

CALIFORNIA COASTAL COMMISSION

45 FREMONT STREET, SUITE 2000
SAN FRANCISCO, CA 94105-2219
VOICE AND TDD (415) 904-5200



RECORD PACKET COPY

Th 8c

Filed: April 10, 2001
49th Day: May 29, 2001
Staff: JRR-SF
Staff Report: April 27, 2001
Hearing Date: May 9, 2001

**STAFF REPORT: DETERMINATION OF APPEALABILITY
AND
SUBSTANTIAL ISSUE DETERMINATION**

APPEAL NO.: A-2-HMB-01-011

APPLICANTS: Keenan Land Company

LOCAL GOVERNMENT: City of Half Moon Bay

PROJECT LOCATION: Beachwood Subdivision at the intersection of the proposed Bay View Avenue and Highway One between Terrace and Grand View Avenues, inland of Highway One, Half Moon Bay, San Mateo County.

PROJECT DESCRIPTION: Subdivision of a 24.7-acre parcel into 83 residential lots and construction of 80 detached single-family residences, and installation of new infrastructure including roads, utilities, and a traffic signal.

APPELLANTS: Commissioners Sara Wan and Christina L. Desser
Mr. Michael Ferreira and Mr. Patrick O'Brien

SUBSTANTIVE FILE DOCUMENTS: See Appendix A

STAFF RECOMMENDATION: Substantial Issue

Table of Contents

- I. STAFF RECOMMENDATIONS, MOTIONS AND RESOLUTIONS..... 3
- II. FINDINGS AND DECLARATIONS ON DETERMINATION OF APPEALABILITY..... 4
- III. FINDINGS AND DECLARATIONS ON SUBSTANTIAL ISSUE..... 9
 - A. PROJECT LOCATION AND SITE DESCRIPTION..... 9
 - B. PROJECT DESCRIPTION..... 9
 - C. APPEAL PROCESS..... 9
 - D. STANDARD OF REVIEW 11
 - E. SUBSTANTIAL ISSUE SUMMARY..... 12
 - F. APPELLANTS CONTENTIONS THAT RAISE SUBSTANTIAL ISSUE..... 13
 - 1. *Access to the Shoreline*..... 13
 - 2. *Habitat*..... 16
 - 3. *Visual*..... 26
 - 4. *Water Quality*..... 28
 - G. APPELLANTS' CONTENTIONS THAT DO NOT RAISE SUBSTANTIAL ISSUE 30
 - H. APPELLANTS' CONTENTIONS THAT ARE NOT VALID GROUNDS FOR AN APPEAL..... 30
- IV. INFORMATION NEEDED TO EVALUATE THE REVISED PROJECT DE NOVO..... 31
 - A. HABITAT ANALYSIS 31
 - B. VISUAL 31

I. STAFF RECOMMENDATIONS, MOTIONS AND RESOLUTIONS

A. Determination of Appealability

Staff recommends that the Commission determine that it has jurisdiction over this appeal.

1. Motion

I move that the Commission find that it has jurisdiction of this appeal under Public Resources Code section 30603 and that it adopt the findings to support its jurisdiction that are set forth in the staff report.

2. Staff Recommendation that PDP 10-98 is Appealable:

Staff recommends a YES vote on the motion. The effect of a yes vote on the motion will be to adopt the following resolution and to proceed on the appeal. A majority of the Commissioners present is required to approve the motion.

3. Resolution

The Commission hereby finds that it has jurisdiction of this appeal under Public Resources Code section 30603(a)(2) and adopts the findings to support its jurisdiction that are set forth in the staff report.

B. Substantial Issue

Pursuant to Sections 30603(b) and 30625(b)(2) of the Coastal Act and as discussed in the findings below, the staff recommends that the Commission determine that a substantial issue exists with respect to the grounds on which the appeal has been filed. The proper motion is:

1. Motion

I move that the Commission determine that Appeal No. A-2-HMB-01-011 raises NO substantial issue with respect to the grounds on which the appeal has been filed under Section 30603 of the Coastal Act.

2. Staff Recommendation

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

3. Resolution to Find Substantial Issue

The Commission hereby finds that Appeal No. A-2-HMB-01-011 presents a substantial issue with respect to the grounds on which the appeal has been filed under Section 30603 of the Coastal Act regarding consistency with the Certified Local Coastal Program (LCP).

II. FINDINGS AND DECLARATIONS ON DETERMINATION OF APPEALABILITY

On March 20, 2001, the applicant requested that the City obtain from the Commission a determination on whether the CDP approved on March 20, 2001 by the City Council for the Beachwood development is administratively appealable to the Commission. (Exhibit 1.) On April 4, 2001, the applicant reiterated its request for a determination of appealability directly with the Executive Director of the Commission. (Exhibit 2.) The applicant indicated that it considered its request to trigger the requirement contained in Section 13569 of the Commission's regulations that the Executive Director respond to a request from a local government for a determination of appealability within two days of the request. On April 6, the City telephoned the Commission requesting that the Executive Director provide a determination of whether the City's action approving PDP-10-98 is appealable to the Commission. On April 6, the Executive Director agreed with the City's determination that the City's action approving the Beachwood development on March 20, 2001 is appealable to the Commission. (Exhibit 3.) The Commission notes that the Executive Director's determination is consistent with the determination of appealability made by the City at the time of the initial application as well as the determination of appealability made by the City at the time the City transmitted the Notice of Final Local Action. (Exhibits 4 and 5.)

The applicant's April 4, 2001 request to the Executive Director (Exhibit 2) raises the following issues with respect to whether the development approved by the City is appealable to the Commission:

1. A San Mateo County trial court has found that the disputed habitat areas which would be filled by the approved houses and other construction activities are not wetlands under the LCP; and
2. There is no development within 100 feet of the undisputed wetland areas on the property that the applicant concedes are wetlands within the meaning of the certified LCP.

The Commission disagrees that the two issues raised by the applicant support the applicant's contention that the City's approval of PDP 10-98 is not appealable to the Commission. As discussed below, the Commission finds that the development approved by the City of Half Moon Bay is appealable to the Commission pursuant to Section 30603(a)(2) of the Coastal Act because it is located within 100 feet of wetlands as defined in Section 13577 of the Commission's regulations.

Section 30603 of the Coastal Act provides the basis for appeal of locally issued coastal development permits to the Commission. That section provides, in part, that:

(a) After certification of its local coastal program, an action taken by a local government on a coastal development permit application may be appealed to the commission for only the following types of developments:

(1) *Developments approved by the local government between the sea and the first public road paralleling the sea or within 300 feet of the inland extent of any beach or of the mean high tideline of the sea where there is no beach, whichever is the greater distance.*

(2) *Developments approved by the local government not included within paragraph (1) that are located on tidelands, submerged lands, public trust lands, **within 100 feet of any wetland, estuary, or stream, or within 300 feet of the top of the seaward face of any coastal bluff.***

(3) *Developments approved by the local government not included within paragraph (1) or (2) that are located in a sensitive coastal resource area.*

(4) *Any development approved by a coastal county that is not designated as the principal permitted use under the zoning ordinance or zoning district map approved pursuant to Chapter 6 (commencing with Section 30500).*

(5) *Any development which constitutes a major public works project or a major energy facility. [Emphasis added.]*

Pursuant to Section 30330 of the Coastal Act, the Commission retains the ultimate responsibility for administering and implementing the provisions of the Coastal Act as a whole. Pursuant to Section 30333 of the Coastal Act, the Commission may adopt rules and regulations to carry out the purposes of the Coastal Act. Pursuant to this authority, the Commission adopted regulation Section 13577 to implement and give meaning to the term "wetland" contained in Sections 30121 and 30603(a)(2) of the Coastal Act. Section 13577 of the Commission's implementing regulations defines wetlands for purposes of determining appealability of a local action to the Commission. Section 13577 states:

For purposes of Public Resources Code Sections 30519, 30600.5, 30601, 30603, and all other applicable provisions of the Coastal Act of 1976, the precise boundaries of the jurisdictional areas described therein shall be determined using the following criteria:

...

(b) *Wetlands.*

(1) *Measure 100 feet landward from the upland limit of the wetland. **Wetland shall be defined as land where the water table is at, near, or above the land surface long enough to promote the formation of hydric soils or to support the growth of hydrophytes, and shall also include those types of wetlands where vegetation is lacking and soil is poorly developed or absent as a result of frequent and drastic fluctuations of surface water levels, wave action, water flow, turbidity or high concentrations of salts***

or other substances in the substrate. Such wetlands can be recognized by the presence of surface water or saturated substrate at some time during each year and their location with, or adjacent to vegetated wetlands or deepwater habitats.¹

... [Emphasis added.]

Section 13577 of the Commission's regulations provides that wetlands includes areas where the water table is near the land surface long enough to promote the formation of hydric soils or hydrophytes. Thus, under the definition of wetlands contained in the Commission's regulations and which is utilized for purposes of determining the appealability of a local action to the Commission, areas at the Beachwood site where the water table is near the surface long enough to support the growth of plants which normally are found to grow in water or wet ground are considered wetlands in the absence of hydric soils.

The Commission notes that under one possible interpretation of the certified LCP for the City of Half Moon Bay, the LCP excludes from its definition of wetlands, "vernally wet areas where the soils are not hydric."² The applicant's consultant, WRA, characterized some of the wetlands on this site as "vernally wet" and did not find any evidence of hydric soils at any of its five data sampling points. Based on this information, the San Mateo County Superior Court agreed with the applicant that the these areas were excluded from the definition of wetlands under the certified LCP. However, Section 13577 does not contain an exclusion for vernal wet areas where the soils are not hydric. Moreover, the Commission has disagreed with the applicant's assertion that the LCP provides for this exclusion.³ In any event, the trial's court's determination that the LCP excludes some of these potential wetland areas from the definition of wetlands is not relevant to the issue of whether the City's approval is appealable to the Commission because Section 13577 of the Commission's regulations, rather than the certified LCP, provides the definition of wetlands for purposes of determining appealability to the Commission. Accordingly, regardless of whether the Commission disagrees with the trial court's decision, the LCP definition of wetland is not the basis for determining whether development is appealable to the Commission pursuant to Section 30603(a)(2) of the Coastal Act; rather, Section 13577 of the Commission's regulations provides the definition of wetlands for the purposes of determining appealability to the Commission. Therefore, if the City of Half Moon Bay's approval includes development within 100 feet of wetlands which satisfy the criteria set forth in Section 13577 of the Commission's regulations, the locally approved coastal development permit is appealable to the Commission.

¹ 14 CCR §13577

² Half Moon Bay LUP, Appendix A, p. 226.

³ The Commission does not agree with the trial court's interpretation of the definition of wetlands contained in the City's certified LCP. The Commission instead interprets the definition of wetlands contained in the City's certified LCP in a manner consistent with the definition of wetlands contained in the Coastal Act and its implementing regulations. (See March 20, 2000 letter to City of Half Moon Bay from Ralph Faust attached as, Exhibit 6.)

A. Undisputed Wetland Areas

Notably, the property contains undisputed wetlands that the applicant agrees meet the definition of wetlands in the Coastal Act and Section 13577 of the Commission's regulations as well as the definition contained in the certified LCP. The applicant concedes that the property contains these wetlands as indicated on the wetland delineation dated October 1999, submitted to the City as part of the CDP application, and prepared by Dr. Michael Josselyn of Wetlands Research Associates. (See Exhibit 2.)

However, the applicant argues that there is no development within a 100 feet of the "undisputed wetlands" as required by Coastal Act Section 30603(a)(2). The Vesting Tentative Map is designed such that all of these undisputed wetlands would be located on one of the new lots that would be created by the subdivision approved by the City. The lot is designated as open space and does not appear to include any residential construction within 100 feet of these wetlands.

However, the "development" approved by the City includes a subdivision of the entire property. Section 30106 of the Coastal Act and Appendix A of the Half Moon Bay certified LUP defines development, in part, as:

"Development" means, on land ... change in the density or intensity of use of land, including, but not limited to, subdivision pursuant to the Subdivision Map Act (commencing with Section 66410 of the Government Code...

Thus, the definition of "development" contained in the Coastal Act includes more than just physical development such as residential construction; the definition also includes non-physical changes such as changes to the density and intensity of use of land.

The overall subdivision of the entire property approved by the City of Half Moon Bay constitutes "development" under both the Coastal Act and the City of Half Moon Bay certified LCP. The subdivision approved by the City of Half Moon Bay will change the intensity and density of use of the entire property, including the area that contains the undisputed wetlands. In other words, as approved by the City, "development" within the meaning of the Coastal Act and LCP will occur on the entirety of this property. Therefore, the Commission finds that since the entire property, including both the disputed and undisputed wetland areas, is subject to subdivision, there is development within 100 feet of a wetland as required by Section 30603(a)(2) of the Coastal Act. Therefore, the City's action approving the coastal development permit is appealable to the Commission pursuant to Section 30603(a)(2) of the Coastal Act.

B. Disputed Wetland Areas

In addition, the project site contains several areas of disputed seasonal wetlands that are predominantly vegetated by hydrophytic wetland plant species. A preliminary

wetland delineation by Huffman & Associates⁴ identifies 17 potential wetland areas on the subdivision site. Of those 17 sites, 15 are located in areas that would be subject to construction of houses, roads, and other subdivision-related physical construction. These habitat areas were also evaluated in a subsequent delineation prepared by the applicant's consultant, Wetlands Research Associates (WRA).⁵ WRA took data from eight sampling points, five of which were in the potential wetland areas identified in the preliminary delineation. The dominant vegetation within each of these potential wetland areas is hydrophytes. Most of these plants are classified as facultative wet, meaning "*plants that occur usually (estimated probability of > 67% to 99%) in wetlands, but also occur (estimated probability 1% to 33%) in nonwetlands.*"⁶ These areas also contain some facultative plants, which are just as likely to occur in a wetland as a non-wetland,⁷ and one area contains an obligate wetland species, which almost always occur in a wetland.⁸ None of the dominant plant species in these areas are obligate upland (found almost always in uplands⁹) or facultative upland (usually occur in upland areas¹⁰).

As stated above, the Commission relies on Section 13577 of its regulations to determine the appealability under Section 30603(a)(2) of development approved by a local government. Under this definition, an area can be considered to be a wetland if one or more of the following wetland characteristics are present: hydrology, hydrophytes, or hydric soils. All of the five data points selected by WRA that were in the wetland areas identified in the preliminary delineation showed that the dominant vegetation in those areas consisted mostly of facultative wet species and did not include any facultative upland species. These facultative wet species are hydrophytes¹¹. Thus, the Commission finds that these areas are wetlands pursuant to Section 13577 of the Commission's regulations because of the ability of these areas to support the growth of plants which are normally found to grow in water or wet land. Therefore, the property contains several areas that are wetlands pursuant to Section 13577 of the Commission's regulations.

Under the approved project, those disputed LCP wetlands, which satisfy the criteria set forth in Section 13577, would be subject to construction of houses, roads, and other subdivision-related physical construction. Accordingly, the City of Half Moon Bay's approval also includes physical development within 100 feet of wetlands satisfying the criteria in Section 13577 and the locally approved coastal development permit is also appealable to the Commission on this independent basis.

⁴ Letter dated March 11, 1999, Terry Huffman to Joan Lamphier, Lamphier & Associates.

⁵ Beachwood Subdivision, Half Moon Bay, CA, Half Moon Bay Local Coastal Plan Wetland Delineation Study, Wetland Research Associates, Inc., December 1999, Figure 12.

⁶ Corps of Engineers Wetland Delineation Manual, January 1987, p 18.

⁷ Ibid.

⁸ Ibid.

⁹ Ibid.

¹⁰ Ibid.

¹¹ The Commission permit staff consulted with the Commission's staff biologist and he agreed with the permit staff's conclusion that the areas analyzed by WRA are wetlands under the Coastal Act.

The Commission finds that the development approved by the City of Half Moon Bay is appealable to the Commission pursuant to Section 30603(a)(2) of the Coastal Act because it is located within 100 feet of wetlands as defined in Section 13577 of the Commission's regulations.

III. FINDINGS AND DECLARATIONS ON SUBSTANTIAL ISSUE

The Commission hereby finds and declares:

A. Project Location and Site Description

The approved development is located on an 1,075,932 square-foot (24.7 acre) lot (APN 048-280-020) located on the east side of Highway One between Terrace and Grandview Avenue, in the City of Half Moon Bay (Exhibit 7). The property is zoned R-1-B-2 (Single Family residential with a 7,500 square-foot lot size minimum). The lots to the south of the site are developed with single-family residences and the lots to the north and east (Dykstra Ranch/Pacific Ridge) are undeveloped but are zoned for residential and planned unit development. Finally, Highway One is immediately west of the project site.

At the western edge of the property (adjacent to Highway One), the property elevation is approximately 50 feet Mean Sea Level (MSL), rising to approximately 100 feet MSL at the eastern edge of the project site. The only visible drainage features on-site are a remnant stock pond and a small seasonal drainage at the southeastern corner of the property, which flows onto the site from the east and into an inlet structure and culvert. Although this portion of the site exhibits wetland characteristics, the City determined that the area is not a wetland under the LCP. This issue is discussed in the Habitat Section below. In addition, eucalyptus and cypress trees exist on small portions of the central and southeastern areas of the project site.

B. Project Description

The approved development includes the subdivision of a 27.7-acre parcel into lots for 83 detached single-family homes plus 1.26 acres of open space and 0.42 acres of park. The 83 lots average approximately 7,500 square feet in size and are to be developed with one- and two-story houses. The City's approval of the subdivision includes the construction of 80 individual houses.

C. Appeal Process

1. Local Government Action

On June 30, 1990, the City of Half Moon Bay approved a Vesting Tentative Map for an 83-lot subdivision. The City of Half Moon Bay approved the Vesting Tentative map in 1990 prior to the certification of the City's LCP.

On March 11, 1999, after the 1996 certification of the City's LCP, the City of Half Moon Bay's Planning Commission denied a coastal development permit for the subdivision and residential units.

On March 17, 1999, the applicant, Keenan Land Company, filed an appeal of this denial with the Half Moon Bay City Council.

On March 21, 2000, the City Council denied the request for approval of the project.

On May 19, 2000, the applicant filed a complaint in San Mateo County Superior Court to overturn the City's denial of the coastal development permit.

On February 22, 2001, the San Mateo County Superior Court ordered the City to issue a coastal development permit consistent with the 1990 Vesting Tentative Map.

On March 20, 2001, the City Council approved the coastal development permit attaching the conditions of the 1990 Vesting Tentative Map approval as conditions to the coastal development permit (Exhibit 5).

