

CALIFORNIA COASTAL COMMISSION

NORTH CENTRAL COAST DISTRICT
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Th 5a

Prepared July 10, 2007 (for July 12, 2007 hearing)

To: Coastal Commissioners and Interested Persons
From: Charles Lester, Deputy Director
Michael Endicott, North Central Coast District Supervisor
YinLan Zhang, Coastal Program Analyst
Subject: **STAFF REPORT ADDENDUM for Item Th 5a**
CDP No. A-2-HMB-07-021 (Gale)

The purpose of this staff report addendum is to respond to the public, the applicant's, and the applicant's agent's correspondence, attached herein, which raises the following issues with the Commission's staff report:

- The validity of the appeal filed by the Commissioners
- Whether the development as proposed would have significant adverse impacts on the wetland
- The usability of the rear yard
- The visual impacts of the two-story house design
- The feasibility of Alternative without Variance
- The extent of the available building envelope and wetland buffer on the subject property
- The calculation of the available building envelope outside of the buffer zone.

A. ADD THE FOLLOWING SECTION TO SECTION 2.1 OF THE STAFF REPORT STARTING ON PAGE 4.

Validity of the Filed Appeal

The applicant through his authorized agent, Norbert Dall, in a letter dated July 10, 2007 (Exhibit 24), contends that the filed appeal is invalid based on the following grounds: (1) the failure to comply with the Commission's adopted specific mandatory appeal preparation and filing requirements, (2) the lack of evidence that either the "Gale Appeal Attachment A" (appended to the appeal coversheet, but not specifically referenced on the cover sheet) or the appeal forms themselves were received by the Commission before the close of business at 5 PM on the 10th working day of the appeal period, and (3) the absence of the appellants' written and dated authorization for another person or party to write and file the appeal on their behalf.

The Commission acknowledges that there were omissions and typos on the appeal forms. However, notwithstanding these omissions and typos, based on the evidence used by Mr. Dall for his letter, it is clear that the applicant received the appeal notification, including the attachments appended to the notification, in a timely manner and was therefore specifically aware of the basis of the appeal, including the appellants' alleged inconsistencies of the City's approved development with the certified LCP policies. The Commission also notes that the appeal form omitted some of the listed information because at the time the appeal was filed, the Commission had not yet received the local record which is the sole source of the omitted information.

The Commission further finds that the appeal was received and filed in a timely manner on Tuesday June 5, 2007 based on the following:

- (1) The date on the front cover of the appeal form under the section that states "TO BE COMPLETED BY THE COMMISSION" states June 5, 2007 (Pages 1 and 9 in Exhibit 12).
- (2) The date on the Commission Notification of Appeal also states that the date the appeal was filed was June 5, 2007 (Exhibit 11).
- (3) The file date for the appeal, as entered into the Commission's Permit Tracking Database is also June 5, 2007 (Exhibit 14).
- (4) The Deputy District Director specifically recalls that Commissioners Kruer and Shallenberger agreed to sign on to the appeal prior to the last day of the appeal period on June 5, 2007.
- (5) The Commission staff analyst involved with the filing of the appeal also specifically recalls that the appeal was filed on June 5, 2007 before 5 pm.

Section 13032¹ of the Commission's regulations specifically authorizes the Executive Director to administer the affairs of the Commission. Pursuant to that section of the regulations, the Executive Director in turn can delegate to Commission staff the performance of any of his or her

¹ § 13032. Duties and Delegation.

- (a) In accordance with the direction and policies of the commission and pursuant to [Public Resources Code section 30335](#), the executive director shall administer the affairs of the commission and, subject to approval by that commission, the executive director of the commission shall on behalf of the commission and in accordance with applicable state and civil service procedures, appoint such other employees as may be necessary to carry out the functions of the commission.
- (b) Except as specifically provided by resolution, the executive director may delegate the performance of any of his or her functions, but such delegation(s) shall not affect his or her responsibility to see that the directions and policies of the commission are carried out fully and faithfully.
- (c) The executive director of the commission shall, when authorized by resolution of the commission, establish administrative procedures necessary to implement these regulations. Such administrative procedures shall be reduced to writing, shall be kept current with any amendments thereto, and shall be made available to all persons who shall be provided a copy of such procedures upon request and upon the payment of a reasonable fee.

functions. In the case of this appeal, Commissioners Krueer and Shallenberger provided approval to Commission staff to file the appeal on their behalf by signing the appeal form, and as such, are not required to provide further authorization, as Section 13032 of the Commission's regulations establishes the authority of the Executive Director and his delegated staff to administer the affairs of the Commission, including the filing of Commissioner appeals.

**B. ADD FOLLOWING SECTION TO RELEVANT PUBLIC COMMENTS
SECTION OF THE COMMISSION STAFF REPORT STARTING ON
PAGE 28**

1. Significant Adverse Impacts to Adjacent Wetland

Letters from the applicant, the City, and members of the public contest the finding that the proposed development within the wetland buffer would have significant adverse impacts on the adjacent wetland, citing conclusions in the biological report, emails from CDFG biologist Dave Johnston, and how the subject site is located higher than the wetlands

As discussed in the section titled Development adjacent to Sensitive Habitat Section, due to the various impacts associated with residential development, including noise, lighting, polluted runoff, use of hazardous chemicals including pesticides and fertilizers, the proposed development in the 100-foot wetland buffer zone would result in significant adverse impacts to the sensitive wetland habitat which supports the San Francisco garter snake and the California red-legged frog (see pages 26-27 above).

With respect to the topography of the project site in relation to the adjacent wetland, there is currently no record of the topographic survey of the adjacent wetland, and as such, there is no evidence showing that the adjacent wetland is lower than the subject property and that runoff from the site would not be discharged into the wetland. In the record provided by the City, there are only plans that show the contour lines within the subject property. The contour lines indicate that the site slopes toward the northwest with the southeast portion of the site being the highest part of the lot at approximately 63 feet and the lowest at 60 feet in the northwest portion of the lot. The rear portion of the property is largely flat. The wetlands are to the northeast of the subject property, and because the contour lines and the topography outside of the subject lot is unclear, it is possible that runoff from the project site could be discharged into the wetland to the northeast.

In addition to meeting LUP Policy 3-3 concerning development adjacent to sensitive habitat, in order for the proposed development to be consistent with the wetland protection policies of the LCP (LUP Policy 3-11 and 3-12 and Section 18.38.080 of the Zoning Code), there must be substantial evidence demonstrating that no feasible alternatives to siting the development within the wetland buffer zone exist. According to the City's LCP, this requirement must be met whether or not the proposed development would result in significant adverse impacts to the adjacent wetland. However, as discussed in the above finding regarding feasible alternatives, at least three alternatives are feasible, including the two-story house design proposed by the applicant, the approximately 2,700 square foot house analyzed by the City to be feasible in the City's 2005 denial of the proposed development, and an approximately 1,000 square foot manufactured home.

2. Useable Rear Yard

Letters from the City (Exhibit 18), Tom Roman (Exhibit 15), and the applicant (Exhibit 16) stress the need for a useable rear yard and assert that any feasible alternative where the residence would be located outside of the wetland buffer would require the construction of a permanent fence at the edge of the wetland buffer, thereby eliminating access to the rear portion of the property.

The main point of this contention appears to be the assumption that a permanent habitat protection fence must be installed at the edge of the wetland buffer on the subject property in order to protect the adjacent wetland, the California red-legged frogs and the San Francisco garter snakes. In the February 8, 2007 and March 22, 2007 City staff reports, which contained findings and conditions of approvals for the two-story house design outside of the 100-foot wetland buffer zone, the conditions of approval required the applicant to erect a permanent habitat protection wall at the limit of the wetland buffer which effectively eliminated access to the rear portion of the applicant's property. It is unclear why City staff elected to require the condition because mitigation measures recommended by CDFG included the erection of a temporary, construction-phase habitat protection fence, made of overlapping plywood, not a permanent fence (Exhibit 10, page 9 in Commission staff report). CDFG biologist Dave Johnston (pers. comm) does not believe a permanent protection fence would be necessary and may serve as a hazard because the fence would not extend across the front of the property and any frog or snake may become trapped within the fence instead of being able to move freely without the fence. Because City staff recommended as a condition of approval the installation of a permanent habitat protection fence at the edge of the wetland buffer on the subject property, it has been mistakenly assumed that that is the only way that a house that would be located outside of the wetland buffer could be approved. However, the assumption is flawed, because the permanent fence is not necessary to protect the California red-legged frog or the San Francisco garter snake, and the LCP does not require the development of such fence, only the prohibition of residential development within the wetland buffer. Therefore, the Commission finds that feasible alternatives located outside of the wetland buffer would not require the installation of a permanent habitat protection fence at the edge of the wetland buffer which would eliminate access to the rear portion of the subject property.

3. Visual Impacts

The July 9, 2007 letter from the City (Exhibit 18) states that because the two-story house design, located outside of the buffer zone, which would require variances to front set-back and maximum building envelope standards, would have an even street facing side instead of a design where a portion of the front side of a house would be recessed, that the two-story design would be incompatible with neighborhood character. As discussed in the Substantial Issue portion of the staff report, the houses on Terrace Avenue do not have any consistent architectural character. While the two-story house design would be different, it would not be so different that it would be considered incompatible with the character of the surrounding area, especially since there is no consistent character in the neighborhood beyond residential development. In addition, as discussed previously, the two-story house design was approved by the City's Architectural Review Committee. Moreover, as discussed above on pages 24-25, there are feasible alternatives which would not require variances that could be developed with a recessed street-facing side like other houses on Terrace Avenue.

4. Feasibility of Alternative without Variance

The City's July 9, 2007 letter (Exhibit 18) asserts that Exhibit 8 in the Commission staff report, showing that the building envelope outside of the wetland buffer could accommodate an approximately 2,700 square foot house, is not a feasible alternative because the house that could fit outside the wetland buffer would not have a functional floor plan that would comply with the building code. The City did not provide any plans or drawings to support the claim that a functional floor plan meeting building codes would be infeasible. The letter further states:

Because of the awkward design and small interior areas, the applicant could only find an alternative that required approval of variances.

However, the statement in the City's July 9, 2007 letter is contrary to the applicant's contention in his June 27, 2007 letter (Exhibit 9 in Commission staff report) that the variances are needed because he could only afford a manufactured home and that because the manufactured homes are pre-determined in terms of lengths and widths, that he could not find manufactured homes that could fit within the building envelope without approved variances to the front setback and maximum building envelope standards. As explained above on pages 24 and 25, feasible alternatives are not limited by the predetermined lengths and widths of manufactured homes.

5. Extent of Wetland Buffer on Subject Property

The applicant's July 3, 2007 letter raises the new issue that the wetland buffer covers a greater area on his property than the extent of the wetland buffer depicted in the September 7, 2004 biological report prepared by H.T. Harvey and Associates, which served as part of the evidence relied upon in the Commission's findings about this matter as well as the basis for the City's review of the proposed development. The applicant's November 14, 2006 CDP application for a two-story house outside of the wetland buffer also used the calculation of the wetland buffer contained in the September 7, 2004 biological report. If the wetland buffer extends onto the applicant's property as shown on the exhibit he prepared (Exhibit 16, Attachment B), that would mean that the feasible alternatives identified in the Commission staff report would actually encroach into the 100-foot wetland buffer, inconsistent with the LCP, and that those alternatives would no longer be considered feasible.

However, as discussed further below, because the biologist and principal from H.T. Harvey have confirmed that the distance calculated in the April 29, 2004 letter by Mary Bacca is a mistake, the Commission findings in the staff report on page 5 concerning the distance of the wetland from the project site and the location of the proposed development are accurate.

The applicant provides a letter dated April 29, 2004 from Mary Bacca of H.T. Harvey which states that the wetland on the adjacent Beachwood property is 45 feet from the proposed residence instead of 60 feet as stated in the biological report. Based on the distance of 45 feet, the applicant calculated that the building envelope outside of the buffer zone, complying with the setback requirements in the Zoning Code, is only 1,032 square feet.

The April 29, 2004 letter from Ms. Bacca predates the September 7, 2004 biological report used by the City and was not included in any of the City records submitted to the Commission for the appeal. The letter was prepared for the purposes of initially determining whether the applicant's

proposed development in 2004 would encroach into the 100-foot wetland buffer. The letter is not accompanied by any maps or an official wetlands delineation. According to the applicant, the City requested a full biological report based on the results in the letter. The full biological report, also prepared by Mary Bacca along with other biologists from H.T. Harvey on September 7, 2004, contains the mapped wetland delineation as well as delineation of the 100-foot buffer around the wetland, and states that the wetland is approximately 60 feet from the proposed residence and 35 feet from the northeast corner of the property. The City used the distance of the subject property from the adjacent wetland contained in the September 7, 2004 biological report in its 2005 and 2007 review of the applicant's separate proposals for residential development on the site (Exhibit 8, Page 1 in Commission Staff Report). The applicant, in his November 2006 coastal development application for a two-story home also used the distance calculated in the September 7, 2004 biological report to depict the location of the wetland buffer in his project plans (Exhibit 5, Page 2 of Commission Staff Report).

The applicant asserts that because the April 29, 2004 letter contains the results of an actual site visit to the adjacent wetland that the buffer area on his property should be calculated using the distance of the wetland from his property contained in that letter, which is 45 feet, instead of the 60 feet described in the subsequent September 7, 2004 biological report.

The September 7, 2004 biological report acknowledges that permission to the adjacent Beachwood property was not granted to map the wetlands and that the distance of the wetland from the property was measured using an indirect method. In a telephone conversation between Commission staff and John Bourgeois, biologist at H.T. Harvey who performed the supplemental biological assessment on the project site in November 2006, Mr. Bourgeois indicated that the distance reported by Ms. Bacca, who is currently on leave, in her April 29, 2004 letter was a mistake. Mr. Bourgeois states that Ms. Bacca's field notes from the site visit shows that the wetland is 35 feet from the northeast corner of the property line, which is the same as described in the September 7, 2004 biological report. The field notes also show that the northeast corner of the story pole, indicating where the proposed residence would be located, was 21 feet south of the rear lot line and 7.5 feet east of the side setback line, which means that the wetland is 57.6 feet from the northeast story pole for the proposed residence. Mr. Bourgeois further states that the calculation of the distance of the wetland in relation to the location of the proposed development in the biological report—60 feet, is the correct calculation and that the principal of H.T. Harvey, Pat Boursier, who is also an author of the September 7, 2004 biological report, is in agreement with this determination.

Therefore, the Commission rejects the applicant's contention that the wetland is 45 feet from the site of the proposed development and maintains that the alternatives identified in the Commission staff report are feasible and would be consistent with the LCP. However, the Commission notes that even if the applicant's contention had been correct, 1,032 square feet would still remain for a building site outside of the wetland buffer zone. Within this area, it would be possible for the applicant to develop a two-story home which would be greater than 1,032 square feet. Such residential development would be a feasible alternative to locating the development within the wetland buffer.

C. CALCULATION OF BUILDING ENVELOPE

The June 13, 2007 letter from Tom Roman has a calculation of building envelope (Exhibit 10, Attachment C in Commission staff report) that states that the available home site is 903 square feet. However, this calculation is based on the assumption that the rear property line is the limit of the wetland buffer. However, there are no LCP policy or development standards which state that the property line is the limit of the wetland buffer.

In a separate letter from Tom Roman, received on July 3, 2007 (Exhibit 15), he states that the calculation of the available building envelope is incorrect because staff assumed that the area covered by the wetland buffer is a triangle instead of a quarter of a circle. Commission staff did incorrectly calculate the area of the building envelope, assuming that the available building envelope was a triangle shape. Based on both the City record and the plans submitted by the applicant for the two-story house design, the wetland buffer extends 65 feet into the subject property. The area of the lot is 75' x 107' which totals 8,025 square feet. 8,025 square feet minus the area of the quarter circle ($3.14 * 65^2 / 4 = 3,313.6$) is 4711.4 square feet. Therefore, under the revised calculation, the available building envelope outside of the wetland buffer zone is 4711.4 square feet.

However, the error does not affect the feasibility of the alternatives as the miscalculated area involves the rear portion of the lot (Exhibit 23) where none of the alternatives, including the two-story house design originally proposed by the applicant, the approximately 2,700 square foot house that the City decided was feasible in its 2005 denial of the project, as well as the approximately 1,000 square foot manufactured home discussed in the staff report, would be located.

MAKE THE FOLLOWING REVISIONS TO STAFF REPORT, PAGES 6, 24, AND 26 IN STRIKEOUT AND UNDERLINE:

Page 6.

The subject property is approximately 75 feet wide and 107 feet long. The required minimum 100-foot wetland buffer extends into the property at an angle and covers the northeastern portion of the site, leaving an almost triangular shaped area, approximately ~~5,500~~ 4,700 square feet in size as a remainder.

Page 24:

The subject property is 107 feet long and 75 feet wide. The wetland buffer extends into the property at an angle and covers the northeastern portion of the site, leaving an almost triangular shaped area, approximately ~~5,500~~ 4,700 square feet size, in the southwestern portion of the lot available for development.

Page 26:

Other Building Sites

In order for the proposed development to be consistent with the LCP, not only does

the applicant need to demonstrate that no feasible alternatives exist, but also no other building site on the parcel exists. As discussed above, areas on the parcel outside of the buffer zone is approximately ~~5,500~~ 4,700 square feet in size, and within that area, a two-story single family home approximately 2,700 square feet, which would meet the applicable development standards could be accommodated. Therefore, because there is another building site on the parcel, the proposed development is not consistent with the LUP Policy 3-11 and Section 18.38.080 of the Zoning Code in the certified LCP. The proposed development therefore must be denied.

EXHIBITS

In addition to the above, the following new exhibits should be included in the Commission staff report:

11. Commission Notification of Appeal
12. Appeal Filed by Commissioners Patrick Kruer and Mary Shallenberger
13. Mailing List for Appeal Hearing
14. Printout of Appeal Entry as Appears in Commission's Permit Tracking Database
15. July 3, 2007 Letter from Tom Roman
16. July 3, 2007 Letter from the applicant, Saso Gale
17. June 28, 2007 Letter from Richard Parness
18. July 9, 2007 Letter from Sage Schaan, Planner, City of Half Moon Bay
19. July 7, 2007 Letter from Sofia Freer
20. July 6, 2007 Letter from Kevin Lansing
21. July 8, 2007 Letter from Robert Clinton
22. July 9, 2007 Letter from Douglas Snow
23. Building Area Envelope in Discrepancy

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 www.coastal.ca.gov

**COMMISSION NOTIFICATION OF APPEAL**

DATE: June 5, 2007
 TO: Sage Schaan, Assistant Planner
 City of Half Moon Bay, Building & Planning Department
 501 Main Street
 Half Moon Bay, CA 94019
 FROM: Yinlan Zhang, Coastal Program Analyst
 RE: **Commission Appeal No. A-2-HMB-07-021**

Please be advised that the coastal development permit decision described below has been appealed to the California Coastal Commission pursuant to Public Resources Code Sections 30603 and 30625. Therefore, the decision has been stayed pending Commission action on the appeal pursuant to Public Resources Code Section 30623.

