

**BUSINESS OF THE COUNCIL OF THE CITY OF HALF MOON BAY**

**AGENDA REPORT**

For meeting of: **March 16, 2021**

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**TO:** Honorable Mayor and City Council

**VIA:** Bob Nisbet, City Manager

**FROM:** Catherine Engberg, City Attorney

**TITLE: RESOLUTION OF NECESSITY – AUTHORIZING AN EMINENT DOMAIN ACTION TO ACQUIRE REAL PROPERTY OWNED BY THOMAS J. GEARING (SAN MATEO COUNTY APNS 056-096-240, 056-096-480, 056-127-030, 056-127-040, AND 056-128-090) AND DANIEL K. GEARING (SAN MATEO COUNTY APN 056-125-210)**

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**RECOMMENDATION**

1. Adopt by a 4/5 vote a resolution authorizing an eminent domain action to acquire the real property owned by Thomas J. Gearing (San Mateo County APNs 056-096-240, 056-096-480, 056-127-030, 056-127-040, and 056-128-090) and Daniel K. Gearing (San Mateo County APN 056-125-210) (collectively, Property) located in the West of Railroad area. Acquisition of the Property is required to implement the City's 1985 Local Coastal Land Use Plan (LUP), 1996 certified Local Coastal Program, and 2020 LUP Update by protecting significant habitat and scenic values, providing an area for green infrastructure to control drainage and manage hazards/erosion, managing retreat of the Coastal Trail, mitigating cumulative traffic impacts through its lot retirement program, and maintaining public access and recreational opportunities in the West of Railroad area (Project).
2. Authorize the City Attorney to deposit the amount of probable compensation in the amount of \$91,000 with the court.

**FISCAL IMPACT**

The City's appraisal valued the parcels identified for acquisition from \$8,000 to \$20,000, with a total value of \$91,000 for all six parcels. The amount of compensation will be determined in a court trial following the adoption of the Resolution of Necessity. Litigation expenses could reach up to \$300,000 if this matter proceeds to trial.

The City would make the deposit of probable compensation of \$91,000 necessary to

obtain immediate possession of the Property from its General Fund, but anticipates reimbursing the General Fund with traffic mitigation payments from the sponsor of the 63-unit Ailanto Pacific Ridge project (Lot Retirement Funds). The City will use the Lot Retirement Funds to retire lots with the potential for residential development in the West of Railroad area, thus reducing future traffic in the City.

## **BACKGROUND**

### **I. 1905 and 1909 Subdivision Maps**

The six Gearing parcels are shown on two subdivision maps recorded on December 4, 1905: the Ocean Boulevard Tract (Book 3 of Maps at Page 90), **Attachment (Att.) 2**, and the Map of Frank T. Brophy's Subdivision of the Miramonte Tract (Book 3 of Maps at Page 92), **Att. 3**. The County of San Mateo accepted the streets shown on the maps as dedicated to public use. These paper streets later became the streets of the City of Half Moon Bay by operation of law when the City incorporated in 1959.

Other portions of the West of Railroad area are shown on the Arleta Park and Additions subdivision map, recorded in 1909. **Att. 4**.

### **II. City's First General Plan and Land Use Plan**

#### **A. 1976 General Plan**

In 1976, the City Council approved amendments to its General Plan Land Use Element. See City Council Reso. 25-76, **Att. 5**. The Land Use Element considered the West of Railroad area to be part of the residential subdivision areas called Miramontes-Pilarcitos Park and Arleta Park West. General Plan Land Use Element Policy #2 (page 12) provides that undeveloped paper subdivisions (such as those in the West of Railroad area) should be converted to agricultural acreage or "properly replanned for other uses" to reduce hazards and promote preservation of open space and views of natural areas such as beaches, ocean, hillsides, and creeks. **Att. 5** at pp. 10, 12.

#### **B. California Coastal Act**

In 1976, the Legislature adopted the California Coastal Act. Pub. Res. Code §§ 30000 et seq. The Coastal Act requires every coastal city and county to maintain a Local Coastal Program (LCP) to implement Coastal Act policies for protection and preservation of properties in the jurisdiction located within the coastal zone. The City of Half Moon Bay lies entirely within the California coastal zone and is therefore subject to the requirement that it adopt an LCP governing all property in the City. Pub. Res. Code § 30103 (Definition of Coastal Zone).

