



CITY OF HALF MOON BAY

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

May 27, 2008

Bonnie McClung
Mayor
Half Moon Bay

Assembly Speaker Karen Bass
State Capitol
P.O. Box 942849
Sacramento, CA 94294

Re: Coastal Commission Staff Contradicts Itself in Attack on Half Moon Bay

Dear Speaker Bass:

In an ongoing effort to derail AB 1991, the special rescue bill that would allow the City of Half Moon Bay to avoid an \$18 million payment in settlement of a \$41 million court-imposed liability, California Coastal Commission staff members have sent a document to California Legislators purporting to rebut the factual statements made by Half Moon Bay about the bill. In reality, each assertion by the Commission staff either confirms a City statement, changes the subject, or replaces facts with non-factual speculation and opinion.

Most of the opinions in the document are not new to the debate over AB 1991, and have been considered and rejected by independent third-parties like the San Francisco Chronicle. (See attached editorial). However, I must highlight and rebut several false assertions, as I believe they show the extent to which the Commission staff is willing to mislead the Legislature in order to hinder AB 1991's passage. These claims are particularly egregious because the Commission's own prior actions contradict them.

COMMISSION STAFF'S FALSE STATEMENT: "The City in 1990 incorrectly declared that there were no significant impacts created by the project, by ignoring wetlands that they failed to delineate because they used the wrong standard."

FACT: In 1991, just one year after the City approved the subdivision plan for Beachwood without finding any wetlands on the property (a finding criticized today by the Commission staff) the Commission approved a permit to place 32,000 cubic feet of dirt onto Beachwood. Under California law, this approval would have been illegal if wetlands existed on the property at the time. Does the Commission staff also claim that the Commission ignored wetlands because they

used the wrong standard? “[T]he Coastal Commission granted a *de minimis* waiver allowing the importation of 32,000 cubic yards of fill onto Beachwood, for placement in long rows 50 feet five feet high, within the ‘historic central depression’ . . . The Coastal Commission may only grant a *de minimis* waiver when the proposed project ‘involves no potential for any adverse effect, either individually or cumulatively, on coastal resources . . .’ (Cal Pub Res Code § 30624.7) Wetlands constitute a ‘coastal resource.’ (Cal Pub Res Code § 30116 (a)).” Yamagiwa v. City of Half Moon Bay, 523 F. Supp. 2d 1036, 1077 (N.D. Cal. 2007).

COMMISSION STAFF’S FALSE STATEMENT: “In addition the wetlands that ‘developed’ there reflect the re-establishment of disturbed but naturally occurring wetlands that had always been there.”

FACT: The statement by the Commission staff that the wetland conditions now covering the majority of Beachwood, which developed as a result of city construction activity in the 1980s, are the re-establishment of natural wetlands is completely false. The only naturally occurring wetlands on Beachwood are in a small section of the southeast corner, and will remain protected pursuant to the settlement agreement and the 1990 VTM. The Commission’s own actions prove that no other natural or historic wetlands exist on Beachwood. In 1983, the Commission approved a CDP allowing the City to undertake grading and drainage improvements on Beachwood. “Although the Coastal Commission Staff Report contained a specific discussion about ‘Wetland Resources,’ **no such wetland resources were identified on the Beachwood property.**” Id. at 1073. This fact, among others, lead the Federal District court to conclude that “**the evidence is overwhelming that there were no wetlands on Beachwood** outside its southeast corner,” prior to the grading and drainage improvements approved by the Commission in 1983. Id. at 1079.

While the Commission staff has the right to oppose AB 1991, they should do so based on the facts and not by misleading the California Legislature with false assertions contradicted by the Coastal Commissions own prior actions. Attached is a point-by-point rebuttal of each false or misleading claim made by the Commission staff. As you consider AB 1991, I hope you will carefully consider the facts so that our community can finally put the Beachwood litigation behind us.

Sincerely,

Bonnie McClung