

## CALIFORNIA COASTAL COMMISSION

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Filed: October 31, 2006  
49<sup>th</sup> Day: December 19, 2006  
Staff: Chris Kern – SF  
Staff Report: November 22, 2006  
Hearing Date: December 15, 2006

**STAFF REPORT – APPEAL  
SUBSTANTIAL ISSUE**

**APPEAL NO.:** A-2-HMB-06-019

**APPLICANT:** City of Half Moon Bay

**LOCAL GOVERNMENT:** City of Half Moon Bay

**ACTION:** Approval with Conditions.

**PROJECT LOCATION:** Alameda Avenue and all blocks west of Alameda Avenue (including Mirada Road, San Andreas Avenue, Alcatraz Avenue, Santa Rosa Avenue, Guerrero Avenue, San Pablo Avenue, Naples Avenue, Washington Avenue, and Roosevelt Avenue), and all blocks west of Alsace Lorraine and north of Correas Avenue (including Kelly Avenue, Balboa Boulevard, Miramontes Avenue, Correas Avenue, Alsace Lorraine Avenue, Ocean Avenue, and Potter Avenue), Half Moon Bay (San Mateo County)

**PROJECT DESCRIPTION:** Require permits for parking on designated blocks of the Miramar/Naples and Alsace Lorraine neighborhoods between 12:00 A.M. to 4:00 A.M. daily.

**APPELLANTS:** James Benjamin  
Sofia Freer

## **1.0 STAFF RECOMMENDATION**

### **No Substantial Issue**

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

### **Motion**

**I move that the Commission determine that Appeal No. A-2-HMB-06-019 raises NO substantial issue with respect to the grounds on which the appeal has been filed under § 30603 of the Coastal Act.**

### **Staff Recommendation of No Substantial Issue**

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

### **Resolution to Find No Substantial Issue**

The Commission finds that Appeal No. A-2-HMB-06-019 does not present a substantial issue with respect to the grounds on which the appeal has been filed under § 30603 of the Coastal Act regarding consistency of the approved project with the Certified Local Coastal Plan and/or the public access and recreation policies of the Coastal Act.

## **2.0 PROJECT LOCATION AND DESCRIPTION**

### **2.1 Location**

The approved nighttime permit parking program would be in effect on designated public streets in the Miramar/Naples neighborhood and the Alsace Lorraine neighborhood in Half Moon Bay, specifically: Alameda Avenue and all blocks west of Alameda Avenue (including Mirada Road, San Andreas Avenue, Alcatraz Avenue, Santa Rosa Avenue, Guerrero Avenue, San Pablo Avenue, Naples Avenue, Washington Avenue, and Roosevelt Avenue), and all blocks west of Alsace Lorraine and north of Correas Avenue (including Kelly Avenue, Balboa Boulevard, Miramontes Avenue, Correas Avenue, Alsace Lorraine Avenue, Ocean Avenue, and Potter Avenue), (see Exhibit 1).

### **2.2 Description**

The approved coastal development permit (CDP) authorizes the City of Half Moon Bay to implement a nighttime permit parking program requiring vehicles to display a parking permit to park on public streets in the effected neighborhoods between 12:00 A.M. to 4:00 A.M. daily. The CDP also authorizes installation of street signs within public street right-of-ways and an amendment to the City's Master Traffic Resolution to implement the nighttime permit parking program. The approved CDP will expire on September 28, 2007 (one year of from the date of approval) and is conditioned to require monitoring and reporting of the effectiveness and impacts of the program. Renewal or extension of the program beyond the one-year period authorized by the approved CDP will require City approval of an amendment to the approved CDP or a new CDP and any such action

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would be appealable to the Coastal Commission. The approved CDP, including additional conditions of approval is attached as Exhibit 2.

Pursuant to the approved CDP, parking permits may be purchased by any member of the public, including residents of the affected neighborhoods and their guests, other Half Moon Bay residents living outside of the affected area, and non-Half Moon Bay residents (visitors). Annual parking permits will cost \$20.00 per household for up to four residential permits plus three guest permits and \$20.00 per visitor permit. Daily or other short-term permits for visitors will not be offered.

Permits may be purchased from the Half Moon Bay Police Department either by mail or in person Monday through Friday from 8:30 A.M. to 5:00 P.M. To purchase a permit, both residents and visitors must provide a copy of their vehicle registration and documentation of their current address.

### **3.0 APPEAL PROCESS**

#### **3.1 Local Government Action**

The Half Moon Bay Planning Commission approved CDP PDP-02-04 for the above-described nighttime permit parking program on August 24, 2006, and took final action on the CDP through adopted findings in support of its approval on September 28, 2006.

