

**CALIFORNIA COASTAL COMMISSION**

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**RECORD PACKET COPY****F-6**

Received: 2/11/2000  
Staff: CLK-SF  
Staff Report: 2/29/2000  
Hearing Date: 3/17/2000  
Item Number: F-6

**STAFF REPORT  
REVOCATION REQUEST**

**APPLICATION:** R-1-94-005

**APPLICANT:** Donald Pera, Marilyn Pera, & Alice Francis

**PROJECT LOCATION:** Within the former Ocean Shore Railroad right-of-way, between Kelly and Central Avenues and between Myrtle and Seymour Streets, west of Highway 1, in the City of Half Moon Bay, San Mateo County.  
APNs: 056-096-010; 056-125-110; 064-053-010; 064-073-010; 064-192-030; 064-213-010; 064-313-030; and 064-313-040

**PROJECT DESCRIPTION:** Lot line adjustments to modify the boundaries of 7 parcels. As adjusted, all 7 lots conform to the minimum lot size requirement for the zoning designation.

**INDIVIDUAL REQUESTING REVOCATION:** Scott Singer

**AGENT:** Gregg Garrison

**SUBSTANTIVE FILE DOCUMENTS:** See Appendix A

**EXECUTIVE SUMMARY**

In April 1994, the Commission granted Coastal Development Permit (CDP) 1-94-005 for lot line adjustments on seven parcels. The approved lot line adjustments modified the boundaries of existing parcels. No new parcels were created. Prior to making its

decision to approve the permit application, the Commission received several letters from neighboring property owners opposed to the project.

On February 15, 2000, the Commission received a request for revocation of CDP 1-94-005. The revocation request contends that there are 14 grounds supporting revocation of the permit, including 13 contentions of erroneous information submitted by the applicant, and one contention based on failure to comply with the Commission's permit application public noticing requirements.

Staff recommends that the Commission deny the request to revoke permit 1-94-005 because the revocation request does not establish any part of either of the grounds required by Section 13105 of the Commission's regulations.

### **PROCEDURES FOR REVOCATION**

In pertinent part, the Commission's regulations pertaining to revocation of a coastal development permit are as follows:

#### **Section 13105**

*Grounds for revocation of a permit shall be:*

- (a) Intentional inclusion of inaccurate, erroneous or incomplete information in connection with a coastal development permit application, where the Commission finds that accurate and complete information would have caused the Commission to require additional or different conditions on a permit or deny an application;*
- (b) Failure to comply with the notice provisions of Section 13054, where the views of the person(s) not notified were not otherwise made known to the commission and would have caused the commission to require additional or different conditions on a permit or deny an application.*

#### **Section 13108**

- (a) At the next regularly scheduled meeting, and after notice to the permittee and any persons the executive director has reason to know would be interested in the permit or revocation, the executive director shall report the request for revocation to the Commission with a preliminary recommendation on the merits of the request.*
- (b) The person requesting the revocation shall be afforded a reasonable time to present the request and the permittee shall be afforded a like time for rebuttal.*
- (c) The Commission shall ordinarily vote on the request at the same meeting, but the vote may be postponed to a subsequent meeting if the Commission wishes the executive director or the attorney general to perform further investigation.*
- (d) A permit may be revoked by a majority vote of the members of the Commission present if it finds that any of the grounds specified in Section 13105 exist. If the Commission finds that the request for revocation was not filed with due diligence, it shall deny the request.*

Because of the potential impacts revocation could have on an applicant who may have acted in reliance on the permit, the grounds for revocation are necessarily narrow. The rules of revocation, for instance, do not allow the Commission to make a second judgement on a previously issued permit based on information that comes into existence after the granting of the permit, no matter how compelling that information might be. The grounds for revocation are, of necessity, confined to information in existence at the time of the Commission's action.

This revocation request is based on both subsections (a) and (b) of Section 13105 of the Commission's regulations. The three elements of Section 13105(a) that must be proved before a permit can be revoked are:

- The applicant provided inaccurate, erroneous or incomplete information;
- The inaccurate, erroneous or incomplete information was supplied intentionally; and
- The Commission finds that accurate and complete information would have caused it to impose different conditions or to deny the permit application.

Subsection (b) of Section 13105 also includes three necessary findings for revocation:

- The permit applicant failed to comply with the Commission's permit application noticing requirements;
- The views of the person(s) not notified were not otherwise made known to the Commission; and
- The views of the person(s) not notified could have caused the Commission to impose different conditions or to deny the permit application.

In addition to these three elements, Section 13108(d) establishes that the Commission must deny a revocation request that has not been filed with due diligence. As it may take some time to prepare a request, the Commission has accepted requests submitted at various times after permit approval. In this case, the permit was approved April 12, 1994, and the request submitted February 15, 2000. Therefore, an issue of due diligence is raised.

## **1.0 STAFF RECOMMENDATION**

The staff recommends that the Commission deny the request to revoke permit 1-94-005 because the revocation request does not establish the grounds required by Section 13105 of the Commission's regulations.

### **1.1 MOTION**

I move that the Commission grant revocation of Coastal Development Permit 1-94-005.

### **1.2 STAFF RECOMMENDATION OF DENIAL**

Staff recommends a NO vote on the motion. Failure of this motion will result in denial of the request for revocation and adoption of the following resolution and findings. The motion passes only by affirmative vote of a majority of Commissioners present.

### 1.3 RESOLUTION TO DENY REVOCATION

The Commission hereby denies the request for revocation of the Commission's decision on Coastal Development Permit 1-94-005 on the grounds that there is no:

- a) Intentional inclusion of inaccurate, erroneous or incomplete information in connection with a coastal development permit application, where the Commission finds that accurate and complete information would have caused the Commission to require additional or different conditions on a permit or deny an application; and/or
- b) Failure to comply with the notice provisions of §13054, where the views of the person(s) not notified were not otherwise made known to the Commission and could have caused the Commission to require additional or different conditions on a permit or deny an application.

### 2.0 FINDINGS AND DECLARATIONS

The Commission hereby finds and declares:

#### 2.1 PROJECT DESCRIPTION AND LOCATION

Coastal Development Permit (CDP) 1-94-005 authorized lot line adjustments affecting seven parcels (APNs: 056-096-010, 056-125-110, 064-053-010, 064-073-010, 064-192-030, 064-213-010, 064-313-030, and 064-313-040). The parcels are all located within the former Ocean Shore Railroad right-of-way, between Kelly and Central Avenues and between Myrtle and Seymour Streets, west of Highway 1, in the City of Half Moon Bay, San Mateo County. A more detailed site and project description is contained on pages 2-4 of the original permit application staff report (Attachment 1) Exhibits 4 and 5 of the permit staff report show the configuration of the parcels before and after the lot line adjustments.

#### 2.2 REVOCATION REQUEST

On February 11, 2000, the Commission staff received a request from Scott Singer to revoke CDP 1-94-005 (Attachment 2). In accordance with the Commission's regulations, the staff:

- Reviewed the stated grounds for revocation and determined that the request is not patently frivolous and without merit and initiated revocation proceedings (*14 CCR §13106*)
- Mailed a copy of the revocation request and a summary of the Commission's revocation procedures to the permittees (*14 CCR §13107*).
- Scheduled a public hearing and provided public notice for Commission consideration of this revocation request at the next regularly scheduled meeting (*14 CCR §13108(a)*).

Mr. Singer contends that there are 14 grounds supporting revocation of the permit, including 13 contentions based on Section 13105(a)<sup>1</sup>, regarding erroneous information

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<sup>1</sup> §13105. **Grounds for Revocation**  
Grounds for revocation of a permit shall be:

submitted by the applicant, and one contention based on section 13105(b)<sup>2</sup>, regarding failure to comply with the notice provisions of Section 13054.

### **2.2.1 CONTENTION 1**

The footnote on page 2 of the revocation request contends that the applicants may not have complied with the notice provisions of Section 13054. As support regarding provision of notice for this contention, the request alleges that the applicants' application to the City of Half Moon Bay Planning Commission for lot line adjustments includes an uncompleted "Affidavit of Certified Property Owners List."

As discussed above, revocation of a coastal development permit under Section 13105(b) requires three findings. If any of these three findings cannot be made, the revocation request under Section 13105(b) must be rejected. The first required finding is that the applicants failed to comply with the notice provisions of Section 13054. Section 13054 is specific to the notice requirements for CDP applications to the Coastal Commission. Mr. Singer's contention raises an issue with respect to the manner in which notice was provided for an application to the Half Moon Bay Planning Commission prior to certification of the City's Local Coastal Program. The revocation request does not raise issue with the manner in which the applicants provided notice of the CDP application. Nevertheless, staff reviewed the file materials for CDP 1-94-005. Those materials include evidence that the applicants did comply with the notice requirements of Section 13054. In fact, the list of adjacent property owners contained in the CDP application file includes Philip and Cheryl Young, 208 Garcia Avenue (Mr. Singer's current address). Therefore, the Commission finds that there is no evidence that the applicants failed to comply with the CDP application notice requirements described in Section 13105(b).

### **OTHER CONTENTIONS REGARDING ERRONEOUS INFORMATION**

Contentions 2 through 13 contained in the revocation request and described below do not pertain to information provided to the Commission by the applicants in connection to the CDP application. Rather, these contentions allege inaccuracies in the staff report. The revocation request does not demonstrate, that the applicants intentionally provided inaccurate, erroneous or incomplete information concerning the matters raised by these contentions. Finally, there is no evidence to support a finding that accurate or complete information would have caused the Commission to require additional or different conditions on the permit or to deny the application. Therefore, the Commission finds

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(a) Intentional inclusion of inaccurate, erroneous or incomplete information in connection with a coastal development permit application, where the Commission finds that accurate and complete information would have caused the Commission to require additional or different conditions on a permit or deny an application; ...

#### **<sup>2</sup> §13105. Grounds for Revocation**

Grounds for revocation of a permit shall be: ...

(b) Failure to comply with the notice provisions of Section 13054, where the views of the person(s) not notified were not otherwise made known to the commission and would have caused the commission to require additional or different conditions on a permit or deny an application.

that Contentions 2 through 13 described below do not establish grounds for revocation of the permit under Section 13105(a).

### **2.2.2 CONTENTION 2**

The revocation request contends that the permit should be revoked under Section 13105(a) on the grounds that the following statement in the staff report is inaccurate:

*"No environmentally sensitive areas are present on the subject parcels."*

The revocation request supports this contention by stating:

*"There is currently no dispute that the subject parcels contain wetlands. In addition, it appears that the parcels may likely contain endangered or threatened species habitat."*

The Commission did not require a wetland delineation or biological survey of the site in its consideration of the CDP application for the lot line adjustments. At the time of the permit application in 1994, no wetlands or other environmentally sensitive habitat areas were known or suspected to be located on the subject parcels.

In association with development proposals, Environmental Collaborative conducted biological assessments of the northernmost of the two subject parcels, located between Kelly and Correias Avenues, (*Environmental Collaborative May 1999 and August 1999*). These assessments identified two pocket wetland areas approximately 10 feet to the west of the northern parcel. The survey did not identify any wetlands located within the boundaries of the parcels. The City of Half Moon Bay subsequently conducted an independent biological review of these parcels (*LSA 1999*). The City's assessment generally concurred with the Environmental Collaborative reports. However, the City's consultant did identify a 4-foot-wide drainage ditch supporting a dominance of wetland vegetation on the northern parcel.

In addition to the biological assessments of the northern two parcels discussed above, MAY Consulting Services conducted a wetlands delineation and a biological resources study of "Undeveloped Land West of Railroad Avenue" (*MAY 1999*). MAY was not aware of the configuration or boundaries of the subject parcels during the biological survey and wetlands delineation work. Consequently, MAY did not map wetlands or other environmentally sensitive habitats on the subject properties located within the former Ocean Shore Railroad right-of-way. However, the MAY report describes biological resources generally found within the coastal plane area west of Railroad Avenue. This description states that "*Seasonal wetlands occur within enclosed basins within the annual grasslands.*" The report does not contradict the findings of the City's biological assessment.