Local Permit #: **PDP-051-06**
 Applicant(s): **Saso Crnugelj-Gale**
 Description: **Development of single-family residence within 100 feet of the wetland buffer zone.**
 Location: **684 Terrace Avenue, Half Moon Bay (San Mateo County) (APN(s) 056-081-350)**
 Local Decision: **Approved**
 Appellant(s): **Commissioner Mary Shallenberger; Commissioner Patrick Kruer**
 Date Appeal Filed: **6/5/2007**

The Commission appeal number assigned to this appeal is A-2-HMB-07-021. The Commission hearing date has not yet been established for this appeal. Within 5 working days of receipt of this Commission Notification of Appeal, copies of all relevant documents and materials used in the City of Half Moon Bay's consideration of this coastal development permit must be delivered to the North Central Coast District office of the Coastal Commission (California Administrative Code Section 13112). Please include copies of plans, relevant photographs, staff reports and related documents, findings (if not already forwarded), all correspondence, and a list, with addresses, of all who provided verbal testimony.

A Commission staff report and notice of the hearing will be forwarded to you prior to the hearing. If you have any questions, please contact Yinlan Zhang at the North Central Coast District office.

cc: Saso Crnugelj-Gale
 H.T. Harvey & Associates

EXHIBIT NO. 11
APPLICATION NO.
A-2-HMB-07-021 (GALE)
Commission Notification of Appeal

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

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

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

6. Date of local government's decision: March 22, 2006

7. Local government's file number (if any): PDP-051-06

SECTION III. Identification of Other Interested Persons

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

a. Name and mailing address of permit applicant:

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

(1) _____

(2) _____

(3) _____

(4) _____

SECTION IV. Reasons Supporting This Appeal

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

Exhibit 12
A-2-HMB-07-021 (GALE)
Page 2 of 16

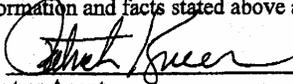
APPEAL FROM COASTAL PERMIT DECISION OF LOCAL GOVERNMENT
Page 3

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

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

SECTION V. Certification

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

Signed: 
Appellant or Agent

Date: _____

Agent Authorization: I designate the above identified person(s) to act as my agent in all matters pertaining to this appeal.

Signed: _____

Date: _____

(Document2)

Exhibit 12
A-2-HMB-07-021 (GALE)
Page 3 of 16

Gale Appeal Attachment A

The approved development does not conform to the policies of the certified City of Half Moon Bay Local Coastal Program (LCP) concerning wetland protection (see applicable LCP policies attached).

Discussion

The approved development is a 2,935 square-foot single-family residence at 684 Terrace Avenue in the City of Half Moon Bay, San Mateo County. The approved development is located 40 feet from a delineated wetland on a neighboring property.

LUP Policy 3-1 defines wetlands as sensitive habitats. Policy 3-3 requires development adjacent to sensitive habitats to be sited and designed to prevent impacts that could significantly degrade the environmentally sensitive habitats and requires uses to be compatible with the maintenance of biological productivity of the sensitive habitat. LUP Policy 3-11 and Section 18.38.080.D of the Zoning Code/IP require 100-foot setback from wetlands. Section 18.38.080.F allows residential development within a wetland buffer where no feasible alternatives exist.

The house approved by the City is within 40 feet of the wetland, which does not meet the 100-foot minimum wetland setback requirement established in LUP Policy 3-11 and Zoning Code Section 18.38.080.D. Residential development is not a permitted use within the wetland buffer unless it has been demonstrated that there are no feasible alternatives to locating the development in the buffer zone. Thus, the approved development would be a permitted use pursuant to Section 18.38.080.F of the Zoning Code if it has been proven that no feasible alternatives exist.

The City staff analyzed two alternatives and prepared findings for approval for each: the applicant's recent proposal that would comply with the wetland setback requirement; and the applicant's original proposal (previously denied by the Planning Commission), that would site the residence within 40 feet of the wetland. City staff concluded that both alternatives were feasible, but the Planning Commission denied the alternative that would comply with setback requirement because it would require the City to approve variances to the front yard setback requirement and the maximum building envelope. Although it is possible to build a house that complies with the wetland setback, the Planning Commission concluded that granting variances was not feasible. Regardless, it appears that there is a feasible building site that would comply with the wetland setback and not require variances. Thus, the City has not adequately demonstrated that there are no feasible alternatives to siting the house within the wetland buffer. Therefore, the approval is inconsistent with the certified LCP requirements to set back development 100 feet from wetlands LUP Policy 3-11 and Section 18.38.080 of the Zoning Code. The project is also inconsistent with LUP Policy 3-3 that protects wetlands from significant adverse impacts because there is an alternative that would comply with the setback requirement.

Relevant LCP Policies

Applicable LUP Policies

3-1 Definition of Sensitive Habitats

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...

Such areas include riparian areas, wetlands, sand dunes...

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.

3-11 Establishment of Buffer Zones

...

- (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

Applicable IP/Zoning Code Policies

18.38.075 Riparian Corridors and Buffer Zones

- A. Permitted Uses. Except as may be specified in this Chapter, within Riparian Corridors, only the following uses shall be permitted:

1. Education and research;
2. Consumptive uses as provided for in the Fish and Game Code and Title 14 of the California Administrative Code;
3. Fish and wildlife management activities;
4. Trails and scenic overlooks on public land(s);
5. Necessary water supply projects;
6. Restoration of riparian vegetation.

- B. Permitted Uses, where no feasible or practical alternative exists:

1. Stream-dependent aquaculture provided that non-stream-dependent facilities locate outside of corridor;
2. Flood control projects where no other method for protecting existing structures in the flood plain is feasible and where such protection is necessary for public safety or to protect existing development;
3. Bridges when supports are not in significant conflict with corridor resources;
4. Pipelines and storm water runoff facilities;
5. Improvement, repair, or maintenance of roadways or road crossings;
6. Agricultural uses, provided no existing riparian vegetation is removed, and no soil is allowed to enter stream channels

...

- E. Permitted Uses within Riparian Buffer Zones:

1. Uses permitted in riparian corridors;
2. Crop growing and grazing, provided no existing riparian vegetation is removed and no soil is allowed to enter stream channels;

3. Timbering in "stream side corridors" as defined and controlled by State and County regulations for timber harvesting.
- F. Permitted Uses within Riparian Buffer Zones, where no feasible alternative exists:
1. The construction of new structures on existing legal building sites, set back 20 feet from the limit of riparian vegetation, only if no other building site on the parcel exists;
 2. The creation of new parcels only if the only building sites available are those within in buffer area, if the proposed parcels are consistent with existing development in the area, and if the building sites are set back 20 feet from the limit of riparian vegetation, or if there is no vegetation, 20 feet from the bank edge of a perennial stream or 20 feet from the midpoint of an intermittent stream.

...
18.38.080 Wetlands.

- A. Permitted Uses:
1. Education and research;
 2. Passive recreation such as bird-watching;
 3. Fish and wildlife management activities.
- B. Permitted Uses with approval of a Use Permit:
1. Commercial mariculture where no alteration of the wetland is necessary;
 2. Bridges;
 3. Pipelines and storm water runoff facilities;
 4. Improvement, repair or maintenance of roadways.
- C. Standards. The Riparian Corridor Standards listed in this Chapter shall apply to Wetlands.
- D. Wetlands Buffer Zone. The minimum buffer surrounding lakes, ponds, and marshes shall be 100 feet, measured from the high water point, except that no buffer is required for man-made ponds and reservoirs used for agricultural purposes.
- E. Permitted Uses within Wetlands Buffer Zones. The Riparian Buffer Zone Uses listed in this Title shall apply to Wetlands Buffer Zones.

- F. Permitted Uses within Wetlands Buffer Zones, where no feasible alternative exists. The Riparian Buffer Zone Uses listed under this Title shall apply to Wetlands Buffer Zones.

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CALIFORNIA COASTAL COMMISSION

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



**APPEAL FROM COASTAL PERMIT
 DECISION OF LOCAL GOVERNMENT**

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

SECTION I. Appellant(s)

Name, mailing address and telephone number of appellant(s):

Commission Mary Shallenberger

45 Fremont Street, Suite 2000

San Francisco, CA 94105

(415) 904-5260

Zip

Area Code

Phone No.

SECTION II. Decision Being Appealed

1. Name of local/port government:

City of Half Moon Bay

2. Brief description of development being appealed:

Development of single-family residence at 684 Terrace Avenue within 100 feet of the
Wetland buffer zone.

3. Development's location (street address, assessor's parcel no., cross street, etc.):

684 Terrace Avenue, Half Moon Bay

APN 056-081-350

4. Description of decision being appealed:

a. Approval; no special conditions: _____

b. Approval with special condition: _____ **X** _____

c. Denial: _____

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

TO BE COMPLETED BY COMMISSION:APPEAL NO: A-2-HMB-07-021DATE FILED: June 5, 2007DISTRICT: North Central Coast District

Exhibit 12
 A-2-HMB-07-021 (GALE)
 Page 9 of 16

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

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

- a. ___ Planning Director/Zoning Administrator c. x Planning Commission
- b. ___ City Council/Board of Supervisors d. ___ Other

6. Date of local government's decision: March 22, 2006

7. Local government's file number (if any): PDP-051-06

SECTION III. Identification of Other Interested Persons

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

a. Name and mailing address of permit applicant:

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

(1) _____

(2) _____

(3) _____

(4) _____

SECTION IV. Reasons Supporting This Appeal

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

Exhibit 12
A-2-HMB-07-021 (GALE)
Page 10 of 16

APPEAL FROM COASTAL PERMIT DECISION OF LOCAL GOVERNMENT

Page 3

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

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

SECTION V. Certification

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

Signed: Mary K. Challenbury
Appellant or Agent

Date: _____

Agent Authorization: I designate the above identified person(s) to act as my agent in all matters pertaining to this appeal.

Signed: _____

Date: _____

(Document2)

Exhibit 12
A-2-HMB-07-021 (GALE)
Page 11 of 16

Gale Appeal Attachment A

The approved development does not conform to the policies of the certified City of Half Moon Bay Local Coastal Program (LCP) concerning wetland protection (see applicable LCP policies attached).

Discussion

The approved development is a 2,935 square-foot single-family residence at 684 Terrace Avenue in the City of Half Moon Bay, San Mateo County. The approved development is located 40 feet from a delineated wetland on a neighboring property.

LUP Policy 3-1 defines wetlands as sensitive habitats. Policy 3-3 requires development adjacent to sensitive habitats to be sited and designed to prevent impacts that could significantly degrade the environmentally sensitive habitats and requires uses to be compatible with the maintenance of biological productivity of the sensitive habitat. LUP Policy 3-11 and Section 18.38.080.D of the Zoning Code/IP require 100-foot setback from wetlands. Section 18.38.080.F allows residential development within a wetland buffer where no feasible alternatives exist.

The house approved by the City is within 40 feet of the wetland, which does not meet the 100-foot minimum wetland setback requirement established in LUP Policy 3-11 and Zoning Code Section 18.38.080.D. Residential development is not a permitted use within the wetland buffer unless it has been demonstrated that there are no feasible alternatives to locating the development in the buffer zone. Thus, the approved development would be a permitted use pursuant to Section 18.38.080.F of the Zoning Code if it has been proven that no feasible alternatives exist.

The City staff analyzed two alternatives and prepared findings for approval for each: the applicant's recent proposal that would comply with the wetland setback requirement; and the applicant's original proposal (previously denied by the Planning Commission), that would site the residence within 40 feet of the wetland. City staff concluded that both alternatives were feasible, but the Planning Commission denied the alternative that would comply with setback requirement because it would require the City to approve variances to the front yard setback requirement and the maximum building envelope. Although it is possible to build a house that complies with the wetland setback, the Planning Commission concluded that granting variances was not feasible. Regardless, it appears that there is a feasible building site that would comply with the wetland setback and not require variances. Thus, the City has not adequately demonstrated that there are no feasible alternatives to siting the house within the wetland buffer. Therefore, the approval is inconsistent with the certified LCP requirements to set back development 100 feet from wetlands LUP Policy 3-11 and Section 18.38.080 of the Zoning Code. The project is also inconsistent with LUP Policy 3-3 that protects wetlands from significant adverse impacts because there is an alternative that would comply with the setback requirement.

Relevant LCP Policies

Applicable LUP Policies

3-1 Definition of Sensitive Habitats

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...

Such areas include riparian areas, wetlands, sand dunes...

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.

3-11 Establishment of Buffer Zones

- ...
- (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

Applicable IP/Zoning Code Policies

18.38.075 Riparian Corridors and Buffer Zones

- A. Permitted Uses. Except as may be specified in this Chapter, within Riparian Corridors, only the following uses shall be permitted:
1. Education and research;
 2. Consumptive uses as provided for in the Fish and Game Code and Title 14 of the California Administrative Code;
 3. Fish and wildlife management activities;
 4. Trails and scenic overlooks on public land(s);
 5. Necessary water supply projects;
 6. Restoration of riparian vegetation.
- B. Permitted Uses, where no feasible or practical alternative exists:
1. Stream-dependent aquaculture provided that non-stream-dependent facilities locate outside of corridor;
 2. Flood control projects where no other method for protecting existing structures in the flood plain is feasible and where such protection is necessary for public safety or to protect existing development;
 3. Bridges when supports are not in significant conflict with corridor resources;
 4. Pipelines and storm water runoff facilities;
 5. Improvement, repair, or maintenance of roadways or road crossings;
 6. Agricultural uses, provided no existing riparian vegetation is removed, and no soil is allowed to enter stream channels
- ...
- E. Permitted Uses within Riparian Buffer Zones:
1. Uses permitted in riparian corridors;
 2. Crop growing and grazing, provided no existing riparian vegetation is removed and no soil is allowed to enter stream channels;

3. Timbering in "stream side corridors" as defined and controlled by State and County regulations for timber harvesting.

F. Permitted Uses within Riparian Buffer Zones, where no feasible alternative exists:

1. The construction of new structures on existing legal building sites, set back 20 feet from the limit of riparian vegetation, only if no other building site on the parcel exists;

2. The creation of new parcels only if the only building sites available are those within in buffer area, if the proposed parcels are consistent with existing development in the area, and if the building sites are set back 20 feet from the limit of riparian vegetation, or if there is no vegetation, 20 feet from the bank edge of a perennial stream or 20 feet from the midpoint of an intermittent stream.

...

18.38.080 Wetlands.

A. Permitted Uses:

1. Education and research;
2. Passive recreation such as bird-watching;
3. Fish and wildlife management activities.

B. Permitted Uses with approval of a Use Permit:

1. Commercial mariculture where no alteration of the wetland is necessary;
2. Bridges;
3. Pipelines and storm water runoff facilities;
4. Improvement, repair or maintenance of roadways.

C. Standards. The Riparian Corridor Standards listed in this Chapter shall apply to Wetlands.

D. Wetlands Buffer Zone. The minimum buffer surrounding lakes, ponds, and marshes shall be 100 feet, measured from the high water point, except that no buffer is required for man-made ponds and reservoirs used for agricultural purposes.

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

- F. Permitted Uses within Wetlands Buffer Zones, where no feasible alternative exists. The Riparian Buffer Zone Uses listed under this Title shall apply to Wetlands Buffer Zones.

...

19829 NCC A-2-HMB-07-21 *
SASO CRNUGELJ-GALE
316 VAN BUREN #9
MONTEREY, CA 93940

* 18703 NCC A-2-HMB-07-21
JULIE KLINGMANN
H.T.HARVEY & ASSOC
3150 ALMADEN EXPRESSWAY, #145
SAN JOSE, CA 95118

* 14791 NCC A-2-HMB-07-21
WILLIAM PATRICK KRUER
THE MONARCH GROUP
7727 HERSCHEL AVENUE
LA JOLLA, CA 92037

19834 NCC A-2-HMB-07-21
DAVE McCLOUD
656 TERRACE AVENUE
HALF MOON BAY, CA 94019

17726 NCC A-2-HMB-07-21
OSVALDO R. MONTEIRO
808 MONTE VISTA LANE
HALF MOON BAY, CA 94019

4450 NCC A-2-HMB-07-21
GEORGE MUTEFF
408 REDONDO BEACH RD
HALF MOON BAY, CA 94019

19832 NCC A-2-HMB-07-21
RICHARD PARNES
684 TERRACE AVENUE
HALF MOON BAY, CA 94019

* 17735 NCC A-2-HMB-07-21
TOM ROMAN
417 WAVE AVENUE
HALF MOON BAY, CA 94019

* 19830 NCC A-2-HMB-07-21
SAGE SCHAAN
CITY OF HALF MOON BAY
501 MAIN STREET
HALF MOON BAY, CA 94019

17807 NCC A-2-HMB-07-21 *
MARY K. SHALLENBERGER
3309 EAST CURTIS DRIVE
SACRAMENTO, CA 95818

19833 NCC A-2-HMB-07-21
DAVID SMITH
695 TERRACE AVENUE
HALF MOON BAY, CA 94019

19831 NCC A-2-HMB-07-21
ANDREW VAZ
686 TERRACE AVENUE
HALF MOON BAY, CA 94019

** get a copy
of staff report*

EXHIBIT NO.	13
APPLICATION NO.	
A-2-HMB-07-021 (GALE)	
Mailing list for Appeal Hearing	

A-2-HMB-07-021

Project Name:

Fees Paid:

IMPORTANT DATES

Received: 6/5/07
Filed: 6/5/07
49thDay: 7/24/07
90thDay: 9/3/07
120thDay: 10/3/07
180thDay: 12/2/07
270thDay: 3/1/08

Applicant(s): Saso Crnugelj-Gale

316 Van Buren #9 Monterey, CA 93940

Agent: H.T.Harvey & Associates

3150 Almaden Expressway, Ste. 145 San Jose, CA 95118

Appellant(s) Commissioner Mary Shallenberger; Commissioner

3309 East Curtis Drive Sacramento, CA 95818

APN(s):

056-081-350

Project Location: 684 Terrace Avenue, Half Moon Bay (San Mateo County)

Project Description: Development of a 2,935 square-foot single-family residence within the 100-foot wetland buffer zone.

PERMIT CHIEF

Confirm info above

Calendar type: Appeal

Analyst assigned: Yinlan Zhang

Notes/Comments to Analyst:

LCP INFO

Local permit #: PDP-051-06

Local action: Approved

Action Date: 3/22/2007

CLERICAL: Please prepare local government Appeal Notification Form

ANALYST

This application is: Complete Incomplete

File date: 6/5/2007

Tentative hearing month: July, 2007

Is project located between first public road and sea? Yes No Don't know

Check any of the following: Related permits?

- Prior-To-Issuance conditions recommended for this
- A 49-day waiver was granted by the permit applicant.
- Legal review is recommended.
- Deed Restriction required

Comments to be entered into database:

CLERICAL

BLURB

- Please use database to create draft blurb for review.
- And/Or, use draft blurb language below.

