Wetlands do not include areas which in normal rainfall years are permanently submerged (streams, lakes, ponds and impoundments), nor marine or estuarine areas below extreme low water of spring tides, nor vernal wet areas where the soils are not hydric.*

**Zoning Code Sec. 18.02.040 Definitions** (pg.14) (See Implementation section below).

*...Wetland: The definition of wetland as used and as may be periodically amended by the California Department of Fish and Game, the California Coastal Commission and the US Fish and Wildlife Service.*

**Zoning Code Sec. 18.38.020 Coastal Resource Areas** (See Implementation section below).

**3-3 Protection of Sensitive Habitats**

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

**3-4 Permitted Uses**

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

**3-5 Permit Conditions [Biologic Report]**

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

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

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

**Zoning Code Sec. 18.38.035 Biological Report** (See Implementation section below).

**3-9 Permitted Uses in Riparian Corridors**



- (a) *Within corridors, permit only the following uses: (1) education and research, (2) consumptive uses as provided for in the Fish and Game Code and Title 14 of the California Administrative Code, (3) fish and wildlife management activities, (4) trails and scenic overlooks on public land(s), and (5) necessary water supply projects.*
- (b) *When no feasible or practicable alternative exists, permit the following uses: (1) stream-dependent aquaculture provided that non-stream-dependent facilities locate outside of corridor, (2) flood control projects where no other method for protecting existing structures in the flood plain is feasible and where such protection is necessary for public safety or to protect existing development, (3) bridges when supports are not in significant conflict with corridor resources, (4) pipelines and storm water runoff facilities, (5) improvement, repair or maintenance of roadways or road crossings, (6) agricultural uses, provided no existing riparian vegetation is removed, and no soil or other runoff is allowed to enter stream channels.*

### **3-11 Establishment of Buffer Zones**

- (a) *On both sides of riparian corridors, from the limit of riparian vegetation extend buffer zones 50 feet outward for perennial streams and 30 feet outward for intermittent streams.*
- (b) *Where no riparian vegetation exists along both sides of riparian corridors, extend buffer zones 50 feet from the bank edge for perennial streams and feet from the midpoint of intermittent streams.*
- (c) *Along lakes, ponds, and other wet areas, extend buffer zones 100 feet from the high water point, except for man-made ponds and reservoirs used for agricultural purposes for which no buffer zone is designated.*

### **3-12 Permitted Uses in Buffer Zones**

- (a) *Within buffer zones, permit only the following uses: (1) uses permitted in riparian corridors, (2) structures on existing legal building sites, set back 20 feet from the limit of riparian vegetation, only if no feasible alternative exists, and only if no other building site on the parcel exists, (3) crop growing and grazing consistent with Policy 3.9, (4) timbering in "streamside corridors" as defined and controlled by State and County regulations for timber harvesting., and (5) no new parcels shall be created whose only building site is in the buffer area except for parcels created in compliance with Policies 3.3, 3.4 and 3.5 if consistent with existing development in the area and if building sites are set back 20 feet from the*

limit of riparian vegetation or if no vegetation 20 feet from the bank edge of a perennial and 20 feet from the midpoint of an intermittent stream.

**3-24 Preservation of Critical Habitats**

- (a) *Require preservation of all habitats or 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.*

**Zoning Code Sec. 18.38.080 Wetlands** (See Implementation section below).

**Policy 7-9** (Page 89)

*New development shall be sited and designed so as to avoid or minimize destruction or significant alteration of significant existing plant communities identified in the General Plan (which include riparian vegetation along stream banks, and notable tree stands)*

**Coastal Act Section 30251** (Incorporated by Policy 1-1)

*The scenic and visual qualities of coastal areas shall be considered and protected as a resource of public importance. Permitted development shall be sited and designed to protect views to and along the ocean and scenic coastal areas, to minimize the alteration of natural land forms, to be visually compatible with the character of surrounding areas, and, where feasible, to restore and enhance visual quality in visually degraded areas. New development in highly scenic areas such as those designated in the California Coastline Preservation and Recreation Plan prepared by the Department of Parks and Recreation and by local government shall be subordinate to the character of its setting.*