2. Filing of Appeal

On March 30, 2001, the Commission received notice of the City's final action approving a coastal development permit for the project (Exhibit 5). The Commission's appeal period commenced the following working day and ran for ten working days thereafter (March 31, 2001 through April 13, 2001). On April 13, 2001, the Commission received an appeal from Commissioners Wan and Desser and an appeal from Michael J. Ferreira and Patrick O'Brien (Exhibits 8 and 9). Following receipt of each of these appeals, the Commission mailed a notification of appeal to the City and the applicant (Exhibit 5).

Pursuant to Section 30261 of the Coastal Act, the appeal hearing must be set within 49 days from the date that an appeal is filed. The 49th day from the appeal filing date is May 29, 2001. The only Commission meeting within the 49-day period is May 7-11, 2001. In accordance with the Commission's regulations, on April 16, 2001, staff requested all relevant documents and materials regarding the subject permit from the City, to enable staff to analyze the appeal and prepare a recommendation as to whether a substantial issue exists. The regulations provide that a local government has five working days from receipt of such a request from the Commission to provide the relevant documents and materials. The Commission received the local file on April 24, 2001.

3. Appeals Under the Coastal Act

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

Coastal Act Section 30603 provides, in applicable part, that an action taken by a local government on a coastal development permit application may be appealed to the Coastal Commission for certain kinds of developments, including the approval of developments located within certain geographic appeal areas, such as those located between the sea and the first public road paralleling the sea, or within 300 feet of the mean high tide line or inland extent of any beach or top of the seaward face of a

coastal bluff; or in a sensitive coastal resource area or located within 100 feet of any wetland, estuary, or stream. Developments approved by counties may be appealed if they are not designated as the "principal permitted use" under the certified LCP. Finally, developments that constitute a major public works or a major energy facility may be appealed, whether they are approved or denied by the local government.

The approved development is located within 100 feet of a wetland, and thus meets the Commission's appeal criteria in Section 30603 of the Coastal Act. Pursuant to Sections 30603 and 30604 of the Coastal Act, an appeal for development in this location is limited to the allegation that the development does not conform to the standards set forth in the certified LCP.

If the Commission decides to hear arguments and vote on the substantial issue question, proponents and opponents will have three minutes per side to address whether the appeal raises a substantial issue. The only persons eligible to testify before the Commission on the substantial issue question are the applicant, persons who made their views known before the local government (or their representatives), and the local government. Testimony from other persons regarding the substantial issue question must be submitted to the Commission or the Executive Director in writing.

It takes a majority of the Commissioners present to find that no substantial issue is raised. Unless it is determined that the project raises no substantial issue, the Commission will conduct a full de novo public hearing on the merits of the project at the same or a subsequent hearing. If the Commission conducts a de novo hearing on the appeal, the applicable test under Coastal Act Section 30604 would be whether the development is in conformance with the certified Local Coastal Program.

D. Standard of Review

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

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

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

1. The degree of factual and legal support for the local government's decision that the development is consistent or inconsistent with the certified LCP and with the public access policies of the Coastal Act;
2. The extent and scope of the development as approved or denied by the local government;

3. The significance of the coastal resources affected by the decision;
4. The precedential value of the local government's decision for future interpretation of its LCP; and
5. Whether the appeal raises only local issues, or those of regional or statewide significance.

However, none of these factors is determinative of the substantial issue question. If the Commission chooses not to hear an appeal, appellant nevertheless may obtain judicial review of the local government's coastal permit decision by filing a petition for a writ of mandate pursuant to Code of Civil Procedure, Section 1094.5.

E. Substantial Issue Summary

The appeal filed by Commissioners Wan and Desser is hereby incorporated in its entirety as if set forth in full (Exhibit 8). The Commissioners' appeal includes the following contentions:

- The approved development will adversely affect access to the coast through its cumulative effects on traffic congestion of Highways 1 and 92, which are identified as primary access routes in the LCP.
- The approved development allows for fill of wetlands in a manner inconsistent with the habitat protection policies of the LCP.
- The approved development would disrupt environmentally sensitive habitat areas (ESHA) and does not conform to the ESHA policies of the LCP.
- The approved development does not conform to the water quality protection policies of the LCP.
- The approved development interferes with views of scenic coastal areas and does not conform to the visual policies of the LCP.
- The Coastside County Water District does not have adequate capacity within its water transmission system to support the approved development.

The appeal filed by Michael J. Ferreira and Patrick O'Brien contends (Exhibit 9):

- The approved development does not conform to the wetland protection policies of the LCP.
- The approved development does not conform to the ESHA policies of the LCP.
- The approved development does not have adequate road service.
- The approved development interferes with views of scenic coastal areas and does not conform to the visual policies of the LCP.

- The approved development will adversely affect access to the coast through its cumulative and regional effects on traffic congestion.
- The approval is inconsistent with the requirements of CEQA.

F. Appellants Contentions that Raise Substantial Issue

1. Access to the Shoreline

a. Contentions

Appellants Wan and Desser maintain that:

The City of Half Moon Bay LCP contains policies requiring adequate road capacity to serve new development and to minimize impacts of development to traffic on Highways 1 and 92. ... [T]he City's LUP adopts Coastal Act Sections 30210, 30250 and 30252. These policies require that development shall not interfere with the public's ability to access the coast and shall only be approved in areas with adequate public services.

Road access to the Mid-Coast region of San Mateo County including the City of Half Moon Bay is limited to Highways 1 and 92. Studies show that the current volume of traffic on these highways exceeds their capacity and that even with substantial investment in transit and highway improvements, congestion will only get worse in the future. ... The extreme traffic congestion existing on Highways 1 and 92 significantly interferes with the public's current ability to access the area's substantial public beaches and other visitor serving coastal resources in conflict with these policies.

....

The only mitigation provided regarding traffic impacts of the Beachwood development pursuant to the City's action is the installation of the traffic signal where the approved subdivision access road will intersect Highway One and the payment of the City's standard traffic mitigation fee of approximately \$1,600 per residence. ... According to the Regional Transportation Plan, even with the maximum contemplated investment in regional highway and transit improvements totaling \$3.2 billion, the volume of traffic on Highway One and 92 in the Mid-coast Region will continue to greatly exceed capacity. ... Therefore, the approved development is inconsistent with LUP Policies 9-2, 9-4 and 10-4 and Coastal Act Policies 30210, 30250, and 30252, which are incorporated into the City's LCP by LUP Policy 1-1.

Appellants Ferreira and O'Brien contend that:

Regional Traffic Impacts ... pose a potential detrimental effect on Coastal Access provisions of the Coastal Act and the Half Moon Bay Local Coastal Program. The project contains no mitigation for the fact that its traffic would substantially impact a situation which is already beyond capacity, particularly as it relates to the ability of Californians to visit the coast, view the coast, and access the coast on weekends and holidays.

b. Applicable Policies

LUP policies numbers 9-2 and 9-4, contained in the Development chapter of the Half Moon Bay LCP (LUP Chapter 9), limit the City's ability to approve new development, including subdivisions, to those situations where there is adequate services, including roads, to support the development. Pursuant to LUP Policy 9-4, lack of adequate services shall be grounds for denial of the project or a reduction in otherwise allowable density. In addition, policy 10-4 of the Public Works Chapter of the Half Moon Bay LUP (Chapter 10) requires that limited capacity be reserved for priority uses, such as public access to the coast, under the plan and also requires the City to avoid overloading existing public works services. In addition, Coastal Act policies 30210, 30250, and 30252, which are incorporated into the LCP by LUP Policy 1-1, establish recreational use of the coast as a priority use and require new development to maximize access and recreation opportunities, minimize cumulative effects on these resources, and identify transportation issues as a concern for access to the coast.

c. Discussion

The City's coastal development permit authorizes the creation of 83 new lots and construction of 80 new residential units. The project site is located immediately east of Highway One and less than a mile north of Highway 92, both of which are primary coastal access routes. Studies show that the current volume of traffic on these highways exceeds their capacity and that even with substantial investment in transit and highway improvements, congestion will only get worse in the future. As a result, the level of service on the highways at numerous bottleneck sections is currently and will in the future continue to be rated as LOS F. LOS F is defined as heavily congested flow with traffic demand exceeding capacity resulting in stopped traffic and long delays. This level of service rating system is used to describe the operation of both transportation corridors as well as specific intersections. LOS F conditions are currently experienced at certain intersections and at bottleneck sections of both highways during both the weekday PM peak-hour commuter period and during the weekend mid-day peak. The extreme traffic congestion existing on Highways 1 and 92 significantly interferes with the public's current ability to access the area's substantial public beaches and other visitor serving coastal resources.

In its February 2001 action approving the Pacific Ridge subdivision, another development in the vicinity of the Beachwood subdivision, the Commission raised a

concern that in light of both the current and projected traffic levels on the area highways, a new subdivision resulting in a net increase in legal lots in the San Mateo County Mid-coast Region would have significant adverse cumulative impacts to regional traffic congestion. In accordance with the policies of the Half Moon Bay LCP that require new development to be served by adequate public services and that protect the public's rights to access the coast by reserving service capacity for that priority use, the Commission required as a condition of approval for the Pacific Ridge project that the applicant retire the development rights on an equivalent number of existing legal lots within the region. Only through this measure was the Commission able to find the project consistent with the Half Moon Bay LCP.

The Beachwood development approved by the City will increase traffic congestion on these coastal access routes and add to the existing impact on access to the coast. Although the coastal development permit provides for mitigation of traffic impacts, these mitigation measures are inadequate to address the cumulative effect on access to the coast. The only mitigation the City provided for traffic impacts of the Beachwood development is the installation of the traffic signal where the approved subdivision access road will intersect Highway One and the payment of the City's standard traffic mitigation fee of approximately \$1,600 per residence. The City's action does not specify how this mitigation fee will be spent or how this mitigation fee is sufficient to address either the local or the regional cumulative impacts of the development. Furthermore, the Commission has not certified the standard traffic impact mitigation fee provisions of the City's municipal code as adequate to carry out the requirements of the Coastal Act or the Certified LUP. According to the Regional Transportation Plan, even with the maximum contemplated investment in regional highway and transit improvements totaling \$3.2 billion, the volume of traffic on Highway One and 92 in the Mid-coast Region will continue to greatly exceed capacity. Thus, the mitigation fee required as a term of the City's approval is inadequate to avoid or offset the cumulative traffic impacts that will result from the approved increase in the supply of legal lots in the region.

The Half Moon Bay LCP provides for the protection of coastal access to the local beaches and prevents the approval of new development that is supported by existing services including roads. In addition, the LCP reserves capacity of public works facilities, including roads, for high priority coastal uses, such as recreation and access to the shoreline. As stated above, the approved permit, as conditioned, does not adequately mitigate all significant cumulative adverse impacts to traffic congestion. There is currently inadequate road capacity to support existing and approved development. In addition, the approved coastal development permit increases demands on road capacity for residential uses, which is not a high priority coastal use. In addition to local traffic impacts on Highway One that will result from the approved development, the approved increase in traffic resulting from the construction of 80 new residential units will have significant adverse cumulative impacts on regional traffic congestion. As a result, the approved development will significantly interfere with the public's ability to access the coast.

In conclusion, the approved coastal development permit authorizes an 83-lot subdivision and the construction of 80 residential units. This subdivision will increase

demand on already over-capacity coastal access roads, mainly Highways 1 and 92. The approved coastal development permit does not provide sufficient mitigation for this traffic impact, and thus the project will adversely affect coastal access. Therefore, the Commission finds that the appeal raises substantial issues with respect to the LCP's new development and public works and access policies.

2. Habitat

a. Contentions

Appellants Wan and Desser maintain that (Exhibit 3):

The approved project would result in the fill of wetlands.... The City's approval did not evaluate the project's effects on these wetland resources contrary to Zoning Code Section 18.20.070. LUP Policies 3-2, 3-3, 3-11, 3-12 and 3-22 prohibit any uses that would have significant adverse impacts on sensitive habitat areas, require any development in areas adjacent to sensitive habitats to be sited and designed to prevent impacts that could significantly degrade the sensitive habitats, require, at a minimum, a 100-foot buffer from wetlands, ponds, and other wet areas, and severely restrict uses within buffer zones. In addition, pursuant to LUP Policy 1-1, the City has adopted the Chapter 3 Policies of the Coastal Act as guiding policies of the LUP. Accordingly, the City's LUP adopts Coastal Act Sections 30230-30233 and 30240, which also require that development protect the biological productivity and quality of coastal waters, wetlands and sensitive habitat areas.

Appellants Ferreira and O'Brien contend that (Exhibit 4):

- *The Project contains a large horseshoe shaped excavation.... [T]his depression contains wetland plants which are not accounted for in the Applicant's studies, but are partially accounted for in the City's studies.*
- *... [W]etland findings ... are not consistent with local lore and memory.... The adjacent Glen Cree wetland vegetation currently visible was once abundant evidence on both parcels on overhead photos of the Beachwood and Glen Cree sites*
- *The Beachwood parcel has been contaminated by the substantial importation of construction soils.... The large scale of this importation has had the detrimental effect of not only covering areas which may have been historically hydric but also altering the topography and drainage patterns.*
- *The project has been further altered by aggressive disking (deep plowing) in recent years ... which not only inhibits the formation of significant wetland plants but, in this case, intermixes imported topsoil with native topsoil.*

b. LCP Standards

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

3-1 Definition of Sensitive Habitats

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

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

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

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

Zoning Code Sec. 18.02.040 Definitions

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

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

As defined by the US Fish and Wildlife Service, a wetland is an area where the water table is at, near, or above the land surface long enough to bring about the formation of hydric soils or to support the growth of plants which normally are found to grow in water or wet ground. Such wetlands can include mud flats (barren of vegetation), marshes, and swamps. Such wetlands can be either fresh or saltwater, along streams (riparian), in tidally influenced areas (near the ocean and usually below extreme high water of spring tides), marginal to lakes, ponds, and man-

made impoundments. Wetlands do not include areas which in normal rainfall years are permanently submerged (streams, lakes, ponds, and impoundments), nor marine or estuarine areas below extreme low water of spring tides, nor vernal wet areas where the soils are not hydric.

3-3 Protection of Sensitive Habitats

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

3-4 Permitted Uses

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

3-5 Permit Conditions

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

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

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

Zoning Code Sec. 18.38.035 Biological Report.

A. When Required. The Planning Director shall require the applicant to submit a Biological Report, prior to development review, prepared by a qualified Biologist for any project located in or within 100 feet of any

Sensitive Habitat Area, Riparian Corridor, Bluffs and Seacliff Areas, and any Wetland...

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

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

2. Description of Habitat Requirements.

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

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

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

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

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

Zoning Code Sec. 18.38.055 Environmental Impact Reports.

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

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

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

1. The Environmental Impact Report adequately meets the requirements for Geological, Biological or Archaeological Reports listed in this Chapter, and

2. The Environmental Impact Report was prepared for either a previous project on the project site or a project on a directly adjoining site.

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

3-9 Permitted Uses in Riparian Corridors

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

(b) When no feasible or practicable alternative exists, permit the following uses: ... (3) bridges when supports are not in significant conflict with corridor resources, ..., (5) improvement, repair or maintenance of roadways or road crossings, ...

3-11 Establishment of Buffer Zones

(a) On both sides of riparian corridors, from the limit of riparian vegetation extend buffer zones 50 feet outward for perennial streams and 30 feet outward for intermittent streams.

(b) Where no riparian vegetation exists along both sides of riparian corridors, extend buffer zones 50 feet from the bank edge for perennial streams and feet from the midpoint of intermittent streams.

- (c) *Along lakes, ponds, and other wet areas, extend buffer zones 100 feet from the high water point, except for man-made ponds and reservoirs used for agricultural purposes for which no buffer zone is designated.*

3-12 Permitted Uses in Buffer Zones

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

c. Biological Report

Appellants Wan and Desser contend that the project is located in an area that potentially supports several sensitive species and that the biological surveys for sensitive species are out of date or not sufficient to support the conclusion that sensitive species do not exist on this site. In addition, appellants Wan and Desser argue that the biological report does not include an analysis of raptor habitat on the site.

The accurate and complete identification of coastal resources is the foundation for complying with the Half Moon Bay LCP. If the delineation of such resources is inadequate, there can be no assurance that any project on that site conforms to the other LCP Standards for sensitive habitats. LUP policy 3-3 and 3-5 and Zoning Code Section 18.15.035, which implement these policies, require a Biologic Report to identify sensitive resources. The Biological report for the approved project contains a report by Harding Lawson Associates, entitled *San Francisco Garter Snake Survey and Riparian Mitigation Plan, Beachwood Subdivision, Half Moon Bay*, which analyzes the habitat value of the site for the snake. However, this survey was done in 1989 and did not include live trapping. The only survey of the site conducted for the San Francisco garter snake was prepared for the applicant and conducted in 1989 by Harding Lawson Associates. That report states that all suitable habitats were evaluated using Dr. S. McGinnis' evaluation system. A similar survey was conducted for the Ailanto development adjacent to the Beachwood project site. In its review of the Ailanto permit, the Commission also raised concerns that the biological report's evaluation of endangered species habitat was inadequate because it was old (prepared in 1986) and did not include an attempt to identify San Francisco garter snakes on the site.

In addition, the biological report does not include surveys for the red-legged frog. All that is included is a letter from a wildlife biologist (Jeffery B. Froke, Ph.D., March 10,

1999) that states that, in the biologist's opinion, the area does not support the frog. That opinion does not appear to be based on scientific surveys or trapping. Thus, the conclusions of the biological report, with respect to the frog, were based on a simple walk through of the project site. There does not appear to be any detailed habitat surveys or attempts at identifying individual frogs. Staff of the U.S. Fish and Wildlife Service has indicated that these species are extremely difficult to detect and that a simple transect survey is not sufficient to document the presence or absence of the snake (pers. com. Larson 6/16/00). Both the San Francisco garter snake and the California red-legged frog are extremely rare and shy and quickly seek cover when approached. Therefore, surveys must include attempts at live trapping, consistent with the Service's protocols, in order to accurately evaluate the project habitat value.

The question of the project sites' value for these sensitive species is further complicated by a letter written by the U.S. Fish and Wildlife Service (dated March 11, 1999, Exhibit 10). In that letter, the Service suggests the possibility of the site providing habitat for sensitive species:

Due to the presence of ponded water and chorus frogs, the Service suggests that a wetland delineation be conducted for the entire site. To avoid possible take of listed species, the Service suggests that the developer hire a qualified biologist to conduct surveys for the red-legged frog and the garter snake.

These surveys were never done. The existing biological report's consideration of garter snake and red-legged frog habitat on this site is out of date (especially for the garter snake evaluation, which is over 10 years old) and is inadequate for the purpose of determining whether the site supports or does not support federally listed species. Without a complete and up-to-date biological report, the Commission cannot determine if the project would affect these habitat resources or whether the project is consistent with the LCP's habitat policies. Therefore, the approved development raises a substantial issue of consistency with the LCP's habitat provisions.

