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Appeal:	4/18/11
49th Day:	Waived
Staff:	N. Dreher-SF
Staff Report:	7/27/12
Hearing Date:	8/8/12

STAFF REPORT: APPEAL - SUBSTANTIAL ISSUE AND DE NOVO

Application No.:	**A-2-SMC-11-021**
Applicant:	**Big Wave Group, LLC**
Appellants:	Committee For Green Foothills, Surfrider Foundation - San Mateo County and Loma Prieta Chapters, Sierra Club, Pillar Ridge Homeowners Association, San Mateo County League For Coastside Protection, Granada Sanitary District, Commissioners Steve Blank and Mary Shallenberger
Location:	Airport Street, Princeton By The Sea, San Mateo County. (047-311-060, 047-312-040)
Project Description:	Divide two lots into thirteen lots and construct an office park and housing facility for developmentally disabled adults, including: (1) Division of the northern parcel into 10 lots and the southern parcel into three lots; (2) construction of eight office park buildings containing 225,000 square feet of mixed-office uses and a 640 space parking lot; (3) construction of two Wellness Center buildings containing a maximum of 57 dwelling units and accessory uses, as well as a 50 space parking lot, 10,000

	square feet of commercial public storage use and 4,000 square feet of detached Wellness Center storage buildings; (4) 6,000 square feet of communications and back up power uses in a separate building; (5) wetland habitat creation; (6) use of an existing agricultural well for domestic purposes; (7) establishment of a mutual water service company and a community wastewater treatment and recycling system; and (8) 26,050 cubic yards of balanced cut and fill.
Staff Recommendation:	Substantial Issue Exists; Denial.

SUMMARY OF STAFF RECOMMENDATION

Big Wave Group, LLC proposes a to divide the northern parcel into 10 lots and the southern parcel into 3 lots; construct 8 office park buildings containing 225,000 square feet of mixed-office uses and a 640 space parking lot; construct 2 wellness center buildings containing a maximum of 57 dwelling units and accessory uses and a 50 space parking lot, 10,000 square feet commercial public storage use and 4,000 square feet of wellness center storage uses; 6,000 square feet of communications and back up power uses; wetland habitat creation; use of an existing agricultural well for domestic purposes; establishment of a mutual water service company and a community wastewater treatment and recycling system; and 26,050 cubic yards of balanced cut and fill, in the Princeton/El Granada area of the San Mateo County Urban Midcoast, directly adjacent to the Half Moon Bay Airport. The project site is subject to significant development constraints due to proximity to coastal and seismic hazards, and proximity to sensitive habitats, including wetlands and a stream. The site is also located within a significant public viewshed between Highway 1 and the coast. In addition, the site is located in the County's working waterfront industrial area that is protected by the LCP for coastal related/dependent uses.

The San Mateo County Board of Supervisors approved a CDP for the proposed project. Numerous groups, in addition to two Commissioners, appealed that decision to the Coastal Commission. The appeals contend that the County's approval is inconsistent with the County's LCP because the project approved by the County ignores serious public services constraints, would not remedy potential tsunami and fault hazards, contains inadequate setbacks to protect biological resources on and adjacent to the site, and would obstruct and otherwise adversely affect important coastal views and would not blend visually with the surrounding area. **Staff recommends that the Commission find that the appeals raise a substantial issue of conformance of the approved project with the County's LCP**.

The LCP requires that adequate public services be available to accommodate new development in the urban midcoast area. The project proposes the conversion of an on-site agricultural well as its domestic water source. The proposal also includes granting the on-site well to Montara Water and Sanitary District for it to manage. However, pursuant to the LCP, the agricultural well may

be used to serve no more than four newly subdivided parcels, while the proposed project calls for 13 parcels total. In addition, pursuant to Montara Water and Sanitary District's current Public Works Plan, the district is not allowed to expand its service capacity to serve new customers. Thus, the proposed project does not ensure an adequate public water supply, as required by the LCP.

Regarding wastewater disposal, the project proposes a private on-site wastewater treatment system with partial reuse and disposal on site and disposal of the remainder of wastewater to the Granada Sanitary District (GSD) public sewer system. In addition, the project proposes that the public sewer utility will provide emergency sewer service in the event that the private system fails. However, GSD may not have adequate transmission and pumping capacity to accommodate the full volume of wastewater, particularly in winter when wet weather flows at times have exceeded transmission capacity already. Inadequate or improperly functioning wastewater treatment, and/or improper discharge of wastewater effluent, which has the potential to degrade coastal water quality and marine resources, is inconsistent with the LCP and Coastal Act.

The LCP requires new development to avoid and minimize impacts due to hazards. New development is prohibited in the tsunami inundation area unless designed to withstand certain tsunami force and residential units must be located sufficiently above projected maximum waves that could threaten the site in the future. In conflict with these requirements, the proposed project would place new residential development lower than the minimum necessary to avoid detrimental impacts caused by tsunamis. Further, the proposed project does not include an adequate analysis of the geotechnical hazards at the site, including seismic hazards, and therefore, it is unclear what the impacts from those hazards would be, or if the project has been designed to adequately minimize such potential hazards.

The project's traffic analysis lacks the detail and information necessary to determine that the project meets the LCP requirements for allowing the proposed level of density/development given the proposed vehicle trips per day and does not include adequate measures to offset the impacts of these additional trips on roadway capacity or the public's ability to reach the shoreline. The project also does not provide adequate public parking opportunities and its impact to surrounding traffic/circulation will negatively impact the public's beach access. In short, the project would not maximize public access to the coast consistent with the applicable requirements of the Coastal Act and LCP.

Further, the proposed development does not demonstrate that: (1) it is sited a sufficient distance from adjacent wetland and riparian resources associated with Pillar Point Marsh, including its proximity to riparian vegetation as well as the creek bank and normal creek flow line; or (2) it protects agricultural resources consistent with applicable LCP policies.

Finally, the proposed project would block significant views from public areas to the ridgeline (west of the project), and would adversely impact the public viewshed overall.

Therefore, the proposed project is inconsistent with a variety of LCP requirements. For these reasons, which are developed in detail in this report, the proposed project is inconsistent with the

County's LCP and applicable Coastal Act policies. As a result, **Staff recommends that the Commission deny a CDP for the proposed project.**

In order to address LCP requirements and the various resource constraints on the site, a revised project would need to demonstrate an adequate and reliable water supply, reliable waste water/sewage disposal capacity, adequate protection of natural resources, such as the Pillar Point Marsh area and surrounding wetlands, minimization of significant impacts to important public views, sufficient traffic capacity, the minimization of significant shoreline hazards at the project site; and the protection of agricultural resources consistent with the requirements of the certified LCP. It is possible that some of the identified deficiencies could be addressed through the imposition of conditions if further analysis was completed to identify both project impacts and specific mitigations. Commission staff remains available to work with the Applicant and the County on such a project in the future.

Project denial does not preclude the Applicant from applying for a project that addresses site constraints and is supported by the information necessary for the Commission to fully evaluate the project's conformity with all applicable LCP policies. Thus, denial of this project is not a final adjudication of the potential for development on this site but is instead a finding that the project proposed is inconsistent with the LCP and applicable Coastal Act policies and cannot be approved as proposed.

The applicant has raised an issue related to state and federal laws prohibiting discrimination on the basis of disability. The staff's recommendation on the merits of the application takes into account the requirements of the Coastal Act and certified LCP and the requirements of state and federal laws prohibiting discrimination.

The motions and resolutions to act on staff's recommendation follow below on page 6.

TABLE OF CONTENTS

I. MOTION AND RESOLUTION

Substantial Issue Motion:

*I move that the Commission **determine that Appeal No.** A-2-SMC-11-021 raises NO substantial issue with respect to the grounds on which the appeal has been filed under Section 30603 of the Coastal Act.*

Staff recommends a **NO** vote on the foregoing motion. Passage of this motion will result in the finding that a substantial issue exists regarding the County's approval of the local permit and adoption of the following resolution and findings. The motion passes only by affirmative vote of a majority of the Commissioners present.

Substantial Issue Resolution:

The Commission hereby finds that Appeal Number A-2-SMC-11-021 presents a substantial issue with respect to the grounds on which the appeal has been filed under Section 30603 of the Coastal Act regarding consistency with the certified Local Coastal Program and/or the public access and recreation policies of the Coastal Act.

De Novo Motion:

*I move that the Commission **approve** Coastal Development Permit A-2-SMC-11-021 for the development proposed by the applicant.*

Staff recommends a **NO** vote on the foregoing motion. Failure of this motion will result in denial of the permit and adoption of the following resolution and findings. The motion passes only by affirmative vote of a majority of the Commissioners present.

De Novo Resolution:

The Commission hereby denies Coastal Development Permit A-2-SMC-11-021 and adopts the findings set forth below on grounds that the development does not conform with the policies of the San Mateo County certified Local Coastal Program or with the public access policies of Chapter 3 of the Coastal Act. Approval of the permit would not comply with the California Environmental Quality Act because there are feasible mitigation measures or alternatives that would substantially lessen the significant adverse impacts of the development on the environment.

II. FINDINGS AND DECLARATIONS

A. PROJECT SITE, DESCRIPTION AND BACKGROUND

Project Site

The project site is located on the west side of Airport Road, north of Stanford Avenue, across the street from and west of the Half Moon Bay Airport, south of the "Pillar Ridge" Manufactured Home Community and just east of Pillar Point Marsh, in the unincorporated Princeton area of San Mateo County (**Exhibits 1 and 2**). The Fitzgerald Marine Reserve, which is bracketed by Maverick's Surf break to the south and Montara Beach to the north, is approximately 0.25 miles to the northwest of the project site.

The project site currently consists of two agricultural fields separated by a small intermittent creek that are part of an ongoing farming operation. The site is relatively flat with elevations at the project site ranging from 9.0 to 27.7 feet National Geodetic Vertical Datum (NGVD), with gentle slopes to the south and west. The creek, which separates the two parcels, leads to the Pillar Point Marsh, a salt marsh habitat. A total of 0.74 acres (32,180 sq. ft.) of wetlands on the project site meets the Coastal Act definition of wetlands. A portion of this total, 0.45 acres, is under Federal Jurisdictional waters/wetlands on the project site, under the permit authority of the US Army Corps of Engineers (USACOE).

The Project site is 19.53 acres. The northern parcel (APN 047-311-060) and site of the Office Park component is approximately 14.25 acres in size. This parcel is split zoned Light Industrial with Design Review and Coastal Development District overlays (M-1/DR/CD), Light Industrial with Airport, Design Review and Coastal Development District overlays (M-1/AO/DR/CD), and Resource Management-Coastal Zone with Design Review and Coastal Development District overlays (RM-CZ/DR/CD).

The southern parcel (APN 047-312-040) and site of the Wellness Center site is approximately 5.28 acres in size. This parcel is split zoned Waterfront with Design Review and Coastal Development District overlays (W/DR/CD), Waterfront with Airport, Design Review and Coastal Development District overlays (W/AO/DR/CD), and Resource Management-Coastal Zone with Design Review and Coastal Development District overlays (RM-CZ/DR/CD).

As of 1999, these two APNs were part of two larger APNs (APNS 047-312-010 and 047-311-030). In 1999, APNS 047-312-010 became two APNs (APNs 047-312-030 and 047-312-040) and 047-311-030 became three APNs (APNs 047-311-050, 047-311-060 and 047-311-070).

Project Description

The proposed project includes a land division to divide the northern parcel (APN 047-311-060, 14.25 acres) into 10 lots and the southern parcel (APN 047-312-040, 5.28 acres) into 3 lots. (**Exhibit 6 and 8**). On the northern lot, the applicant proposes to construct eight office park buildings containing 225,000 square feet of mixed-office uses and a 640 space parking lot. On the southern lot, the applicant proposes to construct two Wellness Center buildings containing a maximum of 57 dwelling units and accessory uses, a 50 space parking lot, 10,000 square feet

commercial public storage use and 4,000 square feet of wellness center storage uses. The project also includes 6,000 square feet of communications and back up power uses.

The project also proposes wetland habitat creation, use of an existing agricultural well for domestic purposes, establishment of a mutual water service company and a community wastewater treatment and recycling system and 26,050 cubic yards of balanced cut and fill.

Four separate violation files have been opened for unpermitted development at the project site. The alleged violations include improper vegetation clearance, grading (including performing earthwork in the presence of San Francisco Garter Snakes (SFGS)), filling wetlands for agricultural activities, unpermitted water storage tanks on site, and unpermitted crossing through the creek between the two subject parcels.

B. SAN MATEO COUNTY APPROVAL

On November 23, 2010, following continuances on October 27, 2010 and November 17, 2010, the San Mateo County Planning Commission approved the following under PLN2005-00481 and PLN2005-482: (1) certification of both Draft and Final Environmental Impact Reports (EIR) for the project; (2) a Use Permit for a modern sanitarium component of the Wellness Center and its accessory uses and proposed uses within the Airport Overlay (AO) Zoning District, respectively; (3) a Major Subdivision to subdivide the northern parcel into (10) lots as described in Alternative C of the EIR and a Minor subdivision to subdivide the southern parcel into three lots; (4) a Coastal Development Permit for eight (8) Office Park buildings (4 two-story and four three-story buildings) containing 225,000 sq. ft. of mixed office uses and a 640-space parking lot as described in Alternative C of the EIR, two (2) Wellness Center buildings (1 single story and 1 three story building) containing a maximum of 57 dwelling units to provide affordable housing for a maximum of 50 developmentally disabled adults and 20 staff persons and a 50-space parking lot, a 10,000 sq. ft. commercial public storage use, wetland habitat creation and other landscaping, associated fencing and grading, use of an existing agricultural well for domestic purposes, and establishment of a mutual water service company and a community wastewater treatment and recycling system; (5) a Design Review Permit for proposed structures and associated grading; (6) an Off-Street Parking Exception to allow 640 parking spaces for the Office Park where 737 parking spaces are required for office uses; (7) a Grading Permit to perform 26,050 cubic yards of balanced cut and fill; and (8) a Development Agreement with the County of San Mateo, for the Big Wave Wellness Center and Office Park proposed on two undeveloped parcels (APN 047-311-060 and APN 047-312-040) located in the unincorporated Princeton-by-the-Sea area of San Mateo County.

On December 7, 2010, the Granada Sanitary District and the Montara Water and Sanitary District filed appeals with the County Board of Supervisors. On December 9, 2010, Committee for Green Foothills (along with co-appellants Surfrider Foundation (San Mateo County Chapter), Sierra Club (Loma Prieta Chapter), California Pilots Association, Pillar Ridge Homeowners Association and San Mateo County League for Coastside Protection) filed an appeal with the County Board of Supervisors.

On March 15, 2011, the County of Board of Supervisors held a public hearing, denied the appeals and upheld the Planning Commission's decision to approve the subject EIRs and proposed project.

On April 5, 2011, the North Central District Office received the County's Final Local Action Notice. (**Exhibits 3 and 4**). The Commission's appeal period began on April 6, 2011 and ended on April 19, 2011, during which the Granada Sanitary District, Committee for Green Foothills (and co-appellants Surfrider Foundation - San Mateo County and Loma Prieta Chapters, Sierra Club, Pillar Ridge Homeowners Association and San Mateo County League For Coastside Protection,) and Commissioners Blank and Shallenberger filed appeals, all of which were filed on April 18, 2011, within the 10-working day appeal period. In addition, on April 20, 2011, the Commission received an appeal of the project from the Montara Water and Sanitary District, but because it was not filed within the appeal period, it is not a valid appeal, and will not be considered in the Substantial Issue portion of the appeal hearing. However, the issues it raises will be addressed in the De Novo portion of the appeal hearing.

C. APPEAL PROCEDURES

Coastal Act Section 30603 provides for the appeal to the Coastal Commission of certain CDP decisions in jurisdictions with certified LCPs. The following categories of local CDP decisions are appealable: (a) approval of CDPs for development that is located (1) between the sea and the first public road paralleling the sea or within 300 feet of the inland extent of any beach or of the mean high tide line of the sea where there is no beach, whichever is the greater distance, (2) on tidelands, submerged lands, public trust lands, within 100 feet of any wetland, estuary, or stream, or within 300 feet of the top of the seaward face of any coastal bluff, and (3) in a sensitive coastal resource area; or (b) for counties, approval of CDPs for development that is not designated as the principal permitted use under the LCP. In addition, any local action (approval or denial) on a CDP for a major public works project (including a publicly financed recreational facility and/or a special district development) or an energy facility is appealable to the Commission. This project is appealable because it involves development located both seaward of the first public road and within 100 feet of a stream and wetlands, and because the project includes components that are not designated as principally permitted uses under the LCP.

The grounds for appeal under Section 30603 are limited to allegations that the development does not conform to the certified LCP or to the public access policies of the Coastal Act. Section 30625(b) of the Coastal Act requires the Commission to conduct a de novo CDP hearing on an appealed project unless a majority of the Commission finds that "no substantial issue" is raised by such allegations. Under Section 30604(b), if the Commission conducts a de novo hearing and ultimately approves a CDP for a project, the Commission must find that the proposed development is in conformity with the certified LCP. If a CDP is approved for a project that is located between the nearest public road and the sea or the shoreline of any body of water located within the coastal zone, Section 30604(c) also requires an additional specific finding that the development is in conformity with the public access and recreation policies of Chapter 3 of the Coastal Act. This project is located between the nearest public road and the sea, and thus this additional finding would need to be made if the Commission approves the project following a de novo hearing.