**Policy 9-2:** (Page 139)

*The City shall monitor annually the rate of build-out in categories designated for development. If the rate of build-out exceeds the rate on which the estimates of development potential for Phase I and Phase II in the Plan are based, further permits for development or land divisions shall not be issued outside existing subdivisions until a revised estimate of development potential has been made. At that time the City shall establish a maximum number of development permits to be granted each year in accordance with expected rates of build-out and service capacities. No permit for development shall be issued unless a finding is made that such development can be served with water, sewer, schools, and road facilities, including such improvements as are provided with the development. (See Table 9.3)*

**9.3.2 Specific Planned Development Policies** (Page 141)

*The purpose of the Planned Development designation is to ensure well-planned development of large, undeveloped areas planned for residential use in accordance with concentration of development policies. It is the intent of this designation to allow for flexibility and innovative design of residential development, to preserve important resource values of particular sites, to ensure achievement of coastal access objectives, to eliminate poorly platted and unimproved subdivisions whose development would adversely affect coastal resources, and to encourage provision for low and moderate income housing needs when feasible. It is also the intent of the Planned Development designation to require clustering of structures to provide open space and recreation, both for residents and the public. In some cases, commercial development such as convenience stores or visitor-serving facilities may be incorporated into the design of a Planned Development in order to reduce local traffic on coastal access roads or to meet visitor needs.*

*All areas designated in the Land Use Plan for Planned Development shall be subject to the following policies:...*

**Policy 9-8** (Page 141)

*The entire site shall be planned as a unit. Preparation of specific plans (Government Code Section 65450) may be required for one or more separate ownerships, individually or collectively, when parcels comprising a site designated PD are in separate ownerships.*

**Policy 9-9:**

*Use of flexible design concepts, including clustering of units, mixture of dwelling types, etc., shall be required to accomplish all of the following goals:*

- (a) Protection of the scenic qualities of the site;*

*(b) Protection of coastal resources, i.e. habitat areas, archaeological sites, prime agricultural lands, etc., as required by the Coastal Act;*

*(c) Avoidance of siting of structures in hazardous areas; and*

*(d) Provision of open space, recreation, and/or beach access.*

**Policy 9-12 (Page 143)**

*The amount of public, private, and common open space in a Planned Development shall be specified in the Development Plan. The required amount of common and public open space shall be at least 20% of the gross area. The City shall determine the amount of public open space required for coastal access and recreation and protection of public views, if not specified elsewhere in this Plan.*

*Open space shall be defined as follows:*

*(a) Public open space shall include but not be limited to public parks and parking lots, beaches, access corridors such as bike paths, hiking or equestrian trails, usable natural areas, and vista points which are accessible to members of the general public. Public open space shall not include areas which are unusable for recreational purposes, i.e. private or public streets, private parking lots, or hazardous areas, such as steep slopes and bluff faces. Environmentally sensitive habitat areas and archaeological sites may be included in public open space only if such areas are usable by the public for light recreation, i.e., walking;*

*(b) Common open space shall include but not be limited to recreational areas and facilities for the use of prospective residents of the project, such as tennis courts, golf courses, swimming pools, playgrounds, community gardens, and other agricultural use, landscaped areas for common use, or other open areas of the site needed for the protection of the habitat, archaeological, scenic or other resources. Common open space shall not include driveways, parking lots, private patios and yards, or other developed areas; and*

*(c) Private open space shall include but not be limited to patios, decks, and yards for the private use of the residents of individual units, and shall include land permanently dedicated to agricultural use.*

***Additional conditions for parcels designated as PD-Planned Development are found in the following sections on specific areas.***

**Zoning Ordinance 18.15.040 (E): Required findings of fact:...** (See Implementation section below)

***That adoption and implementation of the Planned Unit Development Plan will not exceed the capacity of existing or planned infrastructure systems, including, but not limited to, sewer, water, gas, electricity, police and fire protection.***

### 9.3.7 Dykstra Ranch

*This is a parcel of 114 acres of gentle to steep slopes on the eastern edge of the City. Only a very small portion of the site contains prime soils. In the past, the lower slopes and flatlands had been used for pasture. A Planned Unit Development and tentative tract has been previously approved for development in this area, with a total of 228 units.*

*Eastern portions of the Dykstra Ranch have steep slopes. These slopes have been identified as having landslide potential. Residential development and road construction on these steep slopes would require a substantial amount of hillside cutting and filling and would increase the possibility of slope failure, posing a hazard to homes and development on lower slopes. Most of the Dykstra Ranch has development potential without such hazards or conflicts.*