In addition, the appellants raise concerns that the project site might provide habitat for raptors. The area includes open grasslands and tall eucalyptus trees that are suitable for raptor roosting and foraging. In addition, the site immediately east of the Beachwood property, the Ailanto subdivision, supports raptors. In its review of the coastal development permit for the Ailanto subdivision, in order to find the proposed project consistent with the standards of the certified LCP, the Commission required mitigation for impacts to those raptors. The Half Moon Bay LCP defines raptors as a unique species, and thus their habitat is an ESHA. The biological report does not provide any consideration of the area's value as raptor habitat. In light of the fact that the site has potential raptor habitat and that the adjacent property supports raptors, an analysis of raptors on this site is necessary to find this project consistent with the LCP. Since the biological report does not include an evaluation of this issue and the City's resolution approving this project does not consider the site's raptor potential, the Commission finds that the approved project raises substantial issues as to consistency with the LCP's habitat provisions.

Finally, appellants Ferreira and O'Brien raise concerns that the biological report does not consider any offsite habitat values. LUP Policy 3-5 requires the biological report to "consider both any identified sensitive habitats and areas adjacent." LCP Ordinance Sec. 18.38.035.B.1, which implements LUP Policy 3-5, specifies that the report required in conjunction with new development involving sensitive habitats must "describe and map ... existing sensitive habitats, riparian areas and wetlands located on or within 200 feet of the project site." Such mapping is necessary to determine any additional development constraints, for example, whether access to the site that avoids near-site wetland and riparian areas and associated buffers is feasible, and whether any buffers for offsite wetland or riparian areas would extend into the project site, possibly into areas proposed for on-site development. Without this information, the approved development does not ensure the protection of habitat consistent with the LCP's provisions protecting ESHAs. Since the biological report does not include any analysis of off-site resources, the Commission finds that the approved project raises substantial issues of consistency with the LCP's habitat provisions.

d. Identification of Wetlands

Appellants Wan and Desser contend that the approved project would result in fill of wetlands as defined by the Coastal Act, its implementing regulations, and the certified LCP. In addition, appellants Ferreira and O'Brien argue that the soils on the project site have been substantially altered by the importation of construction soil and through regular disking. In its initial review of the coastal development permit for this project, the City raised concerns about potential wetland habitat on this site. The City initially denied the coastal development permit based on the need to have further assessment of the potential wetlands. However, the applicant subsequently filed a complaint with the San Mateo County Superior Court arguing, in part, that the habitat areas in question are not wetlands under the City's LCP. One interpretation of the City's LCP is that it excludes from its definition of wetlands "vernally wet areas where the soils are not hydric." Based on the biological report contained in the record, the court found that the wetlands on the site are vernally wet areas that do not contain hydric soils and, as such, are excluded from the LCP's definition of wetlands.

The Commission believes that the Court's interpretation of the City's LCP on this issue is not the only or best interpretation of the definition of wetlands contained in the certified LCP. In a letter dated March 20, 2000 (Exhibit 6), the Commission's Chief Counsel opines that the disputed wetland areas affected by this approved development are wetlands under the LCP. In that letter, the Chief Counsel emphasizes that the City's definition of wetlands should be interpreted in a manner consistent with the Coastal Act and its implementing regulations, which do not exclude any vernally wet areas from its definition of wetlands. Under this interpretation of the wetland definition contained in the certified LCP, since the LCP's definition of wetlands includes areas that support wetland hydrology, hydric soils, or hydrophytes and there is evidence of wetland hydrology and hydrophytes on the site, the areas containing hydrophytes are considered wetlands, even if they do not support the formation of hydric soils (Exhibit 6).

Even if one concludes that the LCP excludes "vernally wet areas" that do not have hydric soils from its definition of wetlands, there is some question as to whether the areas on the Beachwood site would fit into that exception. First, the LCP exclusion is limited to areas that are "vernally wet." This phrase is not a defined term either in the LCP or in the wetland scientific literature. Two similar or related terms may be found in the literature: vernal ponds (or pools) and seasonal wetlands. Vernal ponds are a specific habitat type that supports unique flora and fauna. The wetlands on the Beachwood site do not support any vernal pond species and none of the data in the biological report identifies vernal ponds on this site. The other appropriate term that may include "vernally wet areas" is "seasonal wetlands." A seasonal wetland is an area that is wet during the rainy season and dry during the remainder of the year. By using the phrase "vernally wet" rather than the more commonly used term "seasonal wetlands," the City's LCP may be distinguishing between seasonal wetlands and "vernally wet areas." Thus, the Commission believes that, in using this phrase, the City's LCP may be identifying a sub-category of seasonal wetlands.

The term "vernal" means "of or relating to the spring." Thus, the phrase "vernally wet areas" applies to areas that are wet only during the spring. If the area is wet at times other than the spring but not wet for the entire year, it would be a seasonal wetland. In this case, the City's record contains evidence that the area was wet in February, which is winter and not spring. The City hired Terry Huffman and Associates to conduct a preliminary wetland delineation on the site and during two site visits in February 1999 (February 5 and 28, 1999), the consultant documented water ponding on these areas. Since there is evidence that the wetland areas pond water prior to the spring season, the Commission finds that there is a substantial question whether the wetlands on this site are excluded from the LCP definition of wetlands because they are wet for periods longer than the spring months, and thus may not fall within the definition of "vernally wet" areas.

In addition, even if one accepts the conclusion that the area is vernally wet, the Commission believes that there is substantial evidence in the record to indicate that it is premature for the City to conclude that the areas do not contain hydric soils. According to Appellants Ferreira and O'Brien, the applicant has affected the nature of the soils on the site by the importation of fill material and by regular disking. In addition, the City hired LSA consultants to evaluate the hydric soil question. In a letter dated January 24, 2000, the consultant stated that consideration of hydric soils on the "site is problematic and that hydric soil conditions could be present despite a seeming lack of visual soil indicators." The letter provides an analysis of the unique conditions of the property and why hydric soils may be present despite the lack of visual evidence. The applicant's consultant and Stephen Faulkner, Ph.D., wrote several letters refuting issues raised by LSA. It appears from the debate that there is a question of the nature of soils on the site. In light of the substantial alteration of the soils on the site, it seems that there may be support for LSA's arguments. Thus, the Commission finds that there is a substantial issue with respect to the City's conclusion that the soils on the site are not hydric, and are, therefore, under its interpretation of the LCP, excluded from the LCP definition of wetlands.

In conclusion, the City's approval of the coastal development permit did not protect several of the habitat areas on the Beachwood site because the City concluded that, because these areas are vernal wet areas that did not include hydric soils, they are not wetlands. This interpretation of the LCP definition of wetlands is not supported by the City's analysis or the definition of wetlands contained in the Coastal Act and its implementing regulations. Because these areas are wetlands under the Coastal Act and its implementing regulations and there are significant questions as to the vernal nature of the hydrology and the hydric nature of the soils, there is a substantial issue with respect to the identification of wetlands on the project site consistent with provisions of the certified LCP.

e. Uses In Wetlands

Inaccurate exclusion of wetland areas on-site raises the substantial issue that there may be additional areas on the site that should have been subject to use limitations and standards pertaining to wetlands and buffers.

The appellants contend the approved project would fill wetlands. In addition to the subdivision, the approved project includes the construction of houses, roadways, and other physical development related to this subdivision. Because the City determined that the habitat areas on the site are not wetlands under the LCP, its approval of the coastal development permit does not contain findings that explain how the approval of fill in wetland areas is consistent with the restrictions of LUP Policy 3-4 regarding permitted uses in sensitive habitat areas, including wetlands, and Policy 3-9, (Permitted Uses in Riparian Corridors). Policy 3-4 only allows "resource-dependent or other uses which will not have a significant adverse impact in sensitive habitats."

The City's approval of the project does not demonstrate, as required by LCP Policies 3-4 and 3-9, that the approved uses (new residential structures and roads) in the wetland and riparian areas are either "resource-dependent" or "will not have a significant adverse impact in sensitive habitats," nor are there any alternatives discussed or any substantiated findings that "no feasible or practicable alternative exists." There are no findings supporting the City's approval of the project. The adopted resolution states that the Court mandated the approval of the coastal development permit but does not demonstrate the approved project's consistency with the certified LCP.

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

f. Uses in Buffer Areas

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

shows the construction of houses and roads within 100 feet of potential wetlands. Furthermore, those lots that contain potential wetlands do not include buffers for those wetlands. It is not evident from the City's approval how these roadway and residential lot intrusions into potential wetland buffer areas are allowable given the restrictions of Policy 3-12, especially regarding the intrusion of residential lots.

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

3. Visual

a. Contentions

Appellants Wan and Desser maintain that:

The approved project includes construction of a sound wall and houses that would restrict views of scenic coastal mountains from Highway One and degrade the visual character of the area.

Appellants Ferreira and O'Brien contend that the sound wall would substantially decrease the view of coastal foothills in manner inconsistent with the Half Moon Bay LCP.

b. LCP Standards

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

Policy 7-5

All new development, including additions and remodeling, shall be subject to design review and approval by the City Architectural Review Committee.

Coastal Act Section 30251

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

Zoning Code Section 18.37.020(B) (1)

Visual Resource Areas within the City are defined as follows:

...

Scenic Hillside areas which are visible from Highway One and Highway 92.... These areas occur include (sic) hillside areas above the 160 foot elevation contour line which are located:

1. *East of the proposed Foothill Boulevard, comprising portions of Carter Hill and Dykstra Ranch properties.*

Zoning Code Section 18.37.030 (B):

Development within the Highway One Corridor ... where existing permits or development does not exist. In general, structures shall be:

1. *Situated and designed to protect any views of ... scenic coastal areas. ...*

4. *Set back an appropriate distance from the Highway One Right-of-Way....*

5. *Designed to maintain a low height above natural grade, unless a greater height would not obstruct public views.*

c. Discussion

The Dykstra Ranch area is the site of the Ailanto subdivision and is located just east of the project site. The Half Moon Bay LCP identifies the portion of the Dykstra ranch above the 160-foot contour as a scenic area. This scenic area is visible from Highway One east of the Beachwood subdivision site. The City's conditions of approval for the development require the construction, on the Beachwood site, of a sound wall and a five-foot vegetated buffer between Highway One and the wall. These features may block views of the scenic coastal area identified in the Zoning Code, inconsistent with the zoning policy that protects those views. The City's approval is not supported by an analysis of the potential impacts of the sound wall on these protected views.

In addition, the approved sound wall would be the first structure of this type in this portion of the City. Although there is a sound wall in the southern part of the City (approximately 2.5 miles south of the Beachwood site), there are no sound walls on Highway One in the area of the Beachwood subdivision. Thus, the character of the area around the Beachwood site, as viewed from Highway One, is not affected by existing sound walls. The construction of the new sound wall at the Beachwood site would change the character of that area as viewed from Highway One. Section 30251 of the Coastal Act (which is incorporated into the LCP by LUP policy 1-1) requires new development to be consistent with the character of the surrounding area. The City's approval is not supported by an analysis of the wall's impact on the character of the surrounding area, and thus, raises a substantial issue with respect to the project's consistency with the visual policies of the LCP.

Additionally, the City's resolution for approval for this subdivision includes the construction of 80 houses. That approval requires the residential house to meet the building heights and setback requirements of the R-1-B1 of the zoning regulations in

the City's Zoning Code. The zoning regulations would allow a 28-foot structure within 25 feet of Highway One. Development of that height with only a 25-foot setback would block views of scenic coastal areas. The City's approval is not supported by an analysis of the impacts of the houses on these protected views.

Section 30251 of the Coastal Act, which the City incorporates into its LCP by LUP Policy 1-1, also requires that new development be sited and designed to be visually compatible with the character of surrounding areas. To implement this Coastal Act section, LUP policy 7-5 requires the City's Architectural Review Committee to review new development. As stated above, the City's approval of the subdivision allows for the construction of 80 houses. However, the coastal development permit application does not include plans for these residential units and the permit does not require review of the plans by the Architectural Review Committee as required by the LUP.

In conclusion, the approval of the subdivision, which includes the construction of a sound wall and 80 houses may significantly interfere with and degrade views from Highway One of coastal hills to the east. The local record for the City's approval does not include an evaluation of this potentially significant impact as required by zoning regulations 18.37.030 (B) (1), (4), and (5) and Coastal Act Section 30251, which is incorporated into the City's LCP by LUP Policy 1-1. Therefore, the Commission finds that the City's approval raises a substantial issue of the approved development's consistency with the LCP's visual policies and standards.

4. Water Quality

a. Contentions

Appellants Wan and Desser maintain that:

The City's approval does not require this project to be consistent with [water quality] policies [of the LCP]. The approved project would increase runoff from the site and does not include any measures to minimize long-term non-point source pollution.

b. LCP Standards

LUP Policy 4-9

All development shall be designed and constructed to prevent increases in runoff that would erode natural drainage courses. Flows from graded areas shall be kept to an absolute minimum, not exceeding the normal rate of erosion and runoff from that to the undeveloped land. ...

Coastal Act Policy 30231

The biological productivity and the quality of coastal waters, streams, wetlands, estuaries, and lakes appropriate to maintain optimum populations of marine organisms and for the protection of human health shall be maintained and, where feasible, restored through, among other

means, minimizing adverse effects of waste water discharges and entrainment, controlling runoff, preventing depletion of ground water supplies and substantial interference with surface water flow, encouraging waste water reclamation, maintaining natural vegetation buffer areas that protect riparian habitats, and minimizing alteration of natural streams.

c. Discussion

The approved project would significantly increase the amount of impervious surfaces in the area by adding new roads, driveways, patios, roofs, and other hard-surfaced features to an undeveloped site, thereby increasing the rate and volume of storm water run-off from the site. This increase in rate and volume of storm water has the potential to result in flooding and erosion. The project would also significantly increase non-point source pollution, both during construction and after completion of the project. This increase in non-point source pollution has the potential to adversely impact water quality in the ocean and Pilarcitos Creek, which flows near this project (approximately ¼ mile). Further, the increases in runoff and non-point source pollution could adversely affect wetlands located on the project site. The stormwater and non-point source pollution impacts could potentially modify the hydrology of the wetland, degrade water and sediment quality within the wetlands, and degrade the habitat value of the wetland.

The approved project includes a condition requiring the applicant, as part of the Final Map submission, to submit a drainage report and grading and erosion/dust control plans for the approval of the City engineer. The grading and erosion and dust control plans must provide for winterization of the project site and comply with Chapter 14.24 of the Half Moon Bay municipal code, a local zoning provision that is not part of the certified LCP. These local zoning requirements manage the volume of stormwater flows but do not regulate the quality of the water. In addition, the grading and erosion/dust plans protect archaeological resources and reduce temporary erosion impacts from construction. However, they do not provide for long-term management of non-point source pollution.

The City's LUP Policy 4.9 addresses storm water runoff by requiring that flows from graded areas shall be kept to an absolute minimum, not exceeding the normal rate of erosion and runoff from that of the undeveloped land. In addition, pursuant to LUP Policy 1-1, the City has adopted the Chapter 3 Policies of the Coastal Act as guiding policies of the LUP. Accordingly, the City's LUP adopts Coastal Act Section 30231, which require that new development protect the biological productivity and quality of coastal waters and to control runoff.

The City's approval does not require the project to comply with these water quality requirements. As described above, the conditions attached to the City's permit address drainage capacity and storm water volume, but do not completely address non-point source pollution issues. The City's approval does not require this project to be consistent with these policies. The approved project would increase runoff from the site and does not include any measures to minimize long-term non-point source

pollution. Therefore, the Commission finds that the City's approval of the project raises a substantial issue of consistency with the water quality policies of the LCP.

G. Appellants' Contentions That Do Not Raise Substantial Issue

1. Availability Of Services

a. Appellants' Contentions

Appellants Wan and Desser contend the City's approval of the subdivision is inconsistent with the Half Moon Bay LCP because the City failed to determine if there is adequate water supply to support the subdivision.

b. Analysis

The City's coastal development permit application file contains a "Will Serve Letter" from the Coastside County Water District (CCWD). This letter shows a commitment by the water district to serve this development. Although the City's approval did not include findings to support this conclusion, there is evidence in the record to demonstrate that, there is adequate water to support this subdivision.

c. Conclusion

Therefore, the Commission finds that the appellants' above-referenced contention does not raise a substantial issues of consistency with the certified LCP provisions regarding the availability of services with respect to water delivery.

H. Appellants' Contentions That Are Not Valid Grounds For An Appeal.

1. CEQA Compliance

a. Appellants' Contentions

Appellants Ferreira and O'Brien contend the City failed to comply with CEQA in approving the project.

b. Analysis

This contention is not a valid ground for appeal. The Commission's appellate jurisdiction is limited to the grounds described in Section 30603(b). Consequently, for appealable development that is not located between the first public road and the sea, the Commission considers only whether the appeal raises issues of consistency with the certified LCP. These are not the grounds asserted by the appellant. Instead, the appellant cites an alleged inconsistency with the California Environmental Quality Act.

c. Conclusion

Therefore, because the appellant's contention fails to identify issue of consistency with a provision of the certified LCP, the Commission finds that the appellants'

above-referenced contention does not constitute a valid basis for appeal of the project.

IV. INFORMATION NEEDED TO EVALUATE THE ORIGINALLY PROPOSED PROJECT DE NOVO

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

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

Significant issues concerning the conformity of the proposed project with the policies of the certified LCP remain unresolved. Following is a discussion of the information needed to evaluate the project in a de novo recommendation to the Commission. Other issues may arise prior to or during the de novo hearing.

A. Habitat Analysis

1. A complete and updated survey of the site for the presence of San Francisco Garter Snakes and the California red-legged frog. The Survey should be designed in consultation with the U.S. Fish and Wildlife Service. The Survey should include an evaluation of the site for habitat for these species in accordance with the U.S. Fish and Wildlife Service's approved protocols.
2. A survey of the site for raptors and evaluation of the site's raptor nesting, roosting, and foraging use and potential.
3. An updated delineation of wetland indicators on the project site. The delineation should include enough data points to establish the size and extent of any potential wetlands on the site. The design of the delineation should be prepared in coordination with the Commission staff biologists.
4. A biological report on the habitats within 200 feet of the project site.

B. Visual

1. Engineering, architectural, and construction plans for the residential units, roads, and other utilities.

2. Construction plans for the sound wall, showing the wall's height and location.
3. Analysis of the project's impacts on views from Highway One looking east towards the hills. The analysis should include photographs of the area with simulated houses, utilities, and sound wall.

Without the above information, the Commission cannot reach a final de novo determination concerning the proposed development's consistency with the certified LCP.