Appeal No. A-2-HMB-07-21 (Crnugelj-Gale, Half Moon Bay) Appeal by Commissioners Mary Shallenberger & Patrick Kruer from decision of City of Half Moon Bay granting permit to Saso Crnugelj-Gale for development of a 2,935-square-foot single-family residence, at 684 Terrace Avenue, Half Moon Bay, San Mateo County. (YLZ-SF)

CCC ACTIONS

FOLLOW-UP

EXHIBIT NO.	14
APPLICATION NO.	
A-2-HMB-07-021 (GALE)	
Printout of Appeal entry as appears in Commission's Permit Tracking Database	

NOI sent: ___/___/___ NOI returned signed: ___/___/___

Permit sent: ___/___/___ Permit returned signed: ___/___/___

Were all Prior-To-Issuance (PTI) conditions met? Yes No

Permit expiration date: ___/___/___

Item Th-5a
Permit #: A-2-HMB-07-021
684 Terrace Ave, Half Moon Bay

***** Copies of this material have been sent to staff and
all of the commissioners *****

RECEIVED

JUL 03 2007

CALIFORNIA
COASTAL COMMISSION

Cover Page for letter to Coastal Commissioners

From Tom Roman, a resident of Half Moon Bay

Regarding Item # Th-5a on the July 12, 2007 Agenda

Permit # A-2-HMB-07-021

In favor of project

***** Copies of this material have been sent to staff and
all of the commissioners *****

EXHIBIT NO.	15
APPLICATION NO.	
	A-2-HMB-07-021 (GALE)
	7/3/07 Letter from Tom Roman (Page 1 of 6)

California Coastal Commission

Dear Commissioners,

My name is Tom Roman. I am a Half Moon Bay planning commissioner, but I am writing as an individual. After having read the staff report for the above appeal, I find that I disagree with its conclusion that there is a substantial issue. I found factual flaws in the report, as well as omission of key facts in the analysis which have a significant bearing on the substantial issue determination. As a result I would like to request that you ask to hold a substantial issue hearing and take testimony on this appeal followed by a vote.

Staff's conclusion is that the only way to adequately protect a nearby wetland is to require the Gale family to accept a project outside of the buffer zone that does not meet their objectives. However, the facts in the public record show that the potential wetland impact of the approved project is minimal, and requiring additional mitigation is not consistent with the letter, spirit, or intent of the California Coastal Act or the certified LCP.

The primary flaw in the staff report is in section 3.3 Conclusion – Substantial Issue, on page 22, first paragraph, which states “there is a lack of factual and legal support for the City’s finding that the approved development is sited and designed to prevent significant adverse impacts to the sensitive wetland habitat”. This conclusion is based on an argument that feasible alternatives outside of the buffer exist, rather than biological opinions in the public record. As I noted in my previous letter, the possible existence of an alternative has no bearing on the degree of impact the approved project may have on the wetland. The opinion stated in the H.T. Harvey biological report was that the project would NOT have a significant adverse impact. This was supported by concurrence from Dave Johnston of CDFG with the caveat that additional mitigation measures he specified were included as conditions of approval (which they were). In an additional email to a former planning commissioner (see Attachment 1, page 2), Dave Johnston explicitly states that the project **“would have minimal impact to the wetland due to it’s distance, the availability of adjacent and nearby habitat of the same or superior value and because of it’s adjacency to existing development”**. Note that Mr. Johnston identifies this project by the fact that it’s the last lot on the eastern end of Terrace Ave, and by the fact that he visited the site with Sage Schaan of the planning staff. In a later email, the USFWS biologist concurred with Dave Johnston’s assessment. So the actual facts are that the biological report, the CDFG biologist and the USFWS biologist all agree that the approved project as conditioned has minimal impact to the wetland. Conversely, **there is not a single expert biological opinion that concludes that the approved project would have a significant adverse impact on the wetland.**

With respect to the possibility of a feasible alternative outside of the buffer zone, the staff report states at the top of page 17 that “the applicant applied for the two-story house because he had determined that it was feasible”. However, the project that the applicant proposed had the permanent exclusion walls, to protect the wetland, located on the north and east property lines, i.e. within the buffer zone, and the applicant assumed the family would be able to use the buffer zone contained within as a backyard. Planning staff added a condition of approval that moved the exclusion wall to the buffer boundary, effectively eliminating the entire backyard for the two-story design, as the wall would intersect the home at various points. The applicants were then left

with reduced front and side yards and no rear yard. On page 17 the staff report states that “whether or not a house would have a recreational backyard is not determinative of feasibility”, however no facts or analysis are offered to support this assertion. The Coastal Act definition of “feasible” includes the relevant phrases “capable of being accomplished in a successful manner...” and “taking into account ... social ... factors”. Since the vast majority of single family homes feature an active rear yard area that is used for social activities, a reasonable person can infer that the inability to successfully develop a backyard as part of a single family home project makes the project not feasible as an alternative to one that could. In other words, a single family home development is not simply about the building itself. The public record shows that the applicants cannot simultaneously meet their building size needs and their needs for a reasonable front, side and rear yard areas without encroaching into the buffer zone.

There are additional parts of the staff report in the “Part II De Novo Action on Appeal” section that are flawed and/or conflict with expert scientific and legal opinions in the public record. Should the hearing progress to that point, please consider these. Taking the four LCP provisions required for buffer zone development referenced on page 24 in order (the 4th LCP provision, meeting the standards in section 18.38.080.G of the Zoning Code, was not explicitly addressed by the staff report, but is embodied in the three existing sections):

1. Availability of Feasible Alternatives (page 24)

My previous letter on this item included a memo from Half Moon Bay’s City Attorney that rendered his expert legal opinion regarding legally defensible interpretations of “feasible alternative”. Using case law (e.g. Sierra Club vs. County of Napa, 121 Cal. App 4th 1490, 1507-1508(2004)), he asserted that a feasible alternative must meet most of a project objectives and will vary based on the facts of the particular land use application. He summarized the specific case facts of the example in this way: because of how the Beringer winery operated, there was no way to reconfigure the proposed expansion such that a feasible alternative could be located outside of a wetland buffer zone. It is relevant to this project in that it clarifies that the objectives that must be met are those of the applicant, not those of the average family in Half Moon Bay. The argument in the staff report on page 24 that “...what the applicant is willing to accept in terms of size and amenities of the house and cost does not determine feasibility” is inconsistent with this case law, and as a result is potentially legally indefensible. Therefore, the two feasible alternatives that the staff report cites, the proposed two-story project, and the 1074 sq ft manufactured home, are not feasible because they would not simultaneously meet their building size needs and their needs for a reasonable front, side and rear yard areas without encroaching into the buffer zone. Also, it is clear that cost per square foot of development is an “economic factor”, which appears in the Coastal Act definition of feasible and therefore must be taken into account, and therefore a custom built home is not feasible either.

2. Other Building Sites (page 26)

This section asserts that a 2700 sq ft two-story home could be built in the 5500 sq ft remaining lot area outside of the buffer, however, the computed remaining lot area appears to be an error. The buffer zone overlap is a quarter circle in shape, not a triangle. The area of a quarter circle is $\text{Pi} \times (\text{radius}^2) / 4$. Taking the average of the radii on the north and east property lines yields ~68 feet, and therefore the area is ~3632 sq ft. This leaves 8062 – 3632 or 4430 sq ft for the portion of the lot outside of the buffer. This is substantially smaller than what staff computed and raises

further concerns about feasibility. In addition, remaining lot is "state of Idaho"-shaped. Based on these factors, finding a building site that accommodates a 2700 sq ft home and leaves reasonable front, side and rear yard space is arguably not feasible.

3. Development adjacent to Sensitive Habitat (page 26)

This section of the staff report notes that the biological assessment concludes that there would be no significant impact to the wetland. It further notes that CDFG's Dave Johnston believes that California Red-Legged Frog and San Francisco Garter Snake, could occur in the wetland. However, the report fails to note that Mr. Johnston's conclusion was that with mitigation, the project would not have significant adverse impacts (see previous discussion in paragraph 3 of this letter).

The report also asserts that replacing natural vegetation in the buffer with development would reduce the physical and chemical filtration functions and could lead to increased polluted runoff and sedimentation entering the wetland. However, according to the topographical map of the area, the wetland is at a higher elevation than the parcel, and therefore it is highly unlikely that any runoff from the property could reach the wetland.

Because the conclusion in the staff report ignores these two important facts, the analysis in the report is flawed and fails to support the conclusion that the approved development would have a significant adverse impact to the wetland.

In summary, since the facts and evidence that exist show that the approved project will not have a significant adverse impact on the wetland, it is therefore consistent with the certified LCP. The LCP does not require additional mitigation for a project that has a minimal impact to sensitive habitat, and therefore the extraordinary step (in this case) of requiring development to be located outside of the buffer zone is not necessary. While it might seem attractive to ask the Gale family to accept a project that does not meet their objectives in order to potentially decrease the wetland impact from minimal to less-than-minimal, this is not consistent with the California Coastal Act or the LCP.

I recommend that during the appeal hearing, the Commission find that there is no substantial issue. If the hearing proceeds to the De Novo Review, I recommend that the Commission approve the proposed single story project, with the same conditions of approval that were imposed by the City of Half Moon Bay.

Regards,



Tom Roman
417 Wave Ave, Half Moon Bay

cc: All 12 Coastal Commissioners
Yinlan Zhang, Coastal Program Analyst

Attachment 1: Email from Dave Johnston to Jimmy Benjamin dated April 28, 2005

James Benjamin

From: David Johnston [djohnston@dfg.ca.gov]
Sent: Thursday, April 28, 2005 10:13 AM
To: jimmyb@stanford.edu
Subject: Re: RLF habitat buffer; "frog walls"

PLANNING DEPT.

APR 28 2005

RECEIVED

Commissioner Benjamin:

I thought it best to respond by e-mail so that you can forward, copy or print my comments as seems appropriate. That being said, I am very willing to discuss/clarify any of this by phone. Today, I will be available on and off until around 3.

I need to preface this by making clear I haven't seen the site, the proposal or any existing biological data/analysis. Without that, I can only really comment in general terms. I am willing to give it a more detailed look in the near future, but obviously that won't help you for tonight.

Here are my thoughts on your specific questions:

1. The USFWS protocol calls for a 300' buffer. I'm not real clear what that is based on and neither is anybody in USFWS that I have been able to ask. In both agencies, there is common agreement that 300' is not a meaningful number. There is not common agreement as to what would be an effective distance, but there is agreement that it should be much larger than 300'.

The state of research on amphibian biology at this point is pointing to greater and greater buffer sizes, especially for those areas that are isolated from one another. Assuming that some of the readers of this mail are unfamiliar with the current understanding, it might be best to go over it briefly.

Many amphibians are distributed in what is termed a metapopulation model. Under this model, a population of red-legged frogs (CRLF) would be found distributed across any geographic area in a scattered distribution. This would be because the breeding sites (ponds) are not evenly distributed across the landscape, but are scattered. Adults come to the ponds to breed and go back up into upland habitat afterward (winter-spring). Adults seem to stick closer to the ponds, but can still go off on a journey. If they do, they seem to go in straight lines, rather than following drainages. Any surviving tadpoles transform in small frogs (called metamorphs) in late spring-summer. Like all teenagers, they are much less likely to be satisfied with the current state of affairs, including where they grew up, and are much more likely to go much larger distances from the main pond. Generally, since it's warm when they transform, they seek cover close to the pond they emerged from and wait for the first rains to go out exploring.

In a metapopulation model, this tendency for some of the population to disperse rather than stay around the breeding site is absolutely critical to the survival of the population as a whole. This is because it is insurance against any random event that might destroy a pond or ponds in one area (or the frogs in those ponds). Such events could be disease, siltation, early dry out and others. Under this view, the long range dispersers would recolonize the vacant pond or ponds. As long as the event didn't wipe out all of the frogs or salamanders in a particular area, this behavior would ensure the population would survive through time.

By this model, it can be seen that it is absolutely critical to preserve the passage areas between ponds to try and preserve as much of the original metapopulation arrangement as possible. This is very difficult to do since political boundaries are not related to biological ones.

Getting back to the issue at hand, the key lesson to be applied is that CRLF populations cannot be maintained in perpetuity by protection on the breeding site and a minimal buffer and 100' is considered less than minimal by CDFG and USFWS. A recent study on California tiger salamanders (CTS), with some very complex modeling, seems to conclude that any buffer less than 640 meters will eventually result in the extinction of that population of CTS. Obviously this poses some serious challenges for planners and I merely mention here to indicate which way the science is going on this issue.

Exhibit 15
A-2-HMB-07-021 (GALE)
Page 5 of 6

2. In general, this would not be a biologically defensible position. In some cases, there may be circumstances where the buffers to a particular pond could be reduced, even to very small numbers. To justify that however, a study would have to evaluate the whole of the circumstances effecting that pond, it would not be valid to do it in isolation.

Without doing such a study, there is no basis for reducing the buffer for one development. If what is being referred to here is a position that one development won't cause harm; I would counter by stating that once one is approved without specific grounds for doing so, there will be no reasonable grounds for denying anyone else that might have the same request-and not only in this location.

As to cumulative impacts, it is my conclusion they would be potentially considerable. Even if an exception, based on specific circumstances, would be appropriate for this development, it is almost inconceivable that the local conditions would be such that numerous developments could approach less than 100' to a breeding sites and it be expected that the population would survive through time. This is, of course, dependant on what's on the other side of the pond.

3. After wading through all of the above, you will probably not be thrilled to read that the safety and effectiveness of a frog wall is the most complex question of the three. There are a host of factors that apply to this question and there is absolutely no way I can answer it without seeing the site.

The first question to be asked is whether or not there should be a wall at all. This depends on a bewildering array of factors, such as the distance from the site, the extent of the barrier, the proximity of other habitat and travel corridors, the proximity of other development which may or may not have barriers, the current condition of the project site and a number of others.

The next question would be whether the wall should attempt a complete exclusion or a partial exclusion. My personal prejudice is to isolate as much as possible, but allow for escape of animals which might become trapped inside. It sounds as if that's the proposal that is before you.

Without having seen this site, the best way I can clarify this is by going over a site I have seen and discussed with Planning staff (Sage Schaan), an SFD on Terrace Avenue:

On that site, a new residence was proposed on a small lot. A wetland was identified some distance to the NE, but as that habitat was on an adjoining property, it hadn't been surveyed. It was my conclusion that there was a potential for occurrence of CRLF and San Francisco garter snake on the property and that precautions should be taken. **In this case, the lot was at the eastern end of a row of existing houses and it was my understanding that there were several more similar parcels to the east of the site, also along Terrace.** These lots would have eventually gotten much closer to the wetland area and would therefore be more problematic. There was open area to the north, south and east and some to the west. Evidently, there was development potential on the parcel where the wetland was located, but proposals had been rejected or were currently tied up.

In this case, the proposed development would have minimal impact on the wetland because of it's distance, the availability of adjacent and nearby habitat of the same or superior value and because of it's adjacency to existing development. This was modified somewhat by the uncertainty of future development around the wetland, but it was recognized that any development on the property containing the pond would likely need extensive review, allowing input from the resource agencies. This circumstance would also allow for a more useful type of planning for wildlife protection as it is always easier to mitigate when more land is available. As I'm sure you have experienced, it is almost impossible to have any kind of meaningful wildlife mitigation on a 10,000 square foot lot.

In this case, I recommended avoidance measures during construction and the construction of a partial wall with escape measures. This method reduces entry onto the property and allows for escape. A full barrier wasn't deemed necessary at this location because it would be very difficult to implement and would have little additional benefit.

I hope this helps, please feel free to contact me if you need any follow-up.

Dave Johnston
Calif. Department of Fish and Game
(831)475-9065

July 3, 2007

Dear Ms. Zhang and the Commissioners,

I read the July 28, 2007 CCC staff report (hereinafter referred to as "staff report") for Appeal No. A-2-HMB-07-21, which is item Th 5a at the July 12, 2007 hearing.

In order to bring some balance to the staff report, we would like to address the following points:

1. Where exactly is the wetland and where does the buffer zone end?

Considering all the different numbers that one can find in different documents, there appears to be a substantial disagreement and a lot of inconsistency in regard to the size of the area outside of the buffer zone. Since this value is crucial for the fair and just determination of the answer to the "substantial issue" question, we dedicated a day to drawing the situation on the lot and its vicinity on a large drawing (made to scale) and running the numbers. The goal was to be as precise and careful as possible and to obtain reliable numbers. The information for this endeavor came solely from the documents provided by biologists.

As it can be seen on pages 64, 71, and 103 of the staff report, biologists made multiple visits to our property at 684 Terrace Avenue in Half Moon Bay. The dates of the visits were: April 27, 2004; August 18, 2004, August 19, 2004; January 2005, and early July 2006. The attempts to establish the distance of the proposed project from the wetlands were made on April 27, 2004, August 18, 2004, and in early July 2006. The biologists clearly stated in their reports that they did not have access to the Beachwood property and were estimating the distances by indirect methods.

The only exception to the pattern of indirect estimation of distances was the first visit, i.e. the visit of April 27, 2004, when the biologist actually walked the Beachwood property, directly measured the distance with a tape measure, and took soil samples to find the edge of the wetlands. Consequently, it is only reasonable to conclude that the most accurate determination of the distance between the proposed house and the wetland was made on April 27, 2004; all other visits produced distances that are based on observation of vegetation and estimations of distances. The report of the April 27, 2004 site visit states that **the measured distance from the staked NE corner of the proposed structure was approximately 45 feet**. This report was submitted to the City of Half Moon Bay on April 30, 2004. We included it for your reference as Attachment A to this letter. The City reviewed the report, used it to establish that our lot is partially affected by the buffer zone, and came back with the requested to produce a more extensive biological report that will include all required components as per the Zoning Code (e.g. Describe and map all existing sensitive habitats, riparian areas, and wetlands located on or within 200 feet of the project site; Identify if any mitigation measures are necessary, and if so, what will be required before, during, and after construction.; Distinguish any wetland areas from what may be a riparian area; Explain if analysis supports the required findings for development in a wetland buffer zone).

Attachment B to this letter is the drawing of the lot, depicting the situation on the lot and its vicinity. One centimeter on the drawing corresponds to 2 feet on the ground. The buffer line indicates a 100-foot buffer zone when the closest wetland is located 45 feet from the NE corner of the proposed house, as determined in the first biological report. The buffer line represents the most accurate buffer line since it is based on the only reliable determination of the distance

July 3, 2007

between the proposed house and the wetland. The knowledge of the location of the buffer line then makes possible the calculation of the area outside of the buffer zone. **The total area outside of the buffer zone is approximately 3,376 sq. ft, and the buildable area outside of the buffer zone is approximately 1,032 sq. ft.** The buildable area outside of the buffer zone is of triangular shape.

These results are vastly different from the numbers used in the staff report (approx. 5,500 sq. ft for total area outside the buffer zone and approx. 2,700 sq. ft. for buildable area outside the buffer zone). Consequently, we request that staff please review their own as well as our methods and calculations.

2. What constitutes a feasible alternative?

The staff report states: "Under Coastal Action Section 30108, feasible is defined as ...capable of being accomplished in a successful manner within a reasonable period of time, taking into account economic, environmental, social, and technological factors."