#### **3.2 Filing of Appeal**

On October 20, 2006, the Commission received the City's Notice of Final Local Action on CDP PDP-02-04. The ten working-day Commission appeal period ran from the next business day, October 23, 2006, to November 3, 2006. On October 31, 2006, the Commission received an appeal of the City's action on the approved CDP from James Benjamin and Sofia Freer (Exhibit 3).

Pursuant to Section 30621 of the Coastal Act, an appeal hearing must be set within 49 days from the date that an appeal of a locally issued CDP is filed. The appeal of Half Moon Bay CDP PDP-02-04 was filed on October 31, 2006. The 49<sup>th</sup> day after the day that the appeal was filed is December 19, 2006. A hearing on this appeal is scheduled for December 15, 2006, which is within 49 days of the date that the appeal was filed in compliance with the requirements of Coastal Act Section 30621.

#### **3.3 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

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“principal permitted use” under the certified LCP. Developments that constitute a major public works or a major energy facility may be appealed, whether they are approved or denied by the local government.

A portion of the approved development (i.e., some of the streets included in the nighttime permit parking program) is located between the sea and the first public road paralleling the sea. Thus, this portion of the approved development meets the Commission’s appeal criteria set forth in Section 30603 of the Coastal Act. Pursuant to Section 30603 of the Coastal Act, an appeal for this type of development is limited to the allegation that the portion of the development that is located in the Commission appeal jurisdiction does not conform to the standards set forth in the certified LCP or the public access policies set forth in the Coastal Act.

Section 30625(b)(2) of the Coastal Act requires a de novo hearing of the appealed project unless the Commission determines that no substantial issue exists with respect to the grounds on which the appeal has been filed. In this case, because the staff is recommending no substantial issue, the Commission will hear arguments and vote on the substantial issue question. 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 (in this case the City of Half Moon Bay), 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 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 LCP and the public access and public recreation policies of Chapter 3 of the Coastal Act.

### 3.4 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;

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

If the Commission chooses not to hear an appeal, the appellant nevertheless may obtain judicial review of the local government's action on the coastal development permit by filing a petition for a writ of mandate pursuant to Code of Civil Procedure, Section 1094.5.

## **4.0 SUBSTANTIAL ISSUE ANALYSIS**

### **Appellants' Contentions**

The appeal includes the following contentions (see Exhibit 3):

- The approved parking program is inconsistent with Coastal Act/LCP Sections 30211 and 30212.5 because it would concentrate nighttime public beach access parking on Pilarcitos Avenue west of the Casa del Mar neighborhood where permits would not be required for nighttime parking.
- The approved parking program is inconsistent with Coastal Act/LCP Sections 30230, 30231, and 30240 because "no evidence is presented that the project would not result in significant adverse impact on the sensitive habitat areas on the beaches west of Casa del Mar as a result of intensified visitor use. . . [n]o conditions are included to mitigate these potentially significant impacts."
- The approved parking program is inconsistent with Coastal Act/LCP Section 30252.6 because it "does not exempt vanpool drivers and passengers from having to purchase permits to park overnight on the street within the project area."
- The City's action does not conform to requirements of the California Environmental Quality Act (CEQA).

### **4.1 Appellants Contentions that Raise No Substantial Issue**

#### **4.1.1 Public Access and Overcrowding**

The appellants contend that the approved parking program is inconsistent with Coastal Act/LCP Sections 30211 and 30212.5 because it would concentrate nighttime public beach access parking on Pilarcitos Avenue west of the Casa del Mar neighborhood where permits would not be required for nighttime parking.

Coastal Act/LCP Section 30211 states:

Development shall not interfere with the public's right of access to the sea where acquired through use or legislative authorization, including, but not limited to, the use of dry sand and rocky coastal beaches to the first line of terrestrial vegetation.

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Coastal Act/LCP Section 30212.5 states:

Wherever appropriate and feasible, public facilities, including parking areas or facilities, shall be distributed throughout an area so as to mitigate against the impacts, social and otherwise, of overcrowding or overuse by the public of any single area.

One of the primary functions of the Coastal Act is to protect the public's right to access the coast. Chapter 3 of the Coastal Act contains policies that prohibit new development that would interfere with existing public access rights and that promote the development of new and expanded coastal access. Accordingly, the Commission must reject attempts by private property owners, developers, and local governments to limit or prevent public access to the coast in most cases.

However, Coastal Act Section 30214 provides that the public access policies of the Coastal Act must be implemented in a manner that takes into account the need to regulate the time, place, and manner of public access depending on the facts and circumstances in each case, based on factors such as:

- The capacity of the site and at what level of intensity.
- The appropriateness of limiting public access to the right to pass and repass depending on such factors as the fragility of the natural resources in the area and the proximity of the access area to adjacent residential uses.
- The need to provide for the management of access areas so as to protect the privacy of adjacent property owners.