L A W Y E R S

**WASHBURN
BRISCOE &
McCARTHY***A Professional Corporation*

March 20, 2001

VIA FACSIMILE

Blair King
City Manager
City of Half Moon Bay
501 Main Street
P.O. Box 338
Half Moon Bay, CA 94019-0338

Re: Crowell Keenan's Application for a Coastal Development Permit for its
Beachwood Property

Dear Mr. King:

It is our understanding that the City of Half Moon Bay has or will determine, pursuant to 14 CCR § 13569 and section 18.20.050(A)(2) of the City's Local Coastal Plan, that the final action the City has or will take with regard to the Beachwood Coastal Development Permit application is appealable to the California Coastal Commission. On behalf of the applicant, we object to this determination and ask that the City seek the opinion of the executive director of the Coastal Commission as to appealability pursuant to 14 CCR § 13569(b), and section 18.20.050(E) of the City's Local Coastal Plan. We further request that the City inform us in writing of the director's opinion in accordance with these regulations. We appreciate your attention to this matter.

Best regards,



Anne E. Mudge

AEM:kc

cc: Peter Douglas, Executive Director of the California Coastal Commission
Adam Lindgren, Esq.
Rick Jarvis, Esq.

EXHIBIT NO. 1

APPLICATION NO. A-2-HMB-01-011

83164 V01

 California Coastal Commission

L A W Y E R S

**WASHBURN
BRISCOE &
MC CARTHY**

A Professional Corporation

April 4, 2001

VIA HAND DELIVERY

Mr. Peter Douglas
Executive Director
California Coastal Commission
45 Fremont Street, Suite 2000
San Francisco, California 94105

RECEIVED
APR 04 2001
CALIFORNIA
COASTAL COMMISSION

Re: Yamagiwa (Beachwood) Property in Half Moon Bay

Dear Mr. Douglas:

On March 20, 2001, we wrote to Blair King, the City Manager of Half Moon Bay, asking him to telephone you as required under section 14 CCR § 13569 and Half Moon Bay zoning code section 18.20.050(A)(2) to obtain your determination on whether the Coastal Development Permit approved on March 20, 2001 by the City Council for the Beachwood Development is administratively appealable to the Coastal Commission. You were provided with a copy of this letter. I understand from a telephone call with Rick Jarvis on April 3, 2001 that the City has not yet made this telephone call. Mr. Jarvis was not able to tell me when they do intend to make this call.

Given the City's delay in responding to our request, we are making the request for your determination directly to you. We consider this letter to be equivalent to a telephone call from the City under 14 CCR § 13569 in terms of triggering the requirement of your response within two days of the request.

84270 V01

EXHIBIT NO. 2
APPLICATION NO. A-2-HMB-01-011

 California Coastal Commission

55 Francisco Street, Suite 600, San Francisco, California 94133 • Telephone: 415.421.3200 • Facsimile: 415.421.5044

San Francisco • Sacramento • Fresno • Tahoe City • Juneau

www.w-b-m.com

Mr. Peter Douglas
April 4, 2001
Page 2

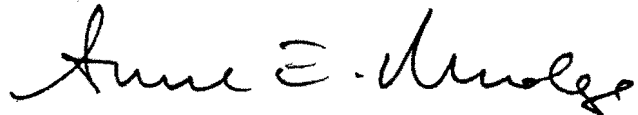
With this letter please find:

- (1) a copy of the final map the applicant is seeking to have approved by the City showing an open space buffer in the southeast corner of the lot and no new lot lines within 100 feet of any "wetland" as defined by the Half Moon Bay LCP;
- (2) a copy of the map from the wetlands delineation dated October 1999, submitted to the City as part of the CDP application (prepared by Dr. Michael Josselyn of Wetlands Research Associates) showing a small area of the property that we have always conceded contains LCP wetlands; and,
- (3) a copy of the statement of decision in Yamagiwa v. City of Half Moon Bay (San Mateo Superior Court Case No. 402781) finding that there are no other LCP wetlands on the Beachwood property.

The final map shows that these LCP wetlands will be protected by a buffer of more than 100 feet and that no development will take place within this buffer.

Thank you for your courtesy and cooperation.


Very truly yours,



Anne E. Mudge

AEM:raa
Enclosures

cc: Adam Lindgren, City Attorney, Half Moon Bay (w/o encls.)
Blair King, City Manager, Half Moon Bay (w/o encls.)
Rick W. Jarvis, Esq. (w/o encls.)

 California Coastal Commission
EXHIBIT NO. 2
APPLICATION NO. A-2-HMP-01-011

Page 2 of 2

CALIFORNIA COASTAL COMMISSION

45 FREMONT, SUITE 2000
SAN FRANCISCO, CA 94105-2219
VOICE AND TDD (415) 904-5200
FAX (415) 904-5400



April 6, 2001

Adam Lindgren
Meyers, Nave, Riback, Silver & Wilson
Gateway Plaza
777 Davis Street, Suite 300
San Leandro, CA 94577

Dear Mr. Lindgren:

This letter is in response to your telephone call this morning requesting, on behalf of the City of Half Moon Bay, that the executive director of the Coastal Commission provide a determination of whether the City's final action approving Coastal Development Permit PDP-10-98 for the Beachwood development project is appealable to the Coastal Commission. On behalf of the executive director, the Commission staff agrees with the City that the action is appealable to the Coastal Commission. This determination is made pursuant to 14 CCR § 13569(c).

Sincerely,

A handwritten signature in black ink, appearing to read "Chris Kern".

Chris Kern
North Central Coast District Supervisor

cc: Anne Mudge, Washburn, Briscoe & McCarthy
Ken Curtis, City of Half Moon Bay Planning Director
Rick Jarvis, City Counsel
Tara Mueller, Deputy Attorney General

EXHIBIT NO. 3

APPLICATION NO. A-2-HMB-01-011

California Coastal Commission



CITY OF HALF MOON BAY

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

NOTICE OF PUBLIC HEARING

Meeting of the City Council of the City of Half Moon Bay
Tuesday, March 21, 2000, 7:30 p.m.

NOTICE IS HEREBY GIVEN that the City Council of the City of Half Moon Bay will hold a public hearing at 7:30 PM on Tuesday, March 21, 2000, at its regular meeting place at the Ted Adcock Senior/Community Center, 535 Kelly Avenue, to consider the following project within the Coastal Zone:

PDP-10-98 Coastal Development Permit Application - Beachwood Subdivision

Applicant: Keenan Land Company

Location: East side of Highway 1, Between Terrace and Grandview Avenues.
APN 048-280-020.


Description: Consideration of an appeal by the applicant of Planning Commission action denying PDP-10-98, Coastal Development Permit, to allow for 83 detached single-family homes on a 24.7-acre site.

Comments may be sent to the City of Half Moon Bay Planning department, 501 Main Street, Half Moon Bay, CA 94019. Additional information and maps are on file at City Hall, 501 Main Street, and may be examined during regular business hours. Anyone interested may appear and be heard at the above-stated place and time. If you challenge this application in court, you may be limited to raising only those issues you or someone else raised at the public hearing described in this notice or in written correspondence delivered to the City during or prior to the public hearing.

Final City Action Appealable to Coastal Commission. A City Council action that results in approval of the Coastal Development Permit for the project can be appealed to the California Coastal Commission within ten working days following receipt of the City's Notice of Final Action on the Coastal Development Permit. A Coastal Resources Report regarding wetlands was required in connection with the project application.

EXHIBIT NO. 4

APPLICATION NO. A-2-HMB-01-011

 California Coastal Commission

CALIFORNIA COASTAL COMMISSION

NORTH CENTRAL COAST DISTRICT OFFICE
45 FREMONT, SUITE 2000
SAN FRANCISCO, CA 94105-2219
(415) 904-5260

**NOTIFICATION OF APPEAL PERIOD**

DATE: March 30, 2001
TO: Kenneth Curtis, Planner
City of Half Moon Bay, Building & Planning Department
501 Main Street
Half Moon Bay, CA 94019
FROM: Virginia A. Esperanza, Coastal Planner 
RE: **Application No. 1-HMB-98-423**

Please be advised that on March 30, 2001 our office received notice of local action on the coastal development permit described below:

Local Permit #: PDP-10-98

Applicant(s): Keenan Land Company, Attn: Joyce Yamagiwa

Description: To subdivide the 24.7 acre site into 83 residential lots, plus open space and park parcels of 0.42 acre. The 83 lots would average approximately 7500 square feet in size, and are to be developed with one and two story houses.

Location: East side of State Highway 1, between Terrace and Grandview Avenue, Half Moon Bay (San Mateo County) (APN(s) 048-280-20)

Unless an appeal is filed with the Coastal Commission, the action will become final at the end of the Commission appeal period. The appeal period will end at 5:00 PM on April 13, 2001.

Our office will notify you if an appeal is filed.

If you have any questions, please contact me at the address and telephone number shown above.

cc: Keenan Land Company, Attn: Joyce Yamagiwa

EXHIBIT NO. 5

APPLICATION NO. A-2-HMB-01-011

 California Coastal Commission

NOTICE OF FINAL LOCAL ACTION

Coastal Development Permit PDP-01-98

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

RECEIVED
MAR 30 2001

CALIFORNIA
COASTAL COMMISSION

Action Date: March 20, 2001

File: PDP-10-98

Applicant: Keenan Land Company (Joyce Yamagiwa)
700 Emerson Street
Palo Alto, CA 94301-2410

Planner: Kenneth M. Curtis / Joan Lamphier, Consultant

This notice is being distributed to the Coastal Commission and those who requested notice. The subject project is located within the appealable area of the Coastal Zone due to the presence of wetland resources on the site. The Coastal Development Permit was approved by the City Council at its regularly scheduled meeting of March 20, 2000 per Court order.

Project Description: Coastal Development Permit for a Vesting Tentative Map with 83 residential lots plus open space parcels on a 24.7-acre site. The Vesting Tentative Map was approved in 1990 prior to certification of the City's Local Coastal Program.

Project Location: East side of Highway 1, between Terrace and Grandview Avenues

Assessors Parcel Number: APN 048-280-020

APPROVED by the City Council on March 20, 2001, based upon the attached Resolution.

RIGHT OF APPEAL: Any aggrieved person may appeal this decision to the Coastal Commission within 10 working days following Coastal Commission receipt of this notice. Applicants will be notified by the Coastal Commission as to the date the Commission's appeal period will conclude. Appeals must be in writing to the San Francisco Office of the Coastal Commission.

EXHIBIT NO. 5
APPLICATION NO. A-2-HMP-01-011

CITY COUNCIL RESOLUTION _____ C-21-01
PDP 10-98, COASTAL DEVELOPMENT PERMIT FOR
BEACHWOOD SUBDIVISION

RECEIVED
MAR 30 2001

CALIFORNIA
COASTAL COMMISSION

WHEREAS, an application was submitted requesting approval of a Coastal Development Permit for a previously approved Vesting Tentative Subdivision Map and for 80 individual houses in the subdivision; and

WHEREAS, environmental review as required by the California Environmental Quality Act has been provided for the Vesting Tentative Map with an approved Negative Declaration; and

WHEREAS, the Planning Commission conducted duly noticed public hearings on the matter on March 11, 1999, at which meetings all those in attendance were given an opportunity to be heard on the matter; and

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

WHEREAS, the Planning Commission denied the request for approval of the Coastal Development Permit at its meeting of March 11, 1999; and

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

WHEREAS, the City Council held a duly noticed public hearing on March 21, 2000, at which meeting all those in attendance were given an opportunity to be heard on the matter; and

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

WHEREAS, on March 21, 2000, the City denied the request for approval of the Coastal Development Permit; and

WHEREAS, on May 19, 2000, the applicant filed suit in San Mateo County Superior Court (Case No. 413013) to overturn the City's denial of the Coastal Development Permit. This action was consolidated with an earlier action (Case No. 402781) filed by the applicant in November of 1997; and

WHEREAS, on February 22, 2001, the San Mateo County Superior Court ordered the City to issue a Coastal Development Permit consistent with the Vesting Tentative Map, in San Mateo County Superior Court Case No. 402781, which Order and Writ of Mandate are attached hereto as Exhibits A and B; and

EXHIBIT NO. 5
APPLICATION NO. A-2-HMP-01-011

WHEREAS, the City Council has found and determined that:

1. It is issuing the permit pursuant to Court order, not because it has in any way voluntarily modified or reversed it Mach 2, 2000 denial or the findings-in support thereof.
2. Because it is being issued pursuant to the Court order, this development permit is exempt from the California Environmental Quality Act under Public Resources Code section 21080(b)(1).
3. The development will be subject to Conditions of Approval imposed on the Vesting Tentative Map attached hereto as Exhibit C.

NOW, THEREFORE, BE IT RESOLVED that the Half Moon Bay City Council approves the Coastal Development Permit application (PDP-10-98) subject to the Conditions of Approval in Exhibit C.

PASSED AND ADOPTED by the Half Moon Bay City Council at a meeting held on March 20, 2001, by the following vote:

AYES: Coleman, Donovan and Patridge

NOES: _____

ABSENT: Mayor Ruddock

ABSTAIN: Councilmember Taylor

APPROVED:

PASSED AND ADOPTED AT THE
COUNCIL MEETING OF

3-20-01

DR

CITY CLERK

Deborah Ruddock
Deborah Ruddock, Mayor

EXHIBIT NO. 5
APPLICATION NO. A-2-HMP-01-011

PASSED AND ADOPTED AT THE
CITY COUNCIL MEETING OF

Dorothy R. Robbins
City Clerk

ATTEST:

Dorothy Robbins
Dorothy Robbins, City Clerk

EXHIBIT A


 California Coastal Commission

EXHIBIT NO. 5

APPLICATION NO. A-2-HMP-01-011

Page 6 of 27

RECORDED FILED
SAN MATEO COUNTY

FEB 23 2001

Clerk of the Superior Court
By MELINKA JONES
DEPUTY CLERK

California Coastal Commission
EXHIBIT NO. 5
APPLICATION NO. A-2-HMP-01-011

Page 7 of 27

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN MATEO

JOYCE YAMAGIWA, Trustee of THE TRUST CREATED UNDER TRUST AGREEMENT dated January 30, 1980, by CHARLES J. KEENAN III AND ANNE MARIE KEENAN, for the benefit of CHARLES J. KEENAN IV, as to an undivided fifty percent (50%) interest, and Trustee of THE TRUST CREATED UNDER TRUST AGREEMENT dated January 30, 1980, by CHARLES J. KEENAN III AND ANNE MARIE KEENAN for the benefit of ANNE-MARIE KEENAN, as to an undivided fifty percent (50%) interest,

Petitioner and Plaintiff,

v.

CITY OF HALF MOON BAY, CITY COUNCIL OF HALF MOON BAY and DOES 1 through 10,

Respondents and Defendants.

Case No. 402781
(consolidated with Case No. 413013)

[PROPOSED] ORDER GRANTING PEREMPTORY WRIT OF MANDATE

Dept: 14, Judge Rosemary Pfeiffer

[PROPOSED] ORDER GRANTING PEREMPTORY WRIT OF MANDATE Case No. 402781

SHBURN
SCOE &
CARTHY

00401 V03

COPY 1

1 On May 19, 2000, the Plaintiff/Petitioner Joyce Yamagiwa filed a verified petition for
 2 writ of mandamus (under Code Civ. Proc. §§ 1085 and 1094.5) and a complaint for damages
 3 and declaratory relief on six other causes of action. The petition for writ of mandamus only
 4 was specially set for hearing on December 14, 2000, in Department 14 of this Court, the writ
 5 causes of action having been ordered to be heard separately from the remaining causes of
 6 action. Petitioner, Joyce Yamagiwa, acting as Trustee, was represented by Anne E. Mudge
 7 and Edward G. Burg; Respondents City of Half Moon Bay and City Council of Half Moon
 8 Bay were represented by Rick W. Jarvis; and Intervenor California Coastal Commission was
 9 represented by Tara L. Mueller.

10 The Court having reviewed the Record of Respondents' Proceedings in this matter and
 11 having accepted the administrative record into evidence, and having reviewed the briefs
 12 submitted by counsel and the arguments of counsel; the matter having been submitted for
 13 decision; and the Court having issued a Statement of Decision on January 26, 2001,

14 IT IS ORDERED AND ADJUDGED that:

- 15 1. The Petition for a peremptory writ of mandate is GRANTED.
- 16 2. A peremptory writ of mandate directed to Respondents shall issue under seal of
 17 this Court, ordering Respondents to issue to Petitioner Coastal Development Permit PDP-10-
 18 98 consistent with the vesting tentative map approved July 3, 1990, as SUB-06-88 in
 19 conformity with those findings contained in this Court's January 26, 2001 Statement of
 20 Decision.
- 21 3. There are several causes of action remaining to be adjudicated in the case. The
 22 Court, therefore, reserves jurisdiction to determine the appropriateness of an award of
 23 attorneys' fees and costs until final judgment is entered. Petitioner is not required to pursue
 24 attorneys' fees and costs until all causes of action have been resolved.

25 DATED: February 22, 2001.

26 California Coastal Commission

27 EXHIBIT NO. 5

28 APPLICATION NO. A-2-HMP-01-011

ROSEMARY PFEIFFER
 JUDGE OF THE SUPERIOR COURT

Page 8 of 27

PROOF OF SERVICE

I, Ren Almanzor, declare that I am over the age of eighteen years and not a party to this action. I am employed in the City and County of San Francisco and my business address is 55 Francisco Street, Suite 600, San Francisco, California 94133.

On February 14, 2001, at San Francisco, California, I served the following document

[PROPOSED] ORDER GRANTING PEREMPTORY WRIT OF MANDATE

on the following interested parties:

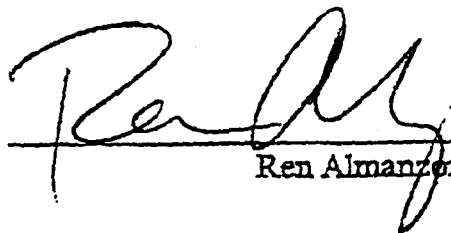
PLEASE SEE ATTACHED SERVICE LIST

In the following manner:

	BY FIRST CLASS MAIL: I am readily familiar with my employer's practice for the collection and processing of mail. Under that practice envelopes would be deposited with the U.S. Postal Service that same day, with first class postage thereon fully prepaid, in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if the postal cancellation date or postage meter date is more than one day after the date of deposit for mailing shown in this proof of service.
	BY FACSIMILE: I caused such envelopes to be delivered by facsimile transmission to the office of the addressee at the facsimile number shown above.
	BY HAND DELIVERY: I caused such envelopes to be delivered by hand to the office of the addressee.
X	BY FEDERAL EXPRESS: I am readily familiar with my employer's practice for the collection and processing of FedEx packages. Under that practice, packages would be deposited with FedEx that same day, with overnight (next business morning) delivery charges thereon fully prepaid, in the ordinary course of business.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on February 14, 2001, at San Francisco, California.