Most of the dilemma around the question of a feasible alternative revolved around the size of the area outside of the buffer zone. The confusion was facilitated by the fact that the biologist gained access to the site (where the wetland is located) only once, which made a precise determination very difficult at best. Fortunately, the questions around the size of the area outside of the buffer zone were successfully answered under point 1 above. The results show that the available buildable areas outside of the buffer zones, even if they are extended by five feet with a variance, do not allow for a feasible alternative, not even the alternative suggested by staff and presented on page 89 of the staff report.

As far as the "economic factor" of the feasibility question is concerned, the staff report supports the position that feasible is what "most people who wish to develop a single family residence in Half Moon Bay" (25) can afford. Such thinking is based on averages, which are not appropriate here. If you have a tub of ice-cold water, and a tub of boiling water, none of these tubs is a place where a human can stay for long. However, if one considered the temperature of water in terms of averages, then the water in either tub would be just fine. The point is, **defining economic feasibility in terms of "most people" is not appropriate since it will not be "most people" who will be paying the bills; the bills will need to be paid by the Gales.** This is why we have no choice but to work with the manufactured housing.

As far as the "social factor" of the feasibility question is concerned, **the staff took the position that the needs of our family are not important.** Currently, we are four people in the family and both parents work from home. This is where the number of rooms/offices is important. The two children we have are of preschool age and they need a safe place where they can play or spend their time in fresh air. This is where the backyard is important. Every person needs a place and time to relax. This is where the backyard is important. By a priori excluding the needs of our family, the staff takes the position that is comparable to a person saying to a hungry person: "You say you need a loaf of bread to feed your family? Well, sorry, what you need is not important. A muffin will have to do."

3. Will the project result in increased sedimentation and pollution of the wetland?

The staff report states more than half a dozen times that the proposed project would result

July 3, 2007

in negative effects in terms of "sedimentation" and "pollution" of the wetland.

The City made the following crystal clear: "The site will be required to drain to the street to avoid all potential runoff from interfering with the adjacent wetland." (staff report, 36). Even if one assumes that there were any "potential runoff" from the developed site, such "potential runoff" will not reach the wetland due to the force of gravity. Namely, the topographical survey shows that the area with the wetland is higher than the NE corner of the property, which is the highest point of the rear property line and closest to the wetland. In other words, **the rear property line is lower than the wetland, even at the closest point, and it slopes away from the wetland.**

It should be noted that the proposed project does not feature any hard landscaping features (no structures or paving in the backyard.) that would increase runoff toward the Beachwood property.

4. Will landscaping threaten the wetland?

The staff report states, for example on pages 20 and 26, that "exotic invasive species used for landscaping could also invade the wetland and replace the native wetland vegetation, resulting in degradation of the wetland and disruption of its biological productivity." A similar idea is also expressed on pages 21 and 27 of the staff report.

I would like to point out that these statements are correct per se, but they are generic statements and, as such, there is no reason to assign any extra weight to them. They are identical to statements like "Too much salt is not good for your blood pressure."

As far as our proposed project is concerned, the biological report makes it clear that our property is already populated by non-native vegetation, and "there exists a broad expanse of non-native herbaceous habitat" (staff report, 82) between our property and the wetland. Further, the **biologist described the situation on site as, "The vegetation is predominantly non-native, both within, and surrounding the seasonal wetlands"** (Appendix A, 2).

Last but not least, we would like to point out that our landscaping proposal does not include anything exotic.

5. Will the proposed project be incompatible with biologic productivity of the wetland?

The staff report states that "the approved development would have a significant adverse impact by contributing to the degradation of the wetland and the wildlife habitat and the water quality in the wetland. The approved development therefore does not maintain the biological productivity of the sensitive wetland habitat" (20). Similar ideas were expressed elsewhere throughout the staff report.

I failed to find the basis for multiple statements about "significant impact". Namely, the biologists evaluating our property agreed on the minimal impact of the proposed project on the wetland. Among these biologists were also biologists from government entities, not only biologists from the private sector. **The idea that the proposed development will contribute to the degradation of the wetland and the wildlife habitat is not supported by the biological assessments. The biologists, most of whom actually visited the site, were of the opinion that the wetland is limited in its function and value since the wetland is relatively small, supports**

July 3, 2007

seasonal hydrology, and a limited suite of hydrophytes and a simplistic vegetative structure (staff report, 82).

The question of the impact of the proposed project on water quality in the wetland has already been addressed under point 2 above - water flows down and the wetland is higher than the rear property line of the property, so the water quality in the seasonal wetland will not be affected by the proposed project.

6. Will the proposed project disturb rare and endangered wildlife species?

The staff report states on page 20 that the proposed development "would increase the risks of disturbance to the San Francisco garter snake and California red-legged frogs by increasing noise and lighting" as well as "...San Francisco garter snakes and California red-legged frogs that use the wetland and the buffer zone."

Statements like these are inaccurately implying a great degree of certainty about the presence of the mentioned wildlife species in the adjacent wetland and the buffer zone. Yes, it is true that in the staff report the first quoted sentence at the beginning of the previous paragraph was preceded with the sentence "Dave Johnston from the CDFG states that California red-legged frogs, a federally threatened species, could also occur" (20). However, Mr. Johnston did not imply certainty. He expressed a possibility, however small it might be. Mr. Johnston's statement was taken out of context and a spin was put on it. If one couples Mr. Johnston's statement with the biologist's assessment that "**the potential for California red-legged frogs and/or San Francisco garter snakes occur on the adjacent Beachwood property is not likely**" (staff report, 82) and "**Thus, California red-legged frogs can be considered to be absent from the project site**" (staff report, 79), one gets a picture that is almost diametrically opposite from the implied certainty of presence of the San Francisco garter snake and California red-legged frogs in the wetlands and the buffer zone.

The staff report also mentions the biologist's statements that endangered species "could cross subject property" (7). However, once the biologists' proposed mitigation measures are put into place, wildlife could not go on site anymore and this will prevent any harm to them.

The staff report also mentions light pollution. If light pollution is a major concern, regardless of what might or might not be present on the adjacent Beachwood property, we can make it so that there is no light installed at the back of the proposed house.

7. Does a house need a developed backyard?

Yes, a house does need a developed backyard and there are **two very good reasons for it**.

One reason has to do with the "**social factor**" as it pertains to feasibility, e.g. for children to play on it (as opposed to playing at the street-facing side of the house, where they are closer to the street and can be hit by a car; or as opposed to playing inside and not spend time outside) and for relaxation and privacy.

Another reason is safety. Specifically, **fire safety**. Recent devastating wildfire at Lake Tahoe clearly showed the extent of damage it can cause. In order to prevent/minimize such disasters, the California Fire Code requires that there is a 30-foot fire break established between structures and combustible vegetation. That is, if the distance between a structure and a property

July 3, 2007

boundary is more than 30 feet, then only the area that is 30 feet deep needs to be cleaned. On the other hand, if the distance between a structure and a property boundary is less than 30 feet, then the entire area from a structure and up to the property boundary needs to be kept clean. According to the California Fire Code, the term structure means "that which is built or constructed, an edifice or building of any kind, or any piece of work artificially build up or composed of parts joined together in some definite manner" while the term combustible vegetation means "cut or uncut weeds, grass, vines and other vegetation." **The bottom line is that having a developed and clean, well maintained backyard provides the required separation between a house and flames that might rage in adjacent undeveloped areas with combustible vegetation.**

8. Will the proposed project be a precedent?

The staff report expresses concerns about the precedential value of the proposed project (22). In regard to this issue, please note that the City was also concerned with this dilemma and addressed it as follows: **"The Commission's decision is not precedential, and does not mandate similar action on the part of the Planning Commission for any future project in the area (Miller v. Board of Supervisors of Santa Barbara County (1981) 122 Cal. App.3d 539) (40, 15. Special Circumstances).**

The staff report also expressed concerns in regard to precedential concerns for "other vacant lots on Terrace Avenue where portion of the lots are located within the wetland buffer". The staff report then continues with "[B]ecause of the approved development, development on those lots that encroach into the required minimum wetland setback could also be approved without adequate findings that no alternatives exist. As such, the City's action on the approved development has precedential value for the City's future interpretation and implementation of its LCP" (22). However, it should be clear that the City did address these concerns already when it wrote the following: "...this finding is not precedential, and the Commission will not use this evaluation as a basis for permit development of surrounding lots in the area. The Department of Fish and Game did not review any adjacent sites for the purposes of development of the surrounding parcels. **The Commission finds that the biological report recommendation and the Department of Fish and Game comments are directly related to this lot and proposed projects and cannot be used in the evaluation of proposed developments on adjacent properties, which may create substantial impacts to the coastal resources that are not found here**" (41, end of first paragraph).

I would also like to point out that the circumstances on our property are unique and are not present on any other lot on Terrace Avenue, which can be easily established and confirmed by the aerial photo from the September 7, 2004 biological report.

It is entirely understandable that the California Coastal Commission is concerned with the precedential value of the City action on our project; however, as it has been demonstrated above, the City has shown that it shares the California Coastal Commission's concerns and this is why it took the necessary steps to "isolate our proposed project" so that nobody could hijack it. We cannot speak for the City, but we cannot imagine that the City would ever use our project as the basis for rampant disregard of environmental protection measures specified in the LCP.

Item No: Th 5a
Permit Number: A-2-HMB-07-021
Saso Crnugelj-Gale and Verena Gale
In favor of project (=against the appeal)

July 3, 2007

In conclusion, we respectfully request from the Commissioners to please ask for a hearing on the "substantial issue" determination, so that arguments can be provided and any questions answered before a decision is made. We strived to address the main areas for which we felt that the information presented in the staff report was either incomplete, or required a clarification, and hopefully you will find it helpful. It is our sincere hope that the information we provided will help you reach the decision that the appeal did not raise a substantial issue, the decision for which you will know in your heart that it was the right decision. **We are real people, not just faceless "applicants", and your decision will have a tremendous impact on our family's future.**

In case you find it necessary to contact us, please do not hesitate to do so at (831) 658-0359 or at saso@verenagale.com. We are available to discuss the presented issues or answer any questions.

Sincerely,



Saso Crnugelj-Gale and Verena Gale

CC: All CCC Commissioners and CCC staff

Attachments:

- Attachment A (Biologist's report on the April 27, 2004 visit to our property)
- Attachment B (Drawing of the lot and the buffer zone)



April 29, 2004

Mr. Saso Crnugelj-Gale
316 Van Buren #9
Monterey, CA 93940
Phone: (831) 658-0359

**Subject: Terrace Avenue (APN 056-081-350), Half Moon Bay, Wetland Assessment
(Project Number 2386-01).**

Dear Mr. Crnugelj-Gale,

This letter serves as a Biological Report as required by the Half Moon Bay City Code Section 18.38.035. I visited the Terrace Avenue parcel on April 27, 2004 to determine whether or not your proposed structure will encroach into a 100-foot wetland buffer zone as depicted on the Beechwood Subdivision map dated August 2001.

The limits of the proposed house structure were staked with story poles. Existing residences occur immediately to the west and south of the parcel, along Terrace Avenue. The parcel itself is dominated by non-native grasses and forbs such as wild oats (*Avena fatua*), soft brome (*Bromus hordeaceus*), ripgut brome (*Bromus diandrus*) and wild radish (*Raphanus sativus*). The proposed Beechwood subdivision is located immediately north of the parcel. According to the August 2001 map, three features identified as "study areas/ponded and other areas" are located in the northeast corner of the subdivision, in the vicinity of the Terrace Avenue parcel. It is my understanding that the California Coastal Commission regards these features as wetlands.

During my site visit, I observed shallow depressions on the Beechwood subdivision property that appeared to coincide with the locations of the three wetlands as shown on the 2001 map. Two of these depressions were separated from each other by a raised berm. The third and smallest feature, located furthest east, was an earthen lined ditch with a large 60-inch raised storm grate at its westernmost end. The depressions and ditch were dry at the time of the visit, but the two depressions appeared to pond on a seasonal basis as evidenced by sediment deposits and scattered algal mats. The ditch had vegetative debris collected around the grate, indicating that it experiences water flows on a seasonal basis. The hydrology for these features appear to be surface driven; that is, during seasonal rainfall events of sufficient duration, surface runoff tends to collect in these low-lying areas. The depressions were dominated by hydrophytes (*i.e.*, water-loving plants) such as rush (*Juncus patens*) and bristly ox-tongue (*Picris echioides*). Other species observed included California blackberry (*Rubus ursinus*), meadow barley (*Hordeum brachyantherum*), quaking grass (*Briza minor*) and soft brome. Finally, a brief examination of the soil showed that the chroma (color) within the upper 10 inches was relatively dark (10YR 2/1) and supported bright mottling (7.5YR 4/4). Such characteristics are indicative of soils that are saturated or ponded for significant duration (*i.e.*, hydric soils). Based upon this

reconnaissance-level site visit, these features appear to meet the technical criteria for wetlands/other waters.

From the northeast story pole, I measured a distance of approximately 45 feet to what I believe is the edge of the nearest seasonal wetland based upon the characteristics described above. Although this places the proposed structure within the 100-foot buffer zone, I do not believe that this shorter distance will adversely affect the functions and values of the seasonal wetland. Overall, these seasonal wetlands offer limited habitat value. The surface hydrology is driven by a gentle east to west gradient whereas the proposed structure is located at least 45 feet to the south. Therefore, it does not seem likely that the hydrology of these features will be adversely affected by the proposed structure. The vegetation is predominantly non-native, both within, and surrounding the seasonal wetlands. In addition, the Beechwood subdivision property has obviously been subject to prior disturbance (e.g., grazing, agricultural activities, earth-moving events) and the seasonal wetlands in the southeast portion of the site may have resulted from some of these man-induced activities. The earthen ditch with the storm grate certainly appears to be man-made.

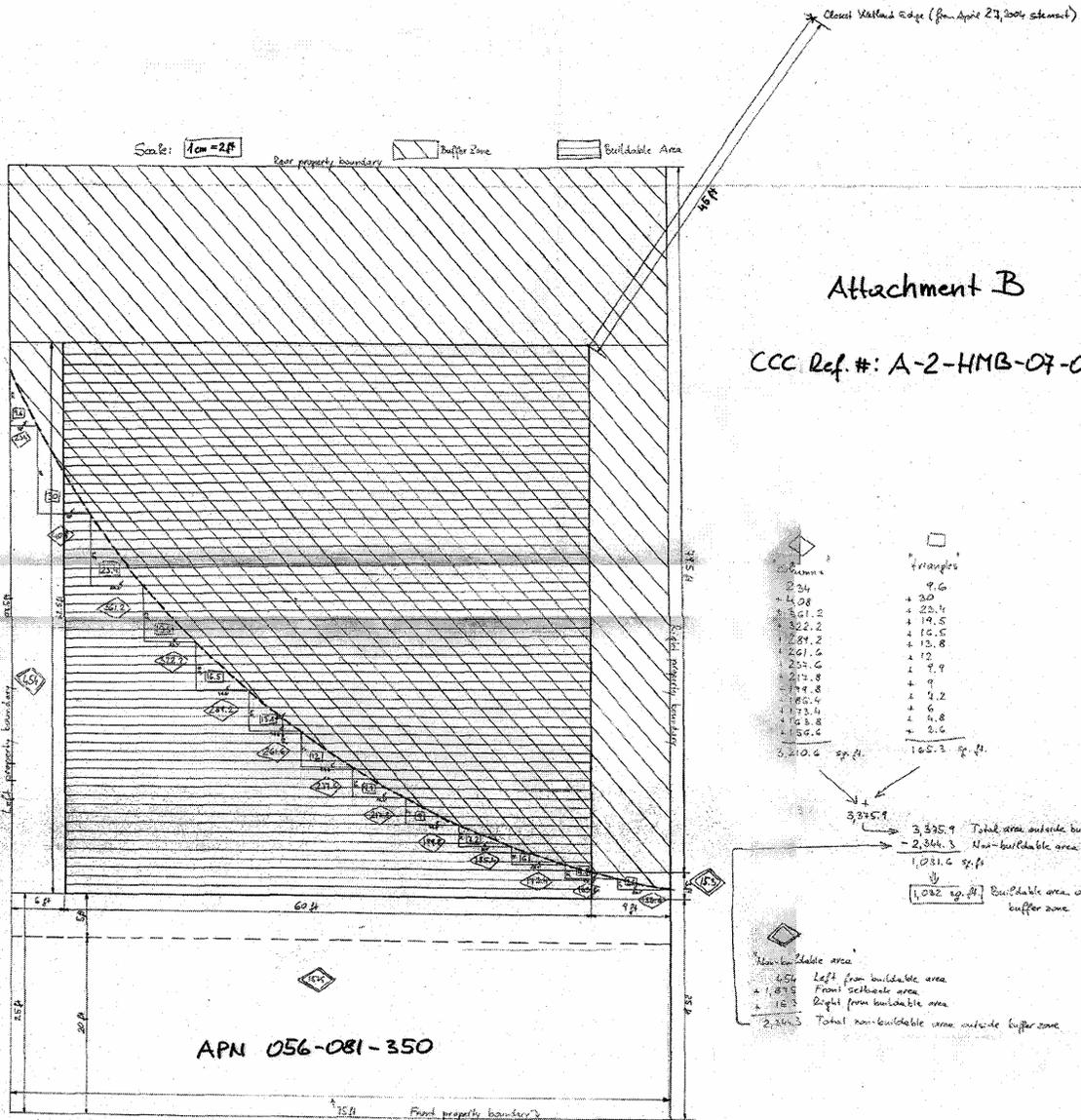
In summary, the proposed structure is located approximately 45 feet from the edge of a seasonal wetland. However, this wetland has limited functions and values and, it is my opinion that this wetland will not be adversely affected by the proposed structure. Please call me at (408) 448-9450, x 305 if you have any questions or need further assistance.

Sincerely,



Mary Bacca, M.S.
Project Manager, Botany, Wetlands and Permitting Division

H. T. HARVEY & ASSOCIATES



Attachment B

CCC Ref. #: A-2-HMB-07-021

Squares	Triangles
2.24	9.6
4.08	+ 22.4
321.2	+ 12.5
284.2	+ 15.8
261.6	+ 12
207.6	+ 7.9
212.8	+ 9
194.8	+ 2.2
185.4	+ 6
173.4	+ 4.8
158.8	+ 2.6
156.6	
3,210.6 sq. ft.	165.3 sq. ft.