*Residential development is appropriate as an alternative to development of more rural lands and those with significant coastal resources, in accordance with Coastal Act policies. It could also contribute to improvement in local traffic circulation by contributing to the development of a new collector road parallel to Highway 1. However, such development must conform with protection of views of the hillside, avoidance of hazards, and minimum alteration of natural landforms. Development of this site does offer the potential for solving local drainage problems in the Terrace Avenue subdivisions.*

*It is proposed that this area be permitted for development of a limited variety of residential unit types to meet needs for new housing in Half Moon Bay. Such development should occur in a manner which minimizes conflicts with Coastal Act policies with respect to preservation of the natural environment and hillside and watershed protection and promote achievement of policies on improved coastal access.*

*New development would involve a combination of single-family detached homes on moderate slopes, clustered high-density single family attached homes, and apartments on lower slopes near the high school, extension of the long-proposed Foothill Boulevard to connect with Foster Drive and Grandview (with possible extensions in the future to the north) and retention of drainage courses and steep slopes in open space.*

#### Proposed Development Conditions

- a) *A specific plan shall be prepared for the entire area which incorporates all of the conditions listed below and conforms to all other policies of the Land Use Plan. The specific plan shall show the locations of roads and structures, and indicate the amount and location of open space, public recreation, and*

*Commercial recreation. The plan shall be subject to environmental review under City CEQA guidelines.*

*The plan and accompanying environmental documents shall be submitted to the Planning Commission, who may recommend additional conditions for development of the site. The Planning Commission may reduce the allowable density if it is determined that Highway 92 is inadequate to accommodate the amount of proposed residential development. In adopting the specific plan, the Planning Commission shall specify the number and type of housing units and open space requirements for each of the parcels which is under separate ownership or for each group of parcels which is to be developed as a unit.*

- b) A maximum of 228 residential units, including single-family detached, attached, and garden apartments, may be developed on the site.*
- c) No development shall be permitted on slopes in excess of 25% or above the 160' contour and, as a condition of approval, an open space easement shall be dedicated which ensures the permanent retention of such slopes in open space. Development shall be clustered to the maximum extent feasible on lower slopes.*
- d) Existing major drainage courses shall be dedicated, after suitable landscaping, to protect against erosion and to provide for passive recreational use.*
- e) Apartments and single-family attached housing shall be located on slopes of less than 15%, and shall involve as little grading and filling as is feasible.*
- f) A right-of-way of not more than 80 feet shall be dedicated along an alignment as generally indicated in the Land Use Plan Map and as approved by the City for the location of Foothill Boulevard and connections with Grandview and Foster, and such right-of-way shall be improved with a suitable street and with bicycle, hiking, and equestrian trails as a part of development of the site. No curb cuts shall be permitted for driveway access to Foothill Boulevard.*
- g) Structures shall be sited so as to minimize interruption of views of the upper hillsides from Highway 1 and the public recreation area along the shoreline.*
- h) No residential development of the site shall precede completion of site grading and installation of all drainage improvements necessary to prevent erosion of the site or lands up and down slope. In addition, the developer shall agree to participate in an assessment district for Foothill Boulevard.*

**Policy 10-4** (Public Works Capacity)

*The City shall reserve public works capacity for land uses given priority in the Plan, in order to assure that all available public works capacity is not consumed by other development and control the rate of new development permitted in the City to avoid overloading of public works and services.*

**Policy 10-25 (Levels of Service)**

*The City will support the use of Level of Service C as the desired level of service on Highways 1 and 92, except during the peak two-hour commuting period and the ten-day average peak recreational hour when Level of Service E will be acceptable.*

**Policy 10-27**

*The City will recommend to CalTrans installation of improvements on Highway 1 to improve safety and recreational traffic flow and minimize local and visitor traffic conflicts, including signs and left-turn bays at beach access routes. Request CalTrans undertake the widening of Highway 1 to four lanes within the City.*

**Policy 10-29**

*The City will encourage and seek to provide additional parking capacity with a portion reserved for remote parking to serve a transit shuttle service to the beach, and request the high school to make available its parking facilities as feasible. Seek to locate a suitable transit terminal in or near the City, such as the southerly terminus of the proposed Devil's Slide bypass.*