The Coastal Act requires each local jurisdiction to draft and adopt an LCP and present the LCP to the Coastal Commission. If the Commission finds that the LCP complies with the Coastal Act, it

certifies the LCP. The Commission's certification of an LCP constitutes a delegation of authority to the local jurisdiction to issue coastal development permits consistent with the LCP.

An LCP must include a Land Use Plan (LUP) and an Implementation Plan (IP). The LUP specifies the allowable kinds, locations, and intensities of development in the jurisdiction's coastal zone, and the resource protection and development policies necessary to meet the requirements of the Coastal Act. Pub. Res. Code § 30108.5 (Definition of LUP). These policies include requirements to protect wetlands, riparian, and other sensitive coastal resources; protect and maximize public access to and along the shoreline; concentrate new development in existing developed areas and assure adequate public services for new growth; protect agricultural lands, scenic landscapes, and cultural resources; manage environmental hazards; and provide for certain priority coastal land uses, such as visitor-serving and coastal-dependent development. Pub. Res. Code §§ 30000-30013 (findings and purpose of California Coastal Act of 1976). The IP must include zoning, development standards, and permitting procedures consistent with and adequate to implement the LUP for any new development in the coastal zone. Pub. Res. Code § 30108.4 (Definition of Implementing Actions); §§ 30512-30513 (procedures for submitting LUP and IP to Coastal Commission for certification).

### **C. 1985 LUP**

In 1981, the City Council approved the City's first LUP for submittal to the Coastal Commission. See City Council Res. 14-81, **Att. 6**. In 1983, the Coastal Commission approved the LUP with modifications. In 1985, the City Council approved the Coastal Commission's modifications and re-submitted the LUP to the Commission. See City Council Reso. 26-85, **Att. 7** (attaching LUP). The Commission certified the LUP on September 24, 1985. See Letter dated October 8, 1985 from Peter Douglas, Executive Director, to Helen Bedesem, Mayor, Half Moon Bay City Council, **Att. 8**.

The Land Use Map in the City's 1985 LUP designates the West of Railroad Planned Development area (WRR PD area) as Regional Public Recreation. 1985 Land Use Plan Map, **Att. 9**. The 1985 LUP also designates the Arleta Park/Miramontes Terrace South, West of Railroad Avenue area as a Planned Development (PD) area. The LUP explains the purpose of the PD designation:

*The purpose of the Planned Development designation is to ensure well-planned development of large, undeveloped areas for residential use in accordance with concentration of development policies. It is the intent of this designation to allow for flexibility and innovative design of residential development, to preserve important resource values of particular sites, to ensure achievement of coastal access objectives, to eliminate poorly platted and unimproved subdivisions whose development would adversely affect coastal resources, and to encourage provision for low and moderate income housing needs when feasible. It is also the intent of the Planned Development designation to require clustering of structures to provide open space and recreation, both for residents and the public. In some cases, commercial development such as convenience stores or*

*visitor-serving facilities may be incorporated into the design of a Planned Development in order to reduce local traffic on coastal access roads or to meet visitor needs.*

**Att. 7**, 1985 LUP at 137.

Policy 9.3.6 of the LUP provides that the preferred alternative for the WRR PD area is public ownership, given Coastal Act priorities to conserve land adjacent to the waterfront and provide a buffer between residential and recreational use. **Att. 7**, 1985 LUP at 149. The 1985 LUP notes that development in the WRR PD area could result in conflicts between residential and recreational use, and that uncontrolled access to the beach and bluffs due to such development would create traffic congestion and environmental problems. **Att. 7**, 1985 LUP at 148.