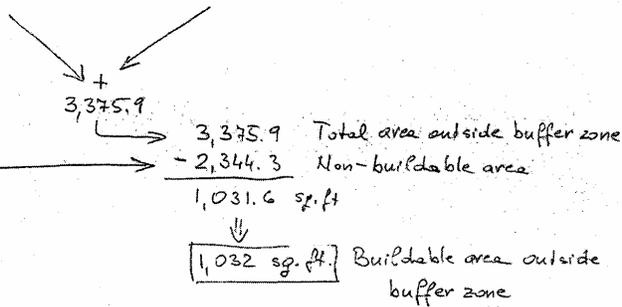
$3,210.6 + 165.3 = 3,375.9$ Total area outside buffer zone
 $3,375.9 - 2,364.3 = 1,011.6$ Non-buildable area
 $1,011.6 - 1,022 = 1,032$ Buildable area outside buffer zone

Non-buildable area:
 Left from buildable area: 1,873
 Front setback area: 103
 Right from buildable area: 2,364.3
 Total non-buildable area outside buffer zone: 2,364.3

Attachment B

CCC Ref. #: A-2-HMB-07-021

◊	◻
"columns"	"triangles"
234	9.6
+ 408	+ 30
+ 361.2	+ 23.4
+ 322.2	+ 19.5
+ 289.2	+ 16.5
+ 261.6	+ 13.8
+ 237.6	+ 12
+ 217.8	+ 9.9
+ 199.8	+ 9
+ 185.4	+ 7.2
+ 173.4	+ 6
+ 163.8	+ 4.8
+ 156.6	+ 3.6
3,210.6 sq. ft.	165.3 sq. ft.



◊	
"Non-buildable area"	
454	Left from buildable area
+ 1,875	Front setback area
+ 15.3	Right from buildable area
2,344.3	Total non-buildable area outside buffer zone

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JUL 05 2007

CALIFORNIA
COASTAL COMMISSION

Hearing Item No. (Item No.): Th 5a

Hearing Date: July 12, 2007

Application No. (Permit No.): A-2-HMB-07-21

Applicant: Saso Crnugelj-Gale

My Name: Richard Parness

My Position: In favor of 1-story project

**Richard Parness
664 Terrace Ave.
Half Moon Bay, CA 94019-1550**

June 28, 2007

California Coastal Commission
c/o Yinian Zhang
Coastal Program Analyst
North Central Coast District Office
45 Fremont, Suite 2000
San Francisco, CA 94105-2219

Re: Subject Property – see reference on upper right hand corner of this letter

Dear California Coastal Commission Commissioners and Coastal Program Analyst:

My wife and I live in the house located on the western boundary of the Subject Property. We wish to voice our support of the 1-story Proposed Project.

As an aside, we are strong environmentalists. We are long time members of the Sierra Club, Greenpeace, National Resource Defense Council, Earth Save, and we have been active in environmental activities.

Feasible Alternative and Reasonableness

Under the Half Moon Bay LCP the term “Feasible Alternative” is not defined. Accordingly, any definition used should provide for a “reasonable” standard. While it may be technically possible to build a house on the Subject Property outside of the Buffer Zone, if the project is not “reasonable,” it should not be considered a “feasible alternative.”

Accordingly, I present the following issues for your consideration:

Zoning Variances – The Applicants have proposed two separate two-story plans that would be placed outside the Buffer Zone. Actually, both plans require zoning variances in order to be built. While it is technically possible to build either of these houses, we believe that it is unreasonable that zoning variances are required

EXHIBIT NO. 17
APPLICATION NO.
A-2-HMB-07-021 (GALE)
6/28/07 Letter from Richard Parness (page 1 of 4)

as a part of a plan to make a project into a Feasible Alternative. Without zoning variances, these projects cannot be built.

From a personal perspective, we strongly oppose such zoning variances because they will allow the two-story house to materially block our access to direct sunlight and to daylight. This issue is further discussed below in Personal Considerations.

Neighboring Lots

The remaining unimproved lots on Terrace Avenue to the east of the Applicants' property are of similar size to the Subject Property. At least the two lots immediately to the east of the subject property are so completely covered by the Buffer Zone that there is clearly no Feasible Alternative. This is because they are located closer to the wetlands feature from which the Buffer Zone is drawn. Consequently, the Buffer Zone on these lots will be reduced from 100 feet to 20 feet and these lots will then be unencumbered by any Buffer Zone. We believe it is unreasonable that the Subject Property should be the only lot on the street that is so restricted. Surely looking at such a strict interpretation of the law would strongly suggest such a result is unfair and unreasonable, and outside the intent of the governing law.

Footprint and Floorplan

In order to squeeze a two-story project into the area outside of the 100-foot Buffer Zone, substantial changes were required to conventional architectural planning. The result is a footprint and floorplan that is not in keeping with generally accepted architectural principles and probably will create problems for the Applicants when they choose to sell their house. We believe that such abnormalities to conventional planning are unreasonable and do not result in a feasible Feasible Alternative.

Substandard Lot

The remaining property outside the 100-foot Buffer Zone is less than 5,000 square feet. Under the LCP such a lot is considered Substandard. We believe it is unreasonable that the application of the 100 foot Buffer Zone requirement create a Substandard Lot for the Applicants, nor should they suffer the consequences of such a situation. The resulting Substandard Lot under these circumstances should not be considered a Feasible Alternative.

Backyard

Under the CCC definition of Feasible Alternative being applied here, the CCC Program Analyst points out that no provision in the definition provides the Applicant the right to a recreational backyard. While, technically, this may be correct, such a strict interpretation provides an incredibly restrictive result that creates another situation that we believe is unfair and unreasonable. For the Applicants, and their children, to be restricted from using their property, to watch the vegetation (most of which are invasive weeds) grow from inside their home

(because they cannot step out onto the property in the 100 foot Buffer Zone) is obscene and unfair, unreasonable, and certainly not what was intended by the term Feasible Alternative.

Neighborhood Standards

The CCC Program Analyst correctly points out that there are other two-story houses in the neighborhood, and houses of varied architectural styles. However, the two-story proposals in the this case have unique characteristics that do not fit into the neighborhood:

Second Floor Setbacks – Other two-story houses have second floor setbacks. The subject two-story proposals lack such setbacks and have two-story walls on all sides. This creates a massive appearance that is unique in this neighborhood and results in a design that is esthetically objectionable.

Front Elevation – The front elevation of the house is on a single plane. Other houses on the street have varied fronts with garages, porches, and rooms existing on various planes that create interesting design elements. Again, a single two-story plane creates a massive appearance; again it is esthetically objectionable

Setback Variance – The setback variance will move this house 5 feet closer to Terrace than other houses in the neighborhood. Coupled with the other issues mentioned above, this will create a massive structure that is unique in the neighborhood and clearly inconsistent with neighborhood standards. When the story poles were erected, they could be seen from Terrace Avenue at Highway 1 – almost two blocks away.

Many other neighbors have expressed their concerns over these issues, and their dislike for the two-story design proposals.

Personal Considerations

We have two home offices that are located on the east side of our house, the side that faces the Subject Property. The only windows in these rooms face the Subject Property. We have no other source of natural light. We spend most of our days in these offices.

The proposed two-story projects will substantially reduce the amount of natural light that will come into our offices. The projects are proposed with the 6-foot setback from our common property line (our house is also setback 6 feet from the common). The Subject Property is designed with a 2-foot elevation on our common property line. Therefore, we will have a solid wall almost 30 feet above our ground level located just 12 feet from our offices. This, coupled with the front of the proposed projects being moved 5 feet closer to the street (code variance), will create a dark alley between our houses, will substantially reduce natural light available in our offices, and will virtually eliminate any

direct sunlight in our offices. We do not believe that these designs will provide us with adequate light.

Precedent Issue – We are concerned that permitting a Feasible Alternative that requires code variances and ignores the common sense and reasonableness of the situation is not in the best interest of the Applicants, the neighbors, City or the Coastal Commission. Such a precedent brings dangerous consequences, and this issue should be considered.

In essence, the Applicant does not want the two-story version, the neighbors do not want the two-story version, and the HMB Planning Commission does not want the two-story version. Applying an unreasonably strict interpretation of the defined term “Feasible Alternative” would create an undesirable result that is truly in nobody’s best interest. My wife joins me in requesting that you please allow reason to rule, and approve the one-story project.

Thank you for your consideration.

Very truly yours,



Richard Parness



CITY OF HALF MOON BAY
 City Hall, 501 Main Street
 Half Moon Bay, California 94019
 Planning: 650-726-8250
 Public Works/Building: 650-726-8260
 Sender's FAX Number: 650-726-8261

FACSIMILE COVER SHEET

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 JUL 09 2007
 CALIFORNIA
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DATE: 7.9.07

TOTAL NUMBER OF PAGES INCLUDING COVER SHEET: 7

COMPANY: Coasta Commission
 ATTENTION: Yinlan Zhang
 FAX NUMBER: (415) 904-5400
 FROM: Sage Schaan
 DEPARTMENT: Planning
 MESSAGE: for Saso Gale appeal

Permit # A-2-HMB-07-021

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IF YOU DID NOT RECEIVE THIS FAX CORRECTLY, PLEASE CALL AND WE WILL RE-TRANSMIT. THANK YOU.

CITY OF HALF MOON BAY, 501 MAIN STREET, HALF MOON BAY, CA, 94019
 PLANNING: 650-726-8250 / PUBLIC WORKS/BUILDING: 650-726-8260
 SENDER'S FAX: 650-726-8261

EXHIBIT NO. 18
APPLICATION NO.
A-2-HMB-07-021 (GALE)
7/9/07 Letter from Sage Schaan, Planner City of HMB (page 1 of 18)

**CITY OF HALF MOON BAY**

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

July 9, 2007

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

RECEIVED
JUL 09 2007
CALIFORNIA
COASTAL COMMISSION

Re: Commission Appeal No. A-2-HMB-07-021(Crnugelj-Gale)

Dear Commissioners:

The City of Half Moon Bay respectfully requests denial of the appeal and supports the construction of the one-story single-family residence located at 684 Terrace Avenue, Half Moon Bay as approved by the City's Planning Commission on March 22, 2007.

No Substantial Issues:

For all the reasons stated in this letter and in all City staff reports prepared for this project the City of Half Moon Bay respectfully requests that the California Coastal Commission find no substantial issues with the appeals filed on June 5, 2007.

Executive Summary:

The City of Half Moon Bay highly values all coastal resources, including wetlands, and will not approve projects that would have adverse impacts to any resource or any projects that are not consistent with the LCP. The City is dedicated to the preservation of wetlands while maintaining a healthy relationship between humans and wildlife. In the event that the California Coastal Commission finds a substantial issue with appeals that were filed, the following points are reasons the City requests a denial of the appeals to uphold the decision made by the City's Planning Commission approving the project.

1. Every biological expert reviewing the project site has acknowledged that with the proper mitigation measures, the proposed project will not have any adverse impacts to the nearby wetlands.
2. No evidence has been provided that shows a functional, feasible alternative that takes into account neighborhood character and the social factor or rear yard recreational space.

Detailed information relating to these two key points can be found in this letter. In reviewing all of the materials, the City finds that the proposed construction of one single-family residence will not have

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The biological report was circulated to CDFG, USFWS, Army Corps of Engineers, Regional Water Quality Board, and California Coastal Commission staff for a 45-day review period. Prior to the Public Hearing the only agency that provided comments was CDFG (see Attachment 1). The comments from Dave Johnston of CDFG explained that he generally concurred with the biological report prepared by H.T. Harvey & Associates and recommended a few more mitigation measures. None of the comments suggested that the project would have any adverse impacts to the nearby coastal resources.

During the Planning Commission public hearing for the project, the Commission directed Planning Department staff to solicit further comments from CDFG and USFWS. Staff contacted Mr. Johnston from CDFG and Mary Hammer from USFWS for further comments. The City was fortunate enough to have Mr. Johnston from CDFG visit the site with City staff. Mr. Johnston provided additional recommendations to have a permanent habitat separation fence and suggested that grading should be done between May and September. These comments were documented in a follow-up e-mail with Mr. Johnston (see Attachment 2). Ms. Hammer from USFWS did not have the resources to evaluate the project, but stated in an e-mail to the City (see Attachment 3) that she supports the comments made by Mr. Johnston and recommends that the City incorporate all of his suggested mitigation measures.

In April 2005, City Planning Commissioner Jimmy Benjamin solicited his own comments from Mr. Johnston at CDFG (see Attachment 4). It appears Mr. Johnston was not clear about the site the Commissioner was referring to and explains general concerns regarding development and CRLF. His statements were regarding "main" pond areas and how tadpoles transform into frogs in spring and summer. Analyzing these statements, Planning Department staff would suggest the subject wetlands are not prime breeding areas because they tend to dry up during the summer months. Further in the e-mail Mr. Johnston references the visit he took to the subject property and stated that the proposed development in question would have "minimal impact on the wetland because of its distance, the availability of adjacent and nearby habitat of the same or superior value and because of its adjacency to existing development."

All reports and comments the City received from the professional analyses of trained biologists from H.T. Harvey & Associates and CDFG indicated that project proposal will not have an adverse impact to the nearby wetlands with the proper mitigation measures. City staff has no reason to believe that the project proposal would have any adverse impacts to the nearby wetlands.

Feasible Alternatives:

Page 16 of the June 28, 2007 Coastal Commission staff report provides the Coastal Act definition of feasibility, which states:

"...capable of being accomplished in a successful manner within a reasonable period of time, taking into account economic, environmental, social, and technological factors. [Emphasis added]"

This gives five categories to determine what is feasible:

1. Length of time
2. Economic factors
3. Environmental impacts
4. Social factors
5. Technological factors.

The Coastal Commission staff report provided an interpretation of an alternative project as being feasible, but only explains that the alternative project would meet four out of the five pieces of criteria. The report fails to explain how an alternative project would meet the social factors in being deemed feasible.

The Coastal Act does not provide a definition of social and a copy of the definition from the American Heritage Dictionary is included in Attachment 5. The dictionary defines social as follows:

1. a. Living together in communities. b. Of or pertaining to communal living. c. Of or pertaining to society. 2. Living in an organized group or similar close aggregate: *social insects*. 3. Involving Allies or members of a confederacy. 4. Of or pertaining to the upper classes. 5. Fond of the company of others; sociable. 6. Intended for convivial activities. 7. Of, pertaining to, or occupied with welfare work.

In reviewing development within cities, social factors such as living together in communities play a key role in the process. As a City and State, we are charged with also evaluating social impacts from what we approve or deny.

City staff agrees that some other proposal than the one before the Coastal Commission could be completed within a reasonable amount of time, could be constructed at a relatively comparable price to the project proposal, and could be accomplished with existing technology. The two points of disagreement are the increased environmental impacts that Coastal Commission staff claim would occur from the proposal and the social component that the Coastal Commission staff fails to address.

Coastal Commission staff continually states in the report that the project will significantly degrade the nearby wetlands, but as explained above there has not been one professional biological opinion provided in the record from any private consultant or public agency that would suggest the proposed project would have an adverse impact to the nearby wetlands with the appropriate mitigation measures.

During the public hearing process the two-story alternative was evaluated by the City. At every Architectural Review Committee (ARC) and Planning Commission meeting, nearby neighbors and others unanimously agreed that the two story proposal outside of the buffer zone would not fit in with the character and fabric of the neighborhood. Coastal Commission staff suggests that since the neighborhood has a mixture of designs that this house would fit in with the others. Additionally, the staff report states that the size, height and bulk are comparable to other homes. Although the square footage and height may be comparable to other houses, the awkward placement and "L" shaped design pushed to the front of the lot would make the house stand out and would undoubtedly attract unusual amounts of attention. Attachment 6 is an aerial photo of the immediate neighborhood showing the placement of residences and rear yards all similar to the one story proposal. The two-story proposal would break this consistent look of the neighborhood.

The commission staff report does not address how the buffer on the lot would be separated from human use. If a habitat separation fence was placed at the buffer line any resident would walkout of their back door and be faced with an immediate wall. No other house on Terrace Avenue would have such a feature, giving the proposed residence an unusual look. No other house on Terrace Avenue is void of a useable rear yard. If there was not a habitat separation fence along the buffer line, it would be more likely that the project site could provide adverse impacts to the nearby wetlands and any species that may find its way over toward the site, with possible potential for a greater environmental impact.

Page 17 of the Coastal Commission staff report suggests that lack of a recreational rear yard is not a determinative of feasibility. City staff would respectfully disagree, since useable rear yards represent a large social component of single-family residential sites. Rear yards are where residents tend to have larger social gatherings, such as children's birthday parties, Forth of July barbeques, conversations with next door neighbors during common gardening times, and recreational areas for adults and children, etc. When multifamily projects are constructed the City of Half Moon Bay and other cities require common open space area for such activities to create the social fabric that is needed for communities.

In considering a feasible alternative, it is absolutely imperative that the useable rear yard is taken into account for the social component of the definition of feasible in the California Coastal Act. To not address the social needs of a project would be ignoring the definition of the Coastal Act and be inconsistent with the policies mandated by the LCP.

The Coastal Commission staff report continually references a drawing prepared by Half Moon Bay staff (Exhibit 8 of Coastal Commission report) as a feasible alternative to the current proposal. It must be clearly noted that the drawing only shows what footprints exist outside of the buffer zone. It does not show or indicate that a functional floor plan could be created out of that footprint using all current building code standards. Stairways and hallways are a minimum of 36-40 inches in width. Planning Department staff has worked with the Building Inspector and has tried diligently to come up with a functional floor plan and nothing practical came out of the process. Because of the awkward design and small interior areas, the applicant could only find an alternative that required approval of Variances.

Many Commissioners stated they could not make the findings to approve the Variances since the design was so out of touch with the rest of the neighborhood. A feasible alternative must also be a practical alternative.

Conclusion:

A completely developed site with useable developed rear yard would allow all property runoff to flow towards Terrace Avenue or into a storm drain, and would provide safe separation between the special status species and the residents. Based on all of the evidence in the record, the proposal project would not have any adverse impacts to the nearby wetlands with the proper mitigation measures which have been incorporated as conditions for approval for the project.

In considering feasible alternatives, social factors must be considered since it is part of the definition of feasible in the California Coastal Act. Without a functional backyard, a project is not feasible.

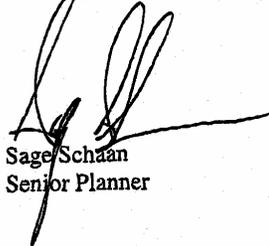
The City of Half Moon Bay understands how decisions can set precedents for future projects; it is a key consideration when reviewing Variances. Environmental issues can be very unique, each resource has a different level of value as habitat. Some resources are effective corridors for certain species. Also, one must consider each project design and how it may affect a nearby resource. As written into the findings to approve the project, each site and proposal will be evaluated on a case by case basis. What may work for this site may not work for the adjacent site or for a site at some other location in the City or State.

Environmental resources are extremely important and the City would not risk the degradation of a wetland for one house.

The City of Half Moon Bay respectfully asks that the Coastal Commission deny the appeal and approve the project as approved by the City of Half Moon Bay Planning Commission.

Thank you for your consideration.

Best Regards,



Sage Schaan
Senior Planner

Attachments:

- Attachment 1 November 10, 2004 E-mail from CDFG
- Attachment 2 February 15, 2005 E-mail from CDFG
- Attachment 3 January 25, 2005 E-mail from USFWS
- Attachment 4 April 28, 2005 E-mail from CDFG
- Attachment 5 Definition of *Social* from the American Heritage Dictionary
- Attachment 6 Aerial Photo of Terrace Avenue showing common house placement
- Attachment 7 Photos of the subject site

Sage Schaan

From: David Johnston [DJOHNSTON@dfg.ca.gov]
Sent: Wednesday, November 10, 2004 3:44 PM
To: Sschan@ci.half-moon-bay.ca.us
Cc: Kathy Geary; Mary_Hammer@fws.gov
Subject: Your file PDP-86-03, DFG file CEQA 2004-1011-R3 Terrace AveSFD



Header

Sage

My apologies if this is a repeat of an earlier e-mail; I had prepared one earlier (around the 26th) and when I attempted to send it, my hard drive failed. It doesn't look like it went out, but if it did, disregard this one.