Ren Almanzor

California Coastal Commission
EXHIBIT NO. 5
APPLICATION NO. A-2-HMP-01-011

EXHIBIT B

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

RECORDED FILED
SAN MATEO COUNTY

FEB 23 2001

Clerk of the Superior Court
By: MELANKA JONES
DEPUTY CLERK

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN MATEO

JOYCE YAMAGIWA, Trustee of THE TRUST CREATED UNDER TRUST AGREEMENT dated January 30, 1980, by CHARLES J. KEENAN III AND ANNE MARIE KEENAN, for the benefit of CHARLES J. KEENAN IV, as to an undivided fifty percent (50%) interest, and Trustee of THE TRUST CREATED UNDER TRUST AGREEMENT dated January 30, 1980, by CHARLES J. KEENAN III AND ANNE MARIE KEENAN for the benefit of ANNE-MARIE KEENAN, as to an undivided fifty percent (50%) interest,

Petitioner and Plaintiff,

v.

CITY OF HALF MOON BAY, CITY COUNCIL OF HALF MOON BAY and DOES 1 through 10,

Respondents and Defendants.

Case No. 402781
(consolidated with Case No. 413013)

[PROPOSED] PEREMPTORY WRIT OF MANDATE

Dept: 14, Judge Rosemary Pfeiffer

California Coastal Commission
EXHIBIT NO. 5
APPLICATION NO. A-2-HMP-01-011

Page 11 of 27

WASHBURN
BRISCOE &
MCCARTHY
A Professional Corporation

[PROPOSED] PEREMPTORY WRIT OF MANDATE Case No. 402781

SD411 V01

COPY

1 TO THE CITY OF HALF MOON BAY AND THE CITY COUNCIL OF HALF
2 MOON BAY:

3 The Court having ordered the issuance of a peremptory writ of mandate,
4 YOU ARE HEREBY COMMANDED, immediately on service of this writ, to issue to
5 Petitioner herein Coastal Development Permit PDP-10-98 consistent with the vesting tentative
6 map approved July 3, 1990, as SUB-06-88 in conformity with this Court's January 26, 2001
7 Statement of Decision.

8 YOU ARE FURTHER COMMANDED to make and file a return to this writ on or
9 before March 2, 2001, setting forth what you have done to comply.


10
11 DATED: February 22, 2001.

12
13 MELINKA JONES
14 CLERK OF THE SUPERIOR COURT

15 LET THE FOREGOING WRIT ISSUE.

16 Dated: February 22, 2001

17 ROSEMARY PEFFER
18 JUDGE OF THE SUPERIOR COURT

19
20
21
22
23
24
25
26  California Coastal Commission
27 EXHIBIT NO. 5
APPLICATION NO. A-2-HMP-01-011

28 Page 12 of 27

PROOF OF SERVICE

I, Ren Almanzor, declare that I am over the age of eighteen years and not a party to this action. I am employed in the City and County of San Francisco and my business address is 55 Francisco Street, Suite 600, San Francisco, California 94133.

On February 14, 2001, at San Francisco, California, I served the following document:

[PROPOSED] PEREMPTORY WRIT OF MANDATE

on the following interested parties:

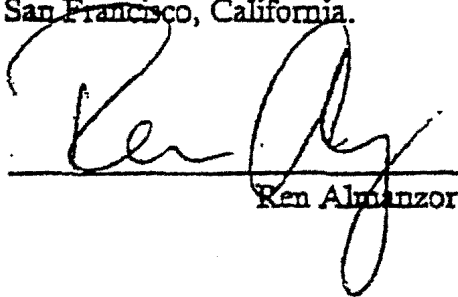
PLEASE SEE ATTACHED SERVICE LIST

In the following manner:

	BY FIRST CLASS MAIL: I am readily familiar with my employer's practice for the collection and processing of mail. Under that practice envelopes would be deposited with the U.S. Postal Service that same day, with first class postage thereon fully prepaid, in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if the postal cancellation date or postage meter date is more than one day after the date of deposit for mailing shown in this proof of service.
	BY FACSIMILE: I caused such envelopes to be delivered by facsimile transmission to the office of the addressee at the facsimile number shown above.
	BY HAND DELIVERY: I caused such envelopes to be delivered by hand to the office of the addressee.
X	BY FEDERAL EXPRESS: I am readily familiar with my employer's practice for the collection and processing of FedEx packages. Under that practice, packages would be deposited with FedEx that same day, with overnight (next business morning) delivery charges thereon fully prepaid, in the ordinary course of business.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on February 14, 2001, at San Francisco, California.



Ren Almanzor

California Coastal Commission
EXHIBIT NO. 5
APPLICATION NO. A-2-HMP-01-011

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

SERVICE LIST

Edward G. Burg
Craig M. Collins
Berger & Norton
1620 26th Street, Suite 200 South
Santa Monica, California 90404
(310) 449-1000 (telephone)
(310) 449-5000 (facsimile)

Rick W. Jarvis
Meyers, Nave, Riback, Silver & Wilson
777 Davis Street, Suite 300
San Leandro, California 94577
(510) 351-4300 (telephone)
(510) 351-4481 (facsimile)

Tara L. Mueller
Deputy Attorney General
California Department of Justice
1515 Clay Street, 20th Floor
Oakland, California 94612
(510) 622-2136 (telephone)
(510) 622-2270 (facsimile)

California Coastal Commission
EXHIBIT NO. 5
APPLICATION NO. A-2-HMP-01-011

PROOF OF SERVICE

I, Ren Almanzor, declare that I am over the age of eighteen years and not a party to this action. I am employed in the City and County of San Francisco and my business address is 55 Francisco Street, Suite 600, San Francisco, California 94133.

On March 1, 2001, at San Francisco, California, I served the following document:

NOTICE OF ENTRY OF ORDER GRANTING PEREMPTORY WRIT OF MANDATE AND PEREMPTORY WRIT OF MANDATE

on the following interested parties:

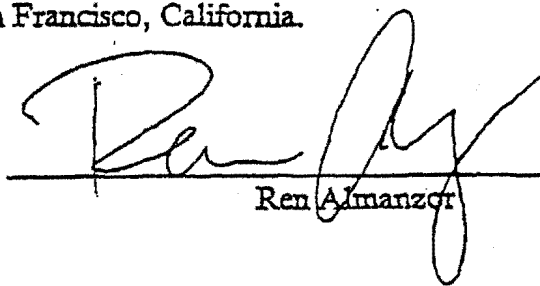
PLEASE SEE ATTACHED SERVICE LIST

In the following manner:

	BY FIRST CLASS MAIL: I am readily familiar with my employer's practice for the collection and processing of mail. Under that practice envelopes would be deposited with the U.S. Postal Service that same day, with first class postage thereon fully prepaid, in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if the postal cancellation date or postage meter date is more than one day after the date of deposit for mailing shown in this proof of service.
X	BY FACSIMILE: I caused such envelopes to be delivered by facsimile transmission to the office of the addressee at the facsimile number shown above.
X	BY HAND DELIVERY: I caused such envelopes to be delivered by hand to the office of the addressee.
	BY FEDERAL EXPRESS: I am readily familiar with my employer's practice for the collection and processing of FedEx packages. Under that practice, packages would be deposited with FedEx that same day, with overnight (next business morning) delivery charges thereon fully prepaid, in the ordinary course of business.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on March 1, 2001, at San Francisco, California.



Ren Almanzor

California Coastal Commission
EXHIBIT NO. 5
APPLICATION NO. A-2-HMP-01-011

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

SERVICE LIST

Edward G. Burg
Craig M. Collins
Berger & Norton
1620 26th Street, Suite 200 South
Santa Monica, California 90404
(310) 449-1000 (telephone)
(310) 449-5000 (facsimile)

BY FAX AND FEDERAL EXPRESS

Rick W. Jarvis
Meyers, Nave, Riback, Silver & Wilson
777 Davis Street, Suite 300
San Leandro, California 94577
(510) 351-4300 (telephone)
(510) 351-4481 (facsimile)

BY FAX AND HAND DELIVERY

Tara L. Mueller
Deputy Attorney General
California Department of Justice
1515 Clay Street, 20th Floor
Oakland, California 94612
(510) 622-2136 (telephone)
(510) 622-2270 (facsimile)

BY FAX AND HAND DELIVERY

California Coastal Commission
EXHIBIT NO. 5
APPLICATION NO. A-2-HMP-01-011

EXHIBIT A

FINDINGS AND CONDITIONS OF APPROVAL

VESTING TENTATIVE MAP SUB-06-28
BEACHWOOD

FINDINGS:

1. That this application was submitted and processed in accordance with the requirements of the Subdivision Ordinance of the City of Half Moon Bay.
2. That the proposed subdivision is consistent with the City of Half Moon Bay Local Coastal Program, Land Use Plan, and all applicable codes and policies of the City.
3. That the site is physically suited for the type and density of the proposed subdivision.
4. That the design of the proposed subdivision as shown on the map dated May 15, 1990, and the proposed improvements will not be detrimental to the health, safety, or welfare of the citizens of Half Moon Bay.
5. That an Initial Study has been prepared for this project in conformance with the California Environmental Quality Act, and it has been determined that this project will not, as mitigated and conditioned, have a significant effect on the environment. The Initial Study and Negative Declaration have been accepted as complete.

CONDITIONS:

Grading and Drainage:

1. That a preliminary geotechnical report shall be required for this project. The geotechnical report shall be prepared, wet-stamped, and signed by a geotechnical engineer licensed by the State of California.

Exhibit A
Findings and Conditions of Approval
Vesting Tentative Map - SUB-06-88/Beachwood 2

2. That a Grading Permit obtained through the City Engineer's office shall be required for all grading outside the street right-of-way. A Grading Permit cannot be issued without an approved grading plan and an approved erosion/dust control plan that provides for winterization of the project site. Comply with all applicable provisions of Chapter 14.24 of the Half Moon Bay Municipal Code and with Standards Specifications for Public Works Construction, 1982 Edition.
3. That if historic or archaeological artifacts are uncovered during grading activities, all work shall stop and a qualified archaeologist shall be retained by the applicant, at the applicant's expense, to perform an archaeological reconnaissance and develop mitigation measures to protect archaeological resources.
4. That the Developer shall comply with all U.B.C. Regulations for grading to reduce temporary erosion impacts associated with development. The future potential for erosion will be eliminated when the sites are landscaped.
5. That a drainage report shall be submitted, as part of the initial Final Map submission, for approval by the City Engineer. The report is to include and show all areas tributary to the site and all information pertinent to the capability of the proposed drainage facilities to handle the expected runoff from the site on the site. Additionally, the report shall include or incorporate the grading plan and the erosion/dust control plan for the project to the satisfaction of the City Engineer. All roof drainage shall be collected and conveyed directly to the gutter or street. The storm drain system shall be connected to existing public lines. Submit engineering calculations confirming that existing storm drain capacity downstream of the proposed development is adequate for the additional flow. If capacity is inadequate, submit engineering calculations and plans for improvements to provide adequate capacity or on-site detention or both. Storm drains must have a manhole at each change in direction of pipe. Curved storm drains are not allowed. Manholes should be within paved streets whenever possible. Changes in flow direction greater than 90 degrees should be avoided.

Utilities:

6. That prior to recordation of the Final Map, the applicants shall submit plans for the water connections to the Coastside County Water District Engineer which shall be approved by all required parties. Furthermore, such security as deemed necessary by the Water District shall be required to insure installation of the proposed facilities.
7. That the subdivider shall submit three prints of the approved Tentative Map to each of the following utility companies: Pacific Gas & Electric Company, Pacific Bell, Weststar Cable TV Company, and the Coastside County Water District. The subdivider shall subsequently provide the City Engineer with each utility's easement needs as part of the initial Final Map submittal.
8. That a sanitary sewer report shall be submitted, as part of the initial Final Map submission, for approval by the City Engineer. The report is to include all information pertinent to the capability of the proposed sewer facilities to handle the expected wastewater from the site. The system shall be connected to existing public lines. Submit engineering calculations confirming that existing sewer capacity downstream of the proposed development is adequate for the additional flow. If capacity is inadequate, submit engineering calculations and plans for improvements to provide adequate capacity. Sanitary sewers must have a manhole at each change in direction of pipe. Curved sewers are not allowed. Manholes should be within paved streets whenever possible. Changes in flow direction greater than 90 degrees should be avoided.
9. That adequate fire hydrants shall be installed within the subdivision to the satisfaction of the Half Moon Bay Fire Protection District. A preliminary map shall be provided to the Fire District for review and approval, which shows all fire hydrant and water main locations prior to the recordation of the Final Map. A copy of the response from the Fire District shall be transmitted to the City Engineer.

Exhibit A
Findings and Conditions of Approval
Vesting Tentative Map - SUB-06-88/Beachwood 4

10. That water supply and distribution line facilities and appurtenances be constructed for domestic water service from Coastside County Water District existing facilities. The developer shall provide evidence of water supply contracts with COWD for not less than 83 lots. Interim water supply is proposed to be from wells. Proof of formation of a mutual water company shall be submitted prior to the submittal of the Final Map.

To protect the water source and public health and safety, all water wells shall be set back from possible sources of pollution and contamination. The amount of setback shall depend upon the geology, soil conditions and topography of the well site. Because of the many variables involved in the determination of the safe horizontal distance of a well from potential sources of contamination and pollution, no one set of distances will be adequate and reasonable for all conditions. In areas where adverse conditions exist, the distances listed may be increased. Conversely, where especially favorable conditions exist or where special means of protection, particularly in construction of the well are provided, lesser distances may be acceptable if approved by the County Health Officer, City Director of Public Works, or his designee.

The following minimum setbacks, measured horizontally from the well, typically shall be:

- From another existing well. 75 feet
- From any septic tanks. 50 feet
- From a septic tank leach field. . . 100 feet
- From a sewer line or lateral. 50 feet
- From a property line (sewered area). . 5 feet
- From a property line (unsewered area) 50 feet
- From an exterior wall of a building foundation. 5 feet
- From a boundary line of any easement dedicated to or reserved for sanitary sewers or wastewater facilities as shown on a map approved by a sanitary district and placed on file by the district within the City of Half Moon Bay 50 feet

Exhibit A
Findings and Conditions of Approval
Vesting Tentative Map - SUB-06-88/Beachwood 3

The applicant shall submit a site plan showing all wells, sewers, sewer laterals, septic tanks, septic tank leach fields, buildings, and easements for storm or sanitary sewers (both existing and proposed) within 100 feet of any well (existing or proposed) on the applicant's parcel(s).

Prior to approval of the Final Map, the applicant shall obtain a domestic well permit issued by the City of Half Moon Bay to convert the existing test well to a temporary domestic well and shall comply with the requirements herein and with the requirements of the San Mateo County Department of Health Services. The applicant shall execute an agreement to abandon and seal the interim domestic well and connect to a permanent water supply system, at the applicant's expense, within 30 days after written notification from the City of the availability of said permanent system. Said agreement shall be recorded and shall apply to all assigns and successors.

Any water filters or water tanks required as part of the on-site water system shall be anchored to prevent lateral movement in accordance with Chapter 23, Uniform Building Code.

All wells, filters, and water tanks shall be screened from view from the street or adjacent property.

11. That if the Mutual Water Company has a treatment or filtering system with backwash residue, and if it is proposed that the residue is to be discharged to the sanitary sewer system, the backwash discharge will be governed by the pretreatment requirements of the Industrial Waste program. The backwash discharge shall be subject to a sewer connection fee and sewer service charge equal to the equivalent number of single-family residences. The total number of single family equivalents shall be determined by dividing the total estimated annual backwash gallonage by seventy-four thousand eight hundred fourteen (74,814) gallons, but in no case shall it be less than one single-family equivalent.
12. That the subdivider shall pay for all maintenance and operation of all utilities and improvements from the time of installation until acceptance of the subdivision improvements by the City Council.
13. That adequate street access and water system for fire protection shall be installed and in working order prior to the beginning of any vertical construction to

Exhibit A
Findings and Conditions of Approval
Vesting Tentative Map - SUB-06-88/Beachwood

Page 22 of 27

the satisfaction of the Fire District and the City Engineer.

14. That fire flow and all other applicable Fire Code Regulations shall be to the satisfaction of the Fire District.
15. That the exact location, number, size, and other pertinent information of all utilities including fire hydrants, street lights, sanitary sewers and storm drains will be checked and approved at the time the final improvement plans are submitted to the City Engineer for review.
16. That all new utilities shall be installed underground.
17. That an Encroachment Permit shall be required for all work within the public right-of-way.

Streets:

18. That the improvement plans for the subdivision shall include the design of the intersection at the proposed Bayview Drive and Highway 1. Said intersection design shall be designed in accordance with Caltrans Standards and shall be approved by Caltrans and the City Engineer.
19. That the applicant shall enter into an agreement with the City of Half Moon Bay, the form and content of which is satisfactory to the City Attorney, that provides for the payment of all costs associated with the improvement of the intersection of Highway 1 and Bayview Drive. The applicant may request that the City prepare a Reimbursement Agreement, allowing the applicant to recover a portion of the cost of the intersection improvements from the developers of the adjacent property to the North across Bayview Drive. Said developers would be required to contribute or reimburse their fair share of the intersection improvement costs prior to the approval of the Final Map for that development. Said improvements shall be those necessary to provide ingress and egress from the subject Beachwood Subdivision.
20. That the public improvements shall be in accordance with the City of Half Moon Bay Design Standards and Standard Specifications.
21. That the developer will be subject to standard traffic mitigation fees, which shall be collected prior to approval of the Final Map in accordance with Section 14.35.060 of the Half Moon Bay Municipal Code.

Exhibit A
Findings and Conditions of Approval
Vesting Tentative Map - SUB-06-88/Beachwood 7

22. That direct vehicular access to Bayview Drive from lots adjacent to the Bayview Drive right-of-way shall not be permitted. The improvement plans for Bayview Drive, Saltair Court, Tidewater Court, Seaside Drive, Golden Gate Avenue, Beachview Drive, and Baywood Court shall be designed to meet Caltrans sight distance requirements.
23. That the driveway access for Lot 15, Block 2, and Lot 6 Block 3, shall be adjacent to the southeasterly side property line. The driveway and garage access shall be designed in such a manner as to permit vehicles to exit the site onto Golden Gate Avenue in a forward direction, rather than backing out onto the street.
24. That the driveway access for Lot 16, Block 1, and Lot 12 Block 2, shall be adjacent to the westerly side property line. The driveway and garage access shall be designed in such a manner as to permit vehicles to exit the site onto the street in a forward direction, rather than backing out onto the street.
25. That unless the subdivider can provide the City with proof of title or interest in that portion of the adjacent parcel (APN 048-280-010 - Marchicoro) within 30.00 feet of the centerline of Bayview Drive prior to submitting a Final Map, then the subdivider shall submit an amended Vesting Tentative Map with the Bayview Drive right-of-way wholly within the Beachwood Subdivision.
26. That the subdivider shall construct curb, gutter, sidewalk, and pavement construction along the street frontages indicated below in accordance with the plans approved by the City Engineer.

