

CALIFORNIA COASTAL COMMISSION

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April 17, 2008

Assemblymember Gene Mullin
Room 2163, State Capitol
Sacramento, Ca.

RE: AB 1991—Oppose

Dear Assemblymember Mullin:

I write to inform you that the California Coastal Commission has voted unanimously to **oppose** AB 1991 as amended to implement the settlement agreement between developer “Chop” Keenan and the City of Half Moon Bay. While the Commission can understand the desire to assist the city, it cannot accept an agreement that exempts development of the Beechwood parcel and adjacent Glen Cree parcel from all state environmental laws, including CEQA and the Coastal Act.

Fundamentally, the Commission opposes the concept of a city and developer seeking special legislation to implement a settlement that is based on a federal trial court decision, which fails to acknowledge that the property had development potential outside of the wetland areas, and that exempts this project from all environmental review. We know of no other circumstance where a project wholly within the Coastal Zone has been completely exempted from Coastal Act requirements, and strongly object to the precedent that this bill creates.

The Commission was prepared to assist the city with an appeal to the 9th Circuit, and, along with the Attorney General’s office, made that offer known to the City. Nevertheless, we understand it was within the City’s sole discretion to pursue a settlement option. However, the terms of the settlement appear to be excessively weighted in favor of the developer, and include additional property not currently owned by the plaintiff, not addressed by the court ruling, and not proven to have man-made wetlands (Glen Cree), to the detriment of statewide coastal protection policies.

Our specific concerns include the following:

Level of development (129 homes) is excessive

AB 1991 authorizes the construction of 129 homes on 36 acres, 12-acres of which (Glen Cree) have never been the subject of a coastal development permit application and were not included in any litigation. This is a 400% increase in the density approved by the Commission in 2001 for the Beechwood parcel, and is wholly inconsistent with numerous coastal resource protection policies. The vesting tentative tract map for 85 parcels on the 24-acre Beechwood site was approved by the City in 1990, before it had a certified LCP, and was therefore not reflective of Coastal Act requirements. Ultimately, a coastal development permit was approved by the Commission in 2001 for 19 parcels – a reduction of the number of parcels the City had approved deemed necessary to protect wetlands. But the Commission’s action was not based solely on avoiding wetland impacts. The permit

also included conditions to minimize adverse impacts relating to traffic and water quality protection.

Authorizing development of the site today based on an expired map and an 18-year-old Mitigated Negative Declaration, while expressly excluding any consideration of existing conditions, will result in unacceptable, unmitigated adverse impacts to coastal resources. For instance, traffic on Highways 1 and 92 has worsened considerably since 1990, and is now at level of service F. There are already more than 2000 existing residential lots that could be developed throughout the city. Adding 129 homes to the City without traffic mitigations will create even worse conditions on Highways 1 and 92, further impeding public access to the coast. In addition, the City of Half Moon Bay is now subject to a Phase I Stormwater Permit (NPDES # CAF 0029921, amended 2003) issued by the State Water Resources Control Board pursuant to the federal Clean Water Act. This requires new development to follow approved development standards and implement Best Management Practices (BMPs) to reduce polluted runoff from the site. Exempting the project from these new regulations will likely result in adverse impacts to water quality of nearby Pilarcitos Creek and the ocean and could cause the City to violate its permit.

Glencree parcel included arbitrarily

As stated previously, the settlement agreement includes a 12-acre adjacent parcel known as Glencree, and authorizes 46 new homes on this site. This property is known to contain sensitive, naturally occurring wetlands that have never been subject to any legal adjudication. The Commission can find no record of ever reviewing a coastal development permit application for subdivision of this property. Glencree appears to have been added to the agreement arbitrarily, as there is no basis in any court decision for the inclusion of Glencree. The Commission believes this is an inappropriate and opportunistic overreach.

Previously approved Coastal Act mitigations are not included

When the Commission approved the 19-parcel Beechwood subdivision in 2001, it did so with conditions. These conditions were necessary to protect wetlands and other sensitive habitat, reduce runoff, protect water quality and protect scenic public views and mitigate severe traffic impacts. The settlement agreement does not acknowledge these impacts nor implement any of these very important environmental protection conditions.

Environmental review is out of date

By memorializing "prior city approvals" AB 1991 essentially revives an expired vesting tentative map that was approved based on environmental documentation that is now nearly 20 years old. Further, the outdated environmental documentation was a mitigated negative declaration that did not constitute final environmental review given the fact that (as acknowledged in the City's approval of the subdivision) a coastal development permit was required and had not yet been obtained. Even though there are numerous changed circumstances that would be applicable to any consideration of new development today in order to protect public health and safety, this bill declares that the development shall proceed with no acknowledgement of those changed circumstances. The result is a project that is allowed to proceed as if there is no Coastal Act, no RWQCB requirements, no endangered species concerns, no increase in traffic since 1990, etc. This makes a mockery of contemporary land use planning and environmental protection principles.

Excluding property from the Coastal Zone is inappropriate

The bill excludes both properties from the coastal zone as outlined in the settlement agreement. The coastal zone boundary is a geographic area mapped by the Legislature, and the appropriate way to change the boundary is for the Legislature to amend the maps. It is wholly inappropriate for private parties to enact coastal zone boundary changes in the context of private litigation settlement agreements. In addition, by exempting the property from the Coastal Act, this developer or a subsequent developer could change the project and still avoid Coastal Act review for a completely different project. The Legislature should not facilitate this onerous end run around the current process and historic practice.

Irrespective of the settlement's details, the Commission is strongly opposed to the precedent of enacting CEQA and Coastal Act exemptions outside of the Public Resources Code. In the rare instances where legislative overrides of certain provisions of the Coastal Act have been previously proposed or enacted, they have always been reviewed as Coastal Act amendments. AB 1991 would enact an amendment to the Coastal Act in another, unrelated statute. The Commission believes strongly that it is wholly inappropriate to create Coastal Act exemptions or amendments in the Subdivision Map Act.

The settlement agreement includes a provision wherein the city must purchase the property for \$18 million, should AB 1991 fail passage in the Legislature. It seems reasonable to assume that the city would not have agreed to this provision if it had not anticipated having the resources to exercise this clause. To that end, it seems to us preferable to allow the city to gain title to the property, and recoup its costs through sale and/or development of the site, together with some habitat restoration measures through the regular regulatory review process, rather than pursue an outdated project with significant unmitigated negative impacts.

We realize that the terms of the settlement as negotiated by the City and the developer have left the Legislature little or no room to craft a compromise solution that may be more protective of coastal resources, less destructive to Coastal Act policies. This is a regrettable and unusual circumstance that puts the Legislature and the public in an untenable position. Nevertheless, should there be any opportunity to revise AB 1991 and the settlement agreement that it implements, Commission staff is willing to work with your staff on reasonable amendments.

Sincerely,

Sarah Christie
Legislative Director
California Coastal Commission

cc: Anna Marie Caballero, Chair, Assembly Local Government Committee
Loni Hancock, Chair, Assembly Natural Resources Committee
Ted Lieu, Chair, Assembly Rules Committee