The 1985 LUP also provides for residential uses in the WRR PD Area:

*In the event that State acquisition is not possible, limited residential development could be permitted under a complete re-planning and re-platting of the area. Such re-planning is required to deal with the unbuildable lots, to alter the mapped street system to minimize access conflicts and improve local circulation, to provide an adequate buffer between residential development and the public beach area, to preserve views along the bluff tops, to preserve the existing cypress stands, and to eliminate the possibility of streets ending at the State Beach property.*

**Att. 7**, 1985 LUP at 149. The Policy requires that prior to development of any property in the WRR PD area, the developer must prepare a specific plan for the entire WRR PD area that shows the location of roads and infrastructure, open space, public recreation, and commercial recreation. The specific plan shall be subject to CEQA, and must be approved by the City. **Att. 7**, 1985 LUP at 149. Because the WRR PD area lies within the “appeals jurisdiction”, any specific plan approved by the City Council may be appealed to the Coastal Commission. Pub. Res. Code § 30603.<sup>1</sup>

In 1992, the City Council approved an amendment to the LUP to incorporate voter-approved Measure A (growth control measure). City Council Reso. 82-92, **Att. 10**. The 1992 amendment did not change the policies of the 1985 LUP affecting the WRR PD area, including the policy

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<sup>1</sup> Specific geographic areas in the appeals jurisdiction include land between the sea and the first public road paralleling the sea or within 300 feet of the inland extent of any beach or the mean high tide line, whichever is the greater distance; lands within 100 feet of any wetland, estuary, or stream; and lands within 300 feet of the top of the seaward face of any coastal bluff. Pub. Res. Code § 30603. The WRR PD area is located between the sea and the first public road paralleling the sea (Railroad Avenue). In addition, portions of the WRR PD area located within 300 feet of the top of the seaward face of coastal bluffs.

requiring developers in the WRR PD area to develop their property under a specific plan for the entire WRR PD area, or Planned Developments in general.

In 1996, the Coastal Commission certified the City's IP to complement the LUP certified in 1985, providing the City with exclusive authority to issue Coastal Development Permits (CDPs) in the City, with the exception of public trust lands. **Att. 11.** The IP did not change the policies of the 1985 LUP affecting the WRR PD area, including the policy requiring developers in the WRR PD area to develop their property under a specific plan for the entire WRR PD area.

### **III. Gearing acquisitions and sales**

Thomas and Daniel Gearing acquired six parcels in the WRR PD area between 1993 and 2020, after the Coastal Commission's 1985 certification of the City's LUP designating the WRR area as a PD area and requiring that development of property in the WRR PD area proceed under a specific plan covering the entire WRR PD area.

On November 3, 1993, Thomas Gearing acquired APNs 056-127-030 and 056-127-040 via quitclaim deed "as a gift" from Christian Dana Kendrick. **Att. 12.** That same day, Gearing acquired APN 056-128-090 (plus APN 056-128-080 which he no longer owns) via quitclaim deed as a "gift" from Christian Dana Kendrick. **Att. 13.**

On May 20, 1994, Thomas Gearing acquired APN 056-096-480 from Angela Lucia. The Assessor's Office indicates a sales price of \$10,000. **Att. 14.**

On December 19, 2014, Thomas Gearing acquired APN 056-096-240 via deed in lieu of foreclosure from Francisco Troncao and Ana Troncao. The Deed indicates that the amount of unpaid debt together with interest and other costs was \$37,129. **Att. 15.**

On May 27, 2015, Thomas Gearing sold APN 064-041-130 to Sohila Zadran for \$4,500. **Att. 16.**

On October 21, 2020, Daniel Gearing acquired APN 056-125-210 via quit claim deed from Juanita Kendrick. **Att. 17.**

### **IV. City acquisition of railroad parcels; recording of CLT conservation easements**

In March 2003, the City acquired two 60-foot wide former Ocean Shore Railroad right-of-way (Railroad Corridor) parcels, APNs 056-096-580 and 056-096-640, from the Labuda family. In the same month, the City entered a purchase and sale agreement with the Pera family to acquire eight additional parcels located in the Railroad Corridor, APNs 056-125-110, 064-053-020, 064-073-020, 064-073-030, 064-192-070, 064-213-010, 064-313-030, and 064-313-040. See City Council Reso. 54-03, **Att. 18.** Title transferred to the City on or around August 14, 2003.