The only persons qualified to orally testify before the Commission on the substantial issue portion of the appeal hearing are the Applicant, persons who made their views known before the local government (or their representatives), and the local government. Testimony from other persons regarding substantial issue must be submitted in writing. Any person may testify orally or in writing during the de novo portion of the appeal hearing.

D. SUMMARY OF APPEAL CONTENTIONS

The Appellants contend that the County-approved project is inconsistent with the certified LCP with respect to the project's conformance with core LCP and Coastal Act policies related to land use, location of development, hazards, lack of adequate public services including water supply, wastewater treatment and disposal and roadway capacity, housing, agriculture, biological resources, visual resources, archaeological resources and public access. Please see **Exhibit 5** for the complete appeal documents. The findings below summarize the appeal contentions without regard to which of the groups of appellants raised the particular contention.

E. SUBSTANTIAL ISSUE DETERMINATION

Locating New Development, Public Services and Public Access

Water Supply

The proposed project is located within the County's urban/rural boundary and therefore, must be served by public water utilities. LUP policies 1.3, 1.4, 1.16, and 1.18 direct new development to existing urban areas to maximize the efficiency of public utilities. LUP policy 1.18 specifically requires new development to be concentrated in urban areas by requiring infill development, and LUP policy 1.19 goes on to define infill as development of vacant land in urban areas that is served by sewer and water utilities. Moreover, except for limited exceptions not relevant here, LUP policy 2.14 states that urban services are to be provided in urban areas and not within rural areas. To be consistent with these policies, development within the urban/rural boundary, including the project site, is to be served by public utilities.

The proposed project is located within the Montara Water and Sanitary District (MWSD) service area, but the County's approval includes a condition that requires the applicant to pursue a water connection from Coastside Community Water District (CCWD). However, the condition allows use of the private on-site well for potable water needs if a connection to CCWD is not obtained. This condition is not adequate to comply with the LCP because it allows for the permanent use of the private on-site well for potable water needs if a connection to CCWD is not obtained. This potential for permanent use of the private, on-site well raises a substantial issue of consistency with the policies of the LCP, including those policies cited above.

In addition, in order for CCWD to serve the site, it would need to expand its district boundary. Such an expansion requires an amendment to the district's current CDP authorization (A-1-HMB-99-20/A-2-SMC-99-63), and as required by the subject CDP authorization, such an amendment may only be granted if the District can demonstrate that the proposed increase in water supply and/or distribution capacity is in phase with the existing or probable future capacity of other area infrastructure, including but not limited to the need for an adequate level of service for Highways 1 and 92. Pursuant to the permit, no increase in water supply or distribution capacity may be permitted within the CCWD Service District, unless the existing or probable

future capacity of other related infrastructure, including but not limited to the San Mateo County Mid-Coast and City of Half Moon Bay regional transportation system, is sufficient to adequately serve the level of development that would be supported by the proposed increase in water supply and/or distribution capacity. Moreover, as required by the permit, adequate level of service for Highways 1 and 92 is defined, at minimum, as Level of Service (LOS) C except during the peak two-hour commuting period and the ten-day average peak recreational hour when LOS E is acceptable, unless CCWD must abide by a stricter standard that is required under the applicable LCP at the time that such permit application is considered.

MWSD is similarly constrained, because the existing certified Public Works Plan (PWP) (2-06-006) expressly forbids the extension of new water connections due to a moratorium on the extension of water to new customers. While an amendment to this PWP could be pursued in the future (assuming the amendment proposal was consistent with Coastal Act/LCP requirements), the applicant and County in their approval cannot rely on such a future proposal to demonstrate an adequate water supply at this time.

The lack of currently available water supplies from MWSD and CCWD, to service the proposed development, raises an issue of consistency of the approved project with LCP Policy 1.18, which requires maximized efficiency of public facilities, services, and utilities, encourages the orderly formation and development of local governmental agencies, concentrates new development in urban areas and rural service centers by requiring the "infilling" of *existing residential subdivisions and commercial areas* and allows some future growth to develop at relatively high densities for affordable housing in areas *where public facilities and services are or will be adequate* and where coastal resources will not be endangered.

Therefore, in regards to water supply, the Commission finds that the appeals raise a substantial issue of consistency of the approved project with LUP Policies 1.3, 1.4, 1.16, and 1.18.

Wastewater

The approved project includes construction and operation of an on-site wastewater treatment and recycling facility, as well as a limited amount of wastewater disposal into the public sewer system. The project is served by an 8-inch sewer line and would obtain eight equivalent dwelling units of sewer capacity from the Granada Sanitary District (GSD), which amounts to approximately 1,800 gallons of wastewater per day. However, the total expected sewage flow from the project is 26,000 gallons per day, and it is unclear whether the 8-inch sewer line or the nearby Princeton Pump Station would be able to accommodate the full project flows. To address this, the County's approval includes a condition requiring the applicant to either revise the project design to limit the maximum amount of sewage flow to the GSD sewer system to that which can be accommodated by the existing 8-inch sewer line in Stanford Avenue and the Princeton Pump Station as determined by GSD or provide necessary expansion of the capacity of the sewer system to accommodate the addition of the expected maximum sewage flow of 26,000 gpd from the project. However, the approved project does not demonstrate that either of these mitigations is feasible. Therefore, because the LCP requires the project site to be served by adequate public utilities, and the County approved a private, on-site wastewater treatment facility with a condition to address potential public infrastructure inadequacies in the future, the

Commission finds that the appeals raise a substantial issue of conformity of the approved project with the certified LCP.

Traffic and Public Access
The project site is located between the first public road and the sea, and therefore, must be consistent with the public access and recreation policies of the Coastal Act as well as the public access policies of the LCP. Coastal Act sections 30210 through 30213 protect the public's right to access the coast and require maximum public access to the coast to be provided and maintained. . The County's approval did not adequately analyze the impacts of the project on the public's ability to access the coast and did not perform an evaluation of impacts on the level of service (LOS) for road segments on Highways 1 and 92

The approved office park would include a division of land to create ten parcels in order to accommodate the construction of 225,000 square feet of office space in eight new office buildings. The project would nearly double the existing office space in the Midcoast and would add approximately 2,123 peak-hour vehicle trips to the road. Nearly all of these vehicle trips would utilize Highway 1, and many would also utilize Highway 92

The San Mateo County Congestion Management Program, dated November 2011, produced by the City/County Association of Governments of San Mateo County (C/CAG), evaluated Level of Service (LOS) for Highway 1 and Highway 92 during morning and evening peak hours, and concluded that the roadway segment of Highway 1 (Linda Mar Boulevard, Pacifica to Frenchman's Creek Road, Half Moon Bay) has an LOS of E. This segment's LOS has worsened since the 2009 report determined this segment to be at LOS D. According to the C/CAG 2011 report, LOS E indicates unstable operations with significant intersection approach delays and low average speeds, volumes at or near capacity and those vehicles may have to wait through several signal cycles, including long queues forming upstream from intersection. , .

The Big Wave project is located within a "roadshed" that has only two points of access – through the State Route 1/Cypress/Airport bottleneck to the north, and the Capistrano/Prospect Way/Broadway/Cornell bottleneck to the south. All traffic from the residential Seal Cove and Pillar Ridge neighborhoods, plus the industrial waterfront in the Princeton area, plus coastal visitors wishing to visit the Princeton area, Maverick's surf break, Pillar Point Marsh, Pillar Point Bluff, and the southern portion of the Fitzgerald Marine Reserve, must pass through these two chokepoints. Funneling up to 2,123 additional daily trips through these chokepoints will adversely impact residents, businesses, and visitors to these popular coastal destinations.
To address the traffic impacts of the project, the County's conditions of approval include a requirement to provide for a new traffic light on Highway 1, if future traffic reports show such a light is necessary. However, the approval fails to evaluate the potential impacts of adding a new light to Highway 1 at this location, including the impacts to the flow of traffic on Highway 1, so these potential project impacts have not been evaluated prior to approval. The County's approval therefore does not ensure public access to the coast is protected as required by the public access policies of the Coastal Act and the LCP, including those policies discussed above.

Further, although the County approval required beach user parking spaces within the project, as required by LCP Policy 10.22, the number of parking spaces for beach users is not

adequateWhile the approved office park would contain 640 parking spaces, the number of beach user spaces required for the office park was based on a total of 518 parking spaces, and therefore, the special condition provides for fewer than the required 20% beach user spaces.

In the area of the approved project, traffic congestion on Highways 1 and 92 and inadequate parking significantly interferes with the public's ability to access the area's substantial public beaches and other visitor serving coastal resources in conflict with the Coastal Act and LCP access policies. Therefore, the Commission finds that the appeals raise a substantial issue of conformity of the public access parking required through the County's conditions of approval with the public access and recreation policies of the LCP including policy 10.22, and the Coastal Act.

Hazards

LCP Policy 9.3 and Zoning Regulations Section 6326.2 prohibit certain development from being located in a Tsunami Inundation Area. Additionally, the LCP requires that new development be safely sited, pursuant to geotechnical evaluations, where the development may be subject to heightened risk of hazards. LCP Policy 9.10 requires site-specific geotechnical investigations to determine mitigation measures for the remedy of geologic hazards. In addition to being within the Tsunami Inundation Area, the project site is adjacent to the active Seal Cove fault (part of the San Gregorio Fault Zone), which is capable of producing shaking and damage. The clayey and sandy soils beneath the site are subject to liquefaction, differential settlement, sand boils, and lateral spread. The possibility exists that an undetected splay of the Seal Cove fault could underlie the property, as the San Gregorio Fault Zone is wide and diffuse. Detailed geotechnical investigations, including subsurface exploration using extensive borings and/or Core Penetration Testing to better characterize the subsurface conditions and prescribe mitigation measures for seismic related ground failure, total and differential settlement, and expansive soil hazards are deferred to future studies during the building permit stage, pursuant to County conditions 5m, 5n, 5o and 5p. Without this information necessary to evaluate the impacts of the approved project, decision makers and the public cannot be assured that the site's geological hazards can be adequately remedied, and/or what the potential impacts of any additional mitigation measures to ensure safety from geological hazards might be. The applicant has not provided a final geotechnical evaluation and the tsunami analysis for maximum projected wave height was inadequate because it used improper metrics for determining the projected risks to the proposed residential development.

The County's evaluation deferred the bulk of the hazards analysis to the building permit stage. However, the appropriate time to determine whether or not the proposed development can be safely sited is prior to approval of the CDP. Therefore, the Commission finds that the appeals raise a substantial issue of consistency of the approved project with the hazards policies of the certified LCP.

Biological Resources

The project site is on and adjacent to important biological resources, including wetlands, a stream and habitat for special-status species. Development in the wetlands and wetland buffers in the County's jurisdiction is restricted by the Sensitive Habitat component of the LUP. LUP policy 7.14 defines wetlands; LUP policy 7.16 limits the uses allowed in wetlands; LUP policies

7.18 and 7.19 establish wetlands buffer zones and limit the uses allowed in them; and LUP policy 7.20 provides specific protections for the Pillar Point Marsh. Development within habitat for special-status species are subject to additional LUP policies, including policies 7.3 and 7.4 which protect sensitive habitats and prohibit development adjacent to sensitive habitat from having adverse impacts on the habitat.

The County's approval does not contain adequate findings of consistency of the project with these policies, because the habitat areas of sensitive species, including dispersal habitat for California Red-Legged Frog, were not mapped, and because raptor surveys were not conducted to evaluate the potential habitat values of trees that would be directly impacted by the project. In addition, the approved establishment of a nursery within the wetlands buffer is inconsistent with the wetlands buffer policies.

In addition, the approved use of a private well and wastewater treatment and recycling facilities has the potential to cause negative impacts to biological resources, including wetlands and sensitive habitats, inconsistent with the LCP. The County's recent Kleinfelder Report[1] found that the Airport Aquifer could handle continued draw from wells at current rates, but that expanded use and increased numbers of wells could contribute to adverse impacts to these systems, particularly due to salt water intrusion. However, the County approval required well monitoring, pursuant to condition 75, to ascertain the volume of water used, but the monitoring does not require an analysis of any adverse impacts to other natural systems.

The County approval also failed to adequately evaluate whether the approved use of recycled water for onsite irrigation would result in excess runoff to the wetland system, especially during the rainy season, or if such runoff would have negative impacts on biological resources caused by salinity levels or nutrient loads of the recycled water. Given the constraints on disposing the recycled water through the public sewer system, discussed above, as approved, the project may ultimately lead to the disposal of recycled water into the wetlands system. Such disposal may result in impacts on biological resources, inconsistent with the LCP. In addition, the water balance calculations used by the County to determine the quantity of wastewater generated by the project are internally inconsistent and therefore, it is not possible to determine the actual quantity of wastewater that would need to be disposed.

Therefore, for all of the above reasons, the Commission finds that the appeals raise a substantial issue of conformity of the approved project with the certified LCP**Visual Resources**

The Visual Resources component of the LCP regulates development to protect the visual resources of the County's coastal zone. LUP policy 8.5 requires new development to be sited in areas that are the least visible from State and County scenic roads, to reduce impacts on views from public viewpoints, and to preserve the visual and open space qualities of the parcel. In addition, LUP policy 8.6 protects the visual resources of streams, wetlands and estuaries. Policy 8.7 prohibits development that would project above the ridgeline or skyline. Policy 8.13(a)(4) requires structures to be designed to be in scale with their setting.

[1] Kleinfelder Midcoast Groundwater Study (April 2009), San Mateo County, California..

The project site is located adjacent to Pillar Point Marsh and would be visible from the harbor, Airport Road, Highway 1, several hiking trails, and other viewpoints. The approved project is significantly larger in mass and scale than surrounding development and would obstruct views of ridgelines and significant open space areas, including Pillar Point Marsh, and cause significant visual impacts, inconsistent with the visual resources policies of the LCP, including those policies sited above. The proposed planting plan proposes 6,000+ trees to be planted to screen the development, but the development remain visible from numerous public viewpoints and highway 1. Further the, Planting plan is ambitious, in that it provides for a lot of trees to be planted but with the clay layer 1-1.5 feet below grade it is unclear whether these trees will flourish.

In addition, the County-approved project included material changes to the project, as compared to the project evaluated in the FEIR that have resulted in new, greater, visual impacts that have not been adequately evaluated. There is insufficient information to evaluate the visual impacts from the revised project, particularly the three story 36-foot high 300-foot long "Building A" and the three story Storage Building that would be just 30 feet from Airport Street on the Wellness Center site. Photo simulations of the original project are misleading, because they show computer generated models of the proposed structures without other surrounding topography, structures or reference points, which in turn frustrates the visual impacts analysis. The story poles with single thin tape that the County relied on in its evaluation were inadequate, as they were not visible from any viewing site except directly in front on Airport Street. The Revised Site Plans for both parcels show general locations of the buildings, but there are no cross-section elevations. The visual simulations demonstrate high likely visibility from surrounding public hiking trails and an inappropriate reliance on the planting of numerous trees and plants without demonstrating a likelihood of success/longevity.

Finally, the project site is adjacent to the Pillar Point Marsh and would be visible from State Route 1, Airport Street, public hiking trails on Pillar Ridge, Pillar Point Harbor, and the Pillar Point Marsh. Buildings on both the Wellness Center and Office Park sites would project above the ridgeline as viewed from Airport Street and from State Route 1.

Therefore, for all of the above reasons, the Commission finds that the appeals raise a substantial issue of conformity of the approved project with the certified visual resource policies, including LCP Policies 8.5, 8.7, and 8.13.

Agriculture

While the project site is not zoned for agriculture, farming has occurred on the site in the past. The land is defined as prime agricultural land under LCP Policy 5.1.Policies 1.3(b) and 5.22 restrict the development of prime agricultural land with respect to high density development and well water sources, respectively. Pursuant to these LCP policies, prime soils should not be developed at a high density. Additionally, the proposed conversion of the agricultural well to a domestic well would serve 13 proposed lots, where 4 is the maximum lots allowed to be served by a single agricultural well following a subdivision of prime agricultural land. The County's analysis did not include an analysis of these policies with respect to the agricultural resources on site. Therefore, the Commission finds that the appeals raise a substantial issue of conformity of the approved project with the agricultural policies of the certified LCP.

Substantial Issue Determination Conclusion
In conclusion, the County-approved project raises substantial issues with respect to its conformance with applicable LCP and Coastal Act provisions related to appropriate land use and location of new development, the availability of adequate public services, hazards, biological resource and sensitive habitat protections, protection, visual and agricultural resources and public recreational access opportunities. Therefore, the Commission finds that the appeals raise a substantial issue of the approved project's conformance with the certified San Mateo County LCP and the Coastal Act's public access and recreation policies.

F. DE NOVO REVIEW

1. Public Services

LCP Policy 1.3 (Definition of Urban Areas) states:

a. Define urban areas as those lands suitable for urban development because the area is either: (1) developed, (2) subdivided and zoned for development at densities greater than one dwelling unit/5 acres, (3) served by sewer and water utilities, and/or (4) designated as an affordable housing site in the Housing Component.
b. Recognize, however, that in order to make a logical urban/rural boundary, some land has been included within the urban boundary which should be restricted to open space uses and not developed at relatively high densities (e.g., prime agricultural soils, and sensitive habitats).

