

## CALIFORNIA COASTAL COMMISSION

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April 28, 2008

Assembly Speaker Fabian Nunez  
State Capitol  
Room 219  
Sacramento, CA 90014

Senate President Protempore Don Perata  
State Capitol  
Room 205  
Sacramento, CA 95814

RE: AB 1991 (Mullin) —Response to comments from City of Half Moon Bay

Honorable Mssrs. Nunez and Perata:

The Commission regrets the need to contact you regarding this bill at this time, prior to its first policy committee hearing. However, the misinformation and inaccuracies contained in the City of Half Moon Bay's letter to you of 4/24/08, and the fact that it has been widely distributed to members of the media, requires a swift correction of the record.

As described in our 4/17/08 letter to the author, the Commission has voted unanimously to oppose AB 1991. This bill would remove two properties in Half Moon Bay from the coastal zone, and exempt a 129-unit residential subdivision from all state-level environmental review, including the Coastal Act, CEQA, Porter Cologne Act and the Fish and Game Code. These exemptions would be granted with no accompanying conditions to mitigate environmental or traffic impacts. And what is most troubling, these sweeping exemptions to multiple environmental statutes are being accomplished via an amendment to the Subdivision Map Act. (Please see the Commission's attached letter of opposition for more detail.)

The City repeatedly attempts to make the point that this is a "one of a kind" bill with such a complicated set of facts that it will never be repeated, and therefore does not create a precedent. This ignores the obvious fact that it is the process itself that sets the precedent. If the Legislature demonstrates a willingness to legislatively implement privately negotiated settlement agreements stemming from *appealable* lower court decisions, there will be no end to the number of similar requests you will receive, each with its own "unique" set of circumstances.

The City says it is ironic that the Commission opposes AB 1991, given that the City relied on our advice previously when taking action on the property that led to the litigation. The insinuation here is that it is somehow the Commission's fault that the City finds itself in this current predicament. It is true that the City consulted with the Commission in 1997-98

regarding application of the wetland policies in its newly-certified LCP. That consultation led to the City's denial of a coastal development permit (CDP) for the proposed 85-parcel subdivision at Beachwood. (State law prohibits local governments from reducing the number of parcels applied for in a tract map, so the City had no discretion to scale the project down to a more appropriate size.) It is crucial to note, however, that the City's action was subsequently upheld in a 2005 State Court of Appeal ruling. In *Joyce Yamagiwa, as Trustee, et al. v. City of Half Moon Bay, CCC, et al.* (unpublished) (2005) the Court found that the City had correctly implemented its wetland protection policies, and properly denied the CDP application.

It is also important to note that the Commission DID approve a 19-parcel subdivision on the Beachwood parcel in 2001, with appropriate conditions to mitigate impacts. The City asserts that the approval and conditions were "illegal" because the Commission "lacked jurisdiction." (*City of Half Moon Bay v. Superior Court, 106 Cal. App. 4th 795 (2003).*) This statement is incomplete and therefore misleading. The jurisdictional question at issue in this case was the timing of the Commission's action, which occurred while an earlier case was still pending. The court focused on the technical timing issue and did not address the substance of the Commission's decision. Moreover, the timing of the Commission's action had been agreed to by the developer, the City and the Commission. Had the developer instead chosen to exercise the approved permit, there could be a 19-unit subdivision at Beachwood today.

The City derisively dismisses what it calls the Commission's offer of "free legal advice," because the Commission did not offer to post a bond or otherwise offer to help pay for the City's \$37 million judgment or to offset the City's attorney's fees. As a State agency, the Commission has no authority to post a bond or otherwise pay for the City's legal fees. What we can and did do in this case was offer to file an amicus brief, with representation by the Attorney General's office. This was reported out of closed session at the Commission's January 2008 meeting. In addition, the Attorney General's Office offered the City's new attorney direct assistance in analyzing the federal court's decision and the grounds for appeal.

The Commission's 4/17 letter states that the additional "Glencree" property was included in the legislation and the settlement agreement arbitrarily, because Glencree was never considered as part of the Beachwood application or any of the subsequent lawsuits. The City responds by saying its inclusion was not arbitrary because Glencree is adjacent to Beachwood, because, like Beachwood, it has an expired tentative map issued by the City with no CDP, and because, most importantly, the plaintiff, "Chop" Keenen, demanded it. We think the City's response speaks for itself and makes our original point quite well.

The Commission's 4/17 letter states that the environmental review done for the Beachwood property is out of date, as it was conducted in the 1980s. Facts on the ground have changed in the 25+ years since the original surveys were done. New environmental regulations to protect water quality and air quality now apply. Traffic has gotten much worse, and water availability is an issue. Yet the City dismisses these concerns by reiterating Judge Walker's flawed assumption that if not for an earlier sewer moratorium, the property would be fully built out by now. Then the City proceeds to claim that conducting additional environmental review today would "plunge this project yet again into the endless cycle of reviews, appeals, litigation, and controversy."

To assume that the property would already be built out if not for the moratorium requires one to make the assumption that the Commission would have issued a CDP for 85 parcels back in the early 1990s, if it had gotten the opportunity. Not only is this highly unlikely, it is irrelevant. The City might as well point to all of the development that would already be built out today if the Coastal Act had never been passed, or CEQA, the Endangered Species Act, or any General Plan law.

Once again, it is worth repeating, the City has a viable option before it. Rather than pursuing the "nuclear option" of removing these properties from the coastal zone and exempting an excessive development project from all environmental review, the Legislature should let the bill die, so that the City can pursue the escape clause it agreed to in the settlement and purchase the property for \$18 million. Once the City secures title to the property, it can work with the community and interested stakeholders to pursue a variety of development/restoration/conservation options. This will allow the City to not only recoup some or all of its initial investment, but also gain significant benefits for the entire community while respecting the rule of law. This appears to be the more prudent and obviously preferable course of action to pursue.

Sincerely,



Sarah Christie  
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California Coastal Commission  
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