Street	Curb Type	Sidewalk Width, FT.
Bayview Drive	Vertical	4
Saltair Court	Vertical	4
Tidewater Court	Vertical	4
Beachview Drive	Vertical	4
Baywood Court	Vertical	4
Golden Gate Avenue	Vertical	4
Seaside Drive	Vertical	4

Exhibit A
Findings and Conditions of Approval
Vesting Tentative Map - SUB-06-88/Beachwood 8

Construct the proposed streets to applicable City standards as follows:

Street Name	Classification	Minimum Width, Ft.	
		Right-of-Way	Curb to Curb
Bayview Drive	Secondary Arterial	80	60
Saltair Court	Minor	50	36
Tidewater Court	Minor	50	36
Beachview Drive	Minor	50	36
Baywood Court	Minor	50	36
Golden Gate Avenue	Minor	50	36
Seaside Drive	Minor	50	36

The minimum radius of any cul-de-sac shall be 30 feet to the face of curb.

27. That there shall be adequate street lighting throughout the project to IES standards for urban residential streets to the satisfaction of the Director of Public Works. The street lighting shall be owned and maintained by Pacific Gas and Electric Company.
28. That the developer shall provide a five foot wide landscaping strip adjacent to Highway 1 along the entire frontage of the development site. The landscaping plan for this area shall be reviewed and approved by the Architectural Review Committee. All landscaping and the irrigation system shall be installed prior to the City accepting the other public improvements within the development. At such time as the public improvements are accepted, the City of Half Moon Bay shall assume the responsibility for maintenance.
29. That a wall shall be constructed for sound attenuation purposes along the frontage of the development site adjacent to Highway 1. The City Engineer shall review the final location and design of the wall to ensure adequate site distance is provided at the intersection of Highway 1 and Bayview Drive.

Park Dedication Requirements:

30. That the developer shall dedicate to the City of Half Moon Bay for Park and Recreation purposes all of Lot 1A of Block 3 and all of Lot 19C of Block 3. In addition, these two sites shall be developed in essentially the same manner as proposed in the Beachwood Landscape Project Plans submitted as a part of the City Council

approval of this Vesting Tentative Map. The City Parks and recreation Director shall review the proposed park improvement plans and budget prior to the submittal of the Final Map. All facilities and landscaping shall be installed per the approved plans prior to the issuance of building permits for any residential construction. In the event that building permits are requested prior to the completion of the installation of the required park and recreation facilities, the applicant may post a bond satisfactory to the City Attorney, Public Works Director, and Parks and recreation Director to ensure that the required improvements are installed prior to the finalization of any building permits.

31. That the areas to be dedicated to the City of Half Moon Bay for Park and Recreation purposes shall be separated physically and visually from the adjacent residential building sites and the Conservation Easement Area to the satisfaction of the Director of Parks and Recreation and the Department of Fish and Game.
32. That all of Lots 1B, 19A, and 19B of Block 3 shall be subject to an irrevocable offer of dedication, and shall be maintained in a manner satisfactory to the California Department of Fish and Game.

Residential Construction:

33. That all building heights and setbacks from the lot lines must be consistent with the R-1-B-2 Zoning Regulations in Title 18 of the Half Moon Bay Municipal Code to the satisfaction of the Director of Planning.
34. That any single family homes constructed on the lots must be designed in such a manner that the ambient noise level within the structure shall meet a Sound Transmission Class (STC) of 50 (45 if field tested and verified by a registered Noise Engineer to the satisfaction of the Director of Planning).
35. That all housing units shall be designed and constructed in accordance with all U.B.C. Regulations (1982 Code) with all building plans to be reviewed and approved by the Building Department prior to the issuance of any Building Permits, to the satisfaction of the Director of Public Works. Computations and back-up data will be considered a part of the required plans. Structural calculations, engineering calculations, or both shall be prepared, signed, and wet stamped by an engineer or architect licensed by the State of California.

Exhibit A
Findings and Conditions of Approval
Vesting Tentative Map - SUB-06-88/Beachwood 10

36. That all residential dwellings shall display lighted street address numbers in a prominent location on the street side of the residence in such a position that the number is easily visible to approaching emergency vehicles. The numerals shall be no less than four inches in height and shall be of a contrasting color to the background.
37. That the developer shall construct all structures in compliance with the strictest standards listed in the U.B.C. Regulations for single family residence earthquake safety as required by Title 24 of the California Administrative Code.

Final Map Submittal:

38. That the initial submission of the Final Map shall be in complete form and accompanied by the traverse sheets, map checking fee and all other items required by the City Engineer. The Final Map shall include a name to be approved by the City Council for any streets and offer all necessary rights-of-way and easements for dedication. The submittal shall include the latest title report (tract map) guarantee of the property.
39. That all material necessary to present the subdivision Final Map to the City Council shall be submitted to the City Engineer at least four weeks prior to the presentation. The material shall be submitted in a form satisfactory to the City Engineer.
40. That the subdivider shall submit improvement plans for the public improvements, including a grading plan and an erosion/dust control plan, as part of the initial Final Map submission. The plans shall be in complete form and in accordance with the standards established by the California Subdivision Map Act, the City's Municipal Code, and the City Engineer regarding format and design information required.
41. That the subdivider shall irrevocably offer for dedication to the public for their use, all streets, easements for public utilities, for sanitary sewers, for storm drainage, for water lines, and for public access as may be required.
42. That any permits required by the Coastal Commission, Caltrans, the California Fish and Game Department, the U.S. Army Corps of Engineers, or any other agency with permitting jurisdiction over the subject property shall be obtained by the applicant or the applicant's representative prior to the issuance of Building Permits.

Exhibit A
Findings and Conditions of Approval
Vesting Tentative Map - SUB-06-88/Beachwood 11

43. That the subdivider pay all outstanding fees and charges due, and make any necessary escrow deposits prior to the recordation of a Final Map.
44. That the subdivider shall cause to be prepared and shall enter into a Subdivision Agreement satisfactory to the City Council covering all of the conditional items specified herein as required by law prior to or when the Final Map is submitted.
45. That the subdivider provide City standard survey monumentation in the street. Three-fourths inch diameter I.P. monuments (24 inch minimum length) shall be set at all lot corners, except where sidewalks are to be constructed or are existing. The surveyor shall set lead and tack in the sidewalk at these locations.
46. That the developer shall be subject to standard storm drainage improvement fees, which shall be collected prior to the approval of the Final Map, in accordance with Chapter 17.08 of the Half Moon Bay Municipal Code.

Special Fire Service Zone:

47. That the applicant shall agree to participate in the formation of a special service zone to assist in the funding of the additional manpower required to service the project. As additional fire service zones are developed, the assessment may be adjusted as necessary to reflect the proportionate contribution of each area for fire protection services. Prior to the issuance of building permits, the applicant shall execute an agreement with the Fire District which shall provide for fully funding the first years assessment at a date set forth in the agreement.

file: S0688FC1

CALIFORNIA COASTAL COMMISSION

EXHIBIT NO. 6

APPLICATION NO. A-2-HMB-01-011

 California Coastal Commission100 CALIFORNIA STREET, SUITE 2000
SAN FRANCISCO, CA 94105-2219
TELEPHONE AND TDD (415) 904-5200**VIA FACSIMILE AND REGULAR MAIL**

(510) 351-4481 (Meyers, Nave, Riback, Silver, and Wilson)

(650) 726-9389 (City of Half Moon Bay)

March 20, 2000

John Truxaw, City Attorney
City of Half Moon Bay
Meyers, Nave, Riback, Silver, and Wilson
777 Davis Street, Suite 300
San Leandro, CA 94577RE: Beachwood Wetlands; Appeal of the Planning Commission Denial Without
Prejudice of an Application for a Coastal Development Permit for the Beachwood'
Subdivision

Dear Mr. Truxaw:

On February 15, 2000, you requested our opinion on how to interpret the definition of wetlands contained in the City's certified Local Coastal Program ("LCP"). (See enclosure.) Your request arose in the context of a coastal development permit ("CDP") application involving the Beachwood subdivision pending before the City Council on appeal. The CDP application, PDP-10-98, is agendized for the City Council's meeting of March 21, 2000. This letter responds to that request.

As explained in your letter, attached, the developer of the Beachwood subdivision claims that the City's LCP excludes from the definition of wetlands vernal wet areas that do not contain hydric soils, even if those vernal wet areas support the growth of plants which normally are found to grow in water or wet ground. However, the developer's interpretation of the certified LCP is contrary to the language of the LCP and is inconsistent with the Coastal Act and its implementing regulations. The City's LCP explicitly defines wetlands to include areas where the water table is near the land surface long enough to support the growth of plants which normally are found to grow in water or wet ground even if the water table is not near the surface long enough to support the formation of hydric soils. The additional discussion following the

definition of wetlands excludes only vernal wet areas with neither hydric soils nor hydrophytes.

Our understanding of the LCP's definition of wetlands is (1) mandated in light of the guiding provisions of the Coastal Act; (2) consistent with the definition of wetlands contained in section 30121 of the Coastal Act (the guiding framework for the City's LCP provision) and section 13577(b)(1) of the Coastal Commission's ("Commission's") regulations; and (3) provided for in section 18.38.020(E) of the City's certified LCP.

First, in interpreting the City's LCP, section 30009 of the Coastal Act instructs that the Coastal Act shall be liberally construed to accomplish its purposes and objectives. The courts are thus obligated to construe the City's LCP liberally in a manner consistent with the Coastal Act and most protective of environmental resources. Given the dramatic loss of wetlands in this country, including California's coastal zone, the importance of protecting this dwindling resource must be underscored.

Second, our interpretation of the City's LCP is consistent with the definition of wetlands contained in the Coastal Act and its implementing regulations. Given that local governments adopt LCPs in order to implement the Coastal Act, and that the Commission found the City's LCP to be in conformity with the Coastal Act, the City's definition of wetlands must be interpreted in a manner consistent with the Coastal Act and its implementing regulations where such an interpretation is possible.

Section 30121 of the Coastal Act defines wetlands to include any areas periodically covered with shallow water. Section 30121 of the Coastal Act states:

"Wetland means land within the coastal zone which may be covered periodically or permanently with shallow water and include saltwater marshes, freshwater marshes, open or closed brackish water marshes, swamps, mudflats, and fens."

Section 13577 of the Commission's regulations implements and further clarifies section 30121 of the Coastal Act. This provision provides that wetlands include areas where the water table is near the land surface long enough to promote the formation of hydric soils or hydrophytes. Section 13577 states:

"For purposes of Public Resources Code Sections 30519, 30600.5, 30601, 30603, and all other applicable provisions of the Coastal Act of 1976, the precise boundaries of the jurisdictional areas described therein shall be determined using the following criteria:

(b) Wetlands.

(1) Measure 100 feet landward from the upland limit of the wetland. Wetland shall be defined as land where the water table is at, near, or above the land surface long enough to promote the formation of hydric soils or to support the growth of hydrophytes, and shall also, include those types of wetlands where vegetation is lacking and soil is poorly developed or absent as a result of frequent and drastic fluctuations of surface water levels, wave action, water flow, turbidity or high concentration of salts or other substances in the substrate. Such wetlands can be recognized by the presence of surface water or saturated substrate at some time during each year and their location within, or adjacent to, vegetated wetlands or deep-water habitats. For purposes of this section, the upland limit of a wetland shall be defined as:

(A) the boundary between land with predominantly hydrophytic cover and land with predominantly mesophytic or xerophytic cover;

(B) the boundary between soil that is predominantly hydric and soil that is predominantly nonhydric; or

(C) in the case of wetlands without vegetation or soils, the boundary between land that is flooded or saturated at some time during years of normal precipitation, and land that is not.

..." [emphasis added.]

Thus, under the definition of wetlands contained in the Commission's regulations, areas at the Beachwood site where the water table is near the surface long enough to support the growth of plants which normally are found to grow in water or wet ground are considered wetlands even if the water table is not near the surface long enough to support the formation of hydric soils. As explained below, the definition of wetlands in the City's LCP is entirely consistent with the definition of wetlands in the Coastal Act and its implementing regulations.

Third, the position that wetlands include areas with hydrophytic vegetation even if the site is vernal wet and the soils are not hydric is mandated by the plain language of the certified LCP itself. The definition of wetlands contained in section 18.38.020(E) of the City of Half Moon Bay's certified LCP states:

For San Mateo County, it is appropriate to adapt the definition of wetland used by the U.S. Fish and Wildlife Service (Classification of

Wetlands and Deep-Water habitats of the United States, (1977). This definition embraces several important concepts which are relevant to the San Mateo Coast: (1) the relationship of the water table with respect to the ground surface; (2) the duration of the water on or at the surface; (3) the soil types involved with the permanent or temporary saturated conditions; and (4) the flora and fauna adapted to the wet conditions.

The most important feature which acts as a common denominator is the soil as indicated in Item 3, above. As a result of the above considerations, the Local Coastal Plan adopts the following U.S. Fish and Wildlife Service definition of wetland:

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

Like the Coastal Act and its implementing regulations, the City's certified LCP provides that wetlands include areas where the water table is near the land surface long enough to promote the formation of hydric soils or to support the growth of plants which normally are found to grow in water or wet ground. Thus, given the bolded portions of the above referenced wetland definitions, wetlands include either vernal wet areas with hydric soils or vernal wet areas with hydrophytes. Accordingly, if the vernal wet areas contain hydrophytes, they are considered wetlands even if they do not contain hydric soils.

After providing a definition of wetlands consistent with the Coastal Act's implementing regulations, the City's certified LCP definition goes on to provide various examples of areas where the water table is near the surface long enough to promote the formation of hydric soils or support the growth of plants which normally are found to grow in water or wet ground. These examples illuminate the meaning of the bolded portion of the City's definition. After providing such examples, the definition of wetlands contained in the City's certified LCP goes on to identify examples of areas where the water table is not near the surface long enough to promote

the formation of hydric soils or support the growth of plants which normally are found to grow in water or wet ground. One such example identified in the last sentence of section 18.30.020(E) is "vernally wet areas where the soils are not hydric." Given that the term "vernally wet" describes areas which are wet during the spring rather than other periods of the year, such areas might not be wet long enough to promote the formation of hydric soils. This example of non-wetland areas does not extend to vernal wet areas that contain hydrophytes. Thus, these latter vernal wet areas remain within the definitions of wetlands. Accordingly, only vernal wet areas with neither hydric soils nor hydrophytes would be excluded from the City's definition of wetlands.

This interpretation harmonizes the underlined portion of section 18.30.020(E) with the bolded portions of that section and gives meaning to the word "or" contained in that bolded portion. Reading the last sentence of the LCP definition in conjunction with the bolded portions of the above-referenced LCP definition and the examples which follow results in an interpretation of the City's LCP that is consistent with the Coastal Act and its implementing regulations, and gives meaning to every phrase of the City's definition.

The Beachwood developer instead argues in favor of a narrow construction of section 18.38.020(E), one that would exclude vernal wet areas without hydric soils, even if those areas were wet enough to support the growth of plants that normally grow in water or wet ground. However, such an interpretation would exclude wetland areas otherwise expressly included in the bolded portions of the above-referenced definitions and effectively convert the word "or" to the word "and." Not only is this construction inconsistent with the plain language of the LCP, such construction is also inconsistent with the Coastal Act and its implementing regulations. Therefore, this illogical construction cannot stand.

Furthermore, we note that even if the certified LCP excludes vernal wet areas that contain hydrophytes but lack hydric soils as the Beachwood developer incorrectly states, we agree with the City's staff recommendation that such exclusion is not applicable to the wet areas at the Beachwood site. As stated on page 21 of the City staff's recommendation, the areas identified by the City's biological evaluation meet the LCP's definition of wetlands "because the [] ponded areas were found to be inundated beyond the 'vernal' period under rainfall conditions which could not be characterized as abnormal, because of the inability [to] effectively rule out the presence of hydric soils in such areas, and because of the ability of these areas to support the growth of plants which are normally found to grow in water or wet ground."

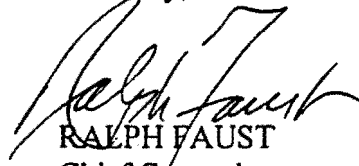
In conclusion, the most logical interpretation of the above-quoted language contained in the City's certified LCP, construed in light of the Coastal Act as a whole, requires the City to protect those areas at the Beachwood site where the water table is near the land surface long enough either to support the growth of hydrophytes or to support the formation of hydric soils. As such, only vernal wet areas with neither hydric soils nor hydrophytes are excluded from the City's definition of wetlands. This interpretation is supported by the guiding provisions of the

John Truxaw
March 20, 2000
Page -6-

Coastal Act, its implementing regulations, and the need to give significance to every word and phrase of the City's definition.

Thank you for the opportunity to provide you with input on this significant matter.

Sincerely,


RALPH FAUST
Chief Counsel

All w/enc.

cc: Peter Douglas, Executive Director – California Coastal Commission
Dennis Coleman, Mayor – City of Half Moon Bay
Deborah Ruddock, Vice-Mayor – City of Half Moon Bay
Jerry C. Donovan, City Council Member – City of Half Moon Bay
Naomi Patridge, City Council Member – City of Half Moon Bay
Toni Taylor, City Council Member – City of Half Moon Bay
Mike Ferreira, Chairman of Planning Commission – City of Half Moon Bay
James L. Benjamin, Vice-Chair of Planning Commission – City of Half Moon Bay
Robin King, Planning Commission – City of Half Moon Bay
John Sullivan, Planning Commission – City of Half Moon Bay
Don Heinz, Planning Commission – City of Half Moon Bay
Robert Hansen, Planning Commission – City of Half Moon Bay
Blair King, City Manager – City of Half Moon Bay
Ken Curtis, Planning Director – City of Half Moon Bay

G:\Legal\AM\Cheddar\Beachwood.doc

EXHIBIT NO. 6
APPLICATION NO. A-2-HMP-01-011

Page 6 of 10

February 15, 2000

Amy F. Roach, Staff Counsel
California Coastal Commission
45 Fremont Street, Suite 2000
San Francisco, CA 94105-2219

RE: Beachwood Wetlands

Dear Amy:

Enclosed are materials recently provided to the City of Half Moon by Wetlands Research Associates and others¹ regarding the presence or lack thereof of LCP wetlands on the Beachwood site. It is my understanding that you will share these materials with the Commission's wetlands biologist, John Dixon, for his consideration and review. The materials, and the City's predicament could also benefit from your thoughts and analysis as well, and thus, I will explain in as straightforward a fashion as I can, what I understand the issues to be at present. I would truly appreciate any thoughts you might have on what follows.