LCP Policy 1.18 (Location of New Development) states:

Direct new development to existing urban areas and rural service centers in order to:
(1) discourage urban sprawl,
(2) maximize the efficiency of public facilities, services, and utilities,
(3) minimize energy consumption,
(4) encourage the orderly formation and development of local governmental agencies,
(5) protect and enhance the natural environment, and
(6) revitalize existing developed areas.
b. Concentrate new development in urban areas and rural service centers by requiring the "infilling" of existing residential subdivisions and commercial areas.
c. Allow some future growth to develop at relatively high densities for affordable housing in areas where public facilities and services are or will be adequate and where coastal resources will not be endangered.
d. Require the development of urban areas on lands designated as agriculture and sensitive habitats in conformance with Agriculture and Sensitive Habitats Component policies.

San Mateo County certified LCP Policy 2.2 (Definition of Public Works) states:

Define public works as:
a. All production, storage, transmission and recovery facilities for water, sewerage, telephone, and other similar utilities owned or operated by any public agency or by

any utility subject to the jurisdiction of the Public Utilities Commission except for energy facilities.

b. All public transportation facilities, including streets, roads, highways, public parking lots and structures, ports, harbors, airports, railroads and mass transit facilities and stations, bridges, trolley wires and other related facilities.

c. All publicly financed recreational facilities and any development by a special district.

d. All community college facilities.

LCP Policy 2.3 (Definition of Special District) states:

Define a special district as any public agency, other than a local government, formed pursuant to general law or special act for the local performance of governmental or proprietary functions within limited boundaries. "Special Districts" include, but are not limited to, a County service area, a maintenance district or area, an improvement district or improvement zone, or any other zone or area, formed for the purpose of designating an area within which a property tax or fee will be levied to pay for a service or improvement benefiting the area.

LCP Policy 2.14 (Establishing Service Area Boundaries) states:

a. Confine urban level services provided by governmental agencies, special districts and public utilities to urban areas, rural service centers and rural residential areas as designated by the Local Coastal Program on March 25, 1986.

b. Redraft the boundaries of special districts or public utilities providing urban level services to correspond to the boundaries of urban areas, rural service centers and rural residential areas established by the Local Coastal Program.

c. Allow exceptions to a. and b. when all alternatives have been fully explored and a special district or public utility is required to maintain some rural land within its boundaries in order to continue a service to its customers which is (1) otherwise consistent with the policies of the Local Coastal Program, (2) maintains the rural nature of undeveloped areas, particularly the use and productivity of agricultural land, (3) maintains the present level of service to existing users in undeveloped areas, and (4) where an illegal situation or great hardship would be created by detachment from a special district or public utility.

d. Require, when a special district or public agency maintains rural lands within their boundaries that the special district or public agency divide the districts into rural and urban zones. Make boundaries of the urban zone, where urban level services are provided, correspond to the boundaries of urban areas and rural service centers established by the Local Coastal Program. Include the rest of the district in the rural zone. Restrict the activities in rural zones to those which are consistent with the maintenance of the rural nature of the area and all other policies of the Local Coastal Program. Lower the user costs in the rural zone to reflect the lower level of service and minimize growth inducement.

LCP Policy 2.21 (Reservation of Capacity for Priority Land Uses) states:

a. Reserve sewage treatment capacity for each land use given priority by the Coastal Act or the Local Coastal Program. These priority uses are shown on Table 2.7. Amend this table to reflect all changes in the Land Use Plan which affect these priority land uses.
b. For each phase of sewage treatment facility development, reserve capacity adequate to allow each priority land use to develop to the percent of buildout allowed by the phase.
c. Allow capacity to be reallocated to non-priority land uses in accordance with Policy 2.8.

LCP Policy 2.32 (Groundwater Proposal) states, in part:

Require, if new or increased well production is proposed to increase supply, that:

[...]

c. The amount pumped be limited to a safe yield factor which will not impact water dependent sensitive habitats, riparian habitats and marshes.
d. Base the safe yield and pumping restriction on studies conducted by a person agreed upon by the County and the applicant which shall: (1) prior to the granting of the permit, examine the geologic and hydrologic conditions of the site to determine a preliminary safe yield which will not adversely affect a water dependent sensitive habitat; and (2) during the first year, monitor the impact of the well on groundwater and surface water levels and quality and plant species and animals of water dependent sensitive habitats to determine if the preliminary safe yield adequately protects the sensitive habitats and what measures should be taken if and when adverse effects occur.

LCP Policy 2.33 (Management of Pillar Point Marsh) states:

Require, as a condition of development permit for any facilities to increase water supply, that any water system that presently draws or proposes to draw water from wells in the aquifer serving Pillar Point Marsh agree to participate in and assist in the funding of the hydrologic study of Pillar Point Marsh required by Policy 7.20 and to accept the restrictions resulting from that study.

LCP Policy 5.22 (Protection of Agricultural Water Supplies) states:

Before approving any division or conversion of prime agricultural land or other land suitable for agriculture, require that:
a. The existing availability of an adequate and potable well water source be demonstrated for all non-agricultural uses according to the following criteria: (1) each existing parcel developed with non-agricultural uses, or parcel legalized in accordance with Policy 1.29, shall demonstrate a safe and adequate well water source located on that parcel, and (2) each new parcel created by a land division shall demonstrate a safe and adequate well water source located either (a) on that parcel, or (b) on the larger property that was subdivided to create the new parcel, providing that a single well source may not serve more than 4 new parcel.
b. Adequate and sufficient water supplies needed for agricultural production and sensitive habitat protection in the watershed are not diminished.

c. All new non-agricultural parcels are severed from land bordering a stream and their deeds prohibit the transfer of riparian rights.

LCP Policy 7.20 (Management of Pillar Point Marsh) states:

a. Define safe yield from the aquifer feeding the marsh as the amount of water that can be removed without adverse impacts on marsh health.
b. Restrict groundwater extraction in the aquifer to a safe yield as determined by a hydrologic study participated in by the two public water systems (CUC and CCWD). Water system capacity permitted and the number of building permits allowed in any calendar year shall be limited if necessary by the findings of the study.
c. Encourage purchase by an appropriate public agency such as the Coastal Conservancy.
d. Encourage management of the marsh to enhance the biological productivity and to maximize wildlife potential.
e. All adjacent development shall, where feasible, contribute to the restoration of biologic productivity and habitat.

Water Supply
Ensuring adequate water supply has been a significant issue in the Midcoast since the certification of the LCP in 1981. The urban Midcoast is currently served by two special districts, the Montara Water and Sanitary District (MWSD) and the Coastside County Water District (CCWD). MWSD serves the communities of Montara and Moss Beach while CCWD provides water to Miramar, Princeton by the Sea and El Granada as well as the City of Half Moon Bay. Each district has dealt with moratoria on new water connections due to a lack of supply. The supply shortage is most severe in areas served by MWSD which has had a moratorium for new connections since 1986 that is incorporated into their controlling certified Public Works Plan (2-06-006). MWSD relies exclusively on local sources for its supply. In the mid 1980s, CCWD was also unable to provide new water connections. Volume and reliability of CCWD's water supply drastically improved in 1994 when the Crystal Springs Pipeline project was completed which allowed the district to purchase and distribute water from the Crystal Springs reservoir owned by the San Francisco Public Utilities Commission (SFPUC). Today, CCWD obtains approximately 75% of its supply from SFPUC and the remainder from local sources.

On April 21, 2009 San Mateo County released the Midcoast Groundwater Study Phase II ("Kleinfelder report").[2] The Commission's Staff Geologist reviewed the study, and found that while it failed to meet its goal of determining a "safe yield" for each of the aquifers in the region, the conceptual model developed of the region's basins and subbasins, the pumping test data and, especially, the subarea water-balance assessment provide important data that support a conservative approach to managing Midcoast groundwater. Most important, it is evident from the water-balance assessment that several of the subbasins are in overdraft conditions during dry years, and that in fact, the elevation of the water table appears to dip near or below sea level in very dry years. Such conditions could lead to saltwater intrusion (although no water quality data were collected), with contamination of existing wells possible. Accordingly, even without the calculation of a "safe yield," increased use of groundwater resources in these basins (through

[2] Kleinfelder Midcoast Groundwater Study (April 2009), San Mateo County, California..

domestic wells, for example) could lead to a greater frequency of times when saltwater intrusion is likely.

The Kleinfelder report does not address the potential for resource damage from continued, or increased, groundwater use. Clearly, any groundwater that is extracted for domestic use (unless it is returned to the aquifer through septic systems, which is a rare occurrence in the urban area) is not available for recharge to wetlands and streams. This has serious implications for the cumulative impacts of continued and increased use of domestic wells. When combined with the saltwater intrusion data described above, the importance of a solid planning and regulatory approach to groundwater management becomes clear. The applicant has addressed these impacts in part through a proposal for wetlands recharge and restoration, but such efforts would have to compete with significant draw from the existing agricultural well for the proposed domestic purposes.

The project includes a multifacted proposal for water service. According to the applicant's most recent proposal, Big Wave would form a Mutual Water Company that would utilize the existing, on-site agricultural well to serve the entire project. The applicant also indicates that the well would be granted to MWSD, and that MWSD would manage the onsite water systems, that the water system would be operated by the Wellness Center or other licensed contractor, and that the Mutual Water Company would provide invoicing for water used for MWSD.

The applicant's proposal for water service is inconsistent with several LCP requirements. First, the conversion of the agricultural well for this project is not allowed. Policy 5.22 states that prior to any division of prime agricultural land or other land suitable for agriculture, each new parcel created by a land division shall demonstrate a safe and adequate well water source located on the larger property that was subdivided, providing that a single well source may not serve more than four new parcels. The proposed project is located on two parcels made comprised entirely of prime agricultural land, therefore meeting the LCP definition of prime, and making the property subject to Policy 5.22. The land is proposed to be divided, from two total parcels to thirteen (13) total parcels, but it is only proposed to be served by a single well source. Under the requirements of LCP Policy 5.22 each new parcel created by a land division shall demonstrate a safe adequate well water source and a single well source may not serve more than four new parcels. In this case, a single well is proposed to serve more than four parcels. Therefore, the proposed use of the well to serve the project, regardless of whether or not it is granted to a public service provider, is inconsistent with Policy 5.22 the San Mateo County certified LCP and must be denied.

Second, under its current Public Works Plan, MWSD is unable to provide new service connections, and therefore unable to serve the project. Thus, the project would not be served by a public water provider, inconsistent with the LCP's requirement that urban developments have adequate public services available. MWSD acknowledges that they would need a Public Works Plan amendment to extend water service to this project as proposed. On May 21, 2012, the applicant informed Commission staff that the District sent Big Wave project proponents a "will serve" letter regarding a water service connection. In the letter, dated May 7, 2012, the MWSD General Manager stated the following:

> *In response to your request for confirmation of water service for the above-named project, please be advised that the Montara Water & Sanitary District will serve the Big Wave Project subject to approval of the District Engineer, District General Manager, District General Counsel and all necessary Federal, State, and local approvals and subject to the requirements of the District's Water Code.*

The Montara Water and Sanitary District operates under a certified Public Works Plan (2-06-006) and is subject to the review of the Commission. The existing Public Works Plan prohibits new water connections due to a long-standing moratorium against new water connections. The moratorium was put in place due to water shortages and historical inadequacy of service to existing customers. According to the existing Plan, MWSD cannot serve the proposed project. Accordingly, when Commission staff requested comments from MWSD staff for clarification as to the intent behind the May 7, 2012 letter, staff received the following explanation:

> *Regarding your inquiry about the status of the Big Wave LLC project, the District issued the attached letter, dated May 7, 2012. It is not, and should not be characterized as a 'will serve' letter. As the District has made plain with the developer, the County and with LAFCO, the District will not issue a formal traditional 'will serve' letter until "all necessary Federal, State and local approvals" are achieved and the District has received and approved an application, all required fees and any and all legal issues are resolved. As you may know, the project area lies within the District's service area and jurisdiction, and the District has been required to undertake legal action to defend its rights and responsibilities within the geographic boundaries related to the* project area.[3]
>
> *[and]*
>
> *... the District is working diligently with coastal staff to process an amendment to the District's Public Works Plan (PWP) that, with regard to commercial development such as Big Wave, clarifies that MWSD reviews each such proposed development individually as to the feasibility of providing water service. For water service to Big Wave, the final decision depends on numerous factors including, as mentioned, the development as finally approved and permitted by the CCC. Once we have that information MWSD can then determine its conditions for service under our own regulations. Thus, our letter to you relating to the availability of service for Big Wave clearly refers to compliance with MWSD's regulations, payment of fees and compliance with all applicable state and federal regulations. What is important to understand is that the Big Wave project is located within MWSD's service area and that public water service to the development must be provided by MWSD.*[4]

Accordingly, without a Public Works Plan Amendment, the District does not have present authority to issue a water connection to the Big Wave site. Therefore, because the proposed use of the existing agricultural well is inconsistent with Agriculture policy 5.22, and because the

[3] Email correspondence, from Mark Massara (MWSD's legal representative), dated June 27, 2012.
[4] Email correspondence, from MWSD General Manager Clemens Heldmaier, dated July 10, 2012.

project cannot be served by MWSD under the district's current PWP, the proposed project does not have an adequate water supply, as required by the LCP.

Wastewater

The DEIR for the project describes the wastewater utilities that serve the area, stating:

> *Municipal wastewater treatment for the Princeton area is provided by the Sewer Authority Mid-Coastside (SAM), which includes the Granada Sanitary District, the City of Half Moon Bay, and the Montara Water and Sanitary District. SAM was created in 1976 as a Joint Exercise of Powers Agreement and serves a population of approximately 22,000 people with a service area of roughly 12 square miles. SAM owns and operates the regional wastewater treatment plant, an 8-mile transmission line connecting the member districts to the plant, three main pumping stations, and an ocean outfall where the treated water is dispersed to the Pacific Ocean at a point west of Pilarcitos Creek. The two sanitary districts and the City of Half Moon Bay each operate and maintain wastewater collection facilities (sewer systems) within their respective jurisdiction.*
>
> *…*
>
> *In the past SAM has experienced sewer capacity overflow problems during heavy rain periods. Over the past 10 years SAM has implemented a number of improvements and procedures to control sanitary sewer overflows, including retention facilities and pump station improvements. Additional sewer system improvements are in process or are currently being planned in concert with sewer collection system improvements by the member districts. The environmental review has recently been completed for the construction of wet weather storage facilities in the area known as Burnham Strip in El Granada. The proposed facilities consist of two 700-feet long, 60-inch diameter buried pipes that would be used to temporarily store up to approximately 205,000 gallons of sewage flow during periods of peak infiltration and inflow. This project is intended to alleviate the excess wet weather sewage flows at the Montara and Portola Pump Stations where significant sewage overflow problems have occurred.*

The USEPA's NPDES Compliance Evaluation Report on August 18, 2006 identifies a prior warning letter to the Sewer Authority Mid-Coastside (SAM) from NOAA for a violation of the National Marine Sanctuaries Act and a prior RWQCB Penalty Order, both based on sanitary sewer overflows. The EPA Report found that "the SAM Sewer System does not have sufficient capacity to convey peak flows during the winter rains." (at p.29). The EPA Report further states that "the largest spills, however, have occurred when the excess wet weather flow hits bottlenecks in SAM IPS [Intertie Pipeline System] at the Montara and Portola Pump Stations." (at p.30). Despite responsible actions and proactive infrastructure improvements by SAM and its member agencies (including GSD) to prevent wet weather over flows, the problem has not yet been solved. Therefore, wastewater treatment in the Midcoast area, including the project site, is currently constrained by inadequate infrastructure.

The proposed project includes a wastewater treatment system, to be used in conjunction with a GSD sewer connection. The wastewater treatment system consists of a wastewater treatment plant that produces recycled water (membrane bioreactor with ultraviolet disinfection) tied into a series of on-site storage tanks and a distribution system. Recycled water would be used for irrigation, toilet flushing, solar panel washing and parking lot cleaning. Any excess recycled water or substandard water is proposed to be discharged into the GSD sewer system. The applicant has proposed to either dispose of sludge using the Granada Sanitary District sewer system or through a series of vermicomposting bins located in the first floor of one of the proposed Wellness Center buildings. The proposed project would generate an estimated 26,000 gallons of wastewater per day, and the applicant has obtained a sewer connection from GSD for 1,800 gallons per day. However, it is unclear how much sewer capacity is actually needed to serve the project.

The LCP requires development in urban areas to be served by adequate public services, which include wastewater disposal. The applicant proposes to utilize the onsite wastewater treatment plant to recycle and reuse all of the water used by the project. However, in the event of maintenance to the wastewater treatment plant, various emergency situations or wet weather that prohibits the release of stored wastewater due to ground saturation, the applicant would need an alternate way to dispose of the project's wastewater flows. The proposed 40,000 gallon on-site storage capacity for recycled water would be inadequate to meet the minimum 20 day requirement under the State Water Code.[5] To meet that requirement through storage, tanks with the total storage capacity of approximately 484,000 gal (26,000 gal/day – 1,800 gal/day x 20 days) would need to be installed on site. However, the site cannot accommodate such large storage in addition to the proposed intensity of development. Another way to meet the requirement would be to dispose of project flows through the GSD sewer system. However, as described in the EIR, it is unclear whether or not the 8-inch sewer line that is proposed to serve the project, or the nearby Princeton Pump Station, would be able to accommodate such flows.