**Policy 10-31**

*The City will require participation in an assessment district for properties for which new development is approved in accordance with this Plan along the designated Foothill Boulevard alignment, as indicated on the Land Use Plan Map, in order to provide funding for this new coastal access and bypass route. This roadway shall provide for through-traffic and local street connections shall be minimized to the extent feasible and on-street parking shall not be allowed.*

**Coastal Act Policies Incorporated by Policy 1-1**

**PRC Section 30250.**

*(a) New ... development, except as otherwise provided in this division, shall be located within, contiguous with, or in close proximity to, existing developed areas able to accommodate it or, where such areas are not able to accommodate it, in other areas with*

*adequate public services and where it will not have significant adverse effects, either individually or cumulatively, on coastal resources...*

**PRC Section 30252.**

*The location and amount of new development should maintain and enhance public access to the coast by (1) facilitating the provision or extension of transit service, (2) providing commercial facilities within or adjoining residential development or in other areas that will minimize the use of coastal access roads,... (4) providing adequate parking facilities or providing substitute means of serving the development with public transportation*

**LCP Implementation Ordinance Standards (Zoning Code Sections)**

**18.02.040 Definitions... (pg.14)**

*Wetland: The definition of wetland as used and as may be periodically amended by the California Department of Fish and Game, the California Coastal Commission and the US Fish and Wildlife Service.*

**18.15.040 Required Findings of Fact.** *The Planning Commission shall not forward its recommendation, and the City Council shall not approve a Planned Unit Development Plan unless the following required findings for approval are made and incorporated into the adopted Planned Unit Development Plan:*

- A. That the Planned Unit Development Plan is consistent with the adopted General Plan, this Chapter, and all other applicable policies and Ordinances of the City;*
- B. That the Planned Unit Development Plan is compatible with surrounding land uses;*
- C. That the adoption and implementation of the Planned Unit Development Plan will result in superior design and development of the site;*
- D. That the Planned Unit Development Plan meets the requirements of any annual dwelling unit allocation system adopted by the City;*
- E. That adoption and implementation of the Planned Unit Development Plan will not exceed the capacity of existing or planned infrastructure systems, including but not limited to sewer, water, natural gas, electricity, police and fire protection;*



F. That, if adequate utilities, infrastructure, and public services are not available to serve all of the proposed development possible under the Planned Unit Development Plan, the plan contains phasing controls or requirements for utility improvements that ensure that demands from proposed development does not exceed utility capacity;

G. That the applicant, or Planning Commission and City Council, have incorporated all appropriate measures and conditions in the Planned Unit Development Plan necessary to mitigate any potential adverse impacts identified during the public review process.

**18.20.060 Notice Required** The City shall provide notice of all applications for a Coastal Development Permit as follows:

A. Contents of Notice. All notices shall include the following information:

1. A statement that the development is within the Coastal Zone;
2. The name and address of the applicant;
3. The file number assigned to the proposed development, and the date the application was filed;
4. A description of the proposed development, including its location;
5. The date, time and place of the public hearing on the Coastal Development Permit, if required, or where no public hearing is required, the date the application will be acted upon by the local governing body or decision-maker; the date by which comments on the proposed Coastal Development Permit must be received; and the address to which these comments should be sent;
6. A brief description of the review process for the Coastal Development Permit, including, where applicable, hearings, public comment periods, submission of public comments prior to decisions, any requirements for Coastal Resource reports, local action and appeals. Where the proposed development is located within the appealable area of the coastal zone, the notice shall state that local actions on the Coastal Development Permit are appealable to the Coastal Commission by any aggrieved person.

B. Provision of Notice. The city shall give notice of its review of the Coastal Development Permit, as follows:

1. **Publication of Notice**. The City shall publish a notice for public hearings on any Coastal Development Permit for the development one time at least ten

calendar days before the public hearing. The City shall publish a notice for any Coastal Development Permit not requiring a public hearing one time at least ten days before the end of the public comment period on the Coastal Development Permit. All notices required by this Section shall be published in a newspaper with general circulation in the City. If a public hearing is continued to a date and time that is not specified at the public hearing, notice of the continued public hearing shall be published and distributed in the same manner and the same time limits as for the initial notice.