In approving the nighttime permit parking program, the City of Half Moon Bay determined that it is necessary to regulate the time, place, and manner of public access to protect residents from "disturbances." The City's findings in support of the approved nighttime permit parking program state "[t]he public record clearly shows that repeated incidents of disturbances, including drunkenness, loud noises, trespassing, vandalism and damage to private property, littering, and possession and demonstration of weapons or threatening actions, have occurred, particularly during summer or holiday weekends at night, over a period of years to represent a significant threat to privacy, public safety and security of private property."

As evidence in support of this finding, the City provides results of a survey of residents in the affected areas, public testimony received during two community meetings, two Planning Commission hearings, and one City Council meeting, and police records. With respect to police records, the City's findings list the following citations issued during the years 2000 to 2005 in the affected neighborhoods:

- Noise Complaints: one time over a period of six years
- Loud Parties: one time over a period of six years
- Trespassing: four times in 2002 only
- Breaking the Curfew (11 PM to 6 AM for youth under age of 18): once in six years

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- Drunk in Public: two to three times per year in four out of six years (a number of these occurred near the corner of Kelly Ave. and Highway 1 [which is not included in the areas covered by the approved nighttime permit parking program])
- Dumping: one to two times in six years (some incidents have occurred during the daytime).
- Vandalism: five to fifteen times per year, for a total of 64 times in six years. An informal search of citation records suggests that a significant number of these cases involved local youth.

The City notes in its findings that: “[w]hereas the number of citations issued is relatively low, these do not necessarily reflect the total number of incidents that have occurred. Due to law enforcement standards, only those incidents that are observed by police officers can be cited. The Police Department indicates that incidents may regularly go unreported or un-cited.”

Thus, the bulk of the evidence offered in support of the City’s determination that it is necessary to regulate nighttime coastal access parking to protect the privacy, safety, and security of residents in the affected neighborhoods is anecdotal in nature. The City presents little in terms of actual documentary evidence of serious threats to residents’ privacy, safety, and security to justify limiting the public’s right to access the coast. In the absence of such evidence, the approved nighttime permit parking program may not be justified under Section 30214 and could therefore conflict with the public access policies of the Coastal Act. Pursuant to Coastal Act Section 30210, maximum access shall be provided for all the people consistent with public safety needs and the need to protect public rights, rights of private property owners, and natural resource areas from overuse.

In this case, the City has not presented evidence of a clear or compelling conflict between coastal access use and the rights of private property owners or public safety. As such, the Commission should determine that the appeal raises a substantial issue concerning the conformity of the approved development with the public access policies of the Coastal Act and the LCP if the approved nighttime permit parking program would have a significant adverse impact on the public’s right to access the coast.

The City designed the approved nighttime permit parking program to minimize its impact on public access by: (1) limiting the time that parking is regulated to 12:00 A.M. to 4:00 A.M., (2) limiting the area where parking is regulated to portions of two neighborhoods, and (3) allowing non-resident visitors to purchase annual parking permits. The approved CDP authorizes the nighttime permit parking program for only one year during which time the City will monitor the effectiveness and impacts of the program. Given the limited scope of the approved nighttime permit parking program, both in terms of time and place, and because the program allows non-resident visitors to purchase parking permits, the Commission finds that the approved program would not have a significant adverse impact on the public’s right to access the coast. Therefore, even though the City provides insufficient evidence of the need to regulate the time, place, and manner of public access in this case, the Commission finds that the approved nighttime permit

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parking program does not raise a substantial issue under the public access policies of the Coastal Act and the certified LCP.

The appellants contend that the approved nighttime permit parking program will lead to overcrowding or overuse by the public of unregulated parking on Pilarcitos Avenue west of the Casa del Mar neighborhood where permits would not be required for nighttime parking in conflict with Coastal Act/LCP Policy 30212.5.

Coastal Act/LCP Policy 30212.5 requires that wherever appropriate and feasible, public access facilities including parking should be distributed throughout an area so as to mitigate against the impacts of overcrowding by the public of any single area. In determining whether the appeal raises a substantial issue under this policy, the Commission must evaluate the risk that the approved nighttime permit parking program will lead to overcrowding by the public of Pilarcitos Avenue west of the Casa del Mar neighborhood.

Neither the administrative record for the approved CDP nor the appeal contains information showing that a significant demand exists for public beach access parking in Half Moon Bay between the hours of 12:00 A.M. and 4:00 A.M., and the Commission is aware of no other evidence that such demand exists. In fact, as stated above, it is principally for this reason that the Commission finds that the approved nighttime permit parking program does not raise a substantial issue under the public access policies of the Coastal Act or the LCP, i.e., the nighttime permit parking program would not interfere with the public's right to access the coast because there is little demand for beach access parking between the hours of 12:00 A.M. and 4:00 A.M. For the same reason, the Commission also finds that there is no substantial issue that the approved nighttime permit parking program will lead to overcrowding by the public of Pilarcitos Avenue west of the Casa del Mar neighborhood.