Additionally, the SF RWQCB and State Dept of Health must authorize (by permit or order) the proposed wastewater treatment system. To do so, the applicant must submit to them a detailed engineering report that specifically outlines all components of the proposed wastewater treatment system, including physical components, maintenance and operation measures and emergency/contingency plans. The RWQCB indicated no such information had been received as of June 19, 2012, and accordingly, no order has been issued.[6] RWQCB Staff has indicated in a letter addressed to the applicant that a Report of Waste Discharge must be submitted to the Regional Water Quality Board, a permit must be obtained from the Board, consistent with CCR Title 22 Water Recycling Criteria, and that no such Report has been submitted and no permit issued for the project. The feasibility of the system has not been established by either the Regional Water Board or the State Department of Health.

Because the applicant has not yet begun the permitting process for this complex wastewater treatment system and the conceptual design appears not to address major constraints, such as the need to accommodate 20 days of wastewater flows, the commenting and permitting process for it will result in alterations to the current project as proposed, including alterations affecting siting

[5] CCR Title 22, Div. 4, Ch. 3 Art. 9 Section 60341 Emergency storage and disposal requirements.
[6] Personal Communication with Blair Allen (SFRWCB), 6/19/2012.

and visual appearance of storage tanks and other treatment facilities. Further, at present, the conceptual design for the onsite wastewater treatment system is predicated upon the capacity of local public districts to accept wastewater and manage components of the system. However, GSD has not confirmed that adequate capacity exists to accommodate waste above 1,800 gal/day. It is possible that GSD will not have capacity for the amount of disposal proposed by the applicant.

Accordingly, the proposed system cannot be relied upon to successfully serve the project until the applicant demonstrates that this system can meet the requirements of the State Regional Water Quality Board and GSD's capacity. In the absence of concrete assurances that this system will be successful in this location, it is reasonable to assume that during the process of obtaining approvals from RWCQB, assuming limited capacity by GSD, the system design will need to be changed to meet the applicant's goals and all state and local laws. Moreover, it is possible that larger storage capacity will need to be constructed on site, beyond the proposed 40,000 gal storage. Larger storage tanks could contribute to the adverse visual and biological resource impacts already posed by the proposed project. Lastly, potential system redesigns or alterations may result in the proposed project's infeasibility due to property constraints and needed equipment on site.

Accordingly, the Commission finds that the proposed project is inconsistent with the requirements of Policy 1.18 that new development in urban areas be accommodated by existing public services, because as proposed, the project incorrectly assumes sewer service is available without a determination that it is in fact available. Without assurance that day-to-day operations and operations in times of weather events or emergencies are adequately considered and incorporated into the project, the Commission finds that the proposed project does not have adequate wastewater services consistent with the requirements of the certified LCP.

Traffic and Public Access

San Mateo County certified LCP Policy 2.48 Capacity Limits states:

The County will:

a. Limit expansion of roadways to capacity which does not exceed that needed to accommodate commuter peak period traffic when buildout of the Land Use Plan occurs.

b. Use the requirements of commuter peak period traffic as the basis for determining appropriate increases in capacity.

San Mateo County certified LCP Policy 2.49 Desired Level of Service states:

The County will:

In assessing the need for road expansion, consider Service Level D acceptable during commuter peak periods and Service Level E acceptable during recreation peak periods.

The San Mateo County certified Local Coastal Plan requires the maximization of the efficiency of public services (LUP Policy 1.8(a)(2), which includes State and County roads. To maximize efficiency in the urban midcoast, the rate of residential growth cannot out pace roadway capacity. If growth does out pace roadway capacity, the increase in people with personal automobiles without improvements to roadway efficiency will cause congestion levels to increase, particularly at peak commute and recreation periods. Accordingly, LUP Policies 2.48 and 2.49 require adequate road capacity to serve new development and to minimize impacts of development to traffic on local highways. The project site is located between the first public road and the sea and therefore must be consistent with the public access and recreation policies of the Coastal Act, particularly Section 30210, which requires that maximum access to the coast be provided and maintained. The impacts of the project's projected additional 2,123 vehicle trips per day on key roadway segments and intersections along State Routes 1 and 92 will increase traffic on currently constrained roadway segments and access points to the site and shoreline. LCP Policy 2.49 establishes Level of Service (LOS) "D" as acceptable (on a scale of A-F) for roadway segments and intersections on State Routes 1 and 92. Per the September, 2009 San Mateo County Congestion Management Program (CMP), Highway 1 has a baseline (1990-91) of LOS "E" between Frenchman's Creek Road and Miramontes Road in Half Moon Bay; and LOS "D" between Linda Mar Boulevard in Pacifica and Frenchman's Creek Road in Half Moon Bay. State Route 92 has a baseline of LOS "E" from Highway 1 to I-280.

According to Final San Mateo County Congestion Management Program, dated November 2011, produced by the City/County Association of Governments of San Mateo County (C/CAG), the relevant roadway segment along Highway 1 (Linda Mar Boulevard, Pacifica to Frenchman's Creek Road, Half Moon Bay) has a level of service (LOS) of E. According to this report, LOS E on two-land highways indicates "Unstable operations [where] Passing is virtually impossible and platooning becomes intense." (at p.3-2). LOS E also indicates "unstable operations with significant intersection approach delays and low average speeds...volumes at or near capacity. Vehicles may have to wait through several signal cycles. Long queues form upstream from intersection." (at p.3-3). LOS E presents significant delays, carries a poor service rating and further indicates "low maneuverability and low driver comfort." (at p.3-4). The LCP considers Service Level D acceptable during commuter peak periods and Service Level E acceptable during recreation peak periods. The Commission consulted the above findings from the 2011 County Congestion Management Program, which demonstrated that morning traffic levels, including during commuting hours, were at level of Service E.

According to the EIR, the project would add 2,123 trips to nearby roadways (Highway 1 and Highway 92). The EIR states that with the project, all intersections would be at LOS C, except Cypress and Hwy 1, which would require a signal, but the EIR did not address Highway segment LOS. As such, it is not possible to determine the project's impacts on nearby roadway capacity, including Highways 1 and 92. Further, the study submitted by the applicant was based on traffic counts from winter months, rather than summer months, and therefore cannot adequately inform the analysis regarding peak recreation periods. The applicant has refused to supply additional traffic information that captures summer peak recreation hours. In response to Commission staff's November 2, 2011 letter in which staff requested a traffic analysis specific to peak recreational use in relation to the beach and shoreline, the applicant sent a letter dated March 20,

2012 that acknowledged staff's request but referred staff to previously submitted information that was nonresponsive to concerns raised by staff.

This lack of information is especially significant here because the Big Wave project is located within a "roadshed" that has only two points of access – through the State Route 1/Cypress/Airport bottleneck to the north, and the Capistrano/Prospect Way/Broadway/Cornell bottleneck to the south. All traffic from the residential Seal Cove and Pillar Ridge neighborhoods, plus the industrial waterfront in the Princeton area, plus coastal visitors wishing to visit the Princeton area, Maverick's surf break, Pillar Point Marsh, Pillar Point Bluff, and the southern portion of the Fitzgerald Marine Reserve, must pass through these two chokepoints. Funneling additional daily trips created by the project through these chokepoints will adversely impact residents, businesses, and visitors to these popular coastal destinations.

According to the Final EIR, and incorporated as part of the proposed project, Mitigation Measure TRANS-1 requires the property owner to submit a traffic report to the Community Development Director, at full occupancy of every 60,000 sq. ft. of office space, until full project occupancy, and submit traffic reports bi-annually after full project occupancy. The report must be signed and stamped by a Professional Transportation Engineer in the State of California and identify the Level of Service (LOS) at the intersection of Cypress Avenue and State Route 1, Airport Street and Stanford/Cornell, Broadway and Prospect Way, Prospect Way and Capistrano and State Route 1 and Capistrano to evaluate if they maintain a LOS C or better. If levels of Service fall below existing levels for the intersection of Cypress Avenue and SR1, the applicant must coordinate with Caltrans to pay a fair share for the installation of a signal to mitigate these potential future traffic impacts.

The California Department of Transportation (Caltrans) has identified a number of concerns[7] with the applicant's analysis, including discrepancies between the traffic impact study findings, which show an increase in traffic as a result of the project, and study intersections that show a decrease in traffic. Additionally, Caltrans recommended that the study include traffic volumes during the summer season when recreational vehicles are more prevalent in the area. Caltrans also requested names of the responsible funding partners/sources and timelines for all traffic mitigation measures. Caltrans staff indicated concerns regarding the applicant's statement that "due to the use of weighted averages, average delay can actually decrease with the addition of Background Traffic to Existing Traffic or with the addition of Project Traffic if the traffic is added to a movement with low delay (i.e., off peak direction)...." The applicant has not provided an adequate response or explanation for concerns raised by Caltrans. The mitigation measures, including traffic signal construction, have not been coordinated with Caltrans.

Moreover, as indicated above, the submitted intersection-based analysis is not sufficient to inform the analysis require under the certified LUP Policies, particularly those regarding adequate public services and peak recreational periods to identify desired levels of service. The proposed project would add a significant number of new trips to Highways 1 and 92, which are already at LOS E, and the project includes only minimal mitigation measures. Further, without an adequate traffic report that addresses peak recreational traffic to analyze the consistency of the

[7] Comment Letters, Caltrans, dated January 5, 2010 and October 10, 2010.

project with all relevant LCP policies, the Commission cannot fully evaluate the project's impacts on road capacity and public access consistent with the requirements of the certified LCP.

Public Services Conclusion

The proposed project has not demonstrated adequate public services related to water, wastewater and road capacity, as described above. Therefore, the Commission denies this project as inconsistent with the certified LCP. Denial of the permit application will not prevent the applicant from reapplying for a permit to develop the property when the applicant is prepared to demonstrate availability of a public water supply adequate to serve the project, feasibility of the proposed wastewater treatment system and adequate availability public sewer capacity, and adequate road capacity to accommodate the traffic generated by the project while protecting public access to the coast.

2. Hazards

LCP Policy 9.1 (Definition of Hazard Areas) states

> *Define hazardous areas as fault zones and land subject to dangers from liquefaction and other severe seismic impacts, unstable slopes, landslides, coastal cliff instability, flooding, tsunamis, fire, and steep slopes (over 30%).*

LCP Policy 9.2 (Designation of Hazard Areas) states:

> *Designate hazardous areas in the Coastal Zone as those delineated on the Geotechnical Hazards Synthesis Map, the Floodway Boundary and Floodway Maps and Flood Insurance Rate Maps adopted under Chapter 35.5 of the San Mateo County Zoning Regulations, and the Natural Hazards Map in the Natural Hazards Chapter of the General Plan.*

LCP Policy 9.3 requires an evaluation of Implementation Sections 6324.6(f) and 6326.2 to determine whether the proposed project is consistent with e certified LCP.

IP Provision 6324.6(f) (Hazards to Public Safety Criteria) states:

> *[...]*
>
> *(f) No land shall be developed which is held unsuitable by the Planning Commission for its proposed use for reason of exposure to fire, flooding, inadequate drainage, soil and rock formations with severe limitations for development, susceptibility to mudslides or earthslides, severe erosion potential, steep slopes, inadequate water supply or sewage disposal capabilities, or any other feature harmful to the health, safety or welfare of the future residents or property owners of the proposed development or the community-at-large. To determine the appropriateness of development the following shall be considered:*
>
> *1. The danger to life and property due to the designated hazards caused by excavation, fill, roads, and intended uses.*

2. *The danger that structures or other improvements may slide or be swept onto other lands or downstream to the injury of others.*
3. *The adequacy of proposed water supply and sanitation systems, and the ability of those systems to prevent disease, contamination and unsanitary conditions during or following a hazardous event or condition.*
4. *The susceptibility of the proposed facility and its contents to potential damage, and the effect of such damage to the property.*
5. *The importance of the services provided by the proposed facility to the community.*
6. *The availability of a sufficient amount of water, as defined by the fire protection agency, for fire suppression purposes.*
7. *The availability of alternative locations, not subject to hazards.*
8. *The relationship of the proposed development to the Safety, Seismic Safety, and Open Space and Conservation Elements of the San Mateo County General Plan.* [Emphasis added.]

IP Provision 6326.2 states:

SECTION 6326.2. TSUNAMI INUNDATION AREA CRITERIA. The following criteria shall apply within all areas defined as Tsunami Inundation Hazard Areas:

(a) The following uses, structures, and development shall not be permitted: publicly owned buildings intended for human occupancy other than park and recreational facilities; schools, hospitals, nursing homes, or other buildings or development used primarily by children or physically or mentally infirm persons.

(b) Residential structures and resort developments designed for transient or other residential use may be permitted under the following circumstances:

1. *The applicant submits a report prepared by a competent and recognized authority estimating the probable maximum wave height, wave force, run-up angle, and level of inundation in connection with the parcel or lot upon which the proposed development is to be located.*
2. *No structure covered by this section shall be allowed within that portion of the lot or parcel where the projected wave height and force is fifty (50) percent or more of the projected maximum, unless: (a) the highest projected wave height above ground level at the location of the structure is less than six (6) feet, (b) no residential floor level is less than two (2) feet above that wave height, and (c) the structural support is sufficient to withstand the projected wave force.*
3. *No structure covered by this section shall be allowed within that portion of the lot or parcel where the projected wave height and force is less than fifty (50) percent of the projected maximum unless the requirements of subsection b, 2), (a), and (c) are satisfied and the residential flood level is at least one (1) foot above the highest projected level of inundation.*
4. *Permission under this subsection shall not be granted if the Planning Commission determines that sufficient data, upon which the report required by subsection 1) must be based, is unavailable and cannot feasibly be developed by the applicant.*

LCP Policy 9.10 (Geological Investigation of Building Sites) states:

Require the County Geologist or an independent consulting certified engineering geologist to review all building and grading permits in designated hazardous areas for evaluation of potential geotechnical problems and to review and approve all required investigations for adequacy. As appropriate and where not already specifically required, require site specific geotechnical investigations to determine mitigation measures for the remedy of such hazards as may exist for structures of human occupancy and/or employment other than those considered accessory to agriculture as defined in Policy 5.6. [Emphasis added.]

Hazards areas and hazards are defined as those geotechnical hazards shown on the current Geotechnical Hazards Synthesis Maps of the General Plan and the LCP Hazards Maps. A copy of the report of all geologic investigations required by the California Division of Mines and Geology shall be forwarded to that agency.

Geologic Stability

Certified LUP Policies 9.1 and 9.2 define and designate hazardous areas and Policy 9.3 applies specific ordinance sections (6324.6(f) and 6326.2) to these hazardous areas. In addition, Policy 9.10 requires site-specific geotechnical investigations in geologic hazard areas to ensure hazards are mitigated adequately. Part of the project site lies within an Alquist-Priolo Earthquake Fault Zone and a tsunami inundation area as shown on State Tsunami Inundation Hazard Area maps, flood zone maps and on the County's Tsunami evacuation planning maps. The project site is also subject to seismic hazards, including liquefaction, sand boils, and cyclic densification. The proposed project is not consistent with the LUP's requirements to avoid and mitigate hazards, because final and comprehensive geotechnical investigations have not been provided in advance of the Commission's evaluation and therefore the LCP analysis cannot be adequately and thoroughly undertaken consistent with the requirements of the certified LCP.

The Final EIR alluded to the Draft EIR's conclusion, provided by Treadwell and Rollo, which reviewed available subsurface data and concluded that the project, as proposed and mitigated, is feasible from a geotechnical standpoint. This conclusion and supporting discussion were cursory and did not flesh out the geotechnical evaluation, based on site explorations and/or site specific analysis. The remainder of the geotechnical discussion in the Final EIR describes comments to the Draft EIR that requested the Final Geotechnical Evaluation be conducted as a component of the Final EIR, so that the feasibility and potential impacts from mitigation measures can be evaluated. The Final EIR geotechnical discussion went on to restate the mitigation measures and conclusions of the Draft EIR and concluded that the Final Geotechnical Report will be conducted during the building permit phase, which is inconsistent with the LCP review process, including Policies 9.3 and 9.10.

To date, the applicant has refused to provide a final geotechnical report and has only provided a final scope of work for the geotechnical evaluation to be performed by BAGG Engineers. The final proposal, received by Commission Staff on March 21, 2012, proposes that BAGG will evaluate: appropriate soil class type and seismic parameters per CBC 2007; specific soil conditions discovered through borings that may require special mitigation or impose restrictions on the project, including the type, quality, and consistency of any on-site fill soils; depth to groundwater and criteria for dealing with shallow groundwater during construction, as

encountered; potential of the site soils for liquefaction and/or compaction during seismic activities including the consequences of liquefaction and criteria for mitigating the impact of such hazards on the new building; criteria for site grading, preparation of the building pads, placement of fills and backfills, including the utility trenches, specifications for acceptable imported fill soils, and criteria for excavation of pits and below grade vaults; criteria for the support of the proposed buildings, including permissible bearing values for dead, dead plus live and dead plus live plus seismic loads, and allowable passive resistance and friction coefficient for spread footing foundations, subgrade modulus for mat calculations, pile capacity, as necessary; impact of the site settlement under the weight of the fill soils forming the building pad as well as the structural loads, on the performance of shallow building foundations and slab-on-grad floors; criteria for the support of the concrete slab-on-grade floors; lateral earth (active and at-rest) pressures for the design of retaining walls, pits and shallow depressions; flexible and rigid permeable pavement sections for various traffic indices, including sections with aggregate base and asphaltic concrete; and provisions for the control of surface and subsurface drainage, including the permeability of the soils at the location of the proposed detention ponds based on the laboratory permeability test results.