2. Mailing of Notices. At least seven (7) calendar days prior to the first public hearing or prior to the City's decision where no public hearing is required, the City shall mail a notice of the public hearing or pending decision for any Coastal Development Permit to the following:

- a. The applicant;
- b. The owner of the property or his or her authorized agent;
- c. Each local agency providing water, sewage, streets, roads, schools or other essential facilities or services to the development;
- d. The owners of all real property, as shown on the latest equalized assessment roll, within 100 feet of the site of the development for appealable developments and for non-appealable developments which do not require a public hearing, and within 300 feet of the site for non-appealable developments requiring a public hearing;
- e. All persons who have requested, within the preceding year, notice of all actions on Coastal Development Permits within the City or on the particular site of the development or who have requested notice of all actions affecting any or all designated Coastal Resource Areas;
- f. The Coastal Commission; and
- g. All residents within 100 feet of the site of the development.

3. Posting of Notices. At the time an application for coastal development permit is filed (or within 7 days), the applicant must post public notice at a conspicuous place, easily read by the public and as close as possible to the site of the proposed development, notice that an application for a permit for the proposed development has been submitted to the City. The applicant shall use a standardized form provided by the Planning and Building Director and the notice shall contain a general description of the nature of the proposed development. If the applicant fails to post and maintain the completed notice form until the permit becomes effective, the Planning and Building Director shall refuse to file the application, or shall withdraw the application from filing if it has already been filed when he or she learns of such failure.

4. Notice of Decision. Within seven (7) calendar days of any decision by the City Council, or within seven (7) days of expiration of the local appeal period on decisions made by the Planning Commission or Planning and Building Director, the Planning and Building Director shall mail notice of the decision to the Coastal Commission, and to any person identified in Item 2e above, and shall include findings for approval and any conditions of project approval if approved, or any findings for denial if denied to the applicant, and procedures for appeal of the local decision to the Coastal Commission.

**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:...

E. **Wetlands.** As defined by the US Fish and Wildlife Service, a wetland is an area where the water table is at, near, or above the land surface long enough to bring about the formation of hydric soils or to support the growth of plants which normally are found to grow in water or wet ground. Such wetlands can include mud flats (barren of vegetation), marshes, and swamps. Such wetlands can be either fresh or saltwater, along streams (riparian), in tidally influenced areas (near the ocean and usually below extreme high water of spring tides), marginal to lakes, ponds, and man-made impoundments. Wetlands do not include areas which in normal rainfall years are permanently submerged (streams, lakes, ponds, and impoundments), nor marine or estuarine areas below extreme low water of spring tides, nor vernal wet areas where the soils are not hydric.

**18.38.035 Biological Report.**

- A. **When Required.** The Planning Director shall require the applicant to submit a Biological Report, prior to development review, prepared by a qualified Biologist for any project located in or within 100 feet of any Sensitive Habitat Area, Riparian Corridor, Bluffs and Seacliff Areas, and any Wetland...
- B. **Report Contents.** In addition to meeting the report requirements listed in Section 18.35.030, the Biological Report shall contain the following components:
1. **Mapping of Coastal Resources.** The Biological Report shall describe and map existing wild strawberry habitat on the site, existing sensitive habitats, riparian areas and wetlands located on or within 200 feet of the project site.
  2. **Description of Habitat Requirements.**
    - a. **For Rare and Endangered Species:** a definition of the requirements of rare and endangered organisms, a discussion of animal predation and migration requirements, animal food, water, nesting or denning sites and reproduction, and the plant's life histories and soils, climate, and geographic requirements;

- b. For Unique Species: a definition of the requirements of the unique organism; a discussion of animal food, water, nesting or denning sites and reproduction, predation, and migration requirements; and a description of the plants' life histories and soils, climate, and geographic requirements.*
- C. Distribution of Report. Any Biological Report prepared pursuant to this Title shall be distributed to the US Fish and Wildlife Service, the Army Corps of Engineers, the California Coastal Commission, the State Department of Fish and Game, the Regional Water Quality Control Board, and any other Federal or State agency with review authority over wetlands, riparian habitats, or water resources.*
  - 1. The Biological Report shall be transmitted to each agency with a request for comments from each agency with jurisdiction over the effected resource on the adequacy of the Report and any suggested mitigation measures deemed appropriate by the agency.*
  - 2. Included within the transmittal of the Biological Report to the various agencies shall be a request for comments to be transmitted to the Planning Director within 45 days of receiving the Report.*

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

**A. Development and Land Use:**

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

6. Shall comply with the restrictions listed in this Title for each coastal resource area, and with all other applicable sections of the City's Local Coastal Program Land Use Plan.

