



CITY OF HALF MOON BAY

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Half Moon Bay, CA 94019

Bonnie McClung
Mayor
City of Half Moon Bay

Assembly Speaker Fabian Núñez
State Capitol
P.O. Box 942849
Sacramento, CA 90013

Senate pro Tem Don Perata
State Capitol
Room 205
Sacramento, CA 95814

Re: Support Half Moon Bay and AB 1991

Dear Speaker Núñez and President Perata:

I am writing you today to ask you to support AB 1991, a one-of-a-kind rescue bill that would help Half Moon Bay avoid an \$18 million payment in settlement of a \$41.1 million court-imposed liability. I also write to correct several misleading and false assertions made by the California Coastal Commission in a letter to the legislature opposing AB 1991.

On April 10, 2008 the California Coastal Commission announced its opposition to a settlement agreement which would allow the City of Half Moon Bay to avoid a \$41.1 million liability, which would have forced the City to declare bankruptcy. The Commission took this position without first notifying the City, but also, without permitting the City to offer its views and explanations for entering the settlement agreement.

The Coastal Commission then voted to oppose AB 1991, the one-of-a-kind legislation that would allow the settlement to proceed, without first reading the legislation. Indeed, the Commission could not have read AB 1991, as the bill was not final at the time they voted to oppose it.

It is ironic that the Coastal Commission, on whose advice the City originally relied when it denied a development permit for Beachwood, resulting in a \$41.1 million liability, has now decided to oppose the settlement agreement that would allow the City avoid this liability – and then does so with a predisposed set of opinions, uniformed by the facts and thus resulting from misleading and false statements, as shown by the Commission's inaccurate letter to the California Legislature.

The settlement allows the City to avoid bankruptcy by re-instituting the subdivision plans for two properties, Beachwood and Glenree, that were previously approved in 1990. AB 1991 – a bill introduced by Assemblyman Gene Mullin – is a narrowly written bill that permits the development of Beachwood and Glenree in accordance with the pre-approved subdivision plans *without setting a precedent* that would undermine the Coastal Act or any other environmental legislation. It states that there are three facts present here that, in combination, will never happen again: (1) the wetland conditions on Beachwood are man-made, the accidental result of a drainage and grading project undertaken by the city; (2) development on Beachwood was approved in 1990, was always part of the city's growth plan, and houses on the property will link two existing subdivisions; and (3) without AB 1991 the City of Half Moon Bay would have faced a \$41.1 million liability that would have bankrupted the City.

In opposing this settlement, the Coastal Commission has written a letter to the California Legislature that omits a number of inconvenient truths about AB 1991 and the history the Beachwood litigation, including the Coastal Commission's role in that history.

- MISLEADING STATEMENT: the Coastal Commission stated that it approved a plan to develop 19 homes on Beachwood in 2001.
- FACT: The Commission conveniently omits the perhaps embarrassing-to-admit and inconvenient truth that this "approval" was in fact conditional, and the Court of Appeal of California ruled that this approval – and the "conditions" the Commission proudly cites in its letter – were illegal because the Coastal Commission lacked jurisdiction. *City of Half Moon Bay v. Superior Court*, 106 Cal. App. 4th 795 (2003).
- MISLEADING STATEMENT: The Coastal Commission was prepared to assist the City with an appeal to the 9th Circuit.
- FACT: The Coastal Commission omits the inconvenient truth that while they made a generous offer of free legal advice to the City on appeal the \$41.1 million verdict to the 9th Circuit, they were not willing to: (1) help post a bond necessary to prevent collection of the judgment while the appeal was pending; (2) assist the City in paying the legal bills for an appeal, which would have been substantial; and (3) never offered to help pay the \$41.1 million if the City lost on appeal, an outcome that would have forced the City into bankruptcy. While the City appreciated the offer of free legal advice, it did not appreciate the Commission's apparent willingness to let the City pay the tab if that legal advice was wrong.
- FALSE STATEMENT: the Glenree parcel was "included arbitrarily."
- FACT: Yet again the Coastal Commission omits inconvenient truths. Glenree is adjacent to Beachwood and both parcels sit directly between two already existing subdivisions. (See attached photo) In addition, it should be noted that Glenree also had been previously approved for development, at approximately the same time as Beachwood with no adverse environmental impact. Finally, the City was required by the plaintiff, Mr. Keenan, to include Glenree as a part of the negotiation to obtain a settlement.
- MISLEADING STATEMENT: environmental review of Beachwood is "out of date."
- FACT: The inconvenient truth omitted by the Coastal Commission is that a federal judge found that the subdivisions on Beachwood would already be complete if not for a sewer moratorium in the 1990s that delayed construction of houses on the property. While the Coastal Commission may be able to ignore a federal court judgment, Half Moon Bay cannot. Any attempt to re-open the already completed environmental review of the City's prior approvals would plunge this project yet again into the endless cycle of reviews, appeals, litigation, and controversy. A settlement of the City's \$41.1 million liability would not be possible under those circumstances.