To conduct this analysis, BAGG proposes numerous site investigations, including: conduct a thorough review of the available geotechnical and geologic reports prepared by others and by BAGG Engineers; mark the CPTs and borings at the site and notify Underground Service Alter at least 48 hours prior to the planned exploration activity; to explore for any evidence of fault rupture, such as uneven contact between the Purisima Sandstone and the overlying Marine Terrace Deposits, uneven contact between the Denniston Clay Loam and the overlying Marine Deposits; obtain a permit for advancing CPTs and drilling soil borings from the County of San Mateo Environmental Health Division, as required; research and review pertinent geologic maps and aerial photography relevant to the site area regarding the seismic and geologic history of the site and the immediate vicinity, and prepare a geologic and seismic write-up, as appropriate; drill, log, sample, advance and measure the depth of four exploratory borings of depths of 30 feet; perform a laboratory testing program on the collected samples, including direct and triaxial (UU) shear strength, R-value, consolidation, classification, and moisture density, as judged appropriate; perform engineering analysis based on the results; and prepare six copies of the final report.

The standard of review for this project is the certified Local Coastal Plan. In this case, the Commission finds that it needs additional studies because, in the opinion of the Staff Geologist, the complex nature (multiple splays) and the poorly constrained location of the Seal Cove fault (part of the San Gregorio Fault Zone) warrant additional investigation to assure that structures for human habitation will not be constructed across an active fault.

Contrary to the applicant's letter dated March 20, 2012, the fault is not accurately located near the project site. Several fault splays have been identified in three trenches north of the site, but as indicated in the Fitzgerald Marine Reserve Master Plan:

> *The fault has never been exposed within the vicinity of the Marsh, and its location is less defined in this area.... Northwest of the Marsh, the fault is shown on geologic maps*

> *running along the base of the uplifted terrace. To the southeast, it is mapped offshore along submarine escarpments that have been identified in bathymetric surveys.*
>
> *…*
>
> *Because the location of the active SGF [San Gregorio Fault] is less clear at the south end of the Reserve, the State [Alquist-Priolo] Special Studies [Earthquake Fault] Zone map for this area must be relied upon for guidance. For permanent structures for human occupation…proposed in this area, a site-specific geologic investigation should be performed to better identify the location of the active fault trace(s).*
>
> *It is precisely such a fault study that staff is recommending be conducted prior to approval of a coastal development permit for this project.*

Also, contrary to the applicant's assertion, no bathymetric data are shown on the 1997 Half Moon Bay quadrangle published by the US Geological Survey. Even if the bathymetric data referenced in the Master Plan do indicate fault escarpments showing the locations of offshore continuations of the Seal Cove fault, they do not rule out the existence of additional fault splays on the subject site.

The geologic cross sections provided by the applicant are based on data that are too sparse, and covering only a portion of the site, to determine whether there are fault offsets in the stratigraphic units.

Therefore, for all of the above reasons, the Commission finds that the proposed project fails to identify and evaluate all significant impacts and the necessary mitigation measures needed to remedy such impacts based on the site conditions. Accordingly, the Commission finds that the proposed project fails to demonstrate that the development will be safely sited consistent with the requirements of the certified LCP and must be denied. Denial of the permit application will not prevent the applicant from reapplying for a permit to develop the property when the applicant is prepared to supply the information necessary to support the permit application and demonstrate its consistency with all applicable requirements of the certified LCP. For example, the applicant can submit the information necessary for the Commission to conduct its evaluation of impacts and mitigation measures.

Tsunami Inundation

The Commission's findings below incorporate the analysis of the Commission's Coastal Engineer. The proposed project site is in a Tsunami Inundation Hazard Area, as shown on the LCP's Tsunami Inundation map, as well as the recently updated California Geological Survey (CGS) map. (**Exhibit 10**). The applicant has made several points to dismiss the application of this map to the subject project.[8] The main technical points about tsunami hazards that have been made by the applicant are:

[8] The Commission has previously relied upon the content of this map, see 2-06-018/A-2-MAR-08-028 (Lawson's landing).

1. There has been no identified damage to this site due to historic tsunamis.
2. Much of the historic tsunami inundation for this area occurred prior to the installation of the Pillar Point Breakwater (called a seawall in the applicant's discussion) and the existing breakwater will provide some protection from future tsunamis.
3. Even though tsunami inundation maps, prepared by the University of Southern California Tsunami Lab for the California Emergency Management Agency (CalEMA) show that the entire Big Wave site is in the inundation zone, the maps are for emergency response purposes only and should not be used for planning and regulatory purposes.
4. The CalEMA Tsunami Inundation Maps cover extreme events, likely to occur over thousands of years.
5. In place of the inundation maps, the project engineer prepared a probabilistic analysis of future tsunamis based on historic events (Holmes 2010)
6. In place of the inundation maps, a wave run-up analysis was prepared that concluded, "The proposed Big Wave Wellness Center is reasonably safe from tsunami hazards due to its elevation and location relative to the shoreline". (Skelly 2010, page 9.)

The historic data used by the applicant was taken from a tsunami database developed and maintained by the Department of Commerce, National Oceanic and Atmospheric Administration (NOAA). The Commission's coastal engineer has often used this data base to research historic tsunami events; it is a very useful resource and staff concurs with its use by the applicant to present the historic tsunami events that have been recorded for the Half Moon Bay area. However, the Commission finds that the applicant has incorrectly used the information in the database to provide a probabilistic tsunami analysis and incorrectly input tsunami data into a wave run-up model. The Commission does not agree with the applicant's analysis of tsunami inundation and des not agree with the decision to dismiss the information provided by the CalEMA Tsunami Inundation Maps. [9]

Historic information on tsunamis in the project area: The applicant has provided a large amount of information on tsunamis. It has provided several copies of the CalEMA, CGS, USC Tsunami Inundation Map along with over 40 pages of tables from NOAA's West Coast and Alaska Tsunami Warning Center that show maximum amplitude for numerous sites around the Pacific Ocean from various historic tsunamis. These tables and reports note that tsunami waves were observed at Half Moon Bay from the 1964 Alaskan Earthquake and Tsunami and from the 1960 Chilean Earthquake and Tsunami. Maximum amplitude of 8.5 feet (2.6 meters) was measured during the 1946 Alaskan Earthquake and Tsunami. Additional information from the NOAA Natural Hazards Viewer (http://maps.ngdc.noaa.gov/viewers/hazards/?layers=0) and

[9] The applicant's coastal engineering consultant has self-determined himself as having been "recognized by the California Coastal Commission as professionally capable of modeling tsunami runup".(See David Skelly 2010 Tsunami Runup and Force Analysis for Big Wave Wellness Center, page 1) Despite such belief by the applicant's engineer, the Coastal Commission has not recognized any individuals as being "professionally capable of producing [this type of] tsunami runup analysis." The California Coastal Commission does recognize the need for professional expertise in many aspects of project development; however, the Commission does not recognize individuals for professional capability with respect to tsunami runup analysis.

from Lander, Lockridge and Kozuch[10] shows wave amplitude during the 1946 tsunami was up to 13 feet (3.96 meters), with inundation extending inland up to 3,280 feet (1,000 meters). O'Brien[11] identified the full wave height as 7 feet below the water surface and 10 feet above (2 m below the water surface to 3 meters above) (also sited in Lander et al.). In 1960, the maximum amplitude for Princeton was about 7.2 feet (2.2 meters) and the bay reportedly drained nearly dry three times and then refilled up to 9 feet (2.7 meters). Based on the damage to Princeton, Magoon[12] put the 1960 water level range at 11.5 feet (3.5 meters) above Mean Lower Low Water (MLLW). During the recent Japan Tohoku event, a maximum amplitude of 2.7 feet (0.7 meters) was recorded. (http://maps.ngdc.noaa.gov/viewers/hazards/?layers=0). From these references, it is clear that Princeton has been and continues to be at risk from tsunami inundation. Information from the applicant confirms this, as does staff's independent review of various historic tsunami references.

The Seawall (aka Pillar Point Breakwater) will protect the Half Moon Bay area from tsunamis:

Most of the historic tsunami inundation information is from the time prior to construction of the Pillar Point Breakwater. Recent evidence from the Tohoku tsunami does support the contention that breakwaters provide some protection from tsunami inundation. At the Japanese community of Kamaishi, the offshore breakwater was severely damaged by the incoming wave. Nevertheless, comparison of observed damages to model results for a no project condition indicate that the Kamaishi breakwater reduced shoreline inundation depths from 45 feet to 26 feet (13.7m to 8m), and run-up from 66 feet to 33 feet (20.2m to 10.0m).[13]

The Kamaishi Breakwater was a solid, cofferdam structure and the Pillar Point Breakwater is a fairly porous rubble mound structure, so there is little similarity between the structures. This example cannot be used to infer any information about the amount of change in either inundation depth or run-up for Half Moon Bay, but does suggest that the Pillar Point Breakwater would have some beneficial effect. The USC modeling effort for Half Moon Bay was at a 100-foot (30-meter) resolution and the effects of the breakwater would not have been fully included in the modeling efforts used to prepare the CalEMA maps. If a more detailed modeling of Pillar Point Harbor were undertaken, the effects from the Breakwater could be modeled. For example, the beneficial efforts of the breakwater at the Port of Los Angeles have been modeled successfully.[14] However, the applicant has not provided acceptable modeling of the changes to tsunami hazards at the project site that can be attributed to the Pillar Point Breakwater.

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[10] Lander, James F., Patricia A. Lockridge, and Michael J. Kozuch (1993) Tsunamis affecting the West Coast of the United States, 1806-1992, KGRD No. 29, National Oceanic and Atmospheric Administration, National Geophysical Data Center, Boulder, Colorado, USA, September, 242 p.

[11] O'Brien, M.P., *Preliminary Report of Seismic Sea Waves from Aleutian Earthquake of April **I, 1946,*** Technical Report HE 116207. Wave Project, Fluid Mechanics Laboratory, University of California at Berkeley, April, 1946, 10 pp. (From Lander, Lockridge and Kozuch, op. cit.)

[12] Magoon, Orville T., "The Tsunami of May, 1960 **as** it Affected Northern California," presented at the American Society of Civil Engineers Hydraulics Division Conference, University of California, Davis, California, August 17, 1962. (From Lander, Lockridge and Kozuch, op. cit.)

[13] Takahashi, Shigeo et al. *Urgent Survey for 2011 Great East Japan Earthquake and Tsunami Disaster in Ports and Coasts* ,Technical Note of Port and Airport Research Institute. Vol. 1231. Print. April 28, 2011

[14] Moffatt-Nichol Engineers (2007) Tsunami Hazard Assessment for the Ports of Long Beach and Los Angeles, http://www.portoflosangeles.org/DOC/REPORT_Tsunami_%20April_2007.pdf

The proposed project site is within the mapped tsunami inundation zone: The tsunami inundation zone maps[15] show all of the downtown Princeton area within the inundation zone. The inundation zone covers the proposed site and goes inland as far as the airport. The inundation maps and supporting documentation show that maximum runup in the vicinity of the project site will range from 26 feet to 29.5 feet MSL (8m to 9 meters MSL).[16]

Planning uses of emergency planning tsunami inundation maps: The inundation maps were prepared by the State of California, in conjunction with NOAA and the University of Southern California Tsunami Hazard Lab. They were completed in 2009 to provide communities and individuals with information about the maximum probable inundation for most of coastal California. When there was some uncertainty in the inundation areas, the mapping effort did err on the side of inclusion. However, almost all maps were field verified and the areas with large mapping uncertainties were examined in the field and mapping adjustments were made to reflect local site conditions.

The applicant has noted that these inundation maps are not to be used for planning purposes. While it is true that the main purpose for the 2009 Tsunami Inundation maps was emergency preparedness and evacuation; it is also true the information on the maps provides a useful tool to assess whether or not an area has the potential to be inundated by a tsunami. The existing tsunami maps took several years of efforts; they are the most recent attempts to provide almost state-wide information on tsunami risk; there was detailed field verification of the inundation lines; and there has not been state or federal funding for "planning purpose only" tsunami inundation maps; therefore, it is reasonable and practical to use the mapping tools as one significant input for a tsunami planning process. In general situations for example, the maps can be examined to determine whether or not there is reason to be concerned about tsunamis for a particular site based upon whether or not the site is within the mapped inundation area. And, based on the location of the site with respect to the entire inundation area, the maps can also provide quantitative as well as qualitative information on how significant tsunami inundation might be. For the case of Half Moon Bay and the proposed project site, the local government has reviewed the map information and, based on knowledge of the local topography and flooding response, the local government has used the 2009 maps as a basis for developing their Tsunami Inundation Hazard areas.

Probable events are covered by the tsunami inundation maps: The 2009 Tsunami Inundation maps were prepared by examining the inundation possible for a variety of different, large fault ruptures. Some maps also included likely inundation from a large submarine slide. Each map contains an information table that shows the input sources that were considered in generating each specific map. The inundation lines are a composite of the maximum probable inundations from all these sources; one portion of the inundation line may be the maximum probable inundation from event A, while another segment may be the maximum probable inundation from event B or event C. There are no probabilities associated with the inundation lines; however, each source event that is used to derive the lines is possible and the fault location and magnitudes are well documented as are all possible events. The map preparers have noted that the "return

[15] http://www.conservation.ca.gov/cgs/geologic_hazards/Tsunami/Inundation_Maps/SanMateo/Documents/Tsunami_Inundation_MontaraMountain_Quad_SanMateo.pdf

[16] Personal communication with Kevin Miller, CalEMA, June 15, 2012

periods"[17] are on the order of hundreds of years;[18] the "return periods" are not thousands of years as the applicant's technical consultants have stated by the applicant's engineer in a meeting with staff.

Development of probabilistic tsunami inundation maps: Some planning professionals would like to have tsunami inundation maps that mirror the probability of the Federal Emergency Management Agency (FEMA) Flood Insurance Rate Maps (FIRMs) that show the 1% and 0.2% annual probability of flooding (often considered the 100-year and 500-year events). River flows have been measured for many years, and riverine flooding can be correlated with rainfall intensity, watershed characteristics and antecedent events. These conditions provide some level of confidence for identifying riverine flooding probabilities and the development of the FIRMs. Similar maps for tsunami inundation are starting to be developed; however, the development of tsunami inundation probabilities is a far more complex than riverine flooding. First of all, tsunamis occur less frequently that riverine flooding so there are fewer data points to use for developing event inundation correlations. Also, the probability for a tsunami is the combined probability of the generating event, such as a large earthquake on an offshore subduction fault (although other faults are capable of producing tsunamis, as are large underwater landslides), and the development of a tsunami. While it is tempting to take the historic tsunami observations as the data set to develop the probability density of tsunami occurrences (as was done by the applicant's project engineer), this approach is not correct. This approach does not link the tsunami probability to the known generating mechanisms. Also, historic data are spotty for many areas of the California coast, with inundation levels based on anecdotal information or some limited investigations of tsunami deposits in areas where geologic and land development conditions allowed the deposition and preservation of such sediment samples. For Half Moon Bay, the applicants developed a useful review of historic tsunami occurrences. This assembly of historic events can provide an indication of the inundation that has occurred in the past; but, it is not a predictor of probable risk.

The Applicant's Determination of Tsunami Risk at the Proposed Site. The applicant has provided as part of the permit application, an analysis of tsunami runup and inundation that differs greatly from that depicted on the CalEMA Tsunami Inundation Maps and with general information about tsunamis. The modeling by the applicant's coastal engineer characterized the input wave as having an initial wave height of 6.5 feet (about 2 meters) and a wave period of 30 seconds, with a resulting runup of about 13 feet. The assumed wave height is quite low, but was provided to him through the probabilistic analysis undertaken by the project's engineer, Mr. Scott Holmes. The 30 second wave period, developed by the applicant's coastal engineer is also quite low. Anyone who watched any of the videos from recent tsunamis in the Indian Ocean,

[17] Return period, also known as recurrence interval is the approximate interval of time between events of a certain type. For floods, it is the river discharge (often termed, the 10-year, 50-year or 100-year flood). For earthquakes, it's a seismic event of a certain magnitude. The return period for a tsunami, while less clearly defined, is normally associated with the triggering event.

[18] Personal communication from Dr. Costas Synolakis, USC, December 8, 2011

Samoa or Japan recognizes that the inundation lasts for far longer than 30 seconds. Coastal engineers refer to tsunamis as long-period waves, and modelers normally use wave periods that range from 20 to 30 minutes.

In addition to using incorrect input for determining the tsunami inundation, the project engineer has used a short-period wind wave model for wave propagation. As noted above, tsunami waves are not short-period wind waves; they are long-period waves that are generated by seismic events, submarine landslides, volcanic eruptions, meteor strikes, and such.