The appellants' contention appears to be based on a concern that the approved nighttime permit parking program will result in the relocation of "disturbance" incidents to the appellants' neighborhood. As noted above, the City has not provided documentary evidence that such incidents present serious conflicts between nighttime beach users and the privacy and safety of residents in any neighborhood in the City. The majority of the households in the appellants' neighborhood that responded to the City's survey reported few or no disturbances related to nighttime beach parking and did not support the permit parking program. As such, the issue of whether or not to include the appellants' neighborhood in the nighttime permit parking program is of local importance only and not of regional or statewide significance. Finally, the approved CDP authorizes the nighttime permit parking program for only one year during which time the City will monitor the effectiveness and impacts of the program. Further action by the City will be required to continue the nighttime permit parking program after September 28, 2007, at which time the City may consider adjustments to the program, including whether to add or remove areas, based on the results of the monitoring and input of the affected communities and the general public.

Therefore, for all of the reasons stated above, the Commission finds that the appeal raises no substantial issue concerning the conformity of the approved nighttime permit parking program with Coastal Act/LCP Policies 30211 and 30212.5.



#### **4.1.2 Water Quality and Environmentally Sensitive Habitat**

The approved parking program is inconsistent with Coastal Act/LCP Sections 30230, 30231, and 30240 because “no evidence is presented that the project would not result in significant adverse impact on the sensitive habitat areas on the beaches west of Casa del Mar as a result of intensified visitor use. . . [n]o conditions are included to mitigate these potentially significant impacts.”

Coastal Act/LCP Policy 30230 states:

Marine resources shall be maintained, enhanced, and where feasible, restored. Special protection shall be given to areas and species of special biological or economic significance. Uses of the marine environment shall be carried out in a manner that will sustain the biological productivity of coastal waters and that will maintain healthy populations of all species of marine organisms adequate for long-term commercial, recreational, scientific, and educational purposes.

Coastal Act/LCP Policy 30231 states:

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.

Coastal Act/LCP Policy 30240 states:

(a) Environmentally sensitive habitat areas shall be protected against any significant disruption of habitat values, and only uses dependent on those resources shall be allowed within those areas.

(b) Development in areas adjacent to environmentally sensitive habitat areas and parks and recreation areas shall be sited and designed to prevent impacts which would significantly degrade those areas, and shall be compatible with the continuance of those habitat and recreation areas.

The beach west of the Casa del Mar neighborhood is within Half Moon Bay State Beach, which is served by four large parking lots at the end of Venice Boulevard. This is a popular and heavily used beach. The Commission is not aware of any conflicts between the long established and ongoing public use of this beach, either during the day or night, and the protection of marine resources, water quality, or environmentally sensitive habitat areas, and the appellants have provided no evidence in support of their allegation that such conflicts exist. To the extent, if any, that the approved nighttime beach parking program would lead to increased nighttime use of this beach, such increased use would be insignificant relative to the level of use this beach currently sustains. Thus, the appellants’ concern that the nighttime permit parking program would lead to significant adverse impacts to marine resources, water quality and environmentally sensitive habitat areas is not supported by the facts or history concerning the use of this beach. As such,

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Commission finds that the appeal raises no substantial issue concerning the consistency of the approved nighttime permit parking program with Coastal Act/LCP Policies 30230, 30231, and 30240.

### **4.1.3 Transit**

The appellants contend that the approved nighttime permit parking program is inconsistent with Coastal Act/LCP Section 30252.6 because it “does not exempt vanpool drivers and passengers from having to purchase permits to park overnight on the street within the project area.”

Coastal Act/LCP Policy 30252.6 states in relevant part:

The location and amount of new development should maintain and enhance public access to the coast by (1) facilitating the provision or extension of transit service. . . (4) providing adequate parking facilities or providing substitute means of serving the development with public transportation. . .

Given the modest amount of the parking permit fee of \$20.00 per year, less than half the cost of one tank of gas for the average passenger van, the nighttime permit parking program would not conflict with the requirements of LCP Policy 30252.6 to support public transportation. Therefore, the Commission finds that the appeal raises no substantial issue concerning the conformity of the approved nighttime permit parking program with Coastal Act Section 30252 (LCP Policy 30252.6).

### **4.2 Appellants Contentions that are not Valid Grounds for Appeal**

Pursuant to Coastal Act Section 30603(b)(1) the grounds for an appeal of a local government approval of a coastal development permit shall be limited to an allegation that the approved development does not conform to the standards set forth in the certified local coastal program or the public access policies of the Coastal Act. Therefore, the appellants’ contention that the City’s action does not conform to requirements of the California Environmental Quality Act (CEQA) is not a valid ground for an appeal of the approved CDP to the Commission.

**[Click here to go to the exhibits.](#)**