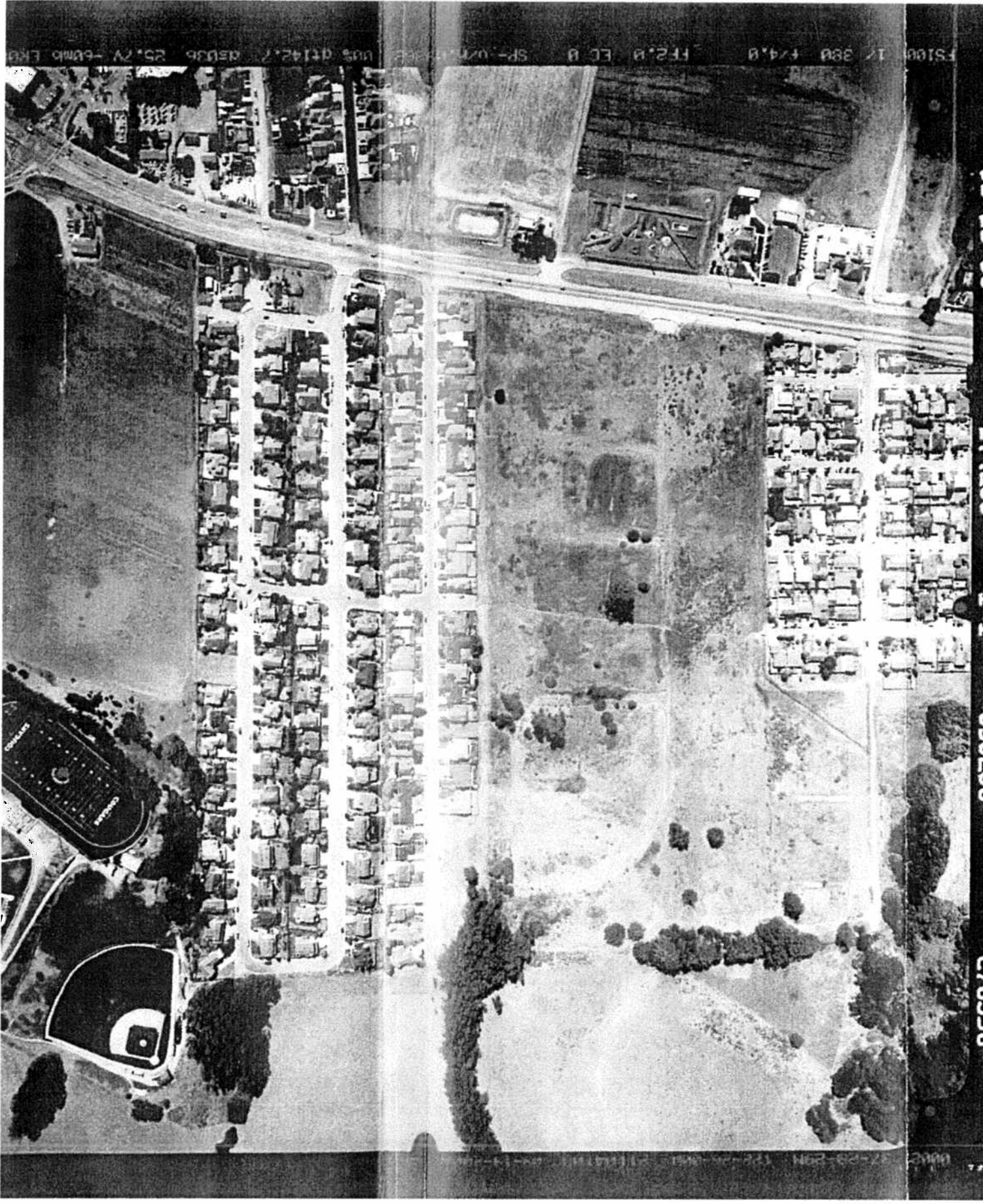
The Coastal Commission also asserts, with a collective straight face, that AB 1991 would set a precedent for future exceptions to the Coastal Act, i.e. that AB 1991 can be used as a basis for similar legislation in the future that allows development on wetlands. In other words, the Coastal Commission is trying to argue that some day in the future, all of the three facts that are prerequisite to AB 1991 might occur together again, i.e. that there will be a property pre-approved for development, man-made wetlands will then accidentally develop on that property as the result of city actions, and a court will issue a judgment against the city that would bankrupt it. I look forward to the Commission offering its guess as the percentage chance that all three of these facts will occur in the future. I respectfully suggest that the answer is 0%.

In addition, suggestions by the Commission that some alternative to the settlement could be negotiated are false. The settlement agreement is final and if AB 1991 fails to pass, the City of Half Moon Bay will be obligated to pay \$18 million under the terms of the agreement. The City worked hard to get the best settlement that it could, understanding that the plaintiff had already won a \$41.1 million judgment that he could attempt to collect immediately even had we appealed.

As AB 1991 moves forward, I hope that you will carefully consider the bill *based on the facts* and help support the best solution to the long and contentious Beachwood litigation.

Sincerely,

Bonnie McClung
Mayor
City of Half Moon Bay



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