The biological assessments described above were all undertaken in 1999, five years after the Commission's action on CDP 1-94-005. The information contained in these reports was not available at the time of the Commission's decision. This information therefore cannot be utilized to establish either that the applicant intentionally submitted erroneous information in connection with the CDP application or that accurate information would have affected the Commission's decision.

Neither the revocation request nor the permit application file provides any support to the contention that the applicants intentionally withheld information concerning potential wetland habitat on the site. Contention 2 of the revocation request fails to demonstrate that the applicants intentionally included inaccurate, erroneous or incomplete information in connection with the permit application. Therefore, the Commission finds that the contention does not meet the requirements for permit revocation under either the first or the second tests of Section 13105(a).

Because all three tests must be satisfied to establish a ground for revocation, the Commission is able to deny Contention 2 as a ground for revocation without considering whether the third test is met. However, even if the first and second tests were met, the contention would still fail to establish a valid ground for revocation of the permit. The third test requires a finding that accurate and complete information submitted at the time of permit application would have caused the Commission to require additional or different conditions or to deny the permit. The lot line adjustments approved by the CDP authorized only the adjustment of the boundaries between seven existing parcels. There is no evidence to suggest that these lot line adjustments were inconsistent with the Coastal Act policies requiring protection of the wetland habitat at the time of the Commission's action in 1994. Even if wetland habitat did exist in the drainage ditch located on a small portion of the northern most of the seven parcels in 1994, the configuration of the parcel as approved would allow a sufficient buffer to protect the wetland habitat from potential impacts associated with future development of the property. Thus, there is no evidence to support a finding that knowledge of the wetland habitat would have caused the Commission to require additional or different conditions or to deny the permit. Therefore, the Commission finds that the contention does not establish any part of the grounds for revocation of the permit under Section 13105(a).

### **2.2.3 CONTENTION 3**

The revocation request contends that the permit should be revoked under Section 13105(a) on the grounds that the following statement in the staff report is inaccurate:

*"The lands... are substantially built out with single-family residences."*

Contrary to Mr. Singer's contention, the staff report provides a clear and accurate description of the state of development on the subject and adjacent properties. The paragraph from which the above quoted excerpt is taken is on page 3 of the staff report and reads in its entirety:

*"To the east of the subject parcels are lands that are also designated in the City's LUP as Residential Medium Density, 2.1 to 8 dwelling units/acre. These lands are zoned as R-1, Single Family Residential, and are substantially built out with single-family residences on 5,000-square-foot parcels."*

The staff report further states that the parcels subject to the proposed lot line adjustments are undeveloped and that the lands lying to the west are undeveloped. All of these statements are accurate. Moreover, statements contained in the staff report in no way establish that the applicant intentionally provided erroneous information in connection with a CDP application. Therefore, the Commission finds that there is no

evidence to support the allegation described as Contention 3 that the applicants provided inaccurate, erroneous or incomplete information.

The revocation request does not demonstrate that the applicants intentionally provided inaccurate, erroneous or incomplete information concerning the surrounding properties or that accurate or complete information would have caused the Commission to require additional or different conditions on the permit or deny the application. Therefore, the Commission finds that the contention does not establish any part of the grounds for revocation of the permit under Section 13105(a).

#### **2.2.4 CONTENTION 4**

The revocation request contends that the permit should be revoked under Section 13105(a) on the grounds that the following statement in the staff report is inaccurate:

*"The subject parcels are lands that are also designated in the City's LUP as Residential Medium Density"*

Notwithstanding any statement in the staff report, the land use designation in 1994 did not govern the Commission's approval of the CDP. The Commission approved the CDP for the lot line adjustments prior to certification of the City's LCP. Therefore, the Chapter 3 policies of the Coastal Act, rather than any provision of the Certified LUP, governed the Commission's approval of the CDP. Therefore, Contention 4 of the revocation request does not contain a valid ground for revocation.

The revocation request does not demonstrate that the applicants intentionally provided inaccurate, erroneous or incomplete information concerning the land use designation of the parcels or that accurate or complete information would have caused the Commission to require additional or different conditions on the permit or deny the application. Therefore, the Commission finds that the contention does not establish any part of the grounds for revocation of the permit under Section 13105(a).

#### **2.2.5 CONTENTION 5**

The revocation request contends that the permit should be revoked under Section 13105(a) on the grounds that the following statement in the staff report is inaccurate:

*"The parcels are physically distant from the sea"*

The subject parcels are located approximately 1,000 feet inland from the edge of the bluff. The staff report includes five exhibits that clearly show the location of the parcels and their proximity to the shoreline. Therefore, there is no evidence to support this contention. Moreover, statements contained in the staff report in no way establish that the applicant intentionally provided erroneous information in connection with a CDP application.

The revocation request does not demonstrate that the applicants intentionally provided inaccurate, erroneous or incomplete information concerning the location of the parcels or that accurate or complete information would have caused the Commission to require additional or different conditions on the permit or deny the application. Therefore, the Commission finds that the contention does not establish any part of the grounds for revocation of the permit under Section 13105(a).



### 2.2.6 CONTENTION 6

The revocation request contends that the permit should be revoked under Section 13105(a) on the grounds that the following statement in the staff report is inaccurate:

*"The parcels are zoned R-1 B-1"*

As stated above, statements contained in the staff report in no way establish that the applicant intentionally provided erroneous information in connection with a CDP application. In addition, notwithstanding any statement in the staff report, the local zoning designation in 1994 did not govern the Commission's approval of the CDP. The Commission approved the CDP for the lot line adjustments prior to certification of the City's LCP. Therefore, there was no certified coastal zoning designation within the City for purposes of coastal development permits. The local zoning designation was in no way the standard of review for the issuance of coastal development permits within the City of Half Moon Bay at the time that the Commission approved the subject CDP. Therefore, Contention 6 of the revocation request does not contain a valid ground for revocation.

The revocation request does not demonstrate that the applicants intentionally provided inaccurate, erroneous or incomplete information concerning the zoning designation of the property or that accurate or complete information would have caused the Commission to require additional or different conditions on the permit or deny the application. Therefore, the Commission finds that the contention does not establish any part of the grounds for revocation of the permit under Section 13105(a).

### 2.2.7 CONTENTION 7

The revocation request contends that the permit should be revoked under Section 13105(a) on the grounds that the following statement in the staff report is inaccurate:

*"Railroad Avenue, a City-owned street, runs along the entire east and the entire west sides of the subject parcels."*

The revocation request also points out that the staff report contains the statement "[t]he Railroad Right of Way is not clearly shown."

In fact, this incomplete quote of the staff report is misleading. The staff report actually states:

*"The Railroad Avenue right of way is not clearly shown in Exhibits No. 4 and 5. However, this right of way is clearly shown on the more detailed tentative maps for the boundary line adjustments that are part of the permit file."*

Upon further investigation of the materials contained in the permit file, the staff confirms that the description of Railroad Avenue in the staff report is accurate. Moreover, notwithstanding the accuracy of the staff report, the revocation request does not demonstrate that the applicants intentionally provided inaccurate, erroneous or incomplete information concerning this matter. Finally, there is no evidence to suggest that the location of the Railroad Avenue right-of-way relative to the subject parcels would have affected the Commission's approval of the lot line adjustments. Therefore,

Contention 7 fails all three tests under Section 13105(a) to establish a valid ground for revocation of the permit.

### **2.2.8 CONTENTION 8**

The revocation request contends that the permit should be revoked under Section 13105(a) on the grounds that the following statement in the staff report is inaccurate:

*"The project does not have a significant adverse effect on the environment, within the meaning of CEQA" and has "consistency with the Coastal Act."*

The quoted statements are legal conclusions reached by the Commission through its consideration of the permit application. In support of this contention, the request references a February 8, 2000 letter to the City. This legal challenge written six years after the Commission's action on the permit does not represent information provided to the Commission by the applicants, and is not a valid ground for revocation. Moreover, these arguments, raised years after the Commission's action on CDP 1-94-005, cannot be utilized to establish either that the applicant intentionally submitted erroneous information in connection with the CDP application or that accurate information would have affected the Commission's decision.

The revocation request does not demonstrate that the applicants intentionally provided inaccurate, erroneous or incomplete information concerning the consistency of the project with the requirements of CEQA and the Coastal Act or that accurate or complete information would have caused the Commission to require additional or different conditions on the permit or deny the application. Therefore, the Commission finds that the contention does not establish any part of the grounds for revocation of the permit under Section 13105(a).

### **2.2.9 CONTENTION 9**

The revocation request contends that the permit should be revoked under Section 13105(a) on the grounds that the following statement in the staff report is inaccurate:

*"The City of Half Moon Bay acted as lead agency for this project under CEQA and found that the project was categorically exempt."*

Notwithstanding the fact that the City of Half Moon Bay did in fact find the project categorically exempt under CEQA, this contention does not address information provided to the Commission by the applicants, and is therefore not a valid ground for permit revocation.

The revocation request does not demonstrate that the applicants intentionally provided inaccurate, erroneous or incomplete information concerning the City's CEQA determination or that accurate or complete information would have caused the Commission to require additional or different conditions on the permit or deny the application. Therefore, the Commission finds that the contention does not establish any part of the grounds for revocation of the permit under Section 13105(a).

### **2.2.10 CONTENTION 10**

The revocation request contends that the permit should be revoked under Section 13105(a) on the grounds that the following statement in the staff report is incomplete or erroneous:

*"Local Approvals Received: City of Half Moon Bay lot line adjustments SUB-08-93, and seven conditional certificates of compliance, No. 93098915 to No. 93098921."*

Notwithstanding the fact that the permit application file contains copies of each of the above-cite local approvals, this contention does not evidence that the applicant intentionally provided the Commission with erroneous or incomplete information at the time they submitted their CDP application, and is therefore not a valid ground for permit revocation. In addition, as support for this contention, the revocation request references a February 8, 2000 letter further detailing examples of erroneous information. However, these arguments, raised years after the Commission's action on CDP 1-94-005, cannot be utilized to establish either that the applicant intentionally submitted erroneous information in connection with the CDP application or that accurate information would have affected the Commission's decision.

The revocation request does demonstrate that the applicants intentionally provided inaccurate, erroneous or incomplete information concerning the local approvals or that accurate or complete information would have caused the Commission to require additional or different conditions on the permit or deny the application. Therefore, the Commission finds that the contention does not establish any part of the grounds for revocation of the permit under Section 13105(a).

### **2.2.11 CONTENTION 11**

The revocation request contends that the permit should be revoked under Section 13105(a) on the grounds that the following statement in the staff report is inaccurate:

*"The subject parcels were created in 1905 when the Old Ocean Shore Railroad was abandoned."*

Notwithstanding the fact that the certificates of compliance for the subject properties appear to support the statement in the staff report that the parcels were created in 1905, this contention does not evidence that the applicant intentionally provided the Commission with erroneous information at the time they submitted their application and is therefore not a valid ground for permit revocation.

Therefore, the revocation request does not demonstrate that the applicants intentionally provided inaccurate, erroneous or incomplete information concerning the history of the property or that accurate or complete information would have caused the Commission to require additional or different conditions on the permit or deny the application. Therefore, the Commission finds that the contention does not establish any part of the grounds for revocation of the permit under Section 13105(a).

### **2.2.12 CONTENTION 12**

The revocation request contends that the permit should be revoked under Section 13105(a) on the grounds that the following statement in the staff report is inaccurate:

*"Subject parcels... [contain only] four existing street and utility crossings that have been acquired through use"*

Singer contends that:

*"Pera granted title in fee to three actual streets, namely Poplar, Grove, and Magnolia to the City in the same transaction wherein the City of Half Moon Bay granted Pera's 1994 lot line adjustment."*

This contention does not pertain to information provided to the Commission by the applicants in connection with the CDP application. It does not demonstrate that the applicants intentionally provided inaccurate, erroneous or incomplete information concerning the streets and utility crossings on the property or that accurate or complete information would have caused the Commission to require additional or different conditions on the permit or deny the application. Therefore, the Commission finds that the contention does not establish any part of the grounds for revocation of the permit under Section 13105(a).