Finally the applicants engineer has used an unreferenced rule of thumb from the US Army Coastal Engineering Manual that "for every 25 feet that a wave overtopping travels across the beach, the height of the runup bore is reduced by 1 foot." The Coastal Engineering Manual is over 1,000 pages long and without a more complete reference, staff was unable to verify that this rule of thumb was even developed for long-period waves. It is likely that this "rule of thumb", if valid at all, was provided for wind waves or storm surge rather than for tsunami waves. Wave runup and dissipation are difficult to quantify and rarely reduce to a simple rule of thumb. As stated in the Coastal Engineering Manual (Section D.4.5-32), "In most situations, the amount of dissipation is small when compared to the effort required to analyze the dissipation processes. In addition, the risk of overestimating wave dissipation with available tools, resulting in an underestimation of flood risk, can be significant." An article in *Physics Today* by Resio and Westerlink[19] also debunks the use of rules of thumb for surge dissipation, noting, "Empirical rules of thumb based on observations alone may be of dubious value. Along the US Gulf Coast, observations have suggested that each 14.5 km of wetlands leads to a 1-m decrease in the maximum surge level. If true, that is an extremely useful piece of information. The estimate could be dangerous, however, if it is false and used to estimate risk reductions in coastal areas behind wetlands."

For the Gulf Coast rule of thumb, a one-foot (0.3 meters) drop in surge level occurs for every 2.8 miles (4.5 km) of travel across a wetland, yet with the applicant's rule of thumb, the same decrease can be achieved by traveling only 25 feet (0.008 km) across a sand beach. Warnings in the CEM and by Resio and Westerlink about the use of rules of thumb for very frequent overland flow from storm surge should be heeded as well for use in the much less frequent, but potentially very damaging tsunami situations -- especially when the estimate provides such marked changes to the wave height.

Thus, the analysis by the applicant has incorrectly taken historic tsunami occurrences to develop what has been termed a 200-year return period tsunami. This event has then been incorrectly modeled using a short-period wind wave model to propagate the wave to the shoreline. And, finally, the overland flow has been characterized by a rule of thumb that most likely has not been developed for tsunamis, and that is of dubious, if not overly optimistic utility in the proposed project situation. When the maximum probable tsunami is modeled with a basin-wide analysis, using long-period wave conditions and a peer-reviewed tsunami inundation model, the resulting runup is 26 feet to 29.5 feet MHW (8 to 9 meters MHW), as reported on the CalEMA Tsunami

[19] Donald T. Resio. and Joannes J. Westerlink, 'Modeling the physics of storm surges', *Physics Today*, September 2008, pp 33 – 38.

Inundation Map. As presented, the applicant's analysis does not replace the peer-reviewed, state approved modeling and field-verified mapping effort provided by the CalEMA maps.

Analysis with respect to Section 6326.2 of the County's IP. The County's review of development within a tsunami inundation zone is regulated by IP Section 6326.2 which states:

> ***SECTION 6326.2. TSUNAMI INUNDATION AREA CRITERIA****. The following criteria shall apply within all areas defined as Tsunami Inundation Hazard Areas:*
>
> *(a) The following uses, structures, and development shall not be permitted: publicly owned buildings intended for human occupancy other than park and recreational facilities; schools, hospitals, nursing homes, or other buildings or development used primarily by children or physically or mentally infirm persons.*
>
> *(b) Residential structures and resort developments designed for transient or other residential use may be permitted under the following circumstances:*
>
> 1. *The applicant submits a report prepared by a competent and recognized authority estimating the probable maximum wave height, wave force, run-up angle, and level of inundation in connection with the parcel or lot upon which the proposed development is to be located.*
> 2. *No structure covered by this section shall be allowed within that portion of the lot or parcel where the projected wave height and force is fifty (50) percent or more of the projected maximum, unless: (a) the highest projected wave height above ground level at the location of the structure is less than six (6) feet, (b) no residential floor level is less than two (2) feet above that wave height, and (c) the structural support is sufficient to withstand the projected wave force.*
> 3. *No structure covered by this section shall be allowed within that portion of the lot or parcel where the projected wave height and force is less than fifty (50) percent of the projected maximum unless the requirements of subsection b, 2), (a), and (c) are satisfied and the residential flood level is at least one (1) foot above the highest projected level of inundation.*
> 4. *Permission under this subsection shall not be granted if the Planning Commission determines that sufficient data, upon which the report required by subsection 1) must be based, is unavailable and cannot feasibly be developed by the applicant.*

Based on the CalEMA Tsunami Inundation Maps and the County of San Mateo's Tsunami inundation maps, the proposed project site is within the tsunami inundation area. Although the applicant has attempted to comply with the requirement of 6326.2(b)(1) by submitting an analysis of tsunami risk, the analysis provided cannot be accepted because, as noted above, it relies on improper and unreferenced assumptions for its conclusions. Absent other information about the site, it is appropriate for the Commission to rely on the inundation modeling and information for the maximum probable tsunami, as prepared by the University of Southern California Tsunami Hazard Lab for the CalEMA Tsunami Inundation Maps, as previously relied on in 2-06-018/A-2-MAR-08-028 (Lawson's landing). These maps indicate the following, all of which pose a risk of tsunami inundation and potential for harm to residents at the site:

The highest projected wave height above ground level at the location of the structure is NOT less than six (6) feet. The CalEMA Tsunami Inundation Maps show for the proposed project site, a maximum water level of about 26 to 29.5 feet Mean High Water (8 to 9 meters Mean High Water) or 24 to 28 feet NGVD (7.5 to 8.5 meters NGVD). Since the site elevation is given as +14 feet NGVD in the Skelly Report, the highest projected water level above ground level at the location of the structure is approximately 10 feet to 14 feet, which is higher than the 6 foot threshold used in Section 6326.2(b)(2)(a) or Section 6326.2(b)(3).

Residential floor level will be less than two (2) feet above that wave height. The proposed elevation of the residential structures is 20 feet NGVD, which is 4 to 8 feet lower than the wave height and thus, not "no less than two (2) feet above the wave height."

Analysis does not show that the structural support is sufficient to withstand the projected wave force. Wave force analysis has only been provided for the anticipated 1 foot tsunami bore; no analysis for the maximum proposed tsunami wave force has been provided nor is there a structural design that would elevate the structure above the tsunami level. Thus, at this time, the proposed structural support cannot be found to be sufficient to withstand the projected wave force.

The above determination in 6326.2(b) about whether to use 6326.2(b)(2) or 6326.2(b)(3) depends upon whether "the projected wave height and force is fifty (50) percent or more of the projected maximum" or whether it is less than fifty (50) percent of the projected maximum. Until appropriate analysis of the projected maximum is provided and the on-site conditions are determined, it is not possible to determine which specific section should be used to evaluate the proposed project. However, many of the elements that must be satisfied are the same for each section – that the highest projected wave height above ground level is less that six (6) feet, that the residential floor level is at least one (1) foot above the highest projected level of inundation (Section 6326.2(b)(2) uses the more strict criteria of two(2) feet) and the structural supports are sufficient to withstand the projected wave forces.

Given the proposed design that is before the Commission, and the maximum probable tsunami from the CalEMA modeling and mapping effort, the proposed project cannot meet the criteria for approval, as outlined in County's IP Provision, 6326.2 Tsunami Inundation Area Criteria.

An Option to Improve or Augment the CalEMA Tsunami Inundation Information: As noted earlier, the CalEMA Tsunami Inundation Maps use a 30-meter grid size for modeling and this is too coarse to fully account for the effects of the Pillar Point Breakwater. A basin-wide model of the Half Moon Bay area, including the Pillar Point Breakwater would help quantify the benefits provided by the breakwater. Such an analysis would start with deepwater waves, typical of those generated by a potential tsunamigenic source, such as a large earthquake on the Aleutian Subduction Zone. Deepwater waves lose little energy in transfer from the source until they come ashore thus, the modeling need not simulate the entire ocean, but could initiate at an appropriate deepwater basin boundary and then propagate the wave inland. As noted earlier, such modeling has been done in Japan for Kamaishi, and in the US for the Ports of Long Beach and Los

Angeles. Firms are now working with CalEMA to do such modeling for additional local areas and to provide some probabilistic analysis for select areas. Commission staff is not aware of the exact cost of such modeling and cannot provide a bid on behalf of any consulting firm. Within the next couple of years, the state may make available more detailed modeling for Half Moon Bay; the applicant would be free to use this work if the applicant does not wish to undertake independent modeling of the Half Moon Bay area.

Given the proposed design and the maximum projected wave height as demonstrated using the Cal EMA modeling and mapping effort, the proposed project does not meet the criteria for approval, as outlined in the County's IP Provision 6326.2(b) Tsunami Inundation Criteria. Therefore, the project as currently proposed is inconsistent with the applicable standards of the certified LCP and must be denied. However, the Commission's action does not constitute a final decision regarding the application of the LCP to development proposals on this property. Denial of the permit application will not prevent the applicant from redesigning the proposed project and/or reapplying for a permit to develop the property when the applicant is prepared to supply the information necessary to support the permit application and demonstrate its consistency with the certified LCP. For example, the applicant could conduct more detailed modeling that addresses the issues raised in these findings and which demonstrates that a proposed project is consistent with the tsunami inundation criteria contained in subsection (b) of Section 6326.2(a) of the certified LCP.

3. Biological Resources

LCP Policy 7.3 (Protection of Sensitive Habitats) states:

a. Prohibit any land use or development which would have significant adverse impact 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 the habitats.

LCP Policy 7.4 (Permitted Uses in Sensitive Habitats) states:

a. Permit only resource dependent uses in sensitive habitats. Resource dependent uses for riparian corridors, wetlands, marine habitats, sand dunes, sea cliffs and habitats supporting rare, endangered, and unique species shall be the uses permitted in Policies 7.9, 7.16, 7.23, 7.26, 7.30, 7.33, and 7.44, respectively, of the County Local Coastal Program on March 25, 1986.
b. In sensitive habitats, require that all permitted uses comply with U.S. Fish and Wildlife and State Department of Fish and Game regulations.

LCP Policy 7.14 (Definition of Wetland) states:

Define wetland as an area where the water table is at, near, or above the land surface long enough to bring about the formation of hydric soils or to support the growth of plants which normally are found to grow in water or wet ground. Such wetlands can include mudflats

(barren of vegetation), marshes, and swamps. Such wetlands can be either fresh or saltwater, along streams (riparian), in tidally influenced areas (near the ocean and usually below extreme high water of spring tides), marginal to lakes, ponds, and manmade impoundments. Wetlands do not include areas which in normal rainfall years are permanently submerged (streams, lakes, ponds and impoundments), nor marine or estuarine areas below extreme low water of spring tides, nor vernally wet areas where the soils are not hydric.

In San Mateo County, wetlands typically contain the following plants: cordgrass, pickleweed, jaumea, frankenia, marsh mint, tule, bullrush, narrow-leaf cattail, broadleaf cattail, pacific silverweed, salt rush, and bog rush. To qualify, a wetland must contain at least a 50% cover of some combination of these plants, unless it is a mudflat.

LCP Policy 7.16 (Permitted Uses in Wetlands) states:

Within wetlands, permit only the following uses: (1) nature education and research, (2) hunting, (3) fishing, (4) fish and wildlife management, (5) mosquito abatement through water management and biological controls; however, when determined to be ineffective, allow chemical controls which will not have a significant impact, (6) diking, dredging, and filling only as it serves to maintain existing dikes and an open channel at Pescadero Marsh, where such activity is necessary for the protection of pre-existing dwellings from flooding, or where such activity will enhance or restore the biological productivity of the marsh, (7) diking, dredging, and filling in any other wetland only if such activity serves to restore or enhance the biological productivity of the wetland, (8) dredging manmade reservoirs for agricultural water supply where wetlands may have formed, providing spoil disposal is planned and carried out to avoid significant disruption to marine and wildlife habitats and water circulation, and (9) incidental public service purposes, including, but not limited to, burying cables and pipes or inspection of piers and maintenance of existing intake and outfall lines.

LCP Policy 7.18 (Establishment of Buffer Zones) states:

Buffer zones shall extend a minimum of 100 feet landward from the outermost line of wetland vegetation. This setback may be reduced to no less than 50 feet only where (1) no alternative development site or design is possible; and (2) adequacy of the alternative setback to protect wetland resources is conclusively demonstrated by a professional biologist to the satisfaction of the County and the State Department of Fish and Game. A larger setback shall be required as necessary to maintain the functional capacity of the wetland ecosystem.

LCP Policy 7.19 (Permitted Uses in Buffer Zones) states:

Within buffer zones, permit the following uses only: (1) uses allowed within wetlands (Policy 7.16) and (2) public trails, scenic overlooks, and agricultural uses that produce no impact on the adjacent wetlands.

LCP Policy 7.20 (Management of Pillar Point Marsh) states:

a. Define safe yield from the aquifer feeding the marsh as the amount of water that can be removed without adverse impacts on marsh health.
b. Restrict groundwater extraction in the aquifer to a safe yield as determined by a hydrologic study participated in by the two public water systems (CUC and CCWD). Water system capacity permitted and the number of building permits allowed in any calendar year shall be limited if necessary by the findings of the study.
c. Encourage purchase by an appropriate public agency such as the Coastal Conservancy.
d. Encourage management of the marsh to enhance the biological productivity and to maximize wildlife potential.
e. All adjacent development shall, where feasible, contribute to the restoration of biologic productivity and habitat.

LCP Policy 7.32 (Designation of Habitats of Rare and Endangered Species) states:

Designate habitats of rare and endangered species to include, but not be limited to, those areas defined on the Sensitive Habitats Map for the Coastal Zone.

LCP Policy 7.33 (Permitted Uses) states:

a. Permit only the following uses: (1) education and research, (2) hunting, fishing, pedestrian and equestrian trails that have no adverse impact on the species or its habitat, and (3) fish and wildlife management to restore damaged habitats and to protect and encourage the survival of rare and endangered species.

b. If the critical habitat has been identified by the Federal Office of Endangered Species, permit only those uses deemed compatible by the U.S. Fish and Wildlife Service in accordance with the provisions of the Endangered Species Act of 1973, as amended.

LCP Policy 7.34 (Permit Conditions) states:

In addition to the conditions set forth in Policy 7.5, require, prior to permit issuance, that a qualified biologist prepare a report which defines the requirements of rare and endangered organisms. At minimum, require the report to discuss: (1) animal food, water, nesting or denning sites and reproduction, predation and migration requirements, (2) plants life histories and soils, climate and geographic requirements, (3) a map depicting the locations of plants or animals and/or their habitats, (4) any development must not impact the functional capacity of the habitat, and (5) recommend mitigation if development is permitted within or adjacent to identified habitats.

LCP Policy 7.35 (Preservation of Critical Habitats) states:

Require preservation of all habitats of rare and endangered species using criteria including, but not limited to, Section 6325.2 (Primary Fish and Wildlife Habitat Area Criteria) and Section 6325.7 (Primary Natural Vegetative Areas Criteria) of the Resource Management Zoning District.

LCP Policy 7.3 prohibits any land use or development that would have significant adverse impacts on sensitive habitat areas, and requires that development in areas adjacent to sensitive habitats shall be sited and designed to prevent impacts that could significantly degrade the sensitive habitats. Policies 7.4 and 7.33 permit only resource dependent uses in sensitive habitat areas and also require that permitted uses comply with U.S. Fish and Wildlife Service (USFWS) and California Department of Fish and Game (CDFG) regulations. Policy 7.35 requires preservation of all habitats of rare and endangered species. LUP Policy 7.1 defines sensitive habitats, in part, as "habitats containing or supporting rare and endangered species...[and]...all perennial and intermittent streams and their tributaries." LUP Policy 7.11 requires a 30-foot buffer from intermittent streams. LUP policy 7.14 defines wetlands; LUP policy 7.16 limits uses allowed in wetlands; LUP policies 7.18 and 7.19 establish wetlands buffer zones and limit the uses allowed in them; and LUP policy 7.20 provides specific protections for the Pillar Point Marsh. Development within habitat for special-status species are subject to additional LUP policies, including policies 7.3 and 7.4 which protect sensitive habitats and prohibit development adjacent to sensitive habitat from having adverse impacts on the habitat. LUP Policies 7.35 and 7.46 provide for preservation of critical habitats for rare, endangered, and unique species. Development within wetlands and their 100-foot (or larger) buffer zone is restricted to very limited uses by LCP Policies 7.16, 7.17, 7.18 and 7.19. LCP. Policy 7.20 requires special protections for Pillar Point Marsh and limits groundwater extractions from the marsh to a safe yield determined by a hydrologic study. LCP Policy 2.34 requires, as a condition of development permit for any facilities to increase water supply, that any water system that presently draws or proposes to draw water from wells in the aquifer serving Pillar Point Marsh agree to participate in and assist in the funding of the hydrologic study of Pillar Point Marsh required by Policy 7.20 and to accept the restrictions resulting from that study. As detailed in the following paragraphs, the project does not comply with the Sensitive Habitats Component of the LCP and CA Sections 30230-30233.