¹Specifically the documents are as follows:

- 1) Half Moon Bay Local Coastal Plan Wetland Delineation Study for the Beachwood Subdivision, prepared by Wetlands Research Associates dated December, 1999 by Michael Josselyn, PhD, which includes within the appendices thereto legal analysis prepared by Anne Mudge, as well as an opinion of the presence of hydric soils by Stephen Faulkner, PhD.
- 2) LSA's review of the above document, dated January 24, 2000 prepared by Sean Lohmann and Steve Foreman
- 3) WRA's February 2, 2000 response to the LSA review
- 4) Stephen Faulkner's February 4, 2000 response to the LSA review
- 5) Anne Mudge February 4, 2000 response to the LSA review
- 6) FYI: Coastal Commission's letter to Michael Josselyn regarding mapping of hydrophytic plant population of North Wavecrest site

North Bay Office
Rosa, California

EXHIBIT NO. 6
APPLICATION NO. A-2-HMP-01-011

East Bay Office
San Francisco, California

As we discussed Friday morning, the analysis prepared by WRA and Dr. Faulker is based on their understanding that the City's LCP excludes from the definition of wetlands vernal wet areas where the soils are not hydric.² In their study, they have reviewed eight separate plots which have some evidence of being wetlands. They concede that these areas are vernal wet, and that there are portions of them covered with hydrophytic vegetation.³ Therefore, at Anne Mudge's direction⁴, they focus on whether or not the soil in these areas are hydric since if not, in accordance with the advice they have received from Anne Mudge, under the City's LCP these areas would not be considered wetlands. They conclude that all but one of the plots have non-hydric soils, and thus are not LCP wetlands.

The City's LCP definition of wetlands is unique and does appear to exclude areas which would clearly be included within the Coastal Act (statutory) definition as well as within the definition generally applied by US Fish and Wildlife. One legal issue that is forced by the LCP definition is whether the Coastal Commission has the power, in certifying a LCP, and thus in finding it consistent with the Coastal Act, to change a statutory definition found in the Act?

However, assuming that the City must apply its LCP definition of wetlands in this situation, then the next question posed is whether or not the Josselyn/Faulkner conclusion that the soil is not hydric holds. In the introduction to its Hydric Soils of the United States, the USDA-NRCS lists four separate criteria of a hydric soil, the presence of any one of which will result in the soil being considered hydric. Two of those criteria pertain to the observable condition of the soil, and generally require digging up the soil and reaching certain objective conclusions about it. For sake of this letter, it appears that the soil might not satisfy either of the first two criteria. However, the third criterion refers to "soils that are frequently ponded for long duration or very long duration during the growing season."⁵ "Frequently ponded" refers to "a frequency class in which flooding, ponding, or saturation is likely to occur often under usual weather conditions (more than 50 percent chance in any year, or more than 50 times in 100 years). "Long duration" refers to "a duration class in which inundation for a single event ranges from 7 days to 1 month." In other words, if the soil at issue is ponded for between seven days to one month during the growing season, and this is likely to occur more often than not in any given year, then the soil is hydric. All agree that in recent years, the soils in question have frequently ponded. For that reason, Josselyn/Faulkner have reviewed photographs and rainfall tables

²See LUP Appendix A, Special Definitions and Zoning Ordinance section 18.38.020.E., attached

³See Appendix A to the WRA Wetlands Delineation Study which includes data forms for eight analyzed plots, five of which are noted as being 100% covered with hydrophytic vegetation

⁴ See Mudge letter in Appendix B to the WRA Study

⁵The fourth criterion is "flooding;" the area does not flood with any regularity.

to determine whether the frequency of ponding would satisfy the above criteria. They argue that the area must be ponded fifty out of 100 years to meet the standard of "frequently." They review certain rainfall data and site photographs, and conclude that the type of ponding that occurred last year, during a heavy rainfall year, would not likely occur for fifty out of 100 years. Based on that analysis, they conclude that it wouldn't pond in a normal year. One problem with their conclusion is that so far during this winter, prior to February 10, 2000 and thus during a period of below normal rainfall, casual observation indicates that the site has shown extensive ponding. Furthermore, the USDA-NRCS definition is not as restrictive as Josselyn/Faulkner indicate; rather than requiring ponding in fifty out of 100 years, it requires no more than a fifty percent chance in any given year, thus not requiring 100 years of observation or fifty years of actual occurrence.

As the above discussion implies, I believe that wetlands scientists could reasonably reach a different conclusion than do Josselyn/Faulkner as to the likelihood that growing season ponding is in fact great enough to result in a conclusion that portions of the site are hydric. But even if the Josselyn/Faulkner conclusion were to hold and the site is determined to not be hydric and therefore arguably not a wetland under the City's unique definition, we are forced to return to the question posed earlier: by what authority may the Coastal Act's definition of wetlands be changed in the approval of an LCP?

Even if the definition of wetlands can be changed by the Commission at the local level, it is doubtful that the Commission has the power to change the definition in the Act as it applies to the Commission's duties and jurisdiction. That is, under section 30603 of the Act the Commission maintains appellate jurisdiction within 100 feet of any wetland. Clearly, the "wetland" jurisdiction of the Commission applies to wetlands as defined in the Act, at section 30121 and not as defined in a local LCP. Presumably, if the Commission were to assert appellate jurisdiction over a CDP approved on this site, the Commission would assert it over wetlands not as defined in the City's LCP, but rather as defined in the Act.⁶ However, if this is true, then the Commission would be put in an odd position when it came to acting on any CDP, since it would look for the project's consistency with the City's LCP. That is, assuming that this project eventually requires Coastal Commission action, would the Commission apply the LCP definition of wetland, or the definition of wetlands found in the Act? Assuming for sake of discussion only that Mr. Dixon agrees with Josselyn/Faulkner that the areas in question are not hydric, but also concludes that certain of those areas do satisfy the Coastal Act's definition of wetlands, it would seem an odd result that the Commission might obtain appellate jurisdiction over an area, but have no authority to regulate development in that same area. Because the Commission did certify the City's LCP, and thus did certify this problematic definition of wetlands, your thoughts on this predicament would be greatly appreciated.

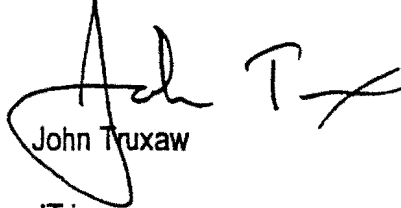
⁶ Coastal Commission Regulations section 13577 supports a definition of wetlands to include an area where among other things the water table is at or near the surface long enough to support either the growth of hydrophytes or the formation of hydric soils.

Amy F. Roach, Staff Counsel
February 15, 2000
Page 4

It appears that the City Council will consider this matter in late March. Between now and then, City staff, LSA and the City's Planning Consultant will continue to watch the site, and consider the appropriate advice to provide the City Council as it considers this matter. Thank you in advance for your interest in this matter. I look forward to discussing this matter with you when your schedule permits.

Very truly yours,

MEYERS, NAVE, RIBACK, SILVER & WILSON



John Truxaw

JT:jm

Enclosures

c: Mayor and City Council (w/out enc.)
Chairman Members of the Planning Commissioner (w/out enc.)
City Manager (w/out enc.)

J:\WPD\WNR\SW465\024\LTR\roactj2.wpd

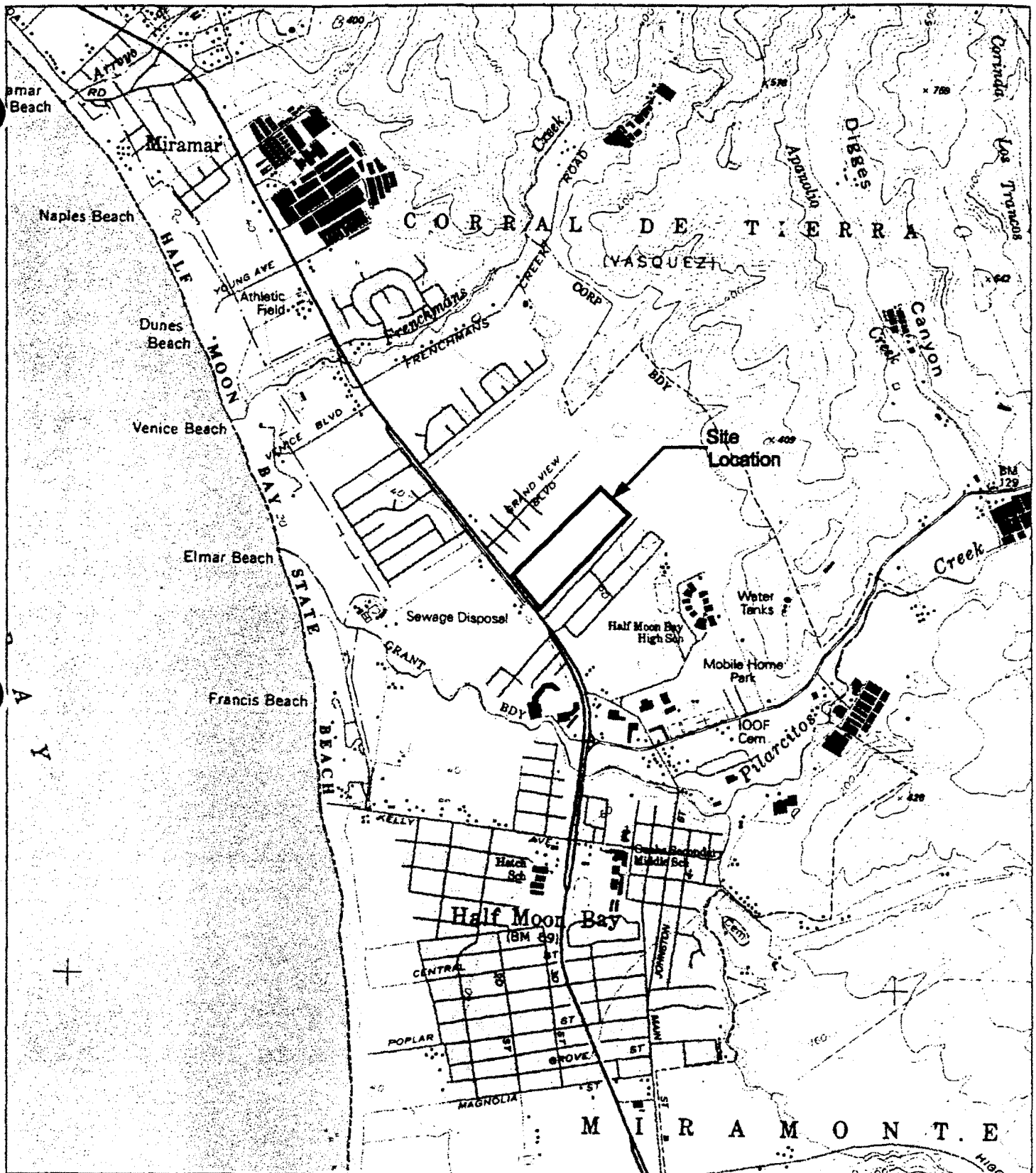


Figure 1. Beachwood Subdivision Location Map

EXHIBIT NO. 7

APPLICATION NO. A-2-HMB-01-011

California Coastal Commission



SCALE 1:24000

Wetlands Research Associates, Inc.
 2180-G East Francisco Blvd.
 San Rafael, CA 94901
 Contact: Michael Josephyn
 Phone: 415-454-8888

LOCATION: Half Moon Bay, CA

COUNTY: San Mateo

APPLICATION BY: Beachwood Subdivision

SOURCE: USGS Half Moon Bay Quadrangle, 1981

DATE: DECEMBER 1999

CALIFORNIA COASTAL COMMISSION45 FREMONT STREET, SUITE 2000
SAN FRANCISCO, CA 94105-2219
VOICE AND TDD (415) 904-5200**EXHIBIT NO. 8****APPLICATION NO. A-2-HMB-01-011****April 13, 2001** California Coastal Commission**REASONS FOR APPEAL**

The approved development does not conform to the policies of the certified City of Half Moon Bay Local Coastal Program (LCP) concerning public access to the coast, wetlands, environmentally sensitive habitat areas, visual resources, water quality, and availability of services.

1. Public Access to Coast

The City of Half Moon Bay LCP contains policies requiring adequate road capacity to serve new development and to minimize impacts of development to traffic on Highways 1 and 92. Land Use Plan (LUP) Policy 9-2 specifies that new development shall not be permitted unless it is found that the development will be served upon completion with road facilities. LUP Policy 9-4 requires that development shall be served with adequate services and that lack of adequate services shall be grounds for denial of a development permit or reduction in the density otherwise allowed under the LUP. Policy 10-4 states that the City shall reserve public works capacity for priority land uses including public access and recreation from consumption by other non-priority uses such as residential development. LUP Policy 10-25 designates LOS C as the desired level of service on Highways 1 and 92 except during the weekday and weekend peak-hours when LOS E may be accepted. In addition, pursuant to LUP Policy 1-1, the City has adopted the Chapter 3 Policies of the Coastal Act as the guiding policies of the LUP. Accordingly, the City's LUP adopts Coastal Act Sections 30210, 30250 and 30252. These policies require that development shall not interfere with the public's ability to access the coast and shall only be approved in areas with adequate public services.

Road access to the Mid-Coast region of San Mateo County including the City of Half Moon Bay is limited to Highways 1 and 92. Studies show that the current volume of traffic on these highways exceeds their capacity and that even with substantial investment in transit and highway improvements, congestion will only get worse in the future. As a result, the level of service on the highways at numerous bottleneck sections is currently and will in the future continue to be rated as LOS F. LOS F is defined as heavily congested flow with traffic demand exceeding capacity resulting in stopped traffic and long delays. This level of service rating system is used to describe the operation of both transportation corridors as well as specific intersections. LOS F conditions are currently experienced at certain intersections and at bottleneck sections of both highways during both the weekday PM peak-hour commuter period and during the weekend mid-day peak. The LCP contains policies that protect the public's ability to access the coast. The extreme traffic congestion existing on Highways 1 and 92 significantly interferes with the public's current ability to access the area's substantial

public beaches and other visitor serving coastal resources in conflict with these policies.

The approved project includes construction of Bayview Avenue with a new signalized intersection at Highway 1. The new intersection and signal will further disrupt traffic flow within the highly congested portion of Highway 1 that runs through urban Half Moon Bay, in conflict with the requirements of the LCP.

In addition to the local traffic impacts on Highway 1 that will result from the approved development, the approved increase in traffic resulting from the construction of 80 new residential units will have significant adverse cumulative impacts to regional traffic congestion. Highways 1 and 92 are the only access routes serving San Mateo County beaches from the region's major population centers. Studies show that the current volume of traffic on these highways exceeds their capacity and that even with substantial investment in transit and highway improvements, congestion will only get worse in the future. As a result, the approved development will significantly interfere with the public's ability to access the coast, inconsistent with Coastal Act Policies 30210, 30250 and 30252, all of which policies are incorporated into the Half Moon Bay LCP by LUP Policy 1-1.

The essential reasons for this problem are that capacity increases to the highways are constrained both legally and physically and because there is a significant imbalance between housing supply and jobs throughout the region. Without any new subdivisions, there are approximately 2,500 existing undeveloped small lots within the City. Each of these lots could potentially be developed with at least one single-family residence. Even with the City's Measure A 3-percent residential growth restriction in place, the City could reach this buildout level by 2010. If the Measure D one percent growth restriction approved by Half Moon Bay voters in November 1999 is implemented through an amendment to the LCP (litigation challenging the measure is currently pending), the rate of buildout would be slowed, but neither of these growth rate restrictions change the ultimate buildout level allowed. It is also important to note that neither the approved development nor several other proposed subdivisions for which the City approved vesting tentative maps prior to the effective date of Measure A are subject to these growth restrictions.

The County's Congestion Management Plan (CMP) concludes that a major factor contributing to existing and future traffic congestion throughout the County is the imbalance between the job supply and housing. In most areas of the County, the problem is caused by a shortage of housing near the job centers, resulting in workers commuting long distances from outside the County. In these areas, the CMP recommends general plan and zoning changes designed to increase the housing supply near the job centers of the County. In the Mid-Coast area of the County however, the problem is reversed. In accordance with the projections contained in the CMP, buildout of the currently existing lots within the City of Half Moon Bay would exceed the needed housing supply for the area by approximately 2,200 units, contributing to significantly worse congestion on the area's highways. Simply put, the

capacity of the regional transportation network cannot feasibly be increased to the level necessary to meet the demand created by the development potentially allowable under the City and the County land use plans.

In its February 2001 action approving the Pacific Ridge subdivision, the Commission found that in light of both the current and projected traffic levels on the area highways, a new subdivision resulting in a net increase in legal lots in the San Mateo County Mid-coast Region would have significant adverse cumulative impacts to regional traffic congestion. In accordance with the policies of the Half Moon Bay LCP that require new development to be served by adequate public services and that seek to protect the public's rights to access the coast by reserving service capacity for that priority use, the Commission required as a condition of approval for the Pacific Ridge project that the applicant retire the development rights on an equivalent number of existing legal lots within the region. Only through this measure was the Commission able to find the project consistent with the Half Moon Bay LCP. The only mitigation provided regarding traffic impacts of the Beachwood development pursuant to the City's action is the installation of the traffic signal where the approved subdivision access road will intersect Highway 1 and the payment of the City's standard traffic mitigation fee of approximately \$1,600 per residence. The City's action does not specify how this mitigation fee will be spent or demonstrate that this mitigation fee is sufficient to address either the local or the regional cumulative impacts of the development. Furthermore, the Commission has not certified the standard traffic impact mitigation fee provisions of the City's municipal code as adequate to carry out the requirements of the Coastal Act or the Certified LUP. According to the Regional Transportation Plan, even with the maximum contemplated investment in regional highway and transit improvements totaling \$3.2 billion, the volume of traffic on Highway 1 and 92 in the Mid-coast Region will continue to greatly exceed capacity. Thus, the mitigation fee required as a term of the City's approval is inadequate to avoid or offset the cumulative traffic impacts that will result from the approved increase in the supply of legal lots in the region. Therefore, the approved development is inconsistent with LUP Policies 9-2, 9-4 and 10-4 and Coastal Act Policies 30210, 30250, and 30252, which are incorporated into the City's LCP by LUP Policy 1-1.

2. Wetlands

The approved project would result in the fill of wetlands, as defined by the Coastal Act, its implementing regulations, and the certified LCP. The City's approval did not evaluate the project's effects on these wetland resources contrary to Zoning Code Section 18.20.070. LUP Policies 3-2, 3-3, 3-11, 3-12 and 3-22 prohibit any uses that would have significant adverse impacts on sensitive habitat areas, require any development in areas adjacent to sensitive habitats to be sited and designed to prevent impacts that could significantly degrade the sensitive habitats, require, at a minimum, a 100-foot buffer from wetlands, ponds, and other wet areas, and severely restrict uses within buffer zones. In addition, pursuant to LUP Policy 1-1, the City has adopted the Chapter 3 Policies of the Coastal Act as guiding policies of the LUP.