### **2.2.13 CONTENTION 13**

The revocation request contends that the permit should be revoked under Section 13105(a) on the grounds that the following statement in the staff report is inaccurate:

*"development [will] not interfere with the public's right of access to the sea"*

Singer contends that:

*"There is unbroken and continuous historical access to the Ocean across the subject parcel that would be significantly impacted upon as result of build out."*

This contention does not pertain to information provided to the Commission by the applicants in connection with the CDP application. It does not demonstrate that the applicants intentionally provided inaccurate, erroneous or incomplete information concerning the access across the property or that accurate or complete information would have caused the Commission to require additional or different conditions on the permit or deny the application. The revocation request provides no specific evidence in support of the allegations that build out of the parcels would interfere with the public's right of access to the sea. The CDP approved lot line adjustments of existing parcels, neither creating new parcels, nor approving development of the parcels. Therefore, the Commission finds that the contention does not establish any part of the grounds for revocation of the permit under Section 13105(a).

### **2.2.14 CONTENTION 14**

The final contention contained in the revocation request states that the boundaries of the subject parcels are based on an inaccurate survey. This contention is based on the findings of two surveys recently conducted on the behalf of Mr. Singer and Jim Grady, another neighboring property owner. These surveys were conducted after the

Commission approved the lot line adjustments. In a February 25, 2000 telephone conversation with Chris Kern of the Commission's staff, Mr. Singer's representative, Herman Kalfen, attorney with the Garrison Law Corporation, stated *"We were not aware of any survey error until recently."*

The permit application file contains (1) City-approved certificates of compliance for each lot, (2) legal descriptions for each lot, and (3) preliminary title reports for each lot. The revocation does demonstrate that the validity of the subject parcels was in question at the time of the Commission's action on the permit. Therefore, Contention 14 does not establish that the applicants intentionally provided inaccurate, erroneous, or incomplete information concerning the legal boundaries of the subject parcels at the time of the permit application.

The revocation request does not establish that accurate or complete information concerning the surveyed property boundaries would have caused the Commission to require additional or different conditions on the permit or deny the application. Therefore, the Commission finds that the contention does not establish any part of the any part of the grounds for revocation of the permit under Section 13105(a).

### **2.3 CONCLUSION**

The Commission denies the revocation request for Coastal Development Permit 1-94-005 because the grounds identified in Section 13105(a) and 13105(b) do not exist.

**APPENDIX A**  
**SUBSTANTIVE FILE DOCUMENTS**

Coastal Development Permit File 1-94-005

Environmental Collaborative May 1999, *Biological Resources Assessment for the Labuda Property on Miramontes Avenue*, Environmental Collaborative May 11, 1999.

Environmental Collaborative August 1999, *Biological Resources Assessment for the Pera Property Old Ocean Shore Railway Right-of-Way*, Environmental Collaborative August 13, 1999.

LSA 1999, *Review of Pera and Labuda Property Assessments*, LSA Associates, Inc., October 18, 1999.

MAY 1999, *Biological Resources Occurring on Undeveloped Land West of Railroad Avenue, Half Moon Bay, San Mateo County*, MAY Consulting Services, October 1999.

## CALIFORNIA COASTAL COMMISSION

NORTH COAST AREA

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Filed: February 25, 1994  
 49th Day: April 15, 1994  
 180th Day: August 24, 1994  
 Staff: James Muth  
 Staff Report: March 25, 1994  
 Hearing Date: April 12, 1994  
 Commission Action:

EXHIBIT NO.	1
APPLICATION NO.	
R-1-94-005 PERA	

STAFF REPORT: CONSENT CALENDARAPPLICATION NO.: **1-94-05**APPLICANTS: **DONALD PERA, MARILYN PERA,  
and ALICE FRANCIS**

AGENT: David Cline

PROJECT LOCATION: Within a former railroad right-of-way located between Kelly and Central Avenues and between Myrtle and Seymour Streets, west of Highway One, City of Half Moon Bay, San Mateo County. APN's 056-096-010, 056-125-110, 064-053-010, 064-073-010, 064-192-030, 064-213-010, 064-313-030, and 064-313-040.

PROJECT DESCRIPTION: Adjust the boundary lines between 7 parcels encompassing a total area of 5.81 acres, resulting in 7 adjusted parcels of 0.321 acres, 0.689 acres, 0.754 acres, 0.799 acres, 0.888 acres, 1.049 acres, and 1.308 acres.

Lot areas: (Before and after the boundary line adjustment)

Parcel 1:	from 0.065 acres to 0.754 acres
Parcel 2:	from 1.760 acres to 0.799 acres
Parcel 3:	from 0.760 acres to 1.049 acres
Parcel 4:	from 1.760 acres to 0.888 acres
Parcel 5:	from 0.780 acres to 0.689 acres
Parcel 6:	from 0.400 acres to 0.321 acres
Parcel 7:	from <u>0.290</u> acres to <u>1.308</u> acres
Total	5.815 <sub>±</sub> acres      5.808 <sub>±</sub> acres

Zoning: R-1 B-1, Single Family Residential, 6,000 sq. ft. minimum parcel size (or about 0.14 acres).

Plan designation: Residential Medium Density, 2.1 to 8 du/acre.

LOCAL APPROVALS RECEIVED: City of Half Moon Bay lot line adjustments SUB-08-93 & SUB-09-93, and seven conditional certificates of compliance, No. 93098915 to No. 93098921.

SUBSTANTIVE FILE DOCUMENTS: City of Half Moon Bay Land Use Plan.

STAFF RECOMMENDATION:

The staff recommends that the Commission adopt the following resolution:

I. Approval with Conditions.

The Commission hereby grants a permit, subject to the conditions below, for the proposed development on the grounds that the development will be in conformity with the provisions of Chapter 3 of the California Coastal Act of 1976, will not prejudice the ability of the local government having jurisdiction over the area to prepare a Local Coastal Program conforming to the provisions of Chapter 3 of the Coastal Act, is located between the sea and the first public road nearest the shoreline and is in conformance with the public access and public recreation policies of Chapter 3 of the Coastal Act, and will not have any significant adverse impacts on the environment within the meaning of the California Environmental Quality Act.

II. Standard Conditions. See attached.

III. Special Conditions. None.

IV. Findings and Declarations.

The Commission hereby finds and declares as follows:

1. Project and Site Description.

The applicants propose to adjust the boundary line between seven parcels located within a former railroad right-of-way near the ocean and west of Highway One in the City of Half Moon Bay. See locational Exhibits No. 1 through 4.

Parcels No. 1, 2, and 3 are located along Railroad Avenue, between Kelly and Central Avenues in the Miramontes Tract. Parcels 4, 5, 6, and 7 are located along Railroad Avenue, between Myrtle and Seymour Streets in the Arleta Park Tract. Exhibits No. 4 and 5 show the location and configuration of the seven parcels before and after the boundary line adjustment.

The seven parcels run in a north-to-south direction, encompass a total area of 5.81 acres, and range in size from 0.065 acres to 1.760 acres. Although recently recognized under the seven certificates of compliance, the subject parcels were created in 1905 when the Old Ocean Shore Railroad was abandoned. The size of the seven parcels before and after the boundary line adjustment is as follows:

Parcel 1:	from 0.065 acres	to 0.754 acres
Parcel 2:	from 1.760 acres	to 0.799 acres
Parcel 3:	from 0.760 acres	to 1.049 acres
Parcel 4:	from 1.760 acres	to 0.888 acres
Parcel 5:	from 0.780 acres	to 0.689 acres
Parcel 6:	from 0.400 acres	to 0.321 acres
Parcel 7:	from <u>0.290</u> acres	to <u>1.308</u> acres
Total	5.815±acres	5.808±acres



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DONALD PERA, MARILYN PERA, and ALICE FRANCIS

Page 3

The seven parcels are all located on a flat and grassy coastal terrace. No environmentally sensitive habitat areas are present on the subject parcels. The subject parcels are all undeveloped, except for four existing street and utility crossings that have been acquired through use. The subject parcels are designated in the City's Land Use Plan (LUP) as Residential Medium Density, 2.1 to 8 dwelling units/acre and are zoned as R-1 B-1, Single Family Residential, 6,000 square foot minimum parcel size.

To the east of the subject parcels are lands that are also designated in the City's LUP as Residential Medium Density, 2.1 to 8 dwelling units/acre. These lands are zoned as R-1, Single Family Residential, and are substantially built out with single-family residences on 5,000-square-foot parcels.

To the west of the subject parcels are undeveloped lands that are designated in the City's LUP as Regional Public Recreation. Section 9.3.6 of the City's LUP (pages 148-150) calls for public acquisition of this area as the preferred alternative. However, in the event that State acquisition is not possible, then the LUP allows for limited residential development of the area. Such development would probably be of a clustered design to improve traffic circulation and beach access and to preserve existing site features, such as views of the ocean and stands of cypress trees. To the west of this undeveloped blufftop terrace lies Half Moon Bay State Beach. See Exhibit No. 3, an April 1993 airphoto of the area.

The access situation over and around the subject parcels is varied. To begin, Railroad Avenue, a City-owned street, runs along the entire east and the entire west sides of the subject parcels. The Railroad Avenue right of way is not clearly shown in Exhibits No. 4 and 5. However, this right of way is clearly shown on the more detailed, tentative maps for the boundary line adjustment that are part of the permit file. Although not all of Railroad Avenue has been paved, this avenue has a 40-foot-wide right of way along the entire east side of the subject parcels and a 20-foot-wide right of way along the entire west side of the subject parcels.

Next, as shown in Exhibits No. 4 and 5, a few streets (such as Kelly Street, Central Avenue, and Garnell Avenue), bisect the subject parcels. These streets and avenues are not mere easements that pass over the subject parcels. Instead, these streets and avenues are owned in fee simple by the City. Kelly Street is developed on the east and west sides of the subject parcels and its extension to the ocean provides vertical access to the ocean. Central Avenue and Garnell Avenue are developed on the east side of the subject parcels. While these two avenues are undeveloped on the west side of the subject parcels, the future improvement of these paper street extensions could provide additional vertical access to the ocean.

Otherwise, most of the streets and avenues that run in an east-to-west direction stop or terminate along the easterly side of the subject parcels. From there, one must go north or south along Railroad Avenue to reach another east-to-west cross street or avenue. For the most part, these same streets and avenues continue on the west side of the subject parcels as unimproved

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paper streets. However, four exceptions are presented by Filbert Street, Spruce Street, Myrtle Street, and Metzgar Street, where access and utility easements over the subject parcels have been acquired through use. The City of Half Moon Bay Planning Commission approved the proposed boundary line adjustments with a condition that these four street access and utility easements be preserved.

Utility lines for gas, telephone, electric, cable television, water, and sewer services are located along or over the seven subject parcels. However, new connections for water and sewer service are subject to a waiting list and are not yet available for the seven parcels. Water service in the area is provided by the Coastside Community Water District and sewer service in the area is provided by the City of Half Moon Bay.

## 2. New Development.

Coastal Act Section 30250(a) requires in applicable part that new development be located in or near existing developed areas able to accommodate it and where it will not result in either individual or cumulative adverse impacts to coastal resources. The intent of this policy is to channel development toward areas where services are provided and where potential adverse impacts to coastal resources are avoided.

The seven parcels are located along the westerly edge of an existing developed area served by urban utilities, including gas, telephone, electric, cable television, water, and sewer lines. Although all of these urban utility lines are located over or near the seven subject parcels, new connections for water and sewer service are not presently available to serve the subject parcels and are subject to a waiting list. Notwithstanding, approval of the boundary line adjustments will not change the status of water and sewer service availability. The waiting time to obtain a new water or sewer service connection for these parcels will remain unchanged before and after the boundary line adjustment.