I concur generally with the report by H.T. Harvey for the site and agree that San Francisco garter snakes and (possibly) California red-legged frogs could cross the site. I recommend the following additional measures to reduce the possibility of a 'take' of individuals of either species.

1. The fence should be constructed of overlapping panels of 4 x 8 plywood, installed with the bottom edge buried a minimum of 6" to 12" below grade and anchored with steel T- posts on the inside, to prevent snakes from climbing into the enclosure. Any gaps at the base will be covered with soil; no gaps larger than 0.25 inch will remain. No silt fencing or erosion control blankets will be used because they present an entrapment hazard.

One-way exit funnels built to the above design will be installed with the fencing to allow snakes and frogs to leave the enclosure but not return. Funnels will be constructed with 1/8-inch hardware cloth and will be installed so that the wider opening is flush with the ground surface inside the fence, and the narrow exit opening will be no more than 2 inches off the ground on the outside of the fence. Elevation of the exit opening will be sufficient to prevent re-entry of snakes and/or frogs.

2. During the initial survey, any burrows on the project site should be excavated by a qualified biologist.

3. A qualified biologist should hold a worker education training session at the beginning of the work to familiarize workers with the appearance and behavior of the two species, as well as what actions should be taken should one be sighted in the work area. Written materials should be prepared so that new employees can receive the information as well.

Please let me know if you have any questions.

Dave Johnston
Calif. Department of Fish and Game
(831)475-9065

Attachment 1

Exhibit 18
A-2-HMB-07-021 (GALE)
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Sage Schaan

From: David Johnston [djohnston@dfg.ca.gov]
Sent: Wednesday, November 10, 2004 3:46 PM
To: Sage Schaan
Subject: Fwd: Delivery Status Notification (Failure)



status.txt



four file PDP-86-03,
DFG file ...

>>> <postmaster@ci.half-moon-bay.ca.us> 11/10/2004 3:44:07 PM >>>
This is an automatically generated Delivery Status Notification.

Delivery to the following recipients failed.

Sschan@ci.half-moon-bay.ca.us

Sage Schaan

From: David Johnston [djohnston@dfg.ca.gov]
Sent: Tuesday, February 15, 2005 3:03 PM
To: Sage Schaan
Subject: Re: Development and grading on Terrace AvSage:enue site afterMay

Thanks for the follow-up.

The best window would be mid-may through mid September and the survey should be done immediately before grading.

It would be a good idea to weed-whack any grass before grading so that the survey can actually observe any burrows.

Feel free to check on any issues you might have.

Dave

Dave Johnston
Calif. Department of Fish and Game
(831)475-9065

>>> "Sage Schaan" <SSchaan@ci.half-moon-bay.ca.us> 02/15/05 10:16 AM
>>>
Dear Dave,

When we visited the site on Terrace Avenue in HMB last month for a proposed one-story house you mentioned that there should not be any grading before May.

Is there a window period in which they should get grading done, i.e. May to August, September, etc.?

Can the preconstruction biological survey be done before May? I assume this is something that should be done immediately before construction starts, so I assume it should happen after May but right before construction, is this correct?

Thanks a lot for your help on this Dave. I want to make sure if anything is allowed to be built on this site that is built with the correct mitigation measures.

Sage Schaan
Associate Planner

Sage Schaan

From: Mary_Hammer@fws.gov
Sent: Tuesday, January 25, 2005 9:48 AM
To: Sage Schaan
Cc: Jack Liebster
Subject: RE: Your file PDP-86-03, DFG file CEQA 2004-1011-R3 Terrace AveSFD

Sage,
 I have not been able to review the proposed project. We have a staffing shortage and very heavy workload right now, therefore, we are unable to comment on all projects. Therefore, I can't really comment as to what conservation measures we would require for the proposed project because I am unfamiliar with the project. However, if Dave has recommended these measures, then I would support his recommendations and would encourage the City to incorporate these measures into the permit. At this time, I cannot provide any additional recommendations. Please let me know if you have any questions.

Sincerely,

Mary Hammer
 Fish and Wildlife Biologist
 U.S. Fish and Wildlife Service
 2800 Cottage Way, Rm. W-2605
 Sacramento, CA 95825-1846
 (916) 414-6600
 Fax (916) 414-6712

"Sage Schaan" <SSchaan@ci.half-moon-bay.ca.us>

01/25/2005 09:37 AM

To: <Mary_Hammer@fws.gov>
 cc: "Jack Liebster" <jliebster@ci.half-moon-bay.ca.us>
 Subject: RE: Your file PDP-86-03, DFG file CEQA 2004-1011-R3 Terrace AveSFD

Dear Ms. Hammer,

On September 20, 2004 the Half Moon Bay Planning Department sent a copy of a biological report to USFWS offices in Sacramento and a number of other agencies for a 45-day review period. After the review period we received comments from, Dave Johnston at Fish and Game via e-mail and he CC'd his comments to you.

The Planning Commission has started to review a proposal for a single-family residence and they were interested if USFWS had any comments on the report.

Would it be possible for you to reply to this e-mail to inform the City if USFWS agrees with the mitigation measures below that are recommended by Dave Johnston? If the opinion of USFWS differs from that of Dave Johnston could you please provide your recommendations for the project?

If you need an additional copy of the report and reduced project plans, please let me know and we will fax them over to you right away. I have copied the Planning Director of Half Moon Bay, Jack Liebster on this e-mail. Could you be sure to reply to both of us since I will be leaving for vacation tomorrow and he will pass

3/1/2005

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Attachment 3

on your comments to the Planning Commission.

Your comments are highly appreciated. Thank you.

Sage Schaan
Associate Planner

-----Original Message-----

From: David Johnston [mailto:DJOHNSTON@dfg.ca.gov]
Sent: Wednesday, November 10, 2004 3:44 PM
To: Sschan@ci.half-moon-bay.ca.us
Cc: Kathy Geary; Mary_Hammer@fws.gov
Subject: Your file PDP-86-03, DFG file CEQA 2004-1011-R3 Terrace AveSFD

Sage

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Please let me know if you have any questions.

Dave Johnston
Calif. Department of Fish and Game

3/1/2005

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James Benjamin

From: David Johnston [djohnston@dfg.ca.gov]
Sent: Thursday, April 28, 2005 10:13 AM
To: jimmyb@stanford.edu
Subject: Re: RLF habitat buffer; "frog walls"

PLANNING DEPT.

APR 28 2005

RECEIVED

Commissioner Benjamin:

I thought it best to respond by e-mail so that you can forward, copy or print my comments as seems appropriate. That being said, I am very willing to discuss/clarify any of this by phone. Today, I will be available on and off until around 3.

I need to preface this by making clear I haven't seen the site, the proposal or any existing biological data/analysis. Without that, I can only really comment in general terms. I am willing to give it a more detailed look in the near future, but obviously that won't help you for tonight.

Here are my thoughts on your specific questions:

1. The USFWS protocol calls for a 300' buffer. I'm not real clear what that is based on and neither is anybody in USFWS that I have been able to ask. In both agencies, there is common agreement that 300' is not a meaningful number. There is not common agreement as to what would be an effective distance, but there is agreement that it should be much larger than 300'.

The state of research on amphibian biology at this point is pointing to greater and greater buffer sizes, especially for those areas that are isolated from one another. Assuming that some of the readers of this mail are unfamiliar with the current understanding, it might be best to go over it briefly.

Many amphibians are distributed in what is termed a metapopulation model. Under this model, a population of red-legged frogs (CRLF) would be found distributed across any geographic area in a scattered distribution. This would be because the breeding sites (ponds) are not evenly distributed across the landscape, but are scattered. Adults come to the ponds to breed and go back up into upland habitat afterward (winter-spring). Adults seem to stick closer to the ponds, but can still go off on a journey. If they do, they seem to go in straight lines, rather than following drainages. Any surviving tadpoles transform in small frogs (called metamorphs) in late spring-summer. Like all teenagers, they are much less likely to be satisfied with the current state of affairs, including where they grew up, and are much more likely to go much larger distances from the main pond. Generally, since it's warm when they transform, they seek cover close to the pond they emerged from and wait for the first rains to go out exploring.

In a metapopulation model, this tendency for some of the population to disperse rather than stay around the breeding site is absolutely critical to the survival of the population as a whole. This is because it is insurance against any random event that might destroy a pond or ponds in one area (or the frogs in those ponds). Such events could be disease, siltation, early dry out and others. Under this view, the long range dispersers would recolonize the vacant pond or ponds. As long as the event didn't wipe out all of the frogs or salamanders in a particular area, this behavior would ensure the population would survive through time.

By this model, it can be seen that it is absolutely critical to preserve the passage areas between ponds to try and preserve as much of the original metapopulation arrangement as possible. This is very difficult to do since political boundaries are not related to biological ones.

Getting back to the issue at hand, the key lesson to be applied is that CRLF populations cannot be maintained in perpetuity by protection on the breeding site and a minimal buffer and 100' is considered less than minimal by CDFG and USFWS. A recent study on California tiger salamanders (CTS), with some very complex modeling, seems to conclude that any buffer less than 640 meters will eventually result in the extinction of that population of CTS. Obviously this poses some serious challenges for planners and I merely mention here to indicate which way the science is going on this issue.

Attachment 4

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JUL-09-2007 17:20

CITY OF HALF MOON BAY

16507268261 P.13

In some cases, there may be circumstances where the buffers would be reduced, even to very small numbers. To justify that however, a study would have to evaluate the whole of the circumstances effecting that pond, it would not be valid to do it in isolation.

Without doing such a study, there is no basis for reducing the buffer for one development. If what is being referred to here is a position that one development won't cause harm; I would counter by stating that once one is approved without specific grounds for doing so, there will be no reasonable grounds for denying anyone else that might have the same request-and not only in this location.

As to cumulative impacts, it is my conclusion they would be potentially considerable. Even if an exception, based on specific circumstances, would be appropriate for this development, it is almost inconceivable that the local conditions would be such that numerous developments could approach less than 100' to a breeding sites and it be expected that the population would survive through time. This is, of course, dependant on what's on the other side of the pond.

3. After wading through all of the above, you will probably not be thrilled to read that the safety and effectiveness of a frog wall is the most complex question of the three. There are a host of factors that apply to this question and there is absolutely no way I can answer it without seeing the site.

The first question to be asked is whether or not there should be a wall at all. This depends on a bewildering array of factors, such as the distance from the site, the extent of the barrier, the proximity of other habitat and travel corridors, the proximity of other development which may or may not have barriers, the current condition of the project site and a number of others.

The next question would be whether the wall should attempt a complete exclusion or a partial exclusion. My personal prejudice is to isolate as much as possible, but allow for escape of animals which might become trapped inside. It sounds as if that's the proposal that is before you.

Without having seen this site, the best way I can clarify this is by going over a site I have seen and discussed with Planning staff (Sage Schaan), an SFD on Terrace Avenue:

On that site, a new residence was proposed on a small lot. A wetland was identified some distance to the NE, but as that habitat was on an adjoining property, it hadn't been surveyed. It was my conclusion that there was a potential for occurrence of CRLF and San Francisco garter snake on the property and that precautions should be taken. In this case, the lot was at the eastern end of a row of existing houses and it was my understanding that there were several more similar parcels to the east of the site, also along Terrace. These lots would have eventually gotten much closer to the wetland area and would therefore be more problematic. There was open area to the north, south and east and some to the west. Evidently, there was development potential on the parcel where the wetland was located, but proposals had been rejected or were currently tied up.

In this case, the proposed development would have minimal impact on the wetland because of it's distance, the availability of adjacent and nearby habitat of the same or superior value and because of it's adjacency to existing development. This was modified somewhat by the uncertainty of future development around the wetland, but it was recognized that any development on the property containing the pond would likely need extensive review, allowing input from the resource agencies. This circumstance would also allow for a more useful type of planning for wildlife protection as it is always easier to mitigate when more land is available. As I'm sure you have experienced, it is almost impossible to have any kind of meaningful wildlife mitigation on a 10,000 square foot lot.

In this case, I recommended avoidance measures during construction and the construction of a partial wall with escape measures. This method reduces entry onto the property and allows for escape. A full barrier wasn't deemed necessary at this location because it would be very difficult to implement and would have little additional benefit.

I hope this helps, please feel free to contact me if you need any follow-up.

Dave Johnston
Calif. Department of Fish and Game
(831) 475-9065

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JUL-09-2007 17:21 CITY OF HALF MOON BAY
>>> "James Benjamin" <jimmy@halfmoonbay.org>
Dear Mr. Johnston:

16507268261 P.14

I'm a Planning Commissioner in the City of Half Moon asking for your advice concerning the effectiveness of a "frog wall" mitigation proposed by an applicant who proposes to build a home within 100 feet of wetlands believed to be capable of supporting CRLF. The applicant has argued that these walls would allow frogs to return to their habitat, but keep them from returning to what would become the home site. Here are my questions:

- 1) Is a 100' setback adequate to maintain the biologic productivity of the habitat? I was of the impression that the USFWS Species Recovery Plan for CRLF indicates wider buffers; in this case, the applicant is requesting that we permit development to be considerably closer than 100'.
- 2) If the Planning Commission were to find that one home less than 100' from the wetland would not have a significant impact, would it necessarily follow that adjacent lots with similarly small setbacks adjacent to the same wetland would not have significant impacts, and that the cumulative impact of such developments would be less than significant?
- 3) How effective is such a wall at allowing safe egress and preventing CRLF ingress?

This item is on our Planning Commission's consent calendar for denial Thursday (tomorrow) night, but the applicant's lawyer has sent us new information which may require the subject to be reopened; that creates an opportunity for additional DFG input, if appropriate. I apologize for bringing this to your attention with so little time before our hearing; I thought the commission's decision on this matter had been made.

If you would like to discuss it and provide comments, I would be glad to share them with our Planning Commission and staff. I can be reached by cell phone at (650) 283-5463, or by email at the above address.

Sincerely,

- Jimmy Benjamin

Ref:

PDP-86-03 -Resolution for Denial of a Coastal Development Permit and Height Exception for the construction of a new, one-story, single family residence.
Applicant: Saso Crnugelej-Gale and Verena Gale. Location: 684 Terrace Avenue, APN 056-081-350. PROJECT PLANNER: Sage Schaan. Phone: 650-726-8254.

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Terrace Avenue
Half Moon Bay



CityGIS

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Attachment 6

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7/6/2007

<http://maps.digitalmapcentral.com/production/CityGIS/V07r6p2/indexA.html>

Picture of the Subject Site



Attachment 7

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Pictures from subject site showing consistency of building placement on Terrace Avenue

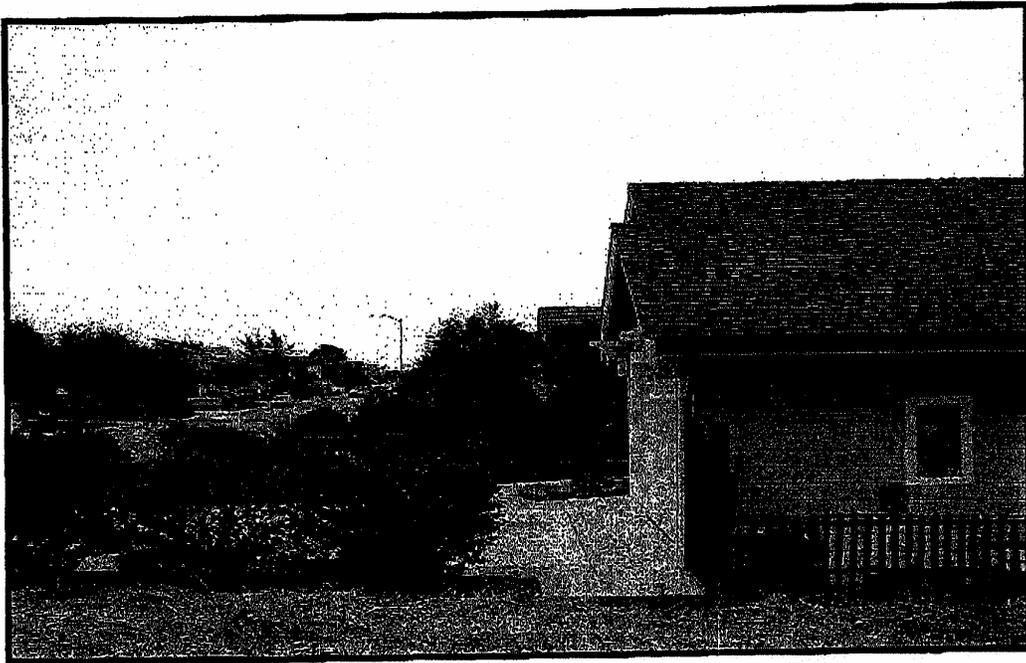


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Page 18 of 18

July 7, 2007

California Coastal Commission
c/o North Central Coast Office
45 Fremont Street, Suite 2000
San Francisco, CA 94105-2219
Attn: Mr. Michael Endicott, District Manager

Re: Appeal No. A-2-HMB-07-021 (Gale)

Dear Mr. Endicott:

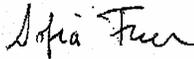
Please forward this letter to each member of the Commission.

In my view as a former Half Moon Bay Planning Commissioner, the city of Half Moon Bay needs a certified LCP amendment from the Coastal Commission with regard to its wetland protection polices, before it can legitimately seek denial of substantial issue and approval of this project.

In as much as there are demonstrably feasible alternatives to the proposed single family home which would allow construction outside the 100 ft wetland buffer zone, the project meets the criteria of being substantially out of conformity with the City's LCP.

I fully support the Coastal Commission staff's recommendation to find substantial issue and to deny the proposed development on the grounds that it is inconsistent with the City's LCP wetland protection policies.

Sincerely,



Sofia Freer,
984 Pilarcitos Avenue
Half Moon Bay CA 94019
sfreer@hmb1.cpm

Agenda Item Th 5a
Sofia Freer

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JUL 09 2007
CALIFORNIA
COASTAL COMMISSION

EXHIBIT NO. 19
APPLICATION NO.
A-2-HMB-07-021 (GALE)
7/7/07 Letter from Sofia Freer

July 6, 2007

Agenda Items Th 5a
Kevin J. Lansing

California Coastal Commission
c/o North Central Coast Office
45 Fremont Street, Suite 2000
San Francisco, CA 94105-2219
Attn: Mr. Michael Endicott, District Manager

Re: Appeal No. A-2-HMB-07-021 (Gale)

Dear Mr. Endicott:

I request that this letter be distributed to each member of the Commission. I am currently a member of the Planning Commission for the City of Half Moon Bay, but my comments below represent my views as an individual citizen.