LUP Policies 7.35 and 7.46 require preservation of critical habitats for rare, endangered, and unique species. A published research study by G.M. Fellers and P.M. Kleeman, titled "California Red-Legged Frog Movement and Habitat Use: Implication for Conservation" in the Journal of Herpetology, 2007, vol. 41, no. 2, pp. 271-281, states that "non-breeding habitats are critically important" for the survival of California red-legged frogs and that even if disturbed land can provide critical non-breeding habitat. The same study found that California red-legged frogs moved a median distance of 150 meters, as far as 1.4 kilometers, between breeding and non-breeding areas. Regarding the project's impact to sensitive habitat areas and habitat of rare and endangered species, an email to the Project Planner from Chris Nagano, USFWS Chief of Endangered Species on January 11, 2011 stated: "...As of this date, the County of San Mateo and/or other parties have not resolved the issue of the potential for adverse effect or take of federally listed species resulting from the proposed Big Wave project with the Service...." The Final (100%) Basis of Design Report states that California red legged frog has been recorded in the past on an adjacent property. One adult and one sub-adult were observed in a wetland near the project site near West Point Road on May 7, 1999 according to the California Natural Diversity Database (2008). The U.S. Fish & Wildlife Service (USFWS) establishes specific upland buffer areas in accordance with the critical habitat designation for the red-legged frog. In past actions concerning development in the San Mateo Coast area, the Coastal Commission has determined that a 300-foot buffer was required to protect California red-legged frog habitat.

WSP Environment and Energy (WSP) provided "An Analysis of the Geographic Extent of Water of the US, including Wetlands, on the Big Wave Property, San Mateo County, California," dated March 17, 2008 based on data collected November 20, 2007. This Report and wetlands delineation identifies approximately 0.45 acres of wetlands of "other waters" (Type 3 water of the U.S.), 0.74 acres of Coastal Act wetlands. The majority of these wetlands are found along the western part of the project site. (**Exhibit 7**). In addition, in a letter Addendum to the Report dated April 24, 2008, Mr. Lee and Ms. Fiedler of WSP, informed the Applicants that field observations made during an on-site meeting on March 27, 2008 revealed that conditions in the southwest field, while fallow, allowed for establishment of annual species, including wetland indicator plants that were more extensive than previously mapped. Mr. Lee and Ms. Fiedler advised that a new Coastal Commission delineation should be done, based on vegetation, and the Applicants agreed. However, when Ms. Fiedler returned to the project site on April 9, 2008, all of the annual vegetation had been plowed under and disked.

Based on WSP's "Draft (100%) Basis of Design Report titled: "Riparian and Waters/Wetlands Ecosystem Restoration for Big Wave Wellness Center and Office Park, San Mateo County, California" dated March 18, 2012, prepared for Big Wave Group, LLC (Design Report), the applicant proposes to restore the first 100 feet of the proposed 150-foot buffer and put organic farming in the outer 50 feet. However, although the report states the buffer would 150 feet, the project plans show the distance on the east side of the stream to the proposed development to be only about 100 ft wide and one of the proposed farming areas is only 15 or 20 feet from the stream (G Meu Assoc, Landscape Planting Plan L101).

Additionally, the 5/17/10 Preliminary Grading, Drainage and Utility Plan for the Wellness Center shows the buildings would have a finished floor elevation of 20 feet, on a finished grade of 18 feet. The existing grade beneath the buildings ranges from 12 to 15 feet. In order to raise the grade an additional 3 to 6 feet, the 5/17/10 plans show the fill would extend within 150 feet of the wetlands. Portions of Wellness Center Building B also extend within 150 feet of the wetlands. Further, in order to comply with California Fire Code and Coastside County Fire Protection District requirements, a 20-foot fire lane will likely be required around the perimeter of the buildings, which will result in additional development in the wetlands buffer. This has not been factored into the proposed Site Plans or Grading Plans. Development in wetland buffers to accommodate new roads is not permitted per Policy 7.19, and would cause potentially significant adverse impacts to adjacent sensitive habitats.

In order to site development on the subject property appropriately, the applicant must demonstrate consistency with the LCP policies protecting these sensitive resources. LCP Policy 7.18 generally requires a 100-ft buffer from wetlands, but a larger setback is required if necessary to maintain the functional capacity of the wetland ecosystem. In this case, the applicant has not demonstrated that there is an adequate buffer between the proposed development and the sensitive resources on site, because of the proximity of the development to the important habitat at Pillar Point Marsh, and the documented uncertainty of the delineated wetland boundary.

Finally, the Draft Planting Plan proposes to create polygons of Live Oak Riparian Forest and Arroyo Willow Riparian Forest that include species such as Coast Live Oak, Buckeye, Red Alder and Toyon. The applicant has not demonstrated sufficiently that these trees will survive on this site that is underlain by wet clayey soils, located so close to the ocean. Coast Live Oak, Madrone, California Buckeye, Western Sycamore, and Big Maple Leaf are also proposed for landscaping along the perimeter of the site and in the paring lots, to screen the buildings. In addition, there are major discrepancies between the Draft Planting Plan which shows a total of 143 trees on the perimeters of the Office Park (84) and Wellness Center (63), and the 3/1/2011 County Staff Report under project updates in the Final EIR, Landscaping, which states there would be 4,000 upland trees plus 6,000 upland shrubs installed around the perimeter of the property. The perimeter segments set aside for landscaping in the Draft Planting Plan (adjacent to Pillar Ridge community, Airport Street, and Princeton) total only 2,332 linear feet. Accordingly, the 4,000 trees would need to be planted closer than one foot apart or in multiple rows.

Accordingly, for all of the above reasons, the Commission finds that the proposed project is inconsistent with the habitat policies of the LCP and must be denied. Although design alternatives to avoid impacts to biological resources could likely be addressed through a revised siting plan that incorporates adequate buffers, as discussed elsewhere in the report, other project deficiencies require the submittal of information before the Commission can adequately evaluate the proposed project consistent with all applicable requirements of the certified LCP.

4. Visual Resources

LCP Policy 8.5 (Location of Development) states, in part:

> *a. Require that new development be located on a portion of a parcel where the development (1) is least visible from State and County Scenic Roads, (2) is least likely to significantly impact views from public viewpoints, and (3) is consistent with all other LCP requirements, best preserves the visual and open space qualities of the parcel overall...*
>
> *[...]*
>
> *Public viewpoints include, but are not limited to, coastal roads, roadside rests and vista points, recreation areas, trails, coastal accessways, and beaches.*
>
> *[...]*
>
> *b. Require, including by clustering if necessary, that new parcels have building sites that are not visible from State and County Scenic Roads and will not significantly impact views from other public viewpoints. If the entire property being subdivided is visible from State and County Scenic Roads or other public viewpoints, then require that new parcels have building sites that minimize visibility from those roads and other public viewpoints.*

LCP Policy 8.7 (Development on Skylines and Ridgelines) states, in part:

a. Prohibit the location of development, in whole or in part, on a skyline or ridgeline, or where it will project above a skyline or ridgeline, unless there is no other developable building site on the parcel.

LCP Policy 8.12 (General Regulations) states, in part:

Locate and design new development and landscaping so that ocean views are not blocked from public viewing points such as public roads and publicly-owned lands.

LCP Policy 8.30 (Designation of County Scenic Roads and Corridors) states:

a. Expand existing County Scenic Corridors to include the visual limits of the landscape abutting the scenic road.
b. Designate County Scenic Roads and Corridors as shown on the Scenic Roads and Corridors Map for the Coastal Zone. These are: Coast Highway north of Half Moon Bay city limits (State Route 1), Half Moon Bay Road (State Route 92), La Honda Road (State Route 84), Higgins-Purisima Road, Tunitas Creek Road, Pescadero Road, Stage Road, Cloverdale Road, and Gazos Creek Road (Coast Highway to Cloverdale Road).

The proposed project includes a series of large, two and three story buildings in a relatively flat area between the ocean and Highway 1. LCP Policy 8.5 requires new development to be located on a portion of a parcel where it will be least visible from County scenic roads, is least likely to impact views from public viewpoints, and best preserves the open space qualities of the parcel overall. Policy 8.5 also requires that all newly subdivided new parcels have building sites that are not visible from County Scenic Roads and will not significantly impact views from other public viewpoints. However, where the entire property being divided is visible from County Scenic Roads or other public viewpoints, then the new parcels must have building sites that minimize visibility from those roads and other public viewpoints. Policy 8.6 protects the visual quality of streams, wetlands, and estuaries. Policy 8.7 prohibits development that would project above the ridgeline or skyline. Policy 8.13(a)(4) requires structures to be designed to be in scale with their setting. The project site is adjacent to the Pillar Point Marsh and would be visible from State Route 1, Airport Street, public hiking trails on Pillar Ridge, Pillar Point Harbor, and the Pillar Point Marsh. Buildings on both the Wellness Center and Office Park sites would project above the ridgeline as viewed from Airport Street and from State Route 1

The proposed project includes 10 total buildings, ranging from two to three stories in height. Given the relatively flat topography, the lack of any nearby development similar in character to the proposed project and the natural condition of the ridge west of the proposed project site when looking from Highway 1, the lack of trees, the nearby airport and surrounding public access points to the north, west and south, this project will be highly visible from public viewpoints and a designated county scenic road – Highway 1.

To minimize the many visual impacts associated with siting such large scale, high density development at the proposed site, the applicant has proposed a landscaping plan that includes the planting of 29,000 trees and plants, and about 6,000 upland shrubs, all to be watered via recycled water using subsurface drip irrigation. The applicant has not provided plans demonstrating the

capacity of the site, given its proposed configuration, to accommodate this volume of vegetation in terms of physical placement of the vegetation and feasibility of water/drainage. The applicant has provided a series of visual simulations, showing the site without trees and with the vegetation at various stages of the development. (**Exhibit 11**). However, without a landscape plan demonstrating the realistic constraints of the site, the placement of the trees and the distance between trees, it is unclear how plausible the proposed plantings are, from a successful mature growth standpoint, given their certain proximity to parking areas, the buildings and Airport Road. Even assuming the proposed landscape strategy will work at this site, the trees as proposed in the visual simulations would not be immune to fire or disease and may present significant visual impacts in the future.

The approved project is significantly larger in mass and scale than surrounding development and would obstruct views of ridgelines and significant open space areas, including Pillar Point Marsh, inconsistent with the visual resources policies of the LCP, including those policies sited above. Therefore, the Commission finds that the project is inconsistent with the visual resource policies of the certified LCP, particularly 8.5, 8.7, and 8.13. While it is possible that design alternatives to avoid and minimize visual resource impacts could be addressed through a conditional approval, as discussed elsewhere in the report, other project deficiencies require the submittal of information before the Commission can adequately evaluate the proposed project consistent with all applicable requirements of the certified LCP.

5. Lot Legality

LCP Policy 1.2 Definition of Development states, in part:

> As stated in Section 30106 of the Coastal Act, define development to mean:
>
> *...change in the density or intensity of use of land, including, but not limited to, subdivision pursuant to the Subdivision Map Act (commencing with Section 66410 of the Government Code), and any other division of land, including lot splits, except where the land division is brought about in connection with the purchase of such land by a public agency for public recreational use....*

IP Provision 6328.5 EXEMPTIONS states, in part:

> *The projects listed below shall be exempt from the requirement for a Coastal Development Permit. Requirements for any other permit are unaffected by this section.*
>
> *[...]*
>
> *(l) Land division brought about in connection with the purchase of land by a public agency for public recreational use.*
>
> *[....].*

LCP Policy 1.27 Confirming Legality of Parcels states:

Require a Coastal Development Permit when issuing a Certificate of Compliance to confirm the legal existence of parcels as addressed in Section 66499.35(a) of the California Government Code (e.g., lots which predated or met Subdivision Map Act and local government requirements at the time they were created), only if: (1) the land division occurred after the effective date of coastal permit requirements for such division of land (i.e., either under Proposition 20 or the Coastal Act of 1976), and (2) a coastal permit has not previously been issued for such division of land.

LCP Policy 1.28 Legalizing Parcels states:

Require a Coastal Development Permit when issuing a Certificate of Compliance to legalize parcels under Section 66499.35(b) of the California Government Code (i.e., parcels that were illegally created without benefit of government review and approval).

LCP Policy 1.29 Coastal Development Permit Standards of Review for Legalizing Parcels states:

Require Coastal Development Permits to legalize parcels. Where applicable, condition permits to meet the following standards. (Permit applications shall be considered as "conditional uses" for the purposes of review.)

[...]

e. On undeveloped illegal parcels created after Proposition 20, on lands located within 1,000 yards of the mean high tide line, or the Coastal Act of 1976, on lands shown on the official maps adopted by the Legislature, a Coastal Development Permit is necessary to legalize the parcel. A permit may be issued only if the land division is in conformance with the standards of the Coastal Development District regulations.

IP Provision 6105.0. Legal Lot Requirement states:

No permit for development shall be issued for any lot which is not a legal lot. For purposes of this ordinance, development does not include non-structural uses of property including but not limited to roads, fences or water wells.

As mentioned above, the proposed project is located on a site that was divided (from two lots to five lots) in 1999 after San Mateo County's March 1998 acquisition of certain Pillar Point Marsh land that was located on then-existing APNs 047-312-020 and 047-311-030. LCP Policy 1.27 requires a CDP in conjunction with Certificates of Compliance to establish lots as legally created when "(1) the land division occurred after the effective date of coastal permit requirements for such division of land (i.e., either under Proposition 20 or the Coastal Act of 1976), and (2) a coastal permit has not previously been issued for such division of land." The County did not process a CDP when the two APNs became five APNs (APNs 047-312-030 and 047-312-040, 047-311-050, 047-311-060 and 047-311-070).

The County's acquisition included portions, but not all, of two of the five newly created APN's (047-312-030 and 047-311-050). (**Exhibit 2**). On June 8, 1999, the County applied for three Certificates of Compliance for the "three remainder parcels created by the County's acquisition of Pillar Point Marsh." These certificates were approved and recorded on July 6, 2000, after the enactment of the Coastal Act. (PLN1999-00442). However, the property lines were not configured along the boundary of its land purchase.

The applicant claims that a CDP was not necessary because pursuant to LCP Policy 1.2 and IP Provision 6328.5(l), CDPs are not required where the land division is brought about in connection with the purchase of such land by a public agency for public recreational use. The Coastal Act and LCP Policy 1.2 do not require a CDP where the land division is brought about in connection with the purchase of *such* land by a public agency for public recreational use, which applies specifically to the parcels owned by the County, in whole or in part, as a result of the acquisition. However, such land divisions must follow the lines of the property acquisition. Here, lines were drawn to create *additional* parcels unrelated to, and not a result of, the acquisition. Also, only portions of 047-312-030 and 047-311-050 are owned by the County for recreational purposes. Therefore, the divisions that created the parcels with APNs 047-312-030 and 047-312-040, 047-311-050 and 047-311-060 were not made along the County purchase lines and these divisions are not exempt from Coastal Act and LCP permit requirements because they are not land divisions brought about in the connection with the purchase of *such* land by a public agency for public recreational use. (**Exhibits 2**). LCP Policy 1.29(e) requires a CDP to legalize any undeveloped illegal parcel created after the Coastal Act of 1976 and that such a permit may be issued only if the land division is in conformance with the standards of the Coastal Development District regulations. Since the County did not process CDPs to substantiate and formally legalize the 1999 creation of parcels 047-312-040 and 047-311-060, the Commission determines that such lots still require CDPs in order to be considered legal under the Coastal Act.[20] IP Section 6105.0 states that no permit for development shall be issued for any lot which is not a legal lot. The proposed land divisions (047-312-040 into three new lots and 047-311-060 into 10 new lots) are not consistent with the LCP, because the underlying lot configuration has not yet obtained the necessary CDP authorizations. Any new application for development on the subject property should include an application for the necessary CDP.

6. Locating New Development – Land Use

LCP Policy 1.3 Definition of Urban Areas states:

a. Define urban areas as those lands suitable for urban development because the area is either: (1) developed, (2) subdivided and zoned for development at densities greater than one dwelling unit/5 acres, (3) served by sewer and water utilities, and/or (4) designated as an affordable housing site in the Housing Component.

b. Recognize, however, that in order to make a logical urban/rural boundary, some land has been included within the urban boundary which should be restricted to open space uses

[20] The Commission notes that APN 047-311-070 (west of the subject property) was created and is comprised entirely of marshlands and sensitive habitat. However, in 2011, the County acquired 047-311-070 for recreational purposes, and it now meets the permit exemption of the Coastal Act and LCP because the entire property is owned by a public agency for public recreational use.

and not developed at relatively high densities (e.g., prime agricultural soils, and sensitive habitats).

LCP Policy 1.4 Designation of Urban Areas states:

Designate as urban those lands shown inside the urban/rural boundary on the Land Use Plan Maps. Such areas include Montara, Moss Beach, El Granada, Princeton and Miramar.

LCP Policy 1.16 Definition and Establishment of Urban/Rural Boundary states:

Define urban/rural boundary as a stable line separating urban areas and rural service centers from rural areas in the Coastal Zone and establish this line on the LCP Land Use Maps.