The primary difference before and after the boundary line adjustment is that Parcel One, as adjusted, will now conform with the City's minimum lot size requirements for the R-1 B-1 zoning district, which has a minimum parcel size of 6,000 square feet, or about 0.14 acres. (Parcel One will increase in size from 0.065 acres to 0.754 acres. As adjusted, the smallest parcel will be Parcel 6 at 0.321 acres, which is still more than twice the minimum parcel size for the R-1, B-1 zoning district. Otherwise, the boundary line adjustment does not affect the width of the subject parcels and all of the parcels comply with the minimum parcel width of 60 feet, both before and after the boundary line adjustment.

In summary, approval of the boundary line adjustments will not change the overall development potential of the 5.81-acre area. There will be seven legally created parcels before and after the boundary line adjustment. In addition, approval of the boundary line adjustment has no potential to result in any significant adverse impacts, either individually or cumulatively, to

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coastal resources as no environmentally sensitive habitat areas are located on any of the parcels and as public access is not affected as discussed more fully below under the Public Access section of this staff report. The Commission therefore finds that the project is consistent with Section 30250(a).

3. Public Access.

Coastal Act Section 30210 requires in applicable part that maximum public access and recreational opportunities be provided when consistent with public safety, private property rights, and natural resource protection.

Section 30211 requires in applicable part that development not interfere with the public's right of access to the sea where acquired through use (i.e. potential prescriptive rights or rights of implied dedication).

Section 30212 requires in applicable part that public access from the nearest public roadway to the shoreline and along the coast be provided in new development projects, except in certain instances, such as when adequate access exists nearby or when the provision of public access would be inconsistent with public safety.

In applying Sections 30210, 30211, and 30212, the Commission is limited by the need to show that any denial of a permit application based on those sections, or any decision to grant a permit subject to special conditions requiring public access, is necessary to avoid or offset a project's adverse impact on existing or potential public access.

Although the subject parcels are located between the first public road and the sea, the parcels are physically distant from the sea. The City's Land Use Plan does not designate any of the parcels for public access use. Instead, LUP policies 2-2, 2-22, 2-29 on pages 29, 33, and 34 require the provision of a public access trail west of the subject parcels and along the top of the bluffs by the ocean. The full alignment of the coastal access trail is shown in the LUP's access improvement map. Parts of the trail have already been constructed.

Approval of the boundary line adjustments will have no effect on the existing streets and avenues that either terminate at the edge of the subject parcels or bisect the subject parcels. In addition, approval of the boundary line adjustment will not impact existing street access and public utility easements over the parcels that have been acquired through use as the City has chosen to protect these access easements as a condition of approval for the boundary line adjustments. As a result, the Commission finds that the project is consistent with Section 30211 as approval of the boundary line adjustment has no potential to interfere with any existing public rights of access, even where acquired through use.

Moreover, approval of the project does not result in the creation of any additional parcels and does not change the overall development potential of

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DONALD PERA, MARILYN PERA, and ALICE FRANCIS

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the 5.81-acre area. Therefore, the project, does not create any additional demand for public access over these parcels or within the surrounding area. The Commission therefore finds that the project is consistent with Sections 30210 and 30212 as the provision of additional public access is not warranted for this project.

4. City of Half Moon Bay LUP/Prejudice of LCP.

Coastal Act Section 30604 authorizes permit issuance if the project is consistent with Chapter 3 of the Coastal Act. As discussed above, approval of the project is consistent with Chapter 3 of the Coastal Act and thus will not prejudice local government's ability to implement a certifiable LCP.

5. CEQA.

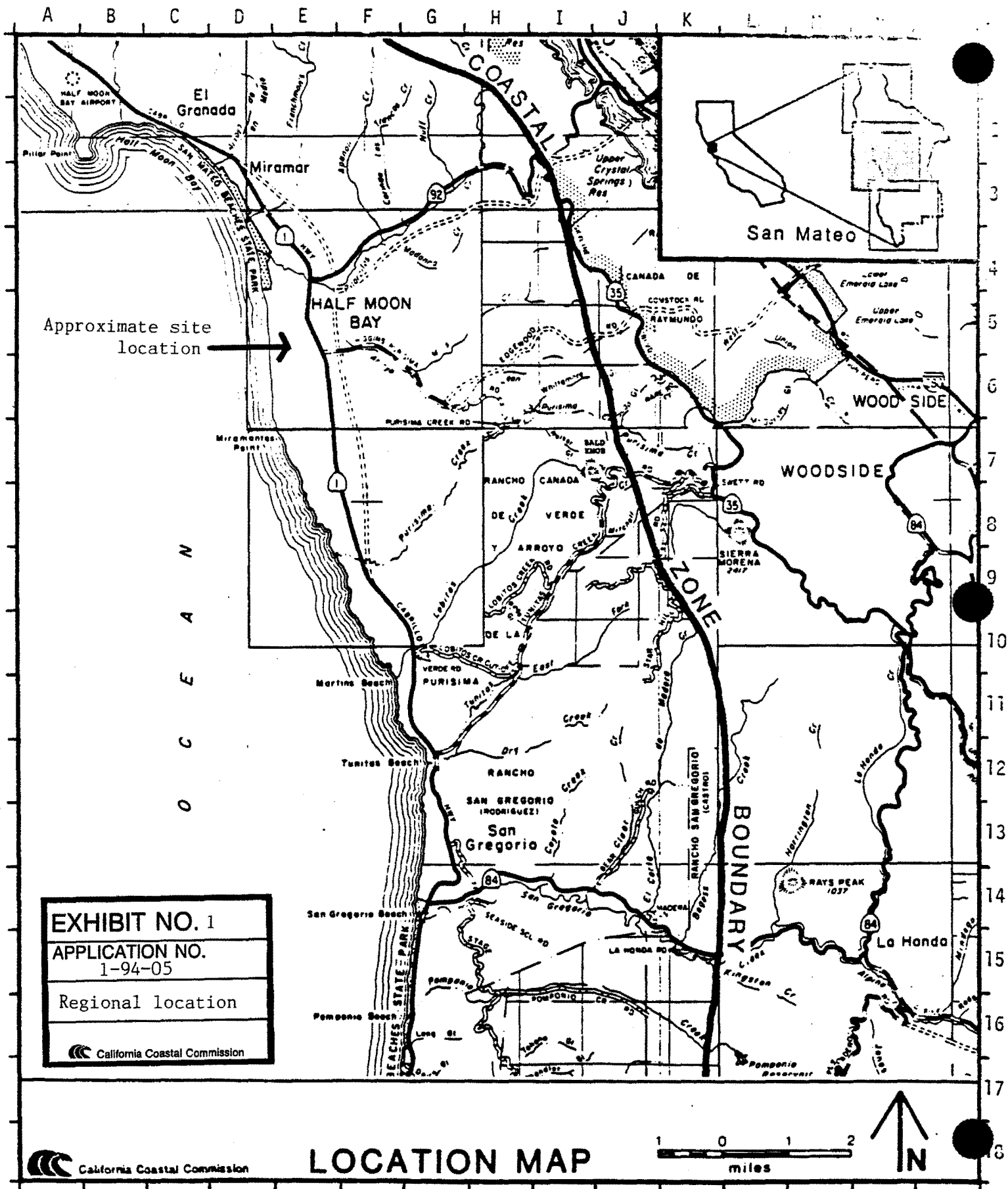
The project does not have a significant adverse effect on the environment, with the meaning of CEQA. As discussed above, no additional mitigation measures are necessary to ensure consistency with the Coastal Act. The City of Half Moon Bay acted as lead agency for this project under CEQA and found that the project was categorically exempt under a class 5(a) exemption determination.

6686p

## ATTACHMENT A

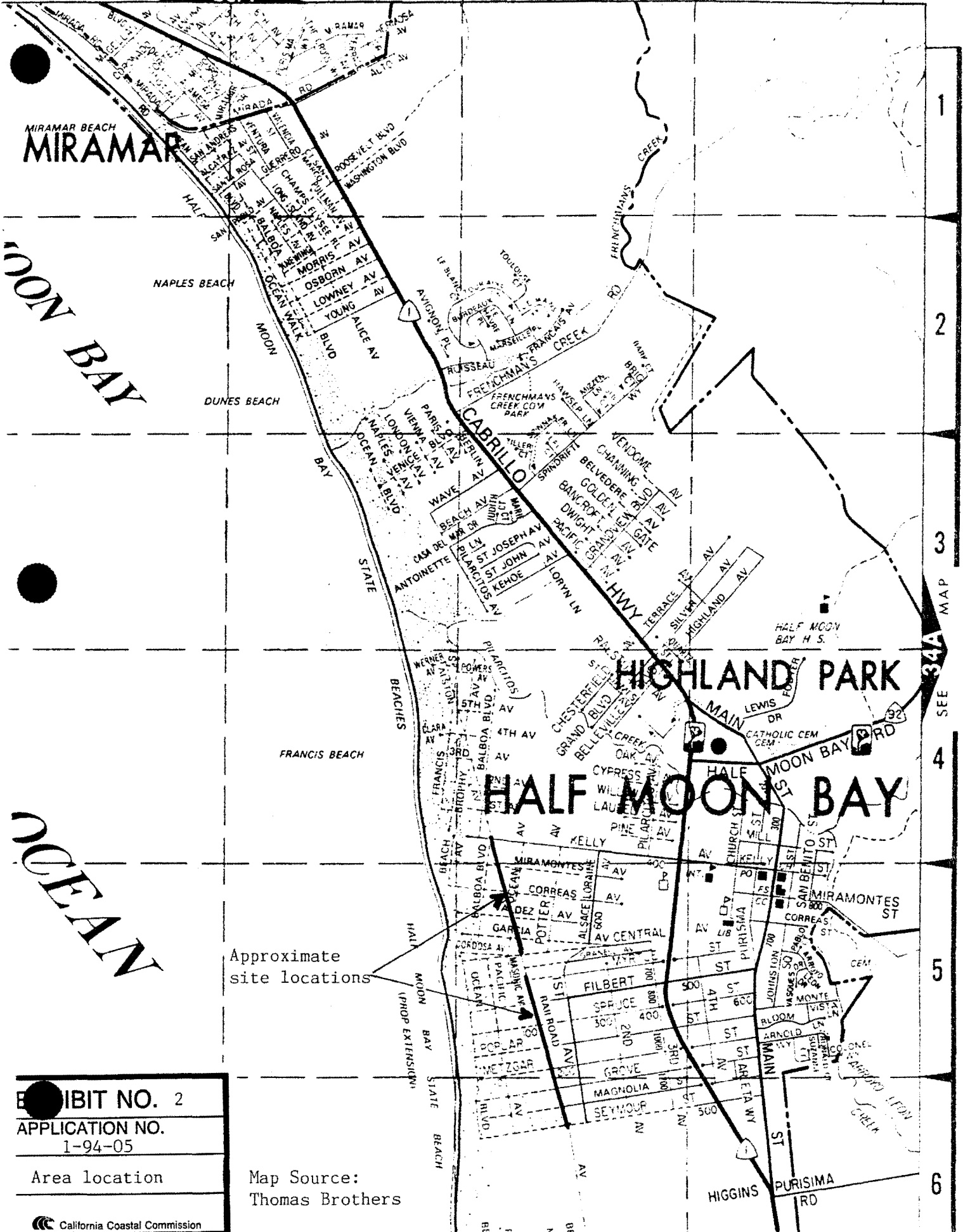
### Standard Conditions

1. Notice of Receipt and Acknowledgment. The permit is not valid and development shall not commence until a copy of the permit, signed by the permittee or authorized agent, acknowledging receipt of the permit and acceptance of the terms and conditions, is returned to the Commission office.
2. Expiration. If development has not commenced, the permit will expire two years from the date on which the Commission voted on the application. Development shall be pursued in a diligent manner and completed in a reasonable period of time. Application for extension of the permit must be made prior to the expiration date.
3. Compliance. All development must occur in strict compliance with the proposal as set forth in the application for permit, subject to any special conditions set forth below. Any deviation from the approved plans must be reviewed and approved by the staff and may require Commission approval.
4. Interpretation. Any questions of intent of interpretation of any condition will be resolved by the Executive Director or the Commission.
5. Inspections. The Commission staff shall be allowed to inspect the site and the development during construction, subject to 24-hour advance notice.
6. Assignment. The permit may be assigned to any qualified person, provided assignee files with the Commission an affidavit accepting all terms and conditions of the permit.
7. Terms and Conditions Run with the Land. These terms and conditions shall be perpetual, and it is the intention of the Commission and the permittee to bind all future owners and possessors of the subject property to the terms and conditions.