I support the Coastal Commission staff's recommendation for a finding that a substantial issue exists. The Half Moon Bay LCP requires that development remain outside the 100 foot wetland buffer zone, unless "no feasible alternative exists." In a report dated March 22, 2007, the City's professional planning staff submitted draft findings and a recommendation for approval of a two-story alternative that was wholly outside of the 100 foot wetland buffer zone. Hence, according to City staff's own analysis, a feasible alternative does exist. The 100 foot wetland buffer zone must therefore be respected.

If the City wishes to revise the wetland protection policies in the LCP, then it should submit an LCP amendment for certification to the California Coastal Commission. Until then, the City must abide by the wetland protection policies set forth in the current certified LCP. Recent local decisions have served to undermine the legislated goals set forth in California Coastal Act, in my opinion.

Sincerely,



Kevin J. Lansing
359 Filbert Street
Half Moon Bay CA 94019
kevin.j.lansing@sf.frb.org

EXHIBIT NO.	20
APPLICATION NO.	A-2-HMB-07-021 (GALE)
7/6/07 Letter from Kevin Lansing	

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CALIFORNIA
COASTAL COMMISSION

**From: Clinton 650-369-0943
515 Terrace Ave, HMB**

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JUL 09 2007
CALIFORNIA
COASTAL COMMISSION

FAX

Number of Pages: 3 which includes cover

Phone: (415) 904-5400

**To: California Coastal Commission
Attn: Charles Lester, Senior Deputy Director**

**The attached are for the Thursday, July 12, 2007 meeting of the Coastal
Commission at San Luis Obispo.**

Agenda item 5. NEW APPEALS

Appeal No. A-2-HMB-07-21 (Crnugelj-Gale)



EXHIBIT NO. 21
APPLICATION NO. A-2-HMB-07-021 (GALE)
7/8/07 Letter from Robert Clinton (pg.1of3)

Robert E. Clinton
515 Terrace Avenue
Half Moon Bay, CA 94019

July 8, 2007

California Coastal Commission
Coastal Commission Members
North Central Coast District Office

Re: Appeal No. A-2-HMB-07-21 (Cmugelj-Gale)

It has taken several years for the principals of this appeal to arrive this close to the point of being able to build a house in Half Moon Bay.

Before purchasing the property, the Gales, were advised by the Half Moon Planning Department there were no wetlands or other problems with the property that would compromise their desire to build a single-family home. After purchase, while designing the house, they were advised by Planning, wetlands were found near the Northern corner of the property on the Beachwood site, which encroached onto their property. They needed a 100-foot buffer from these wetlands, which caused many changes and problems with the footprint of any house to be built.

The Coastal Commission Staff Report covers all the problems with the inability for the owners to arrive at a satisfactory end result to satisfy their needs and be in conformity with the LUP. The Half Moon Bay Planning Commission worked with the Gales to solve many of the problems and then sent it to the City Council for review. The Half Moon Bay City Council finally gave them approval and the Coastal Commission appealed as noted above.

The Coastal Commission Staff Report discusses in great detail the many plans that were submitted by the Gales that were subsequently rejected. Several were rejected by the Half Moon Bay Planning Commission and several by the Gales.

Exhibit 21
A-2-HMB-07-021 (GALE)
Page 2 of 3

Page 2 California Coastal Commission, July 8,2007

There are two important areas that must be considered in analyzing the report. They are "Taking" of property and "Feasibility" alternative for the site plan.

The 100' buffer causes the Gales to loose the use of a large portion of their rear yard. This in reality can be considered a "Taking" of Gales' property. By reducing the buffer to 20', which is more realistic, the "Taking" is minimal.

As noted in the report, under Coastal Action Section 30108, feasible is defined as:

...capable of being accomplished in a successful manner within a reasonable period of time, taking into account economic, environmental, social, and technological factors.

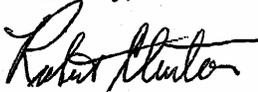
What constitutes a 'feasible alternative' will vary according to the facts of each particular land use application. The identification and scope of alternatives to be analyzed are subject to a '*rule of reason*' and must be evaluated based on the facts of each case and in light of statutory purposes.

The above statement, '*rule of reason*', would allow the Coastal Commission to negate the wetland issue if they so agreed.

We, several neighbors and I, would urge the Coastal Commission to approve Coastal Permit Application No. A-2-HMB-07-021 for the development proposed by the applicant.

Thank you for your consideration.

Sincerely,



Robert Clinton

CCSale71207

Douglas L. Snow, Architect & Artist
Chair of the Coastside Design Review Committee
Planning Commissioner City of Half Moon Bay

ITEM Th 5A
Permit # A - 2 HMB 07021
684 Terrace Avenue
Half Moon Bay, CA 94019

272 Main Street
Half Moon Bay, CA 94019
650.906.4799
douglsnow@sbcglobal.net

RECEIVED

JUL 09 2007

CALIFORNIA
COASTAL COMMISSION

Dear Commissioners,

As a resident of Half Moon Bay I support the Planning Commission's approval of the Saso...Gayle project.

The letter penned by Tom Roman succinctly exposes the appeal's unsupportable rationale. In addition I must note that staff uses the trigger words sensitive environment three times in an introductory paragraph; A blatant contradiction of the biological assessment! I quote "there are no sensitive habitats, riparian areas, or wetlands on the Terrace Avenue site". (Page 6)

What are the hidden fears directing staff's agenda?

Perhaps there's a concern that this approval, though site specific, would affect future development on to adjacent Buchwood property. My response; the bio facts are not going to change.

Maybe there is a concern that Half Moon Bay's LCP inadequacies will be exposed. There was the promise at inception that legal building sites would not be affected. Now any in-fill or existing residence adjoining open lands are vulnerable to wetland limitations. By LCP definition, any body of water (which occur after every rain storm in this rural city) creates a wetland and riparian area. (see attached tsunami map to verify every housing development has an open land boundary) Incidentally, both CCC staff and HMB staff agree our LCP is outdated.

Here is one LCP unfairness;

There are those who will not have to face the wetland buffer catastrophe like, Saso...Gayle's adjacent neighbor, whose property is even closer to the LCP defined wetlands. As there is no feasible alternative, and he is 20 feet away from riparian vegetation, he will likely build without restrictions (see H.T. Harvey photo and overlay).

Chapter 3 of the LCP has many flaws. I hope you realize that the Half Moon Bay Planning Commission acted responsibly in this case interpreting our LCP's original intention.

Respectfully Submitted,



Douglas L. Snow

EXHIBIT NO. 22
APPLICATION NO.
A-2-HMB-07-021 (GALE)
7/9/07 Letter from Douglas Snow (Page 1 of 3)

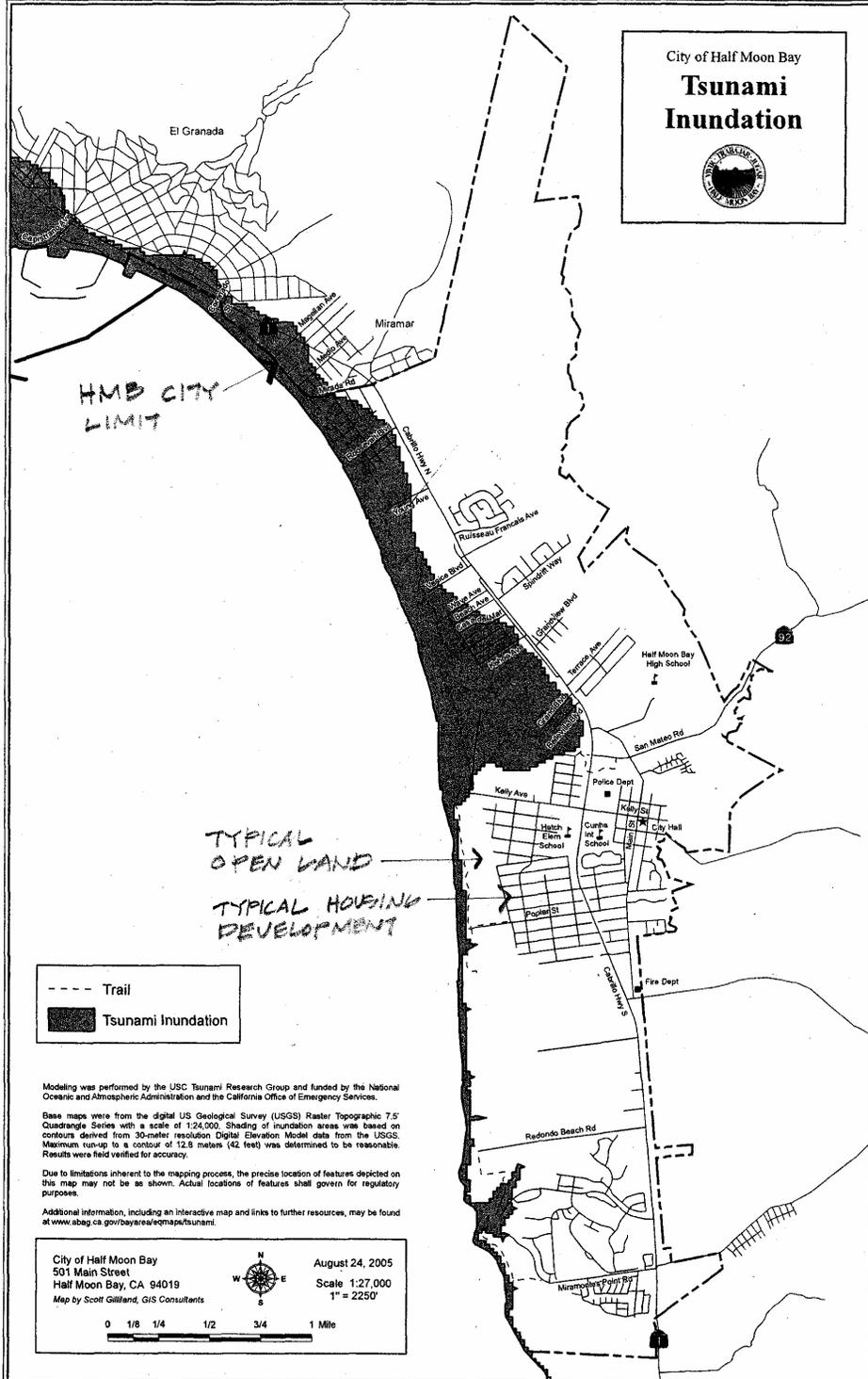
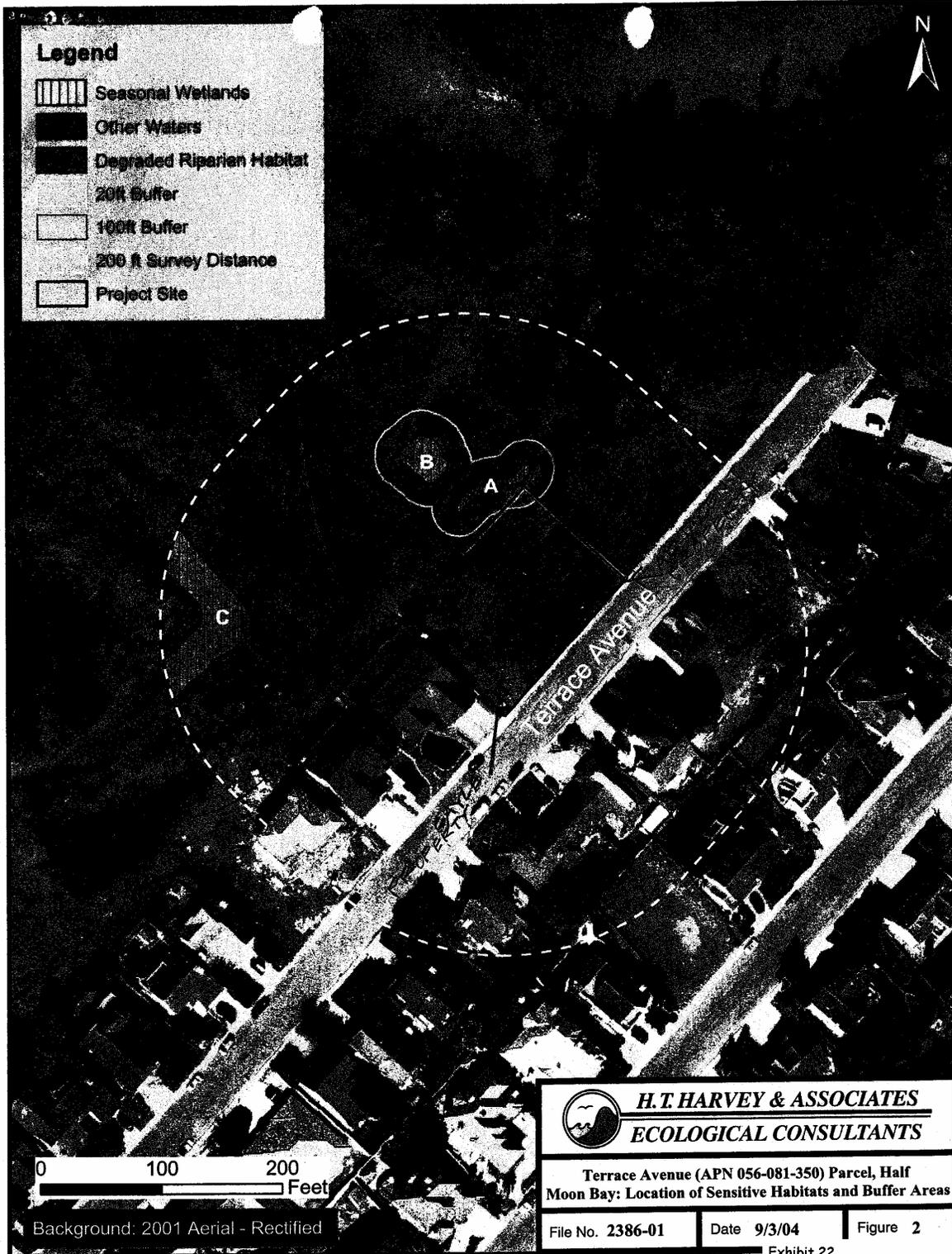


Exhibit 22
 A-2-HMB-07-021 (GALE)
 Page 2 of 3



Legend

-  Seasonal Wetlands
-  Other Waters
-  Degraded Riparian Habitat
-  20ft Buffer
-  100ft Buffer
-  200 ft Survey Distance
-  Project Site



H. T. HARVEY & ASSOCIATES
ECOLOGICAL CONSULTANTS

Terrace Avenue (APN 056-081-350) Parcel, Half Moon Bay: Location of Sensitive Habitats and Buffer Areas

File No. 2386-01

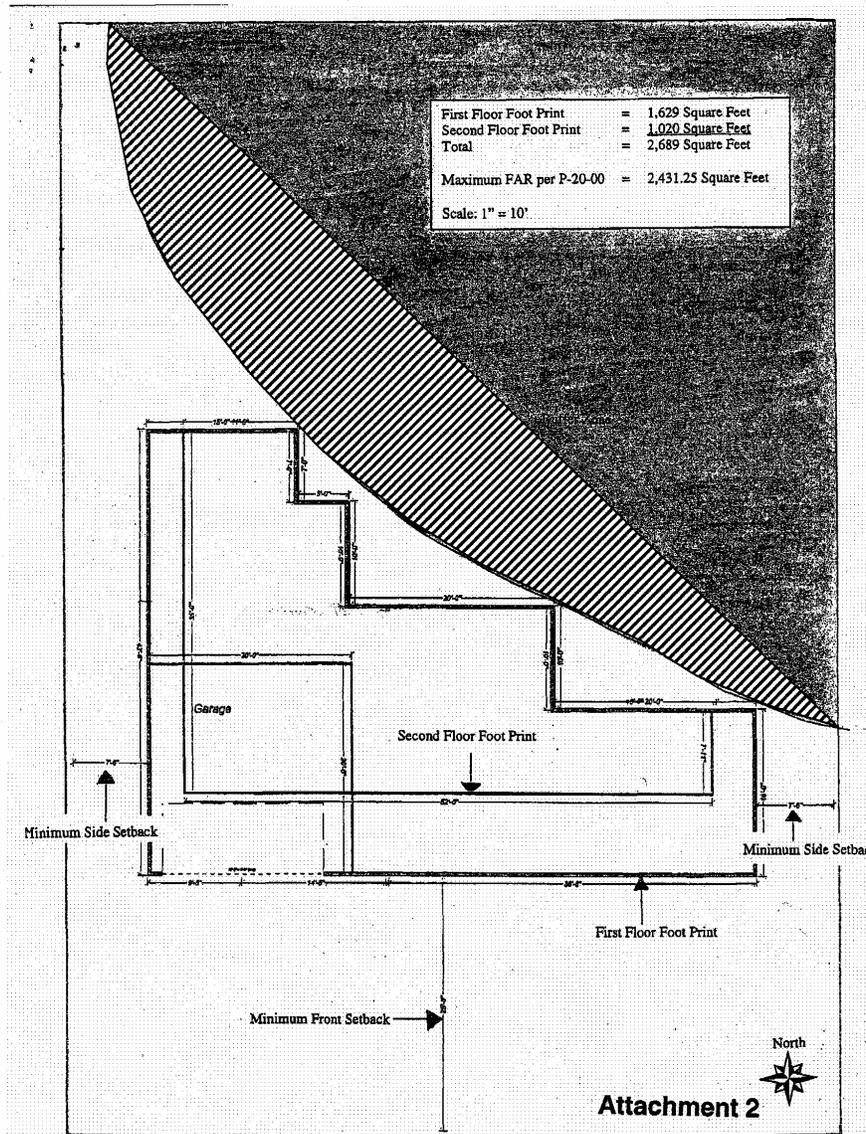
Date 9/3/04

Figure 2

Exhibit 22
 A-2-HMB-07-021 (GALE)
 Page 3 of 3

0 100 200 Feet

Background: 2001 Aerial - Rectified



 Area of discrepancy between original building envelope calculation and calculation in the addendum

EXHIBIT NO. 23
APPLICATION NO.
A-2-HMB-07-021 (GALE)
Building Area Envelope in Discrepancy

DALL & ASSOCIATES

6700 FREEPORT BOULEVARD
Tel.: (Office Direct) ++916.392.0283
Tel. (Mobile worldwide) ++916.716.4126

SUITE 206

SACRAMENTO, CALIFORNIA 95822 USA
Fax: ++916.392.0462
Email: NDall49@sbcglobal.net

FAX TRANSMITTAL

TO: CHARLES LESTER, Ph.D. **FAX:** 1.831.427.4877
Deputy Director
California Coastal Commission
North Central Coast District

COPY: Amy Roach, Esq. **FAX:** 1.415.904.5235
Mr. Michael Endicott 1.415.904.5400
Mr. Saso Crnugelj-Gale 1.831.658.0359

FROM: Norbert H. Dall
Authorized Representative for Mr. Saso Crnugelj-Gale

DATE: July 10, 2007

SUBJECT: **CDP A-2-HMB-07-021 (GALE)**

PAGES: Cover + 5 + 11 = 17 Pages Total

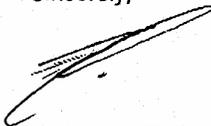
Dear Charles:

Enclosed please find our memorandum on behalf of our client with regard to the status of the appeal.