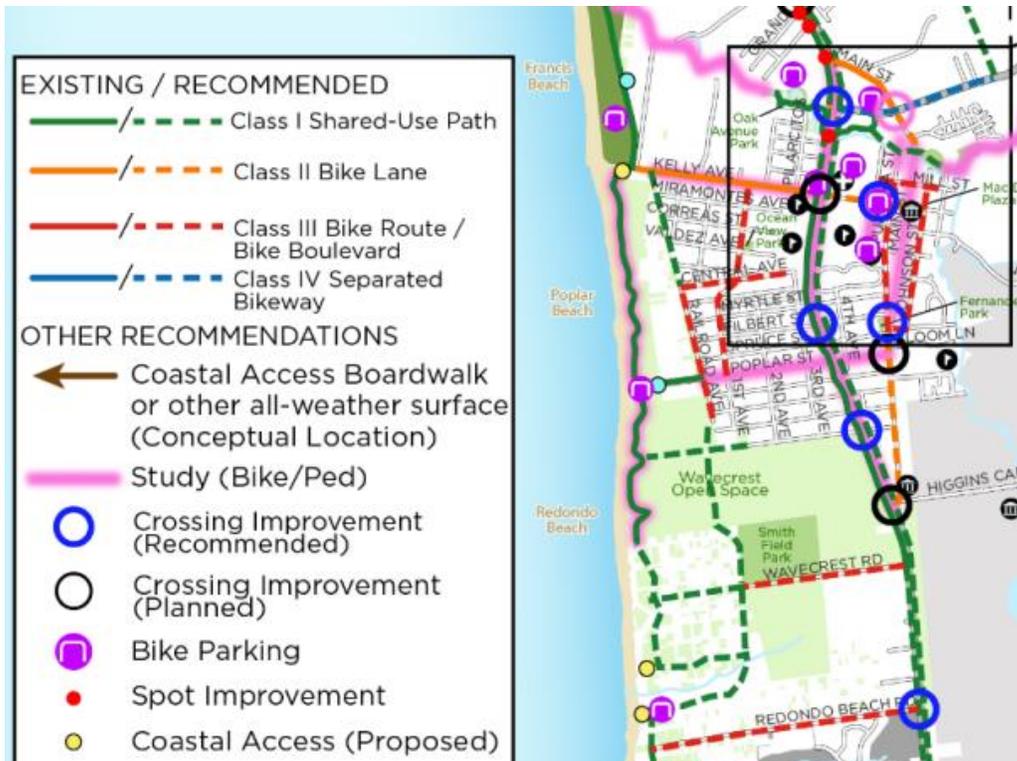
On February 3, 2004, the City and Half Moon Bay Open Space Trust (now Coastside Land Trust [Trust]) recorded Deeds of Conservation Easements in the Corridor in favor of the Trust for

APNs 056-096-580 and 056-096-640, extending from Valdez to Miramontes Streets (San Mateo County Recorder # 2004-018801), **Att. 19**, and for APNs 056-125-110, 064-053-020, 064-073-020, 064-073-030, 064-192-070, 064-213-010, 064-313-030, and 064-313-040, extending from Valdez to Seymour Streets (San Mateo County Recorder # 2004-018800), **Att. 20**. The Conservation Easements ran the full length of the Railroad Corridor between Kelly and Seymour Streets, with gaps between Central and Myrtle Streets and between Poplar and Metzgar Streets that had not been designated as Assessor's parcels, unlike most of the Railroad Corridor between Kelly and Seymour Streets. On December 1, 2005, the City and the Trust recorded a Deed of Conservation Easement for parcel APN 056-096-590 (San Mateo County Recorder # 2005-210758) located between Miramontes and Kelly Avenue. **Att. 21**.

Accordingly, since 2005, the Railroad Corridor has been subject to 60-foot wide conservation easements from Kelly Avenue on the north to Seymour Street on the south, with the two aforementioned gaps. The conservation easements recite the properties' conservation values, including their natural, scenic, and open space values. In furtherance of these values, the conservation easements restrict allowable uses to recreational uses including sightseeing, walking, jogging, dog walking, biking, and similar activities. The conservation easements prohibit "development" as defined in HMB Municipal Code section 18.20.020(c), unless consistent with the recreational uses permitted by the easements. Paving the area of the conservation easements for street purposes to access the WRR PD area, therefore, is not permitted by the easements. Lots developer with housing in the WRR PD area would have access to public streets only through the two gaps in the conservation easements.