Approximate site location →

<b>EXHIBIT NO. 1</b>
APPLICATION NO. 1-94-05
Regional location
California Coastal Commission



Approximate site locations

**EBIT NO. 2**  
**APPLICATION NO.**  
 1-94-05

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Area location

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California Coastal Commission

Map Source:  
Thomas Brothers

4-19-93

CDBW-BLK

Approximate site locations

EXHIBIT NO. 3

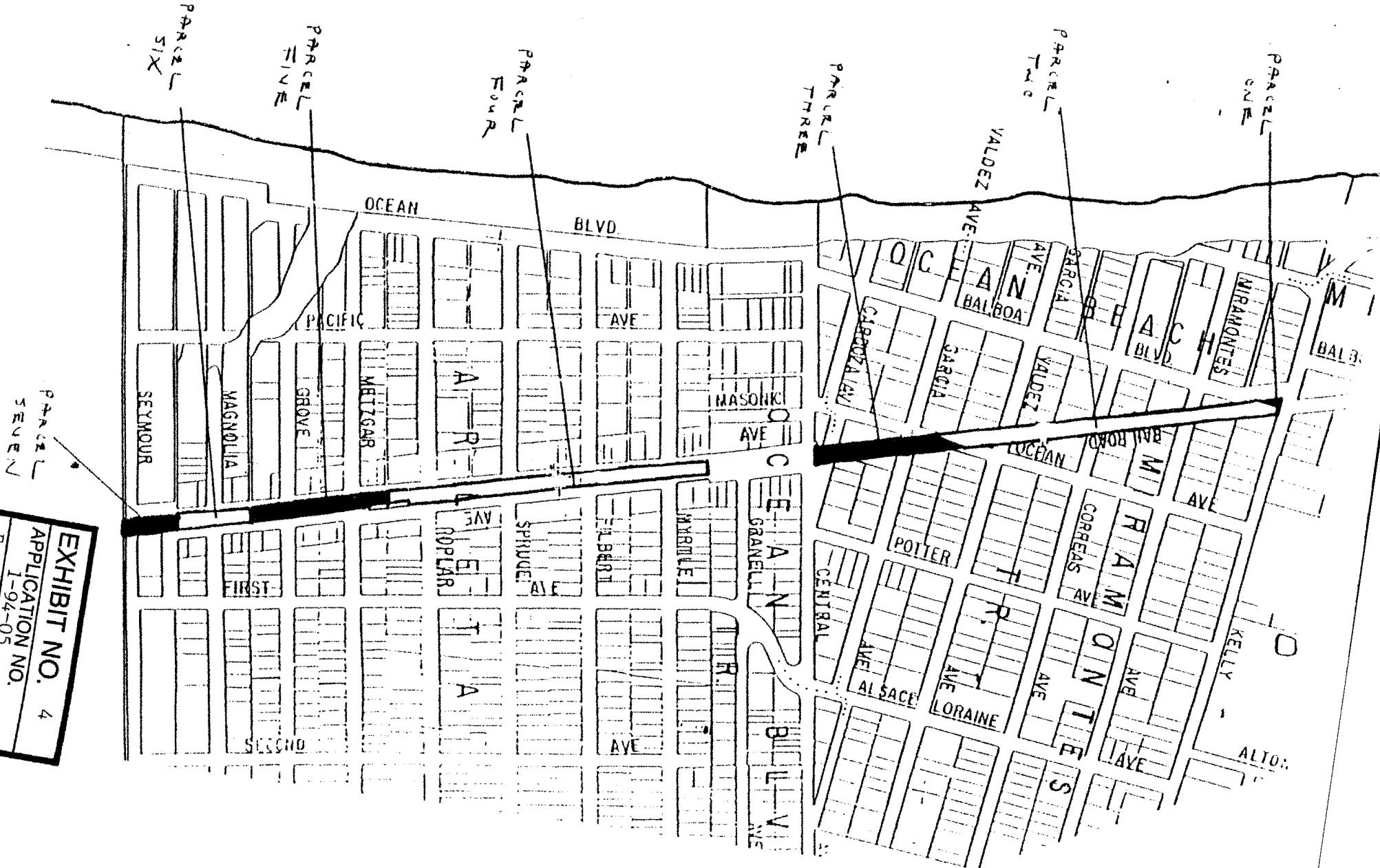
APPLICATION NO.  
1-94-05

4/19/93 airphoto

California Coastal Commission



Notice: This is neither a plat nor a survey. It is furnished merely for your convenience to aid you in locating the land indicated herein with reference to streets and other land. No liability is assumed by reason of any reliance hereon.



**EXHIBIT NO. 4**  
APPLICATION NO. 1-94-05  
Existing parcel configurations

Notice: This is neither a plat nor a survey. It is furnished merely as a guide to aid you in locating the land indicated by the numbers and reference to streets and other land. No liability is assumed by reason of any reliance hereon.

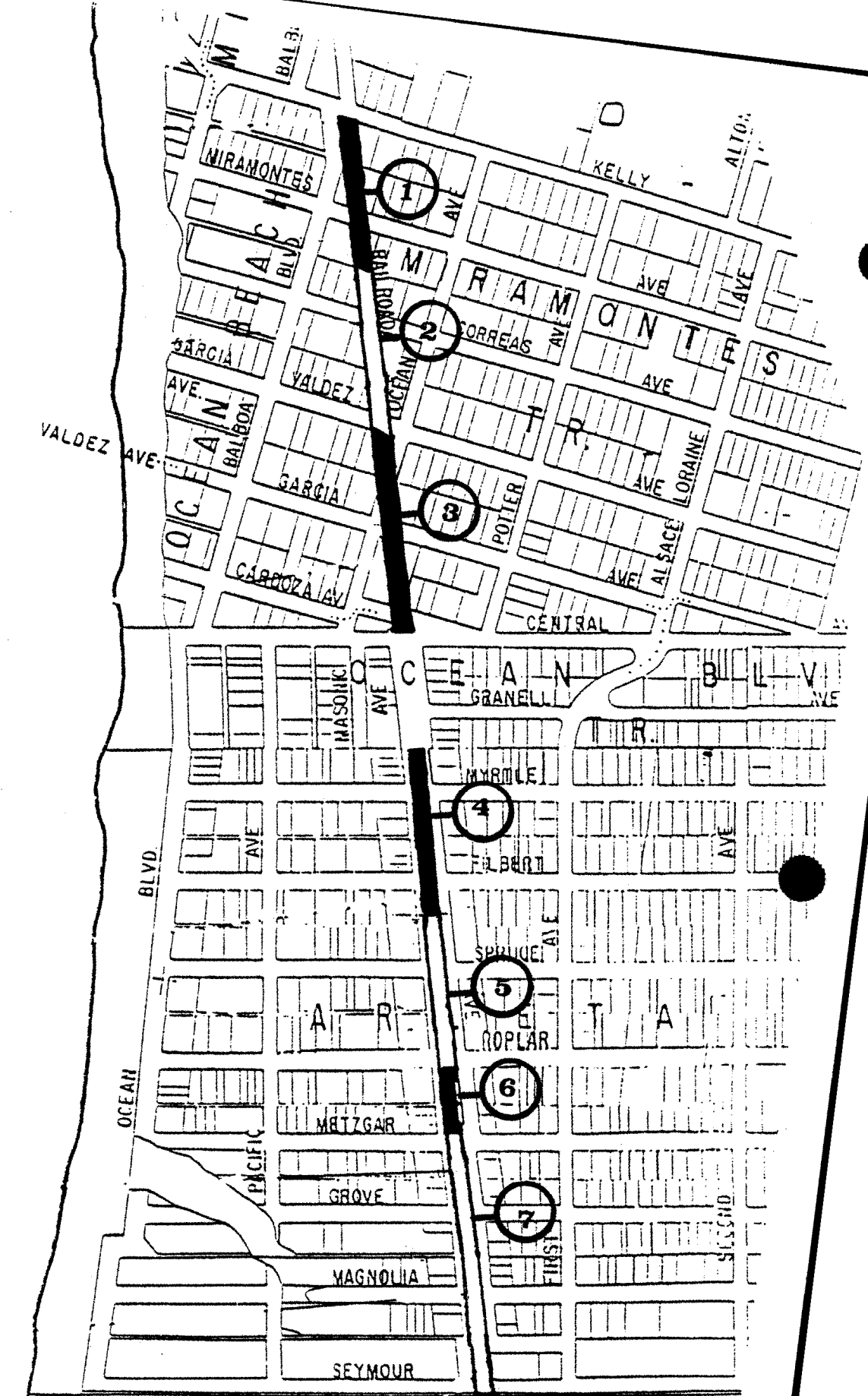


EXHIBIT NO. 5  
APPLICATION NO.  
1-94-05  
Proposed parcel  
configurations

**GARRISON LAW CORPORATION**  
**A PROFESSIONAL CORPORATION**

RECEIVED  
FEB 11 2000

10 February 2000

CALIFORNIA  
COASTAL COMMISSION

Mr. Jack Liebster  
California Coastal Commission, North Coast Area  
45 Fremont Street, Suite 2000  
San Francisco, CA 94105-2219

EXHIBIT NO. 2

APPLICATION NO.

R-1-94-005 PERA

RE: REQUEST FOR REVOCATION OF COASTAL DEVELOPMENT PERMIT  
FOR LOT LINE ADJUSTMENT

Application #: 1-94-05

APN: 056-096-010, 056-125-110, 064-053  
010, 064-073-010, 064-192-030, 064-213  
010, 064-313030, and 064-313-040  
and C of C #9308916

Applicants: Donald Pera; Maralyn Pera; Alice Francis

Dear Mr. Liebster:

This letter requests that the Coastal Commission review and revoke the above referenced Coastal Development Permit. This request is based upon numerous substantial and serious inaccuracies and omissions regarding applicant's application to the Coastal Commission for lot line adjustment.<sup>1</sup>

This is also request to revoke the Coastal Development Permit based upon violation of the Subdivision Map Act.

<sup>1</sup> We note that 14 CCR 13108 states that "at the next regularly scheduled meeting... the executive director shall report the request for revocation to the commission with a preliminary recommendation on the merits of the request."

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P. O. BOX 9296  
AUBURN, CALIFORNIA 95603-9296  
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FACSIMILE: (530) 885-7247

EMAIL: GLC@GARRISONLAWCORP.COM

Applicants based application for lot line adjustment upon prior conditional Certificates of Compliance. These conditional Certificates of Compliance, and subsequent lot line adjustment appear to violate the Subdivision Map Act.

Local agencies are barred from issuing any permit or granting any approval necessary to develop the property if the Subdivision Map Act has not been complied with. [Govt C §66499.34].

The above request to revoke the Coastal Development Permit is also in accord with the California Administrative Code, Title 14. Natural Resources, Division 5.5, Chapter 5 (14 CCR 13105 (2000)). The California Code of Regulations states that the "[g]rounds for revocation of a permit shall be" for:

Intentional inclusion of inaccurate, erroneous or incomplete information in connection with a coastal development permit application, where the commission finds that accurate and complete information would have caused the commission to require additional or different conditions on a permit or deny an application.<sup>2</sup>

The Coastal Commission, in reliance on the information provided by the applicant, erroneously issued Coastal Development Permit 1-94-05, dated April 12, 1994. The

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<sup>2</sup>The Coastal Commission shall also revoke any coastal development permit if it finds "[f]ailure to comply with the notice provisions of Section 13054." It does also appear that applicant may not have followed required notice provisions. For example, applicant's application to the HMB Planning Commission for lot line adjustment dated October 29, 1993 includes an uncompleted Affidavit of Certified Property Owners List. This Affidavit requires that the applicant provide "names and addresses of... adjacent properties located within a 300 foot radius." The Affidavit attached to applicant's application was not completed and a line was drawn across this uncompleted form with "NA" in large letters.

following information, recited by the Coastal Commission in the CDP, based upon information submitted by the applicants, is incorrect as set forth below:<sup>3</sup>

- "No environmentally sensitive areas are present on the subject parcels."