Thank you for your attention to this request. Please advise us of your determination.

We will bring 25 conformed copies to the Commission meeting on Wednesday for distribution to Commissioners.

Sincerely,



Norbert H. Dall
223:2717.020.100707.1

EXHIBIT NO. 24
APPLICATION NO.
A-2-HMB-07-021 (GALE)
7/10/07 Letter from Norbert Dall (pg. 1 of 11)

RECEIVED
JUL 10 2007

CA COASTAL COMMISSION
LEGAL DIVISION

DALL & ASSOCIATES

6700 FREEPORT BOULEVARD SUITE 206 SACRAMENTO, CALIFORNIA 95822 USA

Tel.: (Office Direct) ++916.392.0283

Email: NDall49@sbcglobal.net

Fax: ++916.392.0462

SDall49@aol.com

By Facsimile (1.831.427.4877)

July 9, 2007

Charles Lester, Ph.D.
Deputy Director
California Coastal Commission
North Central Coast District
725 Front Street, Suite 300
Santa Cruz, California 95060

SUBJECT: CDP A-2-HMB-07-021 (GALE); INVALID APPEAL

Dear Dr. Lester:

This firm has recently been retained by Mr. Saso Crnugelj-Gale with regard to the above-referenced appeal to the Coastal Commission of the approval by the City of Half Moon Bay of local coastal permit PDP-051-06. (See, Exhibit 1, Appeal by "Commission [sic] Mary Shallenberger" and "Commission [sic] Pat Kreur," CDP A-2-HMB-07-021. Curiously, the appeal is not attached to the Staff Report and Recommendation for this matter, dated June 28, 2007, contrary to settled Commission practice.)

Both the City and the applicant have already presented evidence under separate cover that the local approval of the 2,935 square foot home and garage in a substantially developed single-family home subdivision inland of Highway 1 is specifically consistent with the City's certified Local Coastal Program ("LCP"). We have been asked to address in this memorandum the validity of the appeal itself.

The appeal apparently submitted (filed) by Commission staff in the name of two Coastal Commissioners constitutes the sole basis upon which this matter is now before the Commission, upon which the same staff recommends that the City-approved permit raises a significant question of project-LCP consistency, and upon which the same staff urges that the appealed single-family home be denied.

As plainly demonstrated by the copy of the appeal documents in Exhibit 1, that appeal consists of two signed but undated, and otherwise substantially blank, appeal forms. In critical part, the appeal form – which is identical in format and computer-generated content for both Commissioners – fails to either contain or even reference any factual or legal ground for appeal whatsoever. (See, Exhibit 1, page 3.) An undated and unsigned "Gale Appeal Attachment A," which also appears by its font and spacing to have been generated on the same computer, accompanied each of the two appeal forms, apparently without having been prepared, read, or specifically authorized by the named appellants. Because

Exhibit 24
A-2-HMB-07-021 (GALE)
Page 2 of 11

1

the attachment is also not date-received stamped by the Coastal Commission office that received it, it is unknown whether even this incomplete and erroneous document was received by the Commission prior to the 5 p.m. deadline of the appeal period on June 5, 2007. Had named appellants read this attachment before certifying to a substantively blank appeal, as experienced Commissioners they would surely have noticed, and corrected, the fatal flaw created by the failure to state a sufficient factual and legal ground for the appeal on the appeal form, or by reference.

Our client therefore contends that the pending appeal is invalid due to: (1) repeated disregard for, and failure to comply with, the Commission's adopted specific mandatory appeal preparation and filing requirements, (2) failure to state a specific Coastal Act ground for appeal, (3) lack of evidence that the "Gale Appeal Attachment A" (appended to the appeals, but not referenced in either one), or the incomplete appeal forms themselves, for that matter, were received by the Commission before the close of business at 5 p.m. on the 10th working day of the appeal period, and (4) omission of the requisite appellants' written and dated authorization for another person or party to write and file the appeal on their behalf, as discussed in greater detail below.

As the Commission's own files indicate, this Commission routinely rejects for filing any submittals from applicants, local governments, and members of the public that deviate from even one of these filing requirements. As indicated in Table 1, attached hereto on page 5, the present appeal is replete with omissions, as well as factual errors where information is provided. The only thing the appeal appears to have gotten correct is the project's file number and that it is within the jurisdiction of the City of Half Moon Bay. (Appeal page 1, Sec. II.1 and Appeal page 2, Sec. II.7.) Our client therefore respectfully requests Commission staff, which somehow, without any apparent precedent review in the record, deemed the facially inadequate appeal to be accepted as complete and sufficient for filing by the Commission, to advise the named appellants to withdraw the appeal, as provided in Title 14, Cal. Code of Regulations §13116 (hereinafter, "14 CCR §13____").

The Commission has adopted and promulgated administrative regulations, with the force of law, requiring that an appeal, including by any two members of the Commission, "must contain" nine (9) specified items of information to render it substantively and procedurally complete. (14 CCR §13111(a), "Filing of Appeals," emphasis added.) In addition, the Commission's appeal form, in Section V on page 3, requires an appellant to certify, by affixing her or his signature and the date of signing, that "(t)he information and facts stated above are correct to the best of my/our knowledge."

These mandatory requirements constitute no mere bureaucratic paper work. Rather, they are essential to the Commission's ability to determine – within the parameters of due process, fairness, impartiality, and maximized public opportunities for understanding and participation – appellant(s)'s true identity, whether the appeal is *bona fide*, the identities of the applicants and members of the public who require notification of the appeal itself and of Commission's proceedings, the factual and legal adequacy of the appeal's stated grounds for appeal; and, whether the appealed local government CDP decision raises a sufficiently significant question regarding consistency with the LCP and associated resource protection to warrant a new, time-consuming, and costly proceeding. Moreover, failure to

2

accurately list on the appeal all readily identifiable persons who testified (here in support of the project) during local government's proceedings on it constitutes a fundamental denial of timely notice of the appeal, as required by 14 CCR §13111(c), and thereon a further prima facie grounds for Commission dismissal of the appeal. ✓

Table 1 summarizes the named Commissioner appellants' (and/or appellants' de facto agents) repeated failure to perform as required by the Coastal Act as well as Commission's own adopted regulations and appeal form. Of the twelve (12) specific filing requirements, the two *verbatim* identical appeals do not provide any information whatsoever with regard to eight (8) or 66.6%. While some information is provided with respect to four (4) of them, or 33.3%, the information provided for three of these four is factually incorrect in whole or substantial part. Thus, the appeals effectively satisfy only one out of 12 of the Commission's mandatory informational requirements, while failing to satisfy over 90% of them, including, but not limited to:

- The appellant certifications (Section V, page 3) are undated, although the signatures were apparently affixed *prior to* City action on the Gale's approved local CDP.
- Although the inadequate information contained in the appeals appears to have been prepared by Commission staff (who also apparently performed the actual submittal and filing), neither appeal form names nor authorizes any agent to perform such duties, as required on page 3. Further, the appeal nowhere identifies the person(s) who in fact performed these functions, notwithstanding that the Coastal Act expressly authorizes no one but two *Commissioners* to submit (file) such appeals and the legislature specifically did not authorize staff to initiate, prepare, bring, or submit (file) such appeals with the Commission on staff's own motion or pursuant to an undocumented unwritten verbal authorization by one or more Commissioners outside the administrative record. ✓
- Section IV on pages 2-3 of the appeals has been submitted without either the requisite appellants' stated "sufficient discussion" of alleged LCP inconsistencies or the reasons supporting a new hearing, nor is there any reference to where such discussion might be found to the extent it might be contained in another document.
- The date of local government's decision shown on page 2 is significantly in error, by one year. Were the information provided here correct, that the City acted on March 22, 2006, even with extraordinarily slow mail service between Half Moon Bay and San Francisco for transmittal of the City's Notice of Final Local Action, the statutory ten-working day appeal period would likely have run long before June 5, 2007.
- In Section III on page 2, the appeal inexplicably fails to even bother to name the applicant, nor does the applicant's name appear elsewhere in the document.
- Further, in Section III on page 2, the appeal omits listing the several members of the public who testified at hearings before the City in favor of the project (there were no speakers in opposition), as well as other known interested members of the public, including the adjacent property owners to the north and east, and their agents, counsel, and other advisors or consultants, who are well known to the Commission.

• A five-page document, "Gale Appeal Attachment A," that at some time was appended to the appeal, stands without reference to the named appellants, lacks a date of production and/or a Commission date-received stamp, and fails to assert any threshold unmitigated potential significant adverse effect from the project on any coastal resource that would trigger a wider wetland buffer mitigation requirement than the LCP-consistent reduced buffer approved by the City. That City action was, in relevant part, based on comments by the California Department of Fish and Game ("CDFG") that no known sensitive frogs or snakes were factually known to utilize the subject small seasonal wetland. Moreover, the City fully incorporated CDFG's recommended on-site measures during and after construction to protect such habitat values as were associated with the small seasonal wetland.

The substantively significant omissions in the appeal, when combined with the cumulative weight of the overwhelming number of omissions and the clear legislative intent that Commission staff is not authorized to submit (file) extralegal CDP appeals, as here, through its own *ad hoc* processes, demonstrate a massive disdain and disregard for Commission's adopted rules, as well as of the substantive and procedural rights of our client, the participating and known interested public, and the City.

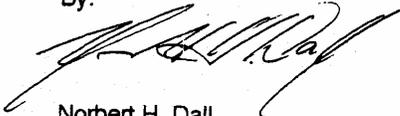
Therefore, you are respectfully requested to advise appellants that the appeals should be withdrawn. If the appeals are not withdrawn prior to the start of the hearing on this matter (Item Thursday 5a, July 12, 2007), our client respectfully requests that the Commission precede its hearing on substantial issue with an action to determine, on the facts and law, whether the appeal was properly submitted (filed) and is valid. In participating in the Commission's proceedings hereon, our client specifically reserves all of his rights.

Thank you for your attention and consideration in this matter. Please call us if you have any questions about this memorandum.

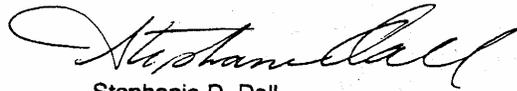
Sincerely,

DALL & ASSOCIATES

By:



Norbert H. Dall
Authorized Representatives for Mr. Saso Crnugelj-Gale



Stephanie D. Dall

Enclosures: -Table 1, one page
-Exhibit 1, eleven pages [2 appeal forms @ 3 pages, plus one copy of "Gale Appeal Attachment A"]

/

Exhibit 24
A-2-HMB-07-021 (GALE)
Page 5 of 11

TABLE 1: CCC APPEAL FILING REQUIREMENTS & PDP-051-06 APPEALS

APPEAL INFORMATION REQUIREMENT	APPEAL OF "COMMISSION MARY SHALLENBERGER"	APPEAL OF "COMMISSION PAT KRUER"
1. Name and address of permit applicant (§13111(a)(1))	Page 2, Section II.a: Not provided	Page 2, Section II: Not provided
2. Name and address of appellant (§13111(a)(1))	Page 1, Section I: Provided, however incorrect telephone number	Page 1, Section I: Provided, however incorrect address
3. Date of local government action (§13111(a)(2))	Page 2, Section II.5: Provided, however incorrect date	Page 2, Section II.5: Provided, however incorrect date
4. Development description (§13111(a)(3))	Page 1, Section II.2: Provided, however erroneous description	Page 1, Section II.2: Provided, however erroneous description
5. Name of governing body with jurisdiction over development (§13111(a)(4))	Page 1, Section II.1: Provided	Page 1, Section II.1: Provided
6. Names and addresses of all persons who submitted written statements or who spoke and left name at public hearing on project, where available (§13111(a)(5))	Page 2, Section III.b: Not provided	Page 2, Section III.b: Not provided
7. Names and addresses of all other persons known by the appellant to have an interest in the matter on appeal (§13111(a)(6))	Page 2, Section III.b: Not provided	Page 2, Section III.b: Not provided
8. Specific grounds for the appeal. (§13111(a)(7))	Pages 2-3, Section IV: Not provided or referenced on appeal form. Unreferenced and undated appended "Gale Appeal Attachment A" does not address threshold question of whether project has any remaining potential significant physical effects on coastal resources, but leaps to pro forma criticism that project does not meet an inapplicable 100 foot buffer standard relative to an offsite "seasonal wetland."	Pages 2-3, Section IV: Not provided or referenced on appeal form. Unreferenced and undated appended "Gale Appeal Attachment A" does not address threshold question of whether project has any remaining potential significant physical effects on coastal resources, but leaps to pro forma criticism that project does not meet an inapplicable 100 foot buffer standard relative to an offsite "seasonal wetland."
9. Statement of facts on which appeal is based. (§13111(a)(8))	Pages 2-3, Section IV: Not provided or referenced on appeal form. Unreferenced and undated appended "Gale Appeal Attachment A" only summarily contends that project 40 foot horizontal separation from "seasonal wetland" does not meet (inapplicable) 100 foot pond, lagoon, and marsh buffer test, and (erroneously) that house design/location on the lot that meets the 100 foot buffer is "feasible."	Pages 2-3, Section IV: Not provided or referenced on appeal form. Unreferenced and undated appended "Gale Appeal Attachment A" only summarily contends that project 40 foot horizontal separation from "seasonal wetland" does not meet (inapplicable) 100 foot pond, lagoon, and marsh buffer test, and (erroneously) that house design/location on the lot that meets the 100 foot buffer is "feasible."
10. Summary of the significant question raised by the appeal (§13111(a)(9))	Pages 2-3, Section IV: Not provided or referenced on appeal form. See Part 8, above.	Pages 2-3, Section IV: Not provided or referenced on appeal form. See Part 8, above.
11. Appeal Certification - Appellants Signature	Page 3, Section V: Provided, but apparently on blank appeal form prior to entry of partial information described above.	Page 3, Section V: Provided, but apparently on blank appeal form prior to entry of partial information described above.
- Appellants Certification Date	Page 3, Section V: Not provided	Page 3, Section V: Not provided
12. Agent Authorization	Page 3, Section V: Not provided	Page 3, Section V: Not provided

STATE OF CALIFORNIA - THE RESOURCES AGENCY
CALIFORNIA COASTAL COMMISSION
45 FREMONT STREET, SUITE 2000
SAN FRANCISCO, CA 94105-2219
VOICE AND TDD (415) 904-5200

ARNOLD SCHWARZENEGGER, Governor



**APPEAL FROM COASTAL PERMIT
DECISION OF LOCAL GOVERNMENT**

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

SECTION I. Appellant(s)

Name, mailing address and telephone number of appellant(s):

<u>Commission Mary Shallenberger</u>		
<u>45 Fremont Street, Suite 2000</u>		
<u>San Francisco, CA 94105</u>	<u>(415) 904-5260</u>	
Zip	Area Code	Phone No.

SECTION II. Decision Being Appealed

1. Name of local/port government: City of Half Moon Bay
2. Brief description of development being appealed: Development of single-family residence at 684 Terrace Avenue within 100 feet of the Wetland buffer zone.
3. Development's location (street address, assessor's parcel no., cross street, etc.): 684 Terrace Avenue, Half Moon Bay
APN 056-081-350
4. Description of decision being appealed:
 - a. Approval; no special conditions: _____
 - b. Approval with special condition: _____ **X** _____
 - c. Denial: _____

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

TO BE COMPLETED BY COMMISSION:

APPEAL NO: A-2-HMB-07-021
 DATE FILED: June 5, 2007
 DISTRICT: North Central Coast District

EXHIBIT 1
 (11 Pages Total)
CDP A-2-HMB-07-021 (GAGE)
MEMORANDUM RE INVALID APPEAL
JULY 9, 2007

Exhibit 24
A-2-HMB-07-021 (GALE)
Page 7 of 11

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

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

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

6. Date of local government's decision: March 22, 2006

7. Local government's file number (if any): PDP-051-06

SECTION III. Identification of Other Interested Persons

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

a. Name and mailing address of permit applicant:

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

(1) _____

(2) _____

(3) _____

(4) _____

SECTION IV. Reasons Supporting This Appeal

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

APPEAL FROM COASTAL PERMIT DECISION OF LOCAL GOVERNMENT
Page 3

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

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

SECTION V. Certification

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

Signed: Mary K. Challenberg
Appellant or Agent

Date: _____

Agent Authorization: I designate the above identified person(s) to act as my agent in all matters pertaining to this appeal.

Signed: _____

Date: _____

(Document 2)

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Gale Appeal Attachment A

The approved development does not conform to the policies of the certified City of Half Moon Bay Local Coastal Program (LCP) concerning wetland protection (see applicable LCP policies attached).

Discussion

The approved development is a 2,935 square-foot single-family residence at 684 Terrace Avenue in the City of Half Moon Bay, San Mateo County. The approved development is located 40 feet from a delineated wetland on a neighboring property.

LUP Policy 3-1 defines wetlands as sensitive habitats. Policy 3-3 requires development adjacent to sensitive habitats to be sited and designed to prevent impacts that could significantly degrade the environmentally sensitive habitats and requires uses to be compatible with the maintenance of biological productivity of the sensitive habitat. LUP Policy 3-11 and Section 18.38.080.D of the Zoning Code/IP require 100-foot setback from wetlands. Section 18.38.080.F allows residential development within a wetland buffer where no feasible alternatives exist.

The house approved by the City is within 40 feet of the wetland, which does not meet the 100-foot minimum wetland setback requirement established in LUP Policy 3-11 and Zoning Code Section 18.38.080.D. Residential development is not a permitted use within the wetland buffer unless it has been demonstrated that there are no feasible alternatives to locating the development in the buffer zone. Thus, the approved development would be a permitted use pursuant to Section 18.38.080.F of the Zoning Code if it has been proven that no feasible alternatives exist.

The City staff analyzed two alternatives and prepared findings for approval for each: the applicant's recent proposal that would comply with the wetland setback requirement; and the applicant's original proposal (previously denied by the Planning Commission), that would site the residence within 40 feet of the wetland. City staff concluded that both alternatives were feasible, but the Planning Commission denied the alternative that would comply with setback requirement because it would require the City to approve variances to the front yard setback requirement and the maximum building envelope. Although it is possible to build a house that complies with the wetland setback, the Planning Commission concluded that granting variances was not feasible. Regardless, it appears that there is a feasible building site that would comply with the wetland setback and not require variances. Thus, the City has not adequately demonstrated that there are no feasible alternatives to siting the house within the wetland buffer. Therefore, the approval is inconsistent with the certified LCP requirements to set back development 100 feet from wetlands LUP Policy 3-11 and Section 18.38.080 of the Zoning Code. The project is also inconsistent with LUP Policy 3-3 that protects wetlands from significant adverse impacts because there is an alternative that would comply with the setback requirement.

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Relevant LCP Policies

Applicable LUP Policies

3-1 Definition of Sensitive Habitats

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...

Such areas include riparian areas, wetlands, sand dunes...

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.