**B. The Initial Study:**

1. Shall evaluate the proposed uses and development within any coastal resource areas in terms of their dependence upon the coastal resources.

2. Shall determine whether the proposed uses are sited and designed so as to prevent impacts which would significantly degrade areas adjacent to a sensitive habitat.

3. Shall review the feasibility of partial or total restoration of damaged sensitive habitat(s).

4. Shall determine whether proposed development is sited and designed so as to avoid or minimize destruction or significant alteration of significant existing plant communities identified in the General Plan, including riparian vegetation and notable tree stands.

5. Shall evaluate projects to ensure the protection of riparian corridors of streams, lakes and other bodies of fresh water as designated on the Habitat Areas and Water Resources Overlay, and any other riparian areas, except for man-made irrigation ponds over 2,500 square feet surface area.

6. Shall evaluate the project's conformance with the restrictions listed in this Title for each coastal resource area, and with all other applicable sections of the City's Local Coastal Program Land Use Plan.

**18.38.055 Environmental Impact Reports.**

At the discretion of the Planning Director, a project applicant may use the analysis contained in an Environmental Impact Report prepared under the California Environmental Quality Act or an Environmental Impact Statement prepared under the federal Environmental Policy Act to fulfill the requirements of this Title.

**A. Use of Environmental Impact Report on Project.** The Planning Director may allow an applicant to substitute the analysis in an Environmental Impact Report on a project for a Geological, Biological or Archaeological Report on the same project, if the Planning Director determines that the Environmental Impact Report adequately meets the requirements for Geological, Biological or Archaeological Reports listed in this Title...

**B. Use of Previously Prepared Environmental Impact Report.** The Planning Director may accept the information and analysis contained in a previously prepared Environmental Impact Report required under the California Environmental Quality Act

*in lieu of a new Geological, Biological, or Archaeological Report if the Planning Director determines that:*

- 1. The Environmental Impact Report adequately meets the requirements for Geological, Biological or Archaeological Reports listed in this Chapter, and*
- 2. The Environmental Impact Report was prepared for either a previous project on the project site or a project on a directly adjoining site.*
- 3. In order to use any previously prepared Biological Report pursuant to this Section, the Biological Report must have been a part of a Certified Final EIR that was accepted as complete and adequate no more than one year prior to the date of submittal...*

**18.38.075 Riparian Corridors and Buffer Zones.**

**A. Permitted Uses.** *Except as may be specified in this Chapter, within Riparian Corridors, only the following uses shall be permitted:*

- 1. Education and research;*
- 2. Consumptive uses as provided for in the Fish and Game Code and Title 14 of the California Administrative Code;*
- 3. Fish and wildlife management activities;*
- 4. Trails and scenic overlooks on public land(s);*
- 5. Necessary water supply projects;*
- 6. Restoration of riparian vegetation.*

**B. No Alternative Permitted Uses.** *The following are permitted uses where no feasible or practical alternative exists:*

- 1. Stream-dependent aquaculture provided that non-stream-dependent facilities locate outside of corridor;*
- 2. Flood control projects where no other method for protecting existing structures in the flood plain is feasible and where such protection is necessary for public safety or to protect existing development;*
- 3. Bridges when supports are not in significant conflict with corridor resources;*
- 4. Pipelines and storm water runoff facilities;*
- 5. Improvement, repair, or maintenance of roadways or road crossings;*

6. *Agricultural uses, provided no existing riparian vegetation is removed, and no soil is allowed to enter stream channels*

**C. *Standards.*** *Development shall be designed and constructed so as to ensure:*

1. *That the removal of vegetation is minimized;*
2. *That land exposure during construction is minimized and that temporary vegetation or mulching is used to protect critical areas;*
3. *That erosion, sedimentation, and runoff is minimized by appropriately grading and replanting modified areas;*
4. *That only adapted native or non-invasive exotic plant species are used for replanting;*
5. *That sufficient passage is provided for native and anadromous fish as specified by the State Department of Fish and Game;*
6. *That any adverse effects of waste water discharges and entrainment are minimized;*
7. *That any depletion of groundwater supplies and substantial interference with surface and subsurface water flows are prevented;*
8. *That waste water reclamation is encouraged;*
9. *That natural vegetation buffer areas which protect riparian habitats are maintained;*
10. *That any alteration of natural streams is minimized.*