This statement is false. There is currently no dispute that the subject parcels contain wetlands<sup>4</sup>. In addition, it appears that the parcels may likely contain endangered or threatened species and habitat.

- The "lands... are substantially built out with single-family residences."

This statement is false. The parcel is contiguous and unbuilt upon. There is no development between the parcel and the Pacific Ocean to the west. The subject parcels are not on the Alsace Lorraine Assessment rolls and therefore cannot be regarded as infill.

- "The subject parcels are lands that are also designated in the City's LUP as Residential Medium Density"

This statement is false. Please see Chapter 9, page 152 of the HMB Land Use Plan dated 1985 that states that "the preferred alternative, give Coastal Act priorities, is for acquisition of the subdivided area west of Railroad Avenue for State Beach expansion. HMB Land Use law also requires that a "specific plan shall be prepared for the entire

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<sup>3</sup> Bulleted quotes are from the Staff Report: Consent Calendar for Application 1-94-05 prepared based upon applicant's application.

<sup>4</sup> Please see study conducted by May Consulting.

area...[and] shall show the locations of roads and structures." This specific plan and accompanying environmental documents shall be submitted to the Planning Commission, who may recommend additional conditions for development of the site." The Land Use law also requires that the "specific plan shall be subject to environmental review under... CEQA." Instead, applicants seek to develop parts of the Site piecemeal, with Categorical Exclusion from CEQA and without any environmental review.

- "The parcels are physically distant from the sea"

The City of Half Moon Bay Land Use Plan notes the close proximity of this land to the Ocean and expresses concern that it is located in "an area where the width of current public ownership is quite limited."<sup>5</sup>

- The parcels are zoned "R-1 B-1"

The Administrative Record lacks sufficient information evidencing the date that any zoning ordinance was legally enacted. It does appear that applicants are relying on a map without indication of origin. Moreover, this map does not show that areas West of Railroad Avenue<sup>6</sup> are zoned to support the proposed projects. Commissioner Toni Taylor correctly noted during the January 27, 2000 hearing that the area claimed to be zoned residential could actually just be the result of a thicker lined pen.

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<sup>5</sup> Chapter 9, page 152 of the HMB Land Use Plan

Back on January 13, 1994, the Planning Commission staff report declared that "the Land Use Plan provides for a planned unit development to the west of Railroad Avenue" according to the "[t]he Planning Director." [Emphasis in Original]. The parcels in question all are all west of Railroad Avenue, located in the Oceanshore Railroad Right of Way.

Despite this, per the January 13, 1994 staff report, the Planning Director declared that the land is not PUD. The Planning Director declared that "these pieces of property are located within the Railroad Avenue right of way." The Planning Director therefore seemed to incorrectly claim that the land is in the undeveloped right of way of a public street, namely *Railroad Avenue*, and not in the *Oceanshore Railroad Right of Way*. There appears to be no administrative record that supports the Director's incorrect assertion.

Please also see the January 4, 2000 from the California Coastal Commission to Augeas Corporation. Mr. Otter of the Coastal Commission states that it is his best recollection that:

[w]e did not certify the subject area for residential use. In fact, it is my understanding that this area to the west of Railroad Avenue was to always remain as Open Space." [Emphasis in original].

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<sup>6</sup> Railroad Avenue is a street, partially built, partially on paper. The Occanshore Railroad Right of Way is west and adjacent to Railroad Avenue.

Mr. Jack Liebster  
February 10, 2000  
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The administrative record cannot support any finding that zoning has been legally enacted and certified in support of the applications.

- "Railroad Avenue, a City-owned street, runs along the entire east and the entire west sides of the subject parcels."

This statement is false. Railroad Avenue is a City owned street, partially built, partially paper. It runs along the east side of the subject parcel, not the west side. Note that applicant did not produce a map clearly showing otherwise, because such a recorded map cannot be found in County records.<sup>7</sup>

- "The project does not have a significant adverse effect on the environment, within the meaning of CEQA" and has "consistency with the Coastal Act."

This statement is false. The project appears to be an orchestrated attempt to develop the parcels by slight incremental steps. Please also see the attached February 8, 2000 Appeal letter from this office to the City Council of Half Moon Bay that sets forth this analysis in much greater detail.

Applicant improperly obtained conditional Certificates of Compliance from City staff, then quickly obtained lot line adjustment, and now seeks to develop.

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<sup>7</sup> Please see page three of the Coastal Commission Staff report that does state that "[t]he Railroad Avenue Right of Way is not clearly shown."



Each step has received absolutely no CEQA analysis but for a declaration of Categorical Exemption. This is despite the presence of wetlands, likely presence of threatened species and habitat, negative impact upon previously unbroken and historical beach access, that the General Plan calls for parcels to remain open space, that the parcels are part of historic Oceanshore Railroad, adjacent to the old railroad depot and must be evaluated pursuant the National Historic Preservation Act (NHPA), and has direct growth inducing impacts.

It is also noted that the applicant has in excess of 20 sewer entitlements for the Oceanshore Railroad Right of Way parcel. CEQA requires review without project segmentation and incrementalization. This failure to conduct environmental review was also based upon applicant's claims that the application involves "no development."<sup>3</sup>

- "The City of Half Moon Bay acted as lead agency for this project under CEQA and found that the project was categorically exempt."

This statement is false. The City did not act as lead agency. The Planning Department of the City of Half Moon Bay failed to evaluate the lot line adjustment. The Planning Director told the Planning Commission in its January 13, 1994 report that the "City cannot deny it [Pera's lot line adjustment application], cannot impose any conditions, or ask for any exactions or dedications."

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<sup>3</sup> Pera's October 29, 1993 Application to HMB for lot line adjustment

These assertions are without support under the law.<sup>9</sup> The City approved the lot line adjustment the next day.

- "Local Approvals Received: City of Half Moon Bay lot line adjustments SUB-08-93, and seven conditional certificates of compliance, No. 93098915 to No. 93098921."

This statement is incomplete or erroneous. Again, the City did not review the lot line adjustment. Moreover, the conditional Certificates of Compliance and lot line adjustment applications were granted upon incomplete and erroneous information and appear to violate the Subdivision Map Act. Please also see the said enclosed February 8, 2000 letter from this office to the HMB City Council that goes into greater detail regarding the many examples of incomplete and erroneous information.

- "The subject parcels were created in 1905 when the Old Ocean Shore Railroad was abandoned."

This statement is false. The Oceanshore Railroad continued operations well into the 1920's. In addition, Mr. Cline's letter to Half Moon Bay dated October 14, 1992 in support of request for Certificates of Compliance states that they "are looking forward to clearing up the historic creation of these parcels... to provide the best use of this property." Mr. Cline then stated that there were "seven

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<sup>9</sup> We also note that the Planning Director's assertions were exactly contrary to the legal opinion dated November 16, 1993 from Robert J. Lanzone, HMB City Attorney to the Planning Director. The legal opinion states that "the review body is required to determine whether the parcels resulting from the lot line adjustment will conform to local zoning... ordinances." The legal opinion also states that the Government Code "allows for conditions and exactions to be imposed" to facilitate the relocation of existing utilities, infrastructure, or to "maintain or enhance public [coastal] access."

separate parcels" based upon the "1924 deed on the Pera parcels" which was "included."

The conditional Certificates of Compliance dated February 18, 1993 state a different historical basis. Each of the six conditional Certificates of Compliance state historical claim based upon deeds dated in 1905.<sup>10</sup>

- "Subject parcels... [contain only] four existing street and utility crossings that have been acquired through use"

This statement is false. Pera granted title in fee to three actual streets, namely Poplar, Grove, and Magnolia to the City in the same transaction wherein the City of Half Moon Bay granted Pera's 1994 lot line adjustment.

- "development [will] not interfere with the public's right of access to the sea"

This statement is incorrect. There is unbroken and continuous historical access to the Ocean across the subject parcel that would be significantly impacted upon as the result of build out.

- "Project Location... APN's 056-096-010, 056-125-110, 064-053-010, 064-073-010, 064-192-030, 064-213-010, 064-313030, and 064-313-040" with project description to "[a]djust the boundary lines between 7 parcels."

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<sup>10</sup> In addition, Please also see the letter dated January 28, 2000 from the County of San Mateo, Department of Public Works that states that it has no record of any division of the Pera parcel into any lots. The agency does have "a Record of Survey on file for that portion of the right-of-way between Kelly and Central" but

It is noted that there are eight APN numbers. It must also be noted that each conditional Certificate of Compliance had either multiple APNs or only portions of APNs. Various conditional Certificates serve to divide APN's. In addition, we are also still investigating what may be a lack of continuity and accord among the various parcel APN's, the Certificates of Compliance, and the various deeds and legal descriptions.

In addition, the claimed parcels are based on incorrect survey conducted by Mr. Joe Bennie. Increasing interest in these applications has brought about closer examination of Mr. Bennie's survey. This examination has discovered significant discrepancies in Mr. Bennie's survey.

Two separate independent surveys indicate that the Bennie Survey is in error.

The first independent survey was conducted by Meridian Survey and Engineering on behalf of property owner Scott Singer located south and adjacent. The Meridian Survey found significant error in the Bennie Survey.

The second independent survey was conducted by Mr. Jim Grady, 320 Mirramontes, Half Moon Bay, CA. Mr. Grady presented oral testimony of survey he obtained of his property north and adjacent. Mr. Grady also entered survey map into the record during 1/27/00 Half Moon Bay Planning

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there is no "Parcel Map, Subdivision Map [or] Record of Survey" that show any legal division of the Pera parcel into seven lots.

Mr. Jack Liebster  
February 10, 2000  
Page 11 of 12

Commission meeting. Mr. Grady's survey also shows that the Bennie survey is in error.

It also must be noted that Mr. Bennie appears to have had significant conflicts of interest. Mr. Bennie was recommended to do survey by applicant's real estate agent, Mr. David Cline. Moreover, Mr. Bennie's wife was owner and agent for Mr. Cline's brokerage, Coldwell Banker.

As a predictable and inevitable result of the mistaken parcels, lot line disputes, surveys, zoning controversies and conflicting claims of ownership, there has been a bevy of litigation surrounding these parcels. Current owners and recent buyers have filed numerous Quiet Title actions which are pending. The applicants have sued at least two adjacent parcel owners showing that there exists confusion surrounding the alleged boundary lines. C.f. Pera v. Singer San Mateo County Superior Court 407380 and Pera V. Spiro, San Mateo Superior Court.

One buyer of a Pera property has also filed a Quiet Title action. Another buyer of a Pera property has formally noticed his neighbor that the neighbor is encroaching 10 feet on the newly acquired Pera property.

Therefore, this letter requests that the above-referenced Coastal Development Permit be revoked under California Administrative Code, Title 14. Natural Resources, Division 5.5, Chapter 5, Coastal Development Permits Issued by Coastal Commission, 14 CCR 13105 (2000). Please do not

Mr. Jack Liebster  
February 10, 2000  
Page 12 of 12

hesitate to contact the undersigned or Mr. Garrison of this office if you have any questions.