LCP Policy 1.18 Location of New Development states:

a. Direct new development to existing urban areas and rural service centers in order to:
(1) discourage urban sprawl,
(2) maximize the efficiency of public facilities, services, and utilities,
(3) minimize energy consumption,
(4) encourage the orderly formation and development of local governmental agencies,
(5) protect and enhance the natural environment, and
(6) revitalize existing developed areas.
b. Concentrate new development in urban areas and rural service centers by requiring the "infilling" of existing residential subdivisions and commercial areas.
c. Allow some future growth to develop at relatively high densities for affordable housing in areas where public facilities and services are or will be adequate and where coastal resources will not be endangered.
d. Require the development of urban areas on lands designated as agriculture and sensitive habitats in conformance with Agriculture and Sensitive Habitats Component policies.

LCP Policy 1.19 Definition of Infill states:

Define infill as the development of vacant land in urban areas and rural service centers which is: (1) subdivided and zoned for development at densities greater than one dwelling unit per 5 acres, and/or (2) served by sewer and water utilities.

LCP Policy 1.24 Protection of Archaeological/Paleontological Resources states:

Based on County Archaeology/Paleontology Sensitivity Maps, determine whether or not sites proposed for new development are located within areas containing potential archaeological/paleontological resources. Prior to approval of development proposed in sensitive areas, require that a mitigation plan, adequate to protect the resource and prepared by a qualified archaeologist/ paleontologist be submitted for review and approval and implemented as part of the project.

As discussed above, LCP Policy 1.3(b) recognizes that in order to make a logical urban/rural boundary, some land has been included within the urban boundary which should be restricted to

open space uses and not developed at relatively high densities, such as prime agricultural subject property is comprised entirely of prime agricultural soils and sensitive habitats, and adjacent to Pillar Point Marsh. LCP Policy 7.20 requires that all development adjacent to Pillar Point Marsh shall, where feasible, contribute to the restoration of biologic productivity and habitat. The proposed project includes subdividing two lots into a total of 13 lots and developing the property at a high density – a total of ten two to three-story buildings within an approximately 10-acredevelopment envelope. This scale of development is not consistent with LUP Policy 1.3(b) which states that land within the urban boundary containing prime agricultural soils and sensitive habitats should not be developed at relatively high densities.

The applicable zoning district for the parcel containing the proposed Office Park allows numerous other, less dense and more compatible uses given the nature and characteristics of the site. The Office Park site (APN 047-311-060) is zoned Light Industrial and Resource Management. The Light Industrial district allows over 150 permitted and conditional uses, including the proposed office park uses, which could be done at a lower density. The Resource Management district which is located on the portions of the subject parcels in proximity of the stream, prioritizes open space and agricultural uses and therefore, that portion of the property is not appropriate for high density office park uses. Therefore, the Commission finds that the proposed project, with regard to scale and density, is inconsistent with Policy 1.3(b), particularly because the Light Industrial zoning district prioritizes other uses more capable of protecting prime soils and sensitive habitats. The Wellness Center site (APN 047-312-040) is discussed in Section G below.

De Novo Review Conclusion

The proposed project is inconsistent with a variety of LCP requirements. It lacks adequate water supply, would not avoid or minimize hazards over its lifetime, would impair significant public views, would not protect natural resources, and would exacerbate Highway One traffic problems. It also has not assured that maximum public access will be provided. Therefore, the Commission must deny the proposed project. As stated above, some of the project deficiencies can be addressed by the imposition of conditions after further analysis is done to determine all impacts and necessary project specific mitigations. Denial of the permit application will not prevent the applicant from redesigning the proposed project and/or reapplying for a permit to develop the property when the applicant is prepared to supply the information necessary to support the permit application and demonstrate its consistency with the certified LCP, including an adequate and reliable water supply, reliable waster water/sewage disposal capacity, minimized impacts to natural resources, such as the Pillar Point Marsh area and surrounding wetlands, avoided and minimized significant impacts to important public views, sufficient traffic capacity, and remedied shoreline hazards at the project site..

G. DISCRIMINATION AND REASONABLE ACCOMMODATION CLAIMS

The applicant has raised an issue related to state and federal laws prohibiting discrimination on the basis of disability and requiring the provision of reasonable accommodations when necessary

to give persons with disabilities equal ability to the use of their house. The Commission's recommendation on the merits of the application takes into account both the requirements of the Coastal Act and the certified LCP and those of the relevant state and federal laws prohibiting discrimination.

The relevant law

The federal Fair Housing Amendments Act of 1988 and California's Fair Employment and Housing Act create an affirmative duty for land use permitting agencies to make reasonable accommodations in rules, policies, practices, or services when accommodation may be necessary to afford disabled persons equal opportunity to use and enjoy a dwelling. (42 U.S.C. § 3604(f)(3)(B) and Gov. Code, §§ 12927(c)(1), 12955(1).)

In addition to the fair housing laws, two other significant federal anti-discrimination laws apply to the Commission and its land use permit decisions: Title II of the Americans with Disabilities Act (ADA), 42 U.S.C. §§ 12101 et seq., prohibits discrimination against individuals with ' disabilities in all public services and the Rehabilitation Act of 1973, 29 U.S.C. § 794, prohibits discrimination on the basis of disability in any program or activity that receives federal financial assistance. Both of these latter statutes have been found to apply to land use decisions and to require permitting agencies to make reasonable accommodations to persons with disabilities in the context of their land use and zoning decisions. *(Bay Area Addiction Research v. City of Antioch* (9th Cir. 1999) 179 F. 3d 725.)

The federal and state fair housing laws impose an affirmative duty to make reasonable accommodations in the rules, policies, practices and procedures where accommodation may be necessary to ensure that people with disabilities have equal access to use and enjoy a dwelling. The required accommodations may be in the policies and procedures for obtaining a permit, or in substantive requirements for obtaining a permit. The laws do not require accommodations that impose an undue financial burden on the permitting jurisdiction or accommodations that would require a fundamental alteration in the nature of the permit program. *(City of Edmonds v. Washington State Bldg. Council,* 18 F.3d 802, 806 (9th Cir. Wash. 1994).) If a requested modification creates a fundamental alteration in a government's land use and zoning scheme, it is not a reasonable accommodation. For example, in *Sanghvi v. City of Claremont*, 328 F.3d 532 (9th Cir. 2003), the court found that the requested city sewer services connection to the group home was not an accommodation required by the Alzheimer's patients' illness and disability but instead was a desired personal financial benefit to the owners, as the only thing stopping them from connecting to the sewer was the owners' refusal to be annexed by the city and thus pay more fees, not anything related to the disability.

In addition, the ADA regulations provide that "a public entity may impose legitimate safety requirements necessary for the safe operation of its services, programs, or activities. However, the public entity must ensure that its safety requirements are based on actual risks, not on mere speculation, stereotypes, or generalizations about individuals with disabilities." 28 CFR Section 35.130(h).

Application of Relevant Law

In this appeal, San Mateo County approved a land division on 2 parcels owned by the applicant, conversion of an agricultural well to domestic purposes, office park buildings on the northern lot, a mutual water service company and wastewater treatment and recycling plant, commercial public storage, communications and back up power uses, wetland creation, cut and fill and, of concern here for purposes of discrimination and reasonable accommodation claims, an affordable housing residence for 50 developmentally disabled adults and 20 live-in staff on the southern lot, called the Wellness Center.

In its de novo review, the Commission must consider whether the proposed wellness center on the southern lot satisfies two different use restrictions: (1) is the proposed development consistent with the zoning limitations of the Waterfront District; and (2) is the proposed development consistent with the use limitations of the tsunami inundation zone.

Consistency of proposed Wellness Center with limitations of base zoning

Regarding whether the proposed wellness center is consistent with the zoning limitations, the Wellness Center would be located on a parcel that is zoned for Waterfront District, which uses do not include residential uses. However, the County granted a Use Permit for the project, agreeing with the applicant's position that the Wellness Center was a sanitarium, which is allowed pursuant to County Regulation section 6500(d) within any district within the Urban Areas of the Coastal Zone, when found to be necessary for the public health, safety, convenience or welfare. There is no definition of "sanitarium" in the County regulations.[21]

The County's report for this project includes the following analysis:

> *The term 'sanitarium' (or sanitorium) is a term of varying definition that is not defined in the Zoning Regulations. Some existing definitions and their sources are the following:*
>
> - *An institution for the promotion of health (Dorland's Medical Dictionary for Health Consumers, 2007).*
>
> - *A facility for the treatment of patients suffering from chronic mental or physical diseases, or the recuperation of convalescent patients (Mosby's Medical Dictionary, 8th edition, 2009).*
>
> *While the Wellness Center would not provide medical treatment on-site for its intellectually or developmentally disabled (DD) adult residents, it is intended to promote their long-term health in a holistic manner. The Wellness Center will*

[21] The City of San Mateo has a definition: **27.04.430 SANITARIUM.** "Sanitarium" means a building and premises in and on which two or more sick, injured or infirm persons are regularly housed or intended to be housed for compensation, not including hospitals. (Ord. 1986-13 § 1 (part), 1986; Ord. 1978-18 § 53 (part), 1978: prior code § 142.01(149)).

> *offer DD adults social and employment opportunities, an opportunity for semi-independent living apart from their parents, and connections to support and medical services.*
>
> *In light of the fact that the term is not specifically defined in the Zoning Regulations, and that it is defined in other sources in a manner that reasonably encompasses the Wellness Center concept, the County may conclude that the Wellness Center proposal falls within the meaning of "sanitarium," as defined in section 6500.d of the Zoning Regulations.[Emphasis added.]*

Further, in order to issue a use permit for a sanitarium, it must be found "necessary for the public health, safety, convenience or welfare." The County found that the project is necessary because there is a shortage of affordable housing. According to an ABAG study, 881 units of affordable housing are needed for the area, and, according to the County's report, there are currently 523 units. This wellness center would add 57 units of affordable housing.

Given that the LCP contains no definition of a sanitarium, the Commission can exercise its discretion to follow the County's lead and characterize the proposed facility as a sanitarium that is permissible in the Waterfront District. However, the Commission need only make this determination if the proposed wellness facility would also meet other necessary LCP requirements, including the use limitation on placement of facilities in tsunami inundation areas. If the proposed wellness facility would not qualify under all necessary LCP criteria, including the tsunami inundation criteria referenced below, then the proposed facility can not be approved consistent with the certified LCP regardless of whether the proposed facility does or does not qualify as a sanitarium.

Consistency of proposed wellness center with Tsunami inundation criteria

Regarding whether the proposed wellness center can be sited in a tsunami inundation zone, County Regulation 6326.2, Tsunami Inundation Area Criteria, states: "The following criteria shall apply within all areas defined as Tsunami Inundation Hazard Areas:

> *(a) The following uses, structures, and development shall not be permitted: publicly owned buildings intended for human occupancy other than park and recreational facilities; schools, hospitals, nursing homes, or other buildings or development used primarily by children or physically or mentally infirm persons.*
>
> *(b) Residential structures and resort developments designed for transient or other residential use may be permitted under the following circumstances:*
>
> *1. The applicant submits a report prepared by a competent and recognized authority estimating the probable maximum wave height, wave force, run-up angle, and level of inundation in connection with the parcel or lot upon which the proposed development is to be located.*

> *2. No structure covered by this section shall be allowed within that portion of the lot or parcel where the projected wave height and force is fifty (50) percent or more of the projected maximum, unless: (a) the highest projected wave height above ground level at the location of the structure is less than six (6) feet, (b) no residential floor level is less than two (2) feet above that wave height, and (c) the structural support is sufficient to withstand the projected wave force.*
>
> *3. No structure covered by this section shall be allowed within that portion of the lot or parcel where the projected wave height and force is less than fifty (50) percent of the projected maximum unless the requirements of subsection b, 2), (a), and (c) are satisfied and the residential flood level is at least one (1) foot above the highest projected level of inundation.*
>
> *4. Permission under this subsection shall not be granted if the Planning Commission determines that sufficient data, upon which the report required by subsection 1) must be based, is unavailable and cannot feasibly be developed by the applicant. [Emphasis added.]*

The applicant states, and the County agreed, that application of Subsection (a) is a violation of the ADA, the Rehabilitation Act, and the Fair Housing Act; and, therefore, the applicant states, Subsection (b), which allows residential and resort developments designed for transient or other residential use if it meets certain conditions, should be followed as a reasonable accommodation.

In its action approving the proposed project, the County determined that there may be limitations on the enforceability of the restrictions described in subsection (a) as applied to facilities for the disabled. Further, the County found that anti-discrimination law requires that local regulation of land use include accommodations for the disabled. Accordingly, rather than applying Section 6326.2(a) to exclude the developmentally disabled, the County applied subsection (b) as the mechanism by which the safety of disabled individuals could be protected.

The Commission agrees that federal and state laws designed to prevent discrimination against the disabled preclude a local ordinance which would allow housing for some persons in the tsunami inundation zone but exclude the developmentally disabled. Therefore, in determining whether it is permissible to site the proposed Wellness Center in the Tsunami Inundation area, the Commission applies subsection (b), the same standards applicable to other residential structures to the project proposed by the applicant.

However, as discussed above in **Section 2** of the findings addressing Hazards, and in particular tsunami hazards, the project as currently proposed does not meet the standards applicable to other residential structures contained in section 6326.2 (b) of San Mateo County's Tsunami Inundation Area Criteria. Further, as previously discussed above, it does not meet other necessary requirements of the LCP. Therefore, the project as currently proposed is inconsistent with the applicable standards of the certified LCP and must be denied. However, the Commission's action does not constitute a final decision regarding the application of the LCP to

this development proposal. Denial of the permit application will not prevent the applicant from redesigning the proposed project and/or reapplying for a permit to develop the property when the applicant is prepared to supply the information necessary to support the permit application and demonstrate its consistency with the certified LCP. For example, regarding hazards, the applicant could conduct more detailed modeling which demonstrates that a proposed project is consistent with the tsunami inundation criteria contained in subsection (b) of Section 6326.2(a) of the certified LCP.

H. UNPERMITTED DEVELOPMENT

In 2003, Commission staff received a report that vegetation had been cleared from the project site. In 2005, it was alleged that additional vegetation was removed, including disking for what the applicant called fire protection. While no trees or riparian vegetation had been removed, it alleged that clear the vegetation removal was done within the 100-foot riparian buffer. Also in 2005, Commission staff was informed that there were three green water storage tanks plus what appeared to be a well on APN 047-311-060. The County subsequently issued a citation for removal of the tanks. In 2010, Commission staff received a report that there was unpermitted crossing through the creek and riparian areas of the two subject sites. These alleged violations are located in the County's jurisdiction and the County agreed to follow up on the allegation.

Although it is alleged that development has taken place prior to submission of this permit application, consideration of the application by the Commission has been based solely upon the policies of the certified LCP and the Chapter 3 policies of the Coastal Act. Commission review and action on this permit does not constitute a waiver of any legal action with regard to the alleged violations, nor does it constitute an implied statement of the Commission's position regarding the legality of any development undertaken on the subject site without a coastal development permit, or that all aspects of the violation have been fully resolved.

I. CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA)

Public Resources Code (CEQA) Section 21080(b)(5) and Sections 15270(a) and 15042 (CEQA Guidelines) of Title 14 of the California Code of Regulations (14 CCR) state in applicable parts:

> ***CEQA Guidelines (14 CCR) Section 15042. Authority to Disapprove Projects.*** *[Relevant Portion.] A public agency may disapprove a project if necessary in order to avoid one or more significant effects on the environment that would occur if the project were approved as proposed.*
>
> ***Public Resources Code (CEQA) Section 21080(b)(5). Division Application and Nonapplication.*** *…(b) This division does not apply to any of the following activities: …(5) Projects which a public agency rejects or disapproves.*
>
> ***Public Resources Code (CEQA) Section 21080.5(d)(2)(A).*** *Require that an activity will not be approved or adopted as proposed if there are feasible alternatives or feasible mitigation measures available which would substantially lessen any significant adverse effect which the activity may have on the environment.*

> ***CEQA Guidelines (14 CCR) Section 15270(a). Projects Which are Disapproved.*** *(a) CEQA does not apply to projects which a public agency rejects or disapproves.*

Section 13096 (14 CCR) requires that a specific finding be made in conjunction with coastal development permit applications about the consistency of the application with any applicable requirements of CEQA. This staff report has discussed the relevant coastal resource issues with the proposal. All above LCP conformity findings are incorporated herein in their entirety by reference. As detailed in the findings above, the proposed project would have significant adverse effects on the environment as that term is understood in a CEQA context.

Pursuant to CEQA Guidelines (14 CCR) Section 15042 "a public agency may disapprove a project if necessary in order to avoid one or more significant effects on the environment that would occur if the project were approved as proposed." Section 21080(b)(5) of the CEQA, as implemented by section 15270 of the CEQA Guidelines, provides that CEQA does not apply to projects which a public agency rejects or disapproves. Section 21080.5(d)(2)(A) of CEQA prohibits a proposed development from being approved if there are feasible alternatives or feasible mitigation measures available which would substantially lessen any significant adverse effect which the activity may have on the environment.

The Commission finds that denial, for the reasons stated in these findings, is necessary to avoid the significant effects on coastal resources that would occur if the project were approved as proposed and is necessary because there are feasible alternatives and mitigation measures available which would substantially lessen any significant adverse effect the project may have on the environment. Accordingly, the Commission's denial of this project represents an action to which CEQA, and all requirements contained therein that might otherwise apply to regulatory actions by the Commission, does not apply.