**D. *Riparian Buffer Zone.*** *The Riparian Buffer Zone is defined as:*

1. *land on both sides of riparian corridors which extends from the "limit of riparian vegetation" 50 feet outward for perennial streams and 30 feet outward for intermittent streams;*
2. *land along both sides of riparian corridors which extends 50 feet from the bank edge for perennial streams and 30 feet from the midpoint of intermittent streams, where no riparian vegetation exists.*

**E. *Permitted Uses within Riparian Buffer Zones include:***

1. *Uses permitted in riparian corridors;*
2. *Crop growing and grazing, provided no existing riparian vegetation is removed and no soil is allowed to enter stream channels;*
3. *Timbering in "stream side corridors" as defined and controlled by State and County regulations for timber harvesting.*

**F. No Alternative Permitted Uses.** *The following are Permitted Uses within Riparian Buffer Zones where no feasible alternative exists:*

1. *The construction of new structures on existing legal building sites, set back 20 feet from the limit of riparian vegetation, only if no other building site on the parcel exists;*
2. *The creation of new parcels only if the only building sites available are those within in buffer area, if the proposed parcels are consistent with existing development in the area, and if the building sites are set back 20 feet from the limit of riparian vegetation, or if there is no vegetation, 20 feet from the bank edge of a perennial stream or 20 feet from the midpoint of an intermittent stream.*

**G. Development Standards within Riparian Buffer Zones.** *Development shall be designed and constructed so as to ensure:*

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

**H. Findings for Development within Riparian Buffer Zones.** *The following Findings shall be supported by the contents of the required Biological Report:*

1. *That there are special circumstances or conditions affecting the property;*
2. *That the project is necessary for the proper design and function of some permitted or existing activity on the property;*
3. *That the project will not be detrimental to the public welfare or injurious to other property downstream or in the area in which the project is located;*
4. *That the project will not significantly reduce or adversely impact the sensitive habitat, or there is no feasible alternative which would be less damaging to the environment;*



5. That the project is in accordance with the purpose of this Chapter and with the objectives of the L.C.P. Land Use Plan;

6. That development on a property which has its only building site located in the buffer area maintains a 20-foot buffer from the limit of riparian vegetation, or if no vegetation exists, a 20-foot buffer from the bank of a perennial stream and a 20-foot buffer from the midpoint of an intermittent stream.

#### 18.38.080 Wetlands

A. *Permitted Uses:*

1. *Education and research;*
2. *Passive recreation such as bird-watching;*
3. *Fish and wildlife management activities.*

B. *Permitted Uses with approval of a Use Permit:*

1. *Commercial mariculture where no alteration of the wetland is necessary;*
2. *Bridges;*
3. *Pipelines and storm water runoff facilities;*
4. *Improvement, repair or maintenance of roadways.*

C. *Standards. The Riparian Corridor Standards listed in this Chapter shall apply to Wetlands.*

D. *Wetlands Buffer Zone. The minimum buffer surrounding lakes, ponds, and marshes shall be 100 feet, measured from the high water point, except that no buffer is required for man-made ponds and reservoirs used for agricultural purposes.*

E. *Permitted Uses within Wetlands Buffer Zones. The Riparian Buffer Zone Uses listed in this Title shall apply to Wetlands Buffer Zones.*

F. *Permitted Uses within Wetlands Buffer Zones, where no feasible alternative exists. The Riparian Buffer Zone Uses listed under this Title shall apply to Wetlands Buffer Zones.*

G. *Development Standards within Wetlands Buffer Zones. The Riparian Buffer Development Standards listed under this Title shall apply to Wetlands Buffer Zones.*

H. *Findings for Development within Wetlands Buffer Zones. The following Findings shall be supported by the contents of the required Biologic Report:*

1. *That there are special circumstances or conditions affecting the property;*
2. *That the project is necessary for the proper design and function of some permitted or existing activity on the property;*
3. *That the project will not be detrimental to the public welfare or injurious to other property in the area in which the project is located;*
4. *That the project will not significantly reduce or adversely impact the sensitive habitat, or there is no feasible alternative which would be less damaging to the environment;*
5. *That the project is in accordance with the purpose of this Chapter and with the objectives of the L.C.P. Land Use Plan;*
6. *That development on a property, which has its only building site located in the buffer area, maintains a 20-foot buffer from the outer edge of any wetland.*