Sincerely,



Herman I. Kalfen, Esq.  
GARRISON LAW CORPORATION

Enclosure (as stated)

Cc: Mayor & Honorable Members of the HMB City Council  
Honorable Members of the HMB Planning Commission  
Mr. Charles Shea, (Cesari, Werner, and Moriarty)  
Mr. Keith Sugar, (Law Offices of Keith Sugar)

**GARRISON LAW CORPORATION**  
**A PROFESSIONAL CORPORATION**

8 February 2000

CITY CLERK-HMB  
00 FEB -8 AM 10:58

Mayor Coleman and Honorable Members  
of the City Council  
City of Half Moon Bay  
City Hall  
Half Moon Bay, CA 94019

RE: APPEAL - ENVIRONMENTAL AND ADMINISTRATIVE REVIEW  
REQUIRED FOR DEVELOPMENT OF OCEANSHORE RAILROAD RIGHT OF  
WAY PARCELS

1. APPEAL FROM PLANNING COMMISSION DETERMINATION  
GRANTING OF COASTAL DEVELOPMENT PERMIT AND APPROVAL  
OF APPLICATION FOR DEVELOPMENT OF SMITH - PDP-70-99
2. OBJECTION TO APPEAL, IF ANY, OF DENIAL OF COASTAL  
DEVELOPMENT PERMIT AND APPLICATION FOR DEVELOPMENT  
OF PERA - PDP-38-99
3. OBJECTION TO APPEAL, IF ANY, OF PENDING DENIAL OF  
COASTAL DEVELOPMENT PERMIT AND APPLICATION FOR  
DEVELOPMENT OF LABUDA; PDP-03-00

Dear Mayor Coleman and Honorable Members of the City Council:

Mr. Pera, Mr. & Mrs. Labuda, and Terese Ambrosia Smith all appeared on January 27, 2000 before the Half Moon Bay Planning Commission with applications for Coastal Development Permits and project approvals. We understand that the Planning Commission denied Pera, stated denial of Labuda, and approved Smith.<sup>1</sup> We hereby bring this appeal to the City Council of the January 27, 2000 action by the Planning Commission regarding its approval of the Smith project.

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<sup>1</sup> We understand that Planning Commission Heinz seeks to change his vote from yes to no on the Smith application. If successful, then the Planning Commission would have sufficient votes to deny the Smith application.

**BAY AREA**  
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In addition we expect other parties to bring appeal regarding denials of the Pera and Labuda applications. Therefore, if any appeal is brought and considered by the City Council regarding Pera and Labuda, the herein is also presented to the City Council in support of any finding of denial by the Planning Commission of the Labuda and Pera permit and development applications.

This is also to object to any approval of the above projects without further development of the administrative record, substantial evidence and the required preparation of an Environmental Impact Report pursuant to the California Environmental Quality Act (CEQA) California Public Resources, Division 13 Environmental Protection.

There are numerous legal issues and lawsuits as well as technical features surrounding these parcels which present a compelling need for further environmental and technical review of the project applications prior to the issuance of a determination as to the status of these parcels under CEQA.

Review of the Administrative Record evidences that the City of Half Moon Bay has been remiss in fulfilling its obligations in the environmental regard. Unless and until these issues are addressed and resolved to the satisfaction of the requirements under CEQA, as well as the residents of the City of Bay, the Administrative Record cannot and does not support categorical exemption or negative declaration, or approval of a Coastal Development Permit.

**FACTORS PRESENT IN INSTANT PROJECTS MANDATING FURTHER ENVIRONMENTAL REVIEW INCLUDE:**

- A. The parcels are in the coastal zone;
- B. The parcels in question contain wetlands or are in close proximity to wetlands;<sup>2</sup>

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<sup>2</sup> There are scientific studies and testimony that demonstrate the existence of wetlands on the parcel including but not limited to the 1999 study by May Consulting. It also must be noted, for the reasons set forth herein, the Army Corp of Engineers should not find that the proposed action falls within any Categorical Exemption. Therefore, the proposed action cannot support any Finding of No Significant Impact (FONSI), and further environmental review is required pursuant to the National Environmental Policy Act (NEPA)



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- C. There is no development between the parcels and the ocean. The subject parcels are not on the Alsace Lorraine Assessment rolls and therefore cannot be regarded as infill;
- D. There is unbroken and historical beach access and easement across subject parcels;
- E. The General Plan calls for these parcels to remain open space;<sup>3</sup>
- F. The parcels are part of the historic Oceanshore Railroad and as such *must* be evaluated pursuant to the National Historic Preservation Act (NHPA). There are several features present that serve to maintain the historical integrity of the Oceanshore Railroad, including but not limited to the close proximity of the original railroad station to the subject parcels thereby creating a contiguous open space railroad corridor;
- G. Evaluation is required for threatened and endangered species and habitat known to be located in close proximity, in compliance with the Civil and Criminal mandates of law;
- H. Development of the subject parcels will cause direct growth inducing impacts. CEQA requires environmental review without segmentation. CEQA requires environmental review with regard to growth inducing impacts of the project to the entire and contiguous Oceanshore Railroad Right of Way. It is also noted that Mr. Pera has in excess of 20 sewer entitlements on the parcel.

This is also request for your investigation of what appears to be possible serious conflicts of interest with possible

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<sup>3</sup> Please see Chapter 9, page 152 of the HMB Land Use Plan dated 1985 that states that "the preferred alternative, give Coastal Act priorities, is for acquisition of the subdivided area west of Railroad Avenue for State Beach expansion. The Land Use Plan also notes the concern that this is "an area where the width of current public ownership is quite limited." HMB Land Use law also requires that a "specific plan shall be prepared for the entire area...[and] shall show the locations of roads and structures." This specific plan and accompanying environmental documents shall be submitted to the Planning Commission, who may recommend additional conditions for development of the site." The Land Use law also requires that the "specific plan shall be subject to environmental review under... CEQA." Instead, applicants seek to develop parts of the Site piecemeal, with Categorical Exclusion from CEQA and without any environmental review.

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Map Act violations just discovered in Half Moon Bay, CA. These violations and conflicts involve Half Moon Bay city employees regarding a major parcel of ocean view land. We are not herein accusing anyone of improper or illegal behavior. We only note the several serious appearances of impropriety as set forth below that may require your further investigation.

**POSSIBLE MAP ACT VIOLATIONS - OCEANSHORE RAILROAD RIGHT OF WAY IMPROPERLY DIVIDED**

It appears that Mr. Donald Pera inherited a large tract of land that was part of the old Oceanshore Railroad Right of Way. Then, in 1993, Mr. Pera, along with his real estate broker, Mr. David Cline, apparently obtained conditional Certificates of Compliance, not in accord with the Subdivision Map Act. Then, in 1994, Mr. Pera with Mr. Cline did a lot line adjustment based on the improper conditional Certificates of Compliance. They sought to adjust the lot lines of the newly created seven parcels.<sup>4</sup>

Then, Mr. Pera sold one of the seven parcels to Mr. Labuda. Mr. Labuda then took the parcel purchased from Mr. Pera, along with two other parcels that Mr. Labuda acquired east of the Railroad Right of Way, and did his own subsequent lot line adjustment. Labuda adjusted the lot lines of the parcel acquired by Mr. Pera with his two lots to the east, creating three "new" lots.

Mr. Labuda then optioned one of the three new lots to Terese Ambrosia Smith, Half Moon Bay employee and wife of Mr. William Smith, Assistant Director of Public Works. Mr. Pera, Mr. Labuda, and Mrs. Smith all currently have applications pending for Coastal Development Permits to develop three of the parcels derived from the improperly subdivided Pera Railroad right of way parcel.

The original division of the Railroad right of way parcel into seven parcels, and then the subsequent lot line adjustments all appear to be in violation of the Subdivision

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<sup>4</sup> Subdivision is defined at Govt C § 66424 to mean "the division, by any subdivider, or any unit or units of improved or unimproved land, or any portion thereof, shown on the latest equalized county assessment roll as a unit or as contiguous units, for the purpose of sale, lease or financing, whether immediate or future. Property shall be considered as contiguous units, even if it is separated by roads, streets, utility easement or railroad rights-of-way."

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Map Act. In addition, this series of transactions could possibly appear to be an orchestrated attempt to circumvent the Map Act and develop individual parcels on what was and still should be a single contiguous parcel.

**SUBDIVISION MAP ACT HAS NOT BEEN COMPLIED WITH WHEN  
OCEANSHORE RAILROAD RIGHT OF WAY WAS SUBDIVIDED INTO LOTS VIA  
CONDITIONAL CERTIFICATES OF COMPLIANCE**

There is not sufficient information in the administrative record to support any finding that the Subdivision Map Act has been properly complied with regarding the subject parcel.

Local agencies are barred from issuing any permit or granting any approval necessary to develop the property if the Subdivision Map Act has not been complied with. [Govt C §66499.34].

Mr. Cline's letter to Half Moon Bay dated October 14, 1992 in support of request for Certificates of Compliance states that they "are looking forward to clearing up the historic creation of these parcels... to provide the best use of this property." Mr. Cline then stated that there were "seven separate parcels" based upon the "1924 deed on the Pera parcels" which was "included."

The conditional Certificates of Compliance dated February 18, 1993 state a different historical basis. Each of the six conditional Certificates of Compliance state historical claim based upon deeds dated in 1905.<sup>5</sup>

Please also see the letter dated January 28, 2000 from the County of San Mateo, Department of Public Works that states that it has no record of any division of the Pera parcel into any lots. The agency does have "a Record of Survey on file for that portion of the right-of-way between Kelly and Central" but there is no "Parcel Map, Subdivision Map [or] Record of Survey" that show any legal division of the Pera parcel into seven lots.

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<sup>5</sup> It must also be noted that each conditional Certificate of Compliance had either multiple APNs or only portions of APNs. Various conditional Certificates serve to divide APN's. is regarding several parcels per the Assessor's Parcel Numbers. Therefore, the conditional Certificates are not supported by the prior APN divisions. In addition, we are also still investigating what may be a lack of continuity and accord among the various parcel APN's, the Certificates of Compliance, and the various deeds and legal descriptions.

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There is insufficient historical documentation to support the conditional Certificates of Compliance. In addition, we do not see documentation regarding sufficient notice and comment regarding the public. It would appear that the conditional Certificates were improperly issued, based on incorrect and incomplete information.

In addition, it is also noted that the related conditional Certificates of Compliance are regarding more than five parcels. The law is clear that a "tentative and final map shall be required for all subdivisions creating five or more parcels." [Govt C § 66426]. "The Act requires a final subdivision map or a parcel map for any division of land." [Govt C §66499.30]. In addition, a sale, lease, or encumbrance of only a portion of a larger parcel triggers the provision of the Act." [Govt C §66499.30] Applicants have failed to produce any final subdivision map or parcel map in support of the applications.<sup>6</sup>

#### OCEANSHORE RAILROAD RIGHT OF WAY SUBJECT OF IMPROPER LOT LINE ADJUSTMENTS BASED ON IMPROPER CONDITIONAL CERTIFICATES OF COMPLIANCE

After obtaining the conditional Certificates of Compliance, applicants proceeded with lot line adjustment. Any lot line adjustment based upon the improper conditional Certificates of Compliance cannot be proper.

It also must be noted that Pera's Planning Permit Application dated October 29, 1993 for lot line adjustment appears to also contradict the earlier historic claim of seven lots underlying the earlier conditional Certificates of Compliance. Mr. Pera's October 29 application was for lot line adjustment to create seven lots out of what was claimed to be eight lots.

In addition, Pera's October 28, 1993 application also claimed that it involved "no development."

In addition, hand written notations that were repeated four times in the Legal Descriptions of the parcels in the Pera

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<sup>6</sup> Please also see 64 Ops. Cal. Atty. Gen. 549, 550 (1981), and Govt. Code §§ 66426, 66428 further stating requirement of property subject to division must be recorded on a final or parcel map.

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application also wrongly claimed that "4 [of the] parcels [are] in Arleta Park."

Moreover, the Planning Department failed to evaluate the lot line adjustment. The Planning Director told the Planning Commission in its January 13 report that the "City cannot deny it [Pera's lot line adjustment application], cannot impose any conditions, or ask for any exactions or dedications."

Later, "Commissioner Allis asked why the City didn't just ask for dedication instead of just easements. The Planning Director responded because this is a lot line adjustment and that City cannot require dedications or exactions."<sup>7</sup> "[T]he Planning Director stated that the important thing to remember is that the City cannot deny the lot line adjustment."<sup>8</sup> [Emphasis in original.]

This is exactly contrary to the legal opinion dated November 16, 1993 from Robert J. Lanzone, City Attorney to Chris Gustin, City Planner. The legal opinion states that "the review body is required to determine whether the parcels resulting from the lot line adjustment will conform to local zoning... ordinances." The legal opinion also states that the Government Code "allows for conditions and exactions to be imposed" to facilitate the relocation of existing utilities, infrastructure, or to "maintain or enhance public [coastal] access."