Accordingly, the City's LUP adopts Coastal Act Sections 30230-30233 and 30240, which also require that development protect the biological productivity and quality of coastal waters, wetlands and sensitive habitat areas.

The wetlands on the project site include both vernal wet areas with hydrophytes and other wetlands that consist of both hydric soils and hydrophytes. The approved project would result in fill of the vernal wet areas with hydrophytes. It will also potentially result in adverse effects to the other wetlands on the site through erosion and non-point source pollution. Therefore, the City's approval does not conform with certified LUP Policies 3-2, 3-3, 3-11, 3-12, and 3-22 and Coastal Act Policies 30230-30233 and 30240, which have been incorporated into the City's LCP by LUP Policy 1-1.

3. Environmentally Sensitive Habitat Areas

A U.S. Fish and Wildlife Service letter dated March 11, 1999 states that the property may support California red-legged frogs and San Francisco garter snakes. The property includes eucalyptus trees and open grassy areas, which might support raptor roosting and foraging. Therefore, the project is located in an area that potentially supports several sensitive species. The biological report for this subdivision contains a report by Harding Lawson Associates entitled *San Francisco Garter Snake Survey and Riparian Mitigation Plan, Beachwood Subdivision, Half Moon Bay*. This snake survey was done in 1989 and did not include live trapping. In addition, the biological report does not include surveys for the red-legged frog. All that is included is a letter from a wildlife biologist (Jeffery B. Froke, Ph.D., March 10, 1999) that states that, in the biologist's opinion, the area does not support the frog. That opinion does not appear to be based on scientific surveys or trapping. Finally, the biological report does not provide any analysis of raptor habitat on the site.

The supporting policy discussion in the City's LUP (Chapter 3) identifies raptors as a "unique species." LUP Policy 3-1 defines habitat for threatened, endangered, and unique species as environmentally sensitive habitat areas. Policies 3-21, 3-22, 3-23, and 3-24 provide for LCP revisions in the event new sensitive species are found, severely restrict uses within sensitive habitats (including limiting uses to those which are deemed compatible by the U.S. Fish and Wildlife Service), require biological reports, and require protection of all habitats of rare and endangered species. Policy 3-25 requires developers to make sufficiently detailed analyses of any construction which could impair the potential or existing migration routes of the San Francisco garter snake, to determine appropriate mitigation measures to be taken to provide for appropriate migration corridors. In addition, pursuant to LUP Policy 1-1, the City has adopted the Chapter 3 Policies of the Coastal Act as guiding policies of the LUP. Accordingly, the City's LUP adopts Coastal Act Section 30240, which also requires that development protect against significant disruption against sensitive habitat areas. The available evidence does not support the conclusion that sensitive habitat effects will be avoided, or that the project is limited to uses compatible with sensitive habitat protection. Therefore, the approved project does not conform with LUP Policies 3-21, 3-22, 3-23, 3-24, 3-25, 3-32, 3-33, 3-34, and 3-35 and Coastal Act Section 30240, which has been incorporated into the City's LCP by LUP Policy 1-1.

EXHIBIT NO. 8

APPLICATION NO. A-2-HMB-01-011

(Page 5 of 7)

 California Coastal Commission

4. Water Quality

The approved project would significantly increase the amount of impervious surfaces in the area (by adding new roads, driveways, patios, roofs, etc.) to an undeveloped site thereby increasing the rate and volume of storm water run-off from the site. This increase in rate and volume of storm water has the potential to result in flooding and erosion. The project would also significantly increase non-point source pollution, both during construction and after completion of the project. This increase in non-point source pollution has the potential to adversely impact water quality in the ocean and Pilarcitos Creek, which flows near this project. Further, the increases in runoff and non-point source pollution could adversely affect wetlands located on the project site. The stormwater and non-point source pollution impacts could potentially modify the hydrology of the wetland, degrade water and sediment quality within the wetlands, and degrade the habitat value of the wetland.

The approved project includes a condition requiring the applicant, as part of the initial Final Map submission, to submit a drainage report and grading and erosion/dust control plans for the approval of the City engineer. The grading and erosion and dust control plans must provide for winterization of the project site and comply with Chapter 14.24 of the Half Moon Bay municipal code, a local zoning provision that is not part of the certified LCP. These local zoning requirements manage the volume of stormwater flows but do not regulate the quality of the water. In addition, the grading and erosion/dust plans protect archaeological resources and reduce temporary erosion impacts from construction. However, they do not provide for long-term management of non-point source pollution. In addition, the required drainage report does not address non-point source pollution. The purpose of that report is to identify tributaries to the site and verify that the drainage facilities proposed as part of the development have the capacity to handle expected runoff.

The City's LUP Policy 4.9 addressed storm water runoff by requiring that flows from graded areas shall be kept to an absolute minimum, not exceeding the normal rate of erosion and runoff from that of the undeveloped land. In addition, pursuant to LUP Policy 1-1, the City has adopted the Chapter 3 Policies of the Coastal Act as guiding policies of the LUP. Accordingly, the City's LUP adopts Coastal Act Section 30231, which require that new development protect the biological productivity and quality of coastal waters and control runoff.

The City's approval does not require the project to comply with these water quality requirements. As described above, the conditions attached to the City's permit address drainage capacity and storm water volume, but do not completely address non-point source pollution issues. The City's approval does not require this project to be consistent with these policies. The approved project would increase runoff from the site and does not include any measures to minimize long-term non-point source pollution. Therefore, the project would degrade water quality and habitat resources of the coastal zone, including the quality of the on-site wetlands. Therefore, the

approved project does not comply with LUP Policy 4-9 or Sections 30231 of the Coastal Act, which is incorporated into the LCP by LUP Policy 1-1.

5. Visual

The approved project includes construction of a sound wall and houses that would restrict views of scenic coastal mountains from Highway 1 and degrade the visual character of the area. The City's Zoning Code defines the scenic coastal areas. Section 18.37.020(B) (1) (Visual Resources Areas) of the City's Zoning Code designates scenic hillsides that are visible from Highways 1 and 92 above the 160 foot elevation contour and located east of the proposed Foothill Boulevard, comprising of portions of Carter Hill and Dykstra Ranch as visual resource areas. The Dykstra Ranch area above the 160-foot contour is visible from Highway 1 east of the Beachwood subdivision site. Therefore, the project would affect views of a scenic coastal area. Section 18.37.030 (B) (1), (4), and (5) (Scenic Corridor Standards) of the City's Zoning Code requires protection of views of scenic coastal areas from development in the Highway 1 corridor, set backs from Highway 1, and the maintenance of low heights above natural grade. The City's conditions of approval for the development require the construction of a sound wall and a five-foot vegetated buffer between Highway 1 and the wall. The wall would block views of the scenic coastal area identified in the Zoning Code and is inconsistent with the zoning policy that protects those views.

Additionally, the City's approval requires the residential house to meet the building heights and setback requirements of the R-1-B1 of the zoning regulations in the City's Zoning Code. The zoning regulations would allow a 28-foot structure within 25 feet of Highway 1. Development of that height with only a 25-foot setback would block views of scenic coastal areas. In addition, the approval allows houses as high as 28 feet above grade. The 28-foot height limit does not meet the requirement to maintain low heights above natural grade. Therefore, the approved houses would be inconsistent with the Zoning Code standards protecting views of scenic coastal areas.

Section 30251 of the Coastal Act, which the City incorporates into its LCP by LUP Policy 1-1, also requires that new development be sited and designed to be visually compatible with the character of surrounding areas. Since there are no other sound walls in this area, the required wall would not be visually compatible with the character of the area. In addition, the City's permit approves the construction of the residential units but did not include an analysis of the design features of the houses or require their design to be consistent with the character of the area. Thus, there is not enough information to determine that the approved houses would be consistent with the requirements of Section 30251 of the Coastal Act.

The City's approval does not address these visual issues contrary to Zoning Code Section 18.20.070. The approved wall and houses would interfere with views from Highway 1 of coastal hills to the east and the sound wall and the houses would adversely affect the visual character of the area. Therefore, the City's approval does

not conform to zoning regulations 18.37.030 (B) (1), (4), and (5) and Coastal Act Section 30251, which is incorporated into the City's LCP by LUP Policy 1-1.

6. Availability Of Services

The approved project allows for the construction of 80 new residences. The City's action includes a condition requiring the applicant, prior to recordation of the final map, to submit plans to the Coastside County Water District (CCWD) engineer for approval by all required parties for the water connections between the new residences and the CCWD water transmission system. The CCWD is currently reviewing the capacity of its water transmission system to determine if the system has enough reserved capacity to serve new development. The CCWD is concerned that at this time its transmission system may not be sufficient to meet the requirements under the California Water Works Standards to supply adequately, dependably and safely the total requirements of all users under maximum demand conditions. The CCWD cannot approve new service connections unless it can determine that these requirements are met (CCR Title 22, Chapter 16, Section 64562). The CCWD is currently reviewing the capacity of its transmission system to determine if improvements to the system are required to comply with state standards. Zoning Code Section 18.20.070 and LUP Policies 9-4 and 10-21 require that a coastal development permit may be approved only after finding that adequate services and resources will be available to serve the proposed development upon completion, and that a certain percentage of available public services will be reserved for priority uses prior to committing them to non-priority uses. Although the City's condition of approval requires the applicant to submit evidence of approved water connections prior to recordation of the final map, given the water district's uncertainty concerning its ability to permit new service connections in accordance with state standards, the City's approval fails to demonstrate that adequate services are available for the approved development or that services have been reserved for priority uses as required under the LCP. Therefore, the City's approval does not conform to Zoning Code Section 18.20.070 or LUP Policies 9-4 and 10-21.

To: California Coastal Commission
45 Fremont Street
San Francisco, Ca 94105-2219

April 13, 2001

From: Mike Ferreira
361 Cypress Point Road
Half Moon Bay, Ca 94019
650-726-3500

Patrick O'Brien
608 Silver Avenue
Half Moon Bay, Ca 94019
650-726-4464


By this writing we wish to appeal the Coastal Development Permit for the Beachwood subdivision as granted by the City of Half Moon Bay on March 20, 2001, pursuant to writ of Mandate and subsequent Stipulation. The following is a summary of the reasons why we believe the project to be inconsistent with and in violation of the Half Moon Bay Local Coastal Program, the California Coastal Act, and the California Environmental Quality Act.

1.) The Bayview Avenue and Golden Gate Avenue storm drains have been prematurely installed along the project alignments for those streets under the guise of the Terrace Avenue Assessment District, and have been functioning for years as unpermitted parcel drainage infrastructure, thereby decreasing the parcel's historic status as containing abundant wetland habitat and thereby violating the Half Moon Bay LUP Chapter 3 protections for Environmentally Sensitive Habitat.

2.) The Project contains unpermitted drainage ditches channeling water into the illegally open sideports of the prematurely installed Bayview Avenue and Golden Gate Avenue storm drain infrastructure. In addition to constituting Precursory Activity, these ditches contain wetland plants, but are not accounted for in either the Applicant's studies or in the City's studies, thereby violating the Half Moon Bay LUP Chapter 3 protections for Environmentally Sensitive Habitat.

EXHIBIT NO. 9

APPLICATION NO. A-2-HMB-01-011

 California Coastal Commission

WDF POB

3.) The Project contains a large horseshoe shaped excavation in the eastern portion which channels water from an historically wet portion of the parcel into a drainage ditch and then into an illegally open sideport of the storm drain underlying Bayview Avenue. In addition to constituting Precursory Activity, this depression contains wetland plants which are not accounted for in the Applicant's studies but are partially accounted for in the City's studies.

4.) The Project has failed to assess areas within 200 feet of the site for impacts as required by LUP Policy 3-5 and Zoning Ordinance section 18.38.035. Clear and obvious wetlands immediately to the north of the Bayview Avenue alignment - on the Glen Cree parcel - were not recognized or factored into the Negative Declaration nor in the City's wetland studies

5.) Had that assessment been done, the 100 foot minimum setback from the wetland areas which has been personally observed on the Glen Cree parcel adjoining the Beachwood site immediately to the north would obviate the Bayview Avenue alignment. Roads are not a permitted use in the wetland setbacks per the Half Moon Bay LUP.

6.) The Bayview Avenue roadbed alignment has been prematurely graded through the setbacks of wetlands to its north and through some or all of probable wetlands that were in its path. When this grading took place is unknown. Precursory activity intrinsically violates the very Permit Process itself, much less the LCP.

7.) The project contains - indeed, is dependent upon - Bayview Avenue. However, 50% of Bayview Avenue - the portion north of the east/west centerline - lies outside the Beachwood parcel in the Glen Cree parcel, for which the Map is now considered expired (if ever vested at all). Policy 9-2 states "No permit for development shall be issued unless a finding is made that such development can be served with water, sewer, schools, and road facilities, including such improvements as are provided with the development."

8.) Substantial lengths of the Bayview Avenue alignment lie within the setbacks of the Glen Cree wetlands. Policy 9-2 states "No permit for development shall be issued unless a finding is made that such

WDF

POB

development can be served with water, sewer, schools, and road facilities, including such improvements as are provided with the development."

9.) The relatively minor wetland findings in the Applicant's and in the City's delineations are not consistent with local lore and memory, i.e.,

a.) The historic local nickname for the general area is "Hog Wallow".

b.) Local farmers gave up trying to farm it and sold it because "It was too wet to farm".

c.) The adjacent Glen Cree wetland vegetation currently visible was once in abundant evidence on both parcels on overhead photos of the Beachwood and Glen Cree sites.

10.) The Beachwood parcel has been contaminated by the substantial importation of construction soils containing, among other things, ground-up asphalt. The large scale of this importation has had the detrimental effect of not only covering areas which may have been historically hydric but also altering the topography and drainage patterns.

11.) The project has been further altered by aggressive disking (deep plowing) in recent years, ostensibly for fire prevention, which not only inhibits the formation of significant wetland plants but, in this case, intermixes imported topsoil with native topsoil.

12.) The negative Declaration for Beachwood was based in part on the reasoning that the EIR for the adjoining Dykstra Ranch (Pacific Ridge) project was sufficient to cover the Beachwood project. Not only was this reasoning questionable unto itself but the Dykstra Ranch (Pacific Ridge) EIR was found to be sorely deficient during the recent Coastal Commission appeal of that project, particularly with regard to endangered species survey sufficiency.

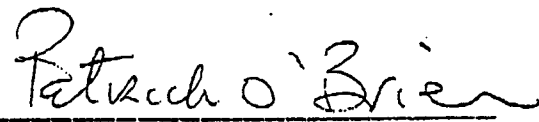
4 of 4

13.) The Soundwall at the western margin of the project as it adjoins the eastern margin of the Highway #1 easement would substantially decrease views of the coastal foothills in violation of the Half Moon Bay Local Coastal Program's Visual Resource Overlay as it applies to the eastern coastal foothills.

14.) Regional Traffic Impacts were inadequately addressed at the time of the Negative Declaration and - given the passage of time and today's traffic situation in rural San Mateo County - are now woefully out of date, and thereby pose a potential detrimental effect on the Coastal Access provisions of the Coastal Act and the Half Moon Bay Local Coastal Program.. The project contains no mitigation for the fact that its traffic would substantially impact a situation which is already beyond capacity, particularly as it relates to the ability of Californians to visit the coast, view the coast, and access the coast on weekends and holidays.

Summation: Although this Coastal Development Permit has been granted by the City of Half Moon Bay as the result of a Court Order, it is our belief that the evidence at trial did not sufficiently address the issues which we are raising herein. We do not believe that the proper information was provided during the permitting process, as prescribed by the LCP, prior to the trial. We therefore request that the California Coastal Commission find Significant Issue and hear the matter De Novo in order to thoroughly analyze this project in light of the impacts to the Sensitive Habitat and Coastal Access protections of the Half Moon Bay Local Coastal Program.


 Michael J. Ferreira 4/13/01


 Patrick O'Brien

2001/09/13



United States Department of the Interior

FISH AND WILDLIFE SERVICE

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

IN REPLY REFER TO:
1-1-99-TA- 857

March 11, 1999

Mr. Anthony J. Carney
City of Half Moon Bay
501 Main Street
Half Moon Bay, California 94109

Subject: Beachwood Subdivision Site Inspection, San Mateo County, California

Dear Mr. Carney:

This documents the U.S. Fish and Wildlife Service's (Service) February 9, 1999, inspection of the Beachwood Subdivision site in the City of Half Moon Bay (City). Cecilia Brown of my staff spoke to you on Tuesday, February 2, 1999, regarding the development. You reported that the property owner was draining a ponded area on the project site with a small electric pump. While inspecting the pumping activities, City staff observed a single frog of undetermined species in the ponded area. City staff expressed concern that this pumping activity might have an adverse effect on endangered species habitat, specifically the California red-legged frog (red-legged frog) (*Rana aurora draytonii*) and the San Francisco garter snake (garter snake) (*Thamnophis sirtalis tetrataenia*). Ms. Brown inspected the site with you and Joan Lamphier of Lamphier and Associates Consulting. The purpose of the inspection was to determine whether suitable habitat was present for red-legged frog or the garter snake.

The project site is located on a shallow-sloped valley at the eastern edge of Half Moon Bay, south of state highway 92. You stated that the property is disked on a regular basis to comply with local fire regulations. Vegetation consisted of annual grasses and forbs. The area had received heavy rainfall during the past four days. Several large areas of shallow ponded water were present. Everyone present during the inspection heard chorus frogs calling throughout the project area. Due to the presence of ponded water and chorus frogs, the Service suggests that a wetland delineation be conducted for the entire site. Red-legged frogs and chorus frogs are known to co-occur. In addition, garter snakes are known to occur within five miles of the project site. To avoid possible take of listed species, the Service suggests that the developer hire a qualified biologist to conduct surveys for the red-legged frog and the garter snake.

Section 9 of the Endangered Species Act as amended, (Act) and its implementing regulations prohibit the "take" of federally listed fish and wildlife species. Take is defined by the Act as "to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect" any listed wildlife species. "Harm," in this definition, includes significant habitat modification or degradation where it actually kills or injures wildlife by significantly impairing essential behavioral patterns, including breeding, feeding, or sheltering. The Service defines "harass" as actions that create the likelihood of injury to listed species to such an extent as to disrupt normal behavior patterns which include, but are not limited to, breeding, foraging, or resting (50 CFR § 17.3).

EXHIBIT NO. 10

APPLICATION NO. A-2-HMB-01-011

Mr. Anthony J. Carney

2

Thank you for conducting a tour of the site. If you have any questions, you may contact Cecilia Brown or Ken Sanchez of my staff at (916) 979-2752.

Sincerely,

Cay C. Goude

Cay Goude
Acting Field Supervisor