The City of Half Moon Bay, by letter from Planning Director Chris Gustin dated January 14, 1994, approved Pera's lot line adjustments. Gustin included an Approval of Lot Line Adjustment form that states that it is a "[b]oundary adjustment resulting in the same number of lots." Mr. Gustin also stated that the City "will make every attempt to expedite the final steps in this process so that no more of your time is wasted."

It is also noted that even if the conditional Certificates of Compliance are somehow deemed proper, the fact that the Certificates are conditional require that all conditions must be met. There is no evidence to support that there was

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<sup>7</sup>Please see page 9 of the 1/13/94 report.

<sup>8</sup>Please see page 8 of the 1/13/94 report.

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satisfaction of any actual or implied conditions of the conditional Certificates of Compliance.

There was never any appropriate environmental review as part of the process of acquiring conditional Certificates of Compliance, lot line adjustments, or the approval of the Smith project. This is despite the many factors set forth above that warrant further CEQA analysis.

In addition, applicants inaccurately claimed that there were no sensitive species involved with the applications for conditional Certificates of Compliance and lot line adjustments.

#### ADMINISTRATIVE RECORD DOES INCLUDE DATE OF ENACTMENT OF ZONING ORDINANCE APPLICABLE TO THE PARCEL

The Administrative Record lacks sufficient information evidencing the date that any zoning ordinance was legally enacted. It does appear that applicants are relying on a map without indication of origin. Moreover, this map does not show that areas West of Railroad Avenue<sup>9</sup> are zoned to support the proposed projects. Commissioner Toni Taylor correctly noted during the January 27, 2000 hearing that the area claimed to be zoned residential could actually just be the result of a thicker lined pen.

Back on January 13, 1994, the Planning Commission staff report declared that "the Land Use Plan provides for a planned unit development to the west of Railroad Avenue" according to the "[t]he Planning Director." [Emphasis in Original]. The parcels in question all are all west of Railroad Avenue, located in the Oceanshore Railroad Right of Way.

Despite this, per the January 13, 1994 staff report, the Planning Director declared that the land is not PUD. The Planning Director declared that "these pieces of property are located within the Railroad Avenue right of way." The Planning Director therefore seemed to incorrectly claim that the land is in the undeveloped right of way of a public street, namely Railroad Avenue, and not in the Railroad

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<sup>9</sup> Railroad Avenue is a street, partially built, partially on paper. The Railroad Avenue Right of Way is west of Railroad Avenue.

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Avenue Right of Way. There appears to be no administrative record that supports this incorrect assertion.

Please also see the January 4, 2000, from the California Coastal Commission to Augeas Corporation. Mr. Otter of the Coastal Commission states that it is his best recollection that:

[w]e did not certify the subject area for residential use. In fact, it is my understanding that this area to the west of Railroad Avenue was to always remain as Open Space." [Emphasis in original].

The administrative record cannot support any finding that zoning has been legally enacted and certified in support of the applications.

#### **EIGHT SEPARATE CONFLICTS OF INTEREST APPARENT**

In addition to the serious concerns regarding Map Act violations, there are serious and significant appearances of conflict of interests involving city officials of Half Moon Bay. These conflicts of interest trace back to at least 1993 and involve the same handful of people.

First, when Mr. Pera and Mr. Cline obtained the 1994 lot line adjustment, the City also received something of value. It appears that the City of Half Moon Bay received title to three streets, namely sections of Poplar, Grove, and Magnolia. The city did not previously have title or easement for the streets, except perhaps by prescription. It further appears that the Half Moon Bay Department of Public Works intentionally or mistakenly paved these three streets. The City agreed to Certificate of Compliance and lot line adjustment for Pera and Pera gave the City title to the three streets in the same transaction.

Second, Terese Ambrosia Smith's husband, William Smith is the Assistant Director of Public Works for the City of Half Moon Bay. This is of additional concern to the degree that the Department of Public Works was involved in the prior placing of the three streets across the original Pera parcel.

Third, Terese Ambrosia Smith assisted Pera to transfer three sewer entitlements in her official capacity as a Half Moon Bay City employee. Terese Ambrosia Smith was across the

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counter in City Hall and assisted with the transfer three sewer permits from Pera to Labuda. This transfer of sewer permits was a condition of the escrow of the sale of one of Mr. Pera's "new" lots to Mr. Labuda. Labuda buys one of Pera's seven "new" lots, and also gets three sewer entitlements. It is noted that Terese Ambrosia Smith would have had some knowledge of the transaction between Pera and Labuda prior to the general public.

Forth, Mr. Labuda takes the "new" lots purchased from Pera and does lot line adjustment with two other parcels that Labuda owns to the east. Labuda then distributes the three sewer entitlements that he received from Pera as a condition of escrow, among the three "new" parcels. Then, Terese Ambrosia Smith obtains an option from Mr. Labuda to purchase one of the three "new" Labuda parcels.

Fifth, Mr. Labuda may have granted Terese Ambrosia Smith an option to purchase contingent upon getting a Coastal Development Permit. Mr. Labuda also may be assisting with legal representation from the Baker Mackenzie law firm to further her effort to obtain a Coastal Development Permit. If true, this would have an appearance of impropriety under the circumstances.

Sixth, it is our understanding that Terese Ambrosia Smith's real estate agent is David Cline. Similarly, it appears that Mr. Labuda's real estate agent may be Mr. Cline. Mr. Pera's real estate agent for the sale from Pera to Labuda was Mr. Cline. Mr. Cline also appears to be central to the possible 1994 Map Act violations subject of this letter.

Seventh, Terese Ambrosia Smith's agent, Mr. Cline recommended that Mr. Joe Bennie survey the Pera parcel. The Joe Bennie survey was used as a basis for the conditional Certificate of Compliance and 1994 lot line adjustment. It now appears that the Joe Bennie surveys are grossly in error.

Eighth, we now also understand that Terese Ambrosia Smith, through her agent, Mr. Cline had other conflicts of interest. David Cline has been working with Mr. Pera to develop the parcels for over a decade. Mr. Cline recommended Mr. Bennie to survey the Pera parcels. Mr. Bennie's wife was the owner



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and an agent of Coldwell Banker Real Estate where Mr. Cline is also an agent.<sup>10</sup>

It would appear that Mr. Cline, as Realtor and agent for Pera, Labuda, Smith, and Coldwell Banker, has many thousands of dollars in commissions at stake in these transactions.

Similarly, Coldwell Banker, (Realtor Cline's brokerage owned by surveyor Bennie's wife) has many thousands of dollars in commissions at stake in these transactions. Of course, Mr. Pera and Mr. Labuda also stand to profit greatly if the transactions proceed.<sup>11</sup>

In addition, Terese Ambrosia Smith also stands to profit if she is able to get a Coastal Development Permit to build on the lot, with less apparent financial risk associated with such a venture. It is again noted that Terese Ambrosia Smith was able to proceed with seller providing the Option and same legal representation<sup>12</sup>

#### SUBDIVISION OF PARCELS BASED ON INCORRECT SURVEY / ALSO CONFLICTS OF INTEREST WITH SURVEYOR

Increasing interest in these applications has brought about closer examination of Mr. Bennie's survey. This examination has discovered significant discrepancies in Mr. Bennie's survey.

Two separate independent surveys indicate that the Bennie Survey is in error. It also appears that Mr. Bennie has significant conflicts of interest as set forth elsewhere herein.

The first independent survey was conducted by Meridian Survey and Engineering on behalf of property owner Scott Singer

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<sup>10</sup>The survey error by Joe Bennie calls into question the lot lines of scores of parcels in Half Moon Bay and it has already resulted in legal action in the Superior Court of San Mateo County, CA.

<sup>11</sup> Mr. Pera has approximately 28 sewer entitlements regarding the Railroad Right of Way parcel(s).

<sup>12</sup> It is also noted that if the transaction proceeds, then the three streets built across the Pera parcels and the subsequent agreement between Pera and the City of Half Moon Bay wherein Pera grants title to the streets would essentially be ratified. This could save Terese Ambrosia Smith's husband, William (Bill) Smith and his agency, the scrutiny regarding the circumstances as to how three streets could be built upon pristine coastal bluffs without proper authorization. This is all in addition the actual financial interest, if any, that Mr. Smith may have in his wife's application.

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located south and adjacent. The Meridian Survey found significant error in the Bennie Survey.

The second independent survey was conducted by Mr. Jim Grady, 320 Mirramontes, Half Moon Bay, CA. Mr. Grady presented oral testimony of survey he obtained of his property north and adjacent. Mr. Grady also entered survey map into the record during 1/27/00 Half Moon Bay Planning Commission meeting. Mr. Grady's survey also shows that the Bennie survey is in error.

Therefore, the Bennie survey should not be relied upon for approval until this well substantiated cloud of controversy and confusion is lifted from the survey of these parcels. You cannot approve a project unless you know where the land is located upon reliable survey.

Again, we are not herein accusing anyone of improper or illegal behavior. We only note the above appearances of impropriety and request your further investigation of such serious matters. It is noted that Government Code section 66499.31 states that violations of the Subdivision Map Act are chargeable as a felony, wherein:

[e]ach violation.. by a person who is the subdivider or an owner of record, at the time of the violation, of property involved in the violation shall be punishable by imprisonment in the county jail not exceeding one year or in the state prison, by a fine not exceeding ten thousand dollars (\$10,000), or by both that fine and imprisonment." [Government Code §66499.31].

Charges pursuant to Government Code §66499.31 would be in addition to investigation and evaluation for additional possible charges arising from the matters related to the herein upon determination of any improper conduct including, but not limited to actions based upon violation of laws regarding conspiracy, fraud,<sup>13</sup> and environmental compliance.<sup>14</sup>

<sup>13</sup> Even conveyance within a family with subsequent conveyance by them to others is violation of Subdivision Map Act and possible conspiracy. [27 Op Atty Gen Cal 66].

<sup>14</sup> We are also concerned with what appears to be less than full compliance with the environmental laws of the State, including the California Environmental Quality Act (CEQA). Although the property appears to contain wetlands, may contain endangered or threatened species, contains historic resources, has no development

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We note that remedies available under the Subdivision Map Act do not limit other remedies available. For example, Govt Code §66499.33 states that:

[t]his division does not bar any legal, equitable or summary remedy to which any aggrieved local agency or other public agency, or any person, firm, or corporation may otherwise be entitled, and any such local agency or other public agency, or such person, firm, or corporation may file a suit in the superior court of the county in which any real property attempted to be subdivided or sold, leased, or financed in violation of this division or local ordinance enacted pursuant thereto is located, to restrain or enjoin any attempted or proposed subdivision or sale, lease, or financing in violation of this division or local ordinance enacted pursuant thereto.

Without evidence that the prerequisites set forth above have been met, there can be no administrative record to support approval of any development upon the parcels derived from the Pera Oceanshore Railroad Right of Way property. This includes the Smith, Labuda, and Pera parcels subject of the herein, all derived from the original Pera Oceanshore Railroad property.

Approval of Coastal Development Permit and project without a fundamental Administrative Record and required environmental review would not be appropriate.

In addition, approval of Smith, Labuda, or Pera applications would make it more difficult to correct the errors and omissions set forth herein.

In addition, local agencies are barred from issuing any permit or granting any approval necessary to develop the property if the Subdivision Map Act has not been complied with. [Govt C §66499.34].

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between the parcel and the ocean, impacts previously unbroken and historical beach access and easement, and has significant growth inducing impacts, we can find no record of appropriate environmental analysis to date.

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We trust that this Council will not approve any permit or development by applicants Smith, Labuda, and Pera and each of them at this time for the reasons set forth herein. Thank you for your most careful consideration of this very important matter.

Sincerely,



Herman I. Kalfen, Esq.  
GARRISON LAW CORPORATION

Enclosures

Cc: Honorable Members of the HMB Planning Commission  
Mr. Bill Shea (Cesari, Werner, and Moriarty)  
Law Offices of Keith Sugar