#### **V. 2019 Bike and Pedestrian Master Plan**

At its September 17, 2019 regular meeting, the City Council adopted the Half Moon Bay Bicycle and Pedestrian Master Plan. **Att. 22**. The Plan was developed following a two-year process with input from the Bicycle Pedestrian Advisory Committee, the Planning Commission, and the community. The Plan recommends that the portions of the Railroad Corridor between Kelly and Central Avenues that are subject to the conservation easements be used for a new Class I Shared-Use trail. See **Att. 22**, Figure 3-8 and Table 3-4 (set forth below).



**Table 3-4: Class I Bikeway Recommendations**

Name	Cross Street A	Cross Street B	Mileage
Coastal Trail Extension	S end of Coastal Trail	Redondo Beach Rd	1.18
Coastal Trail to Wavecrest Rd Connection	Wavecrest Rd	Coastal Trail	0.20
Eastside Parallel Trail	Frenchmans Creek Rd	Miramontes Point Rd	3.78
Eastside Parallel Trail - North	Roosevelt Blvd	City limit	0.26
HMB High School Trail	Hwy 92	High School	0.32
Hwy 1/Naomi Patridge Gap Closure	Heskin Ave	Kelly Ave	0.26
Naomi Patridge Trail Extension - North	Ruisseau Francais Ave	City limit	0.84
Naomi Patridge Trail Extension - South	400 ft S of Wavecrest Rd	City limit	1.58
Pilarcitos Creek Trail	Naomi Patridge Trail	John L. Carter Memorial Park	0.25
Railroad Ave Trail	Kelly Ave	Central Ave	0.36
Railroad Ave Trail Extension	Grove St	Wavecrest Rd	0.54
Seymour St Coastal Trail Spur	Coastal Trail	Seymour St	0.32
Wavecrest Rd Coastal Trail Spur	Coastal Trail	Wavecrest Rd	0.29

Although only 0.36 miles long, this trail from Kelly Street to Central Street would provide a direct link between Francis State Beach and the Alsace Lorraine and Arleta Park neighborhoods, allowing pedestrians and bicyclists to avoid the heavily trafficked Kelly Avenue. See **Att. 22**, Figure 3-8 and Table 3-4 ; see also 2020 LUP Update at p. 5-18, **Att. 23**. The Master Plan also proposes a Railroad Avenue Trail extension from Grove Street in the Arleta Park neighborhood to Wavecrest Road. **Att. 22**, Figure 3-8 and Table 3-4. This 0.5-mile segment would provide

access to Smith Field (baseball and sports fields). The Master Plan provides planning level cost estimates for construction of the Kelly to Central Class 1 trail (\$540,000) and the Grove to Wavecrest Class 1 trail (\$810,000). **Att. 22** at App. D, p. D-2.

## **VI. 2020 Land Use Plan Update**

On October 20, 2020, the City Council approved an LUP Update, the culmination of a multi-year effort that commenced in 2013. See City Council Reso. 2020-94, **Att. 24** (attachments omitted). The LUP Update does not make any substantive change to the policies affecting the WRR PD area.

Consistent with the 1985 Plan, the 2020 LUP Update allows residential development in the WRR PD area, but prioritizes public acquisition. It provides:

*The West of Railroad PD has long been envisioned for public land acquisition with the intent of preserving the larger blufftop area for its significant habitat, coastal access and recreation, and scenic value. While the 1996 Land Use Plan [update of 1985 LUP] included Planned Development policies for West of Railroad, it prioritized public acquisition by the State Department of Park and Recreation to assure an adequate buffer between residential and recreational use in an area where the width of current public ownership is quite limited.*

*Because this area is located immediately east of the City blufftop lands, these lots should be considered for acquisition directly by the City, through the City's lot retirement program, or by land trusts. Public land acquisition would allow this land to be used for green infrastructure to address runoff and erosion concerns along this blufftop area. It would also allow space for managed retreat of the Coastal Trail as the bluffs erode to maintain public access and recreational opportunities.*

The LUP Update identifies significant site constraints affecting the WRR PD area and the adjacent Coastal Trail, including significant site erosion. The Plan explains:

*Concurrently with the Land Use Plan update, the City completed detailed erosion studies of the City-owned and maintained Poplar Beach Blufftop Park area immediately west of the West of Railroad PD. The analysis considered existing on-going erosion conditions as well as the effects of sea level rise. The estimated location of the bluff edge in 2050 and 2100 was mapped for a "business as usual" condition as well as a mitigated approach wherein drainage and public access improvements are implemented. In the unmitigated case, the bluff face is projected to recede as much as 200 feet by 2100 which would bring it into the West of Railroad PD. The mitigated case is about half that, or 100 feet. In either case, it should be assumed that less blufftop land will remain between the West of Railroad PD and the beach below over the course of the Land Use Plan horizon*

*to 2040; even less blufftop will remain in one hundred years (representing the anticipated life of residential development). As these blufftops support a heavily used section of the Coastal Trail and a variety of sensitive animal and plant species, this projected loss is significant.*

**Att. 23** at 2-55. Like the 1985 Land Use Plan, the 2020 LUP Update designates the WRR PD area as Regional Public Recreation and imposes PD land use designation policies on the area. See **Att. 23**, Figure 2-1(2020 Land Use Map). Moreover, like the 1985 Land Use Plan, the 2020 LUP Update requires preparation of a specific plan for the entire WRR PD area prior to development of any individual parcel. The LUP Update provides:

*[R]esidential development remains a potential use. Complete re-planning and re-platting of the area would be necessary to establish buildable lots, alter the mapped street system to minimize access conflicts and improve local circulation, avoid ESHA and conform to ESHA buffers, and preserve views along the blufftops within this significant visual resource area.*

**Att. 23** at 2-56. Unlike the 1985 Plan, however, the LUP Update allows limited new and existing uses without the requirement that the applicant prepare a specific plan.<sup>2</sup>

The 2020 Land Use Plan also places the entire Railroad Corridor, with the exception of two privately owned parcels near Poplar Street, in the Open Space for Conservation land use designation. See **Att. 23**, 2020 Land Use Map. The two private parcels were developed before the Commission certified the 1985 LUP. The designation of the Railroad Corridor as Open Space for Conservation requires that the Corridor remain in permanent conservation. Permitted uses under this land use designation are limited to public trails, education, passive open space

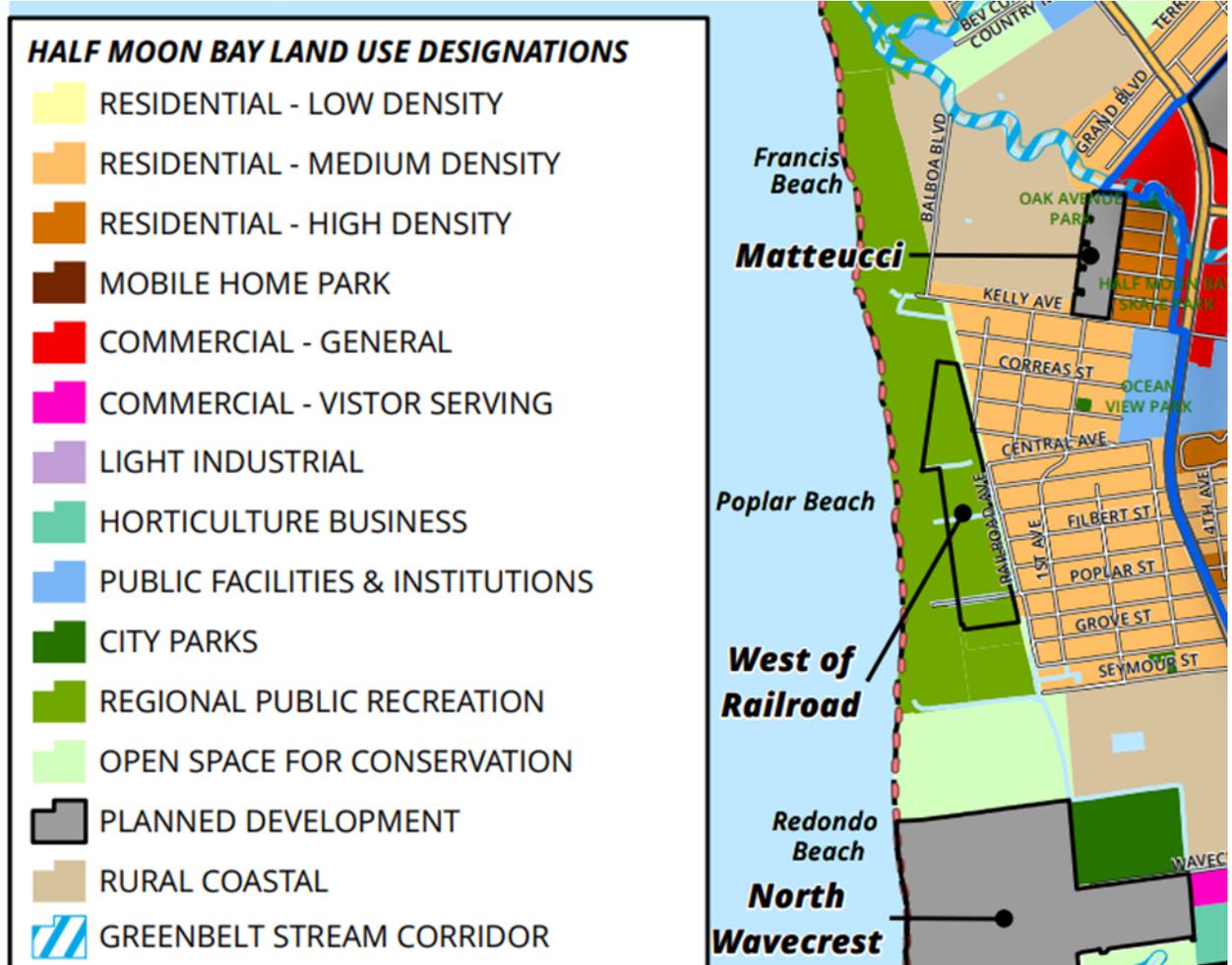
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<sup>2</sup> Policy 2-51 of the 2020 LUP Update allows limited existing and new uses allowed in advance of master plan certification for PD areas. These uses include:

- a. Existing conforming and non-conforming uses;
- b. Existing, new, and/or expanded agriculture and agriculture compatible uses consistent with the Rural Coastal land use designation including residential development consistent with the Workforce Housing Overlay land use designation, Chapter 4 requirements for agricultural accessory and supporting uses, and Chapter 6 requirements;
- c. Habitat restoration and conservation projects;
- d. Lateral and vertical coastal accessways;
- e. Multi-use trails including the California Coastal Trail which may be located within the 300-foot setback from the blufftop edge;
- f. Environmental hazard mitigation;
- g. Ancillary facilities to support resource dependent uses and coastal access including small parking areas, restrooms, wildlife viewing facilities, and similar amenities; and
- h. Accessory dwelling units with existing single-family homes consistent with State law.

Uses shall be sited so as to anticipate and not preclude future development of the PD pursuant to the policies herein. See **Att. 23** at 2-40 to -41.

amenities, green infrastructure, grazing for fuel modification, and habitat restoration. The 1985 LUP did not designate the Railroad Corridor separately from the paper lots and streets, but rather included it in the Residential – Medium Density land use designation that covers the neighborhood area immediately east. See **Att. 9. 2020** (Land Use Map showing LUP land use designations set forth below).



**VII. City’s Lot Retirement Program**

The City plans to purchase and retire lots in the WRR PD area using funds paid by the developer of the Pacific Ridge subdivision. On or about October 15, 2008, the Coastal Commission approved the Coastal Development Permit (CDP) application of Ailanto Properties Inc. (Ailanto) to construct 63 housing units on land adjacent to the eastern ends of Grandview Boulevard and Terrace Avenue, north of Highway 92 and east of Highway 1 in the City (Ailanto Project). The Coastal Commission approved the CDP subject to Ailanto’s payment of \$45,000 per new housing unit it constructed, for a total of \$2.835 million, to allow the City to purchase and retire other property in the City to mitigate the traffic impacts of the Ailanto Project (Lot Retirement Funds).

In 2008, the Coastal Commission, Ailanto, and the City entered into a settlement agreement that resolved litigation filed by Ailanto against the Commission and the City challenging conditions imposed on Ailanto's CDP. **Att. 25** (June 18, 2008 Coastal Commission Staff Report, Ex. 1). The settlement and the conditions of approval require Ailanto to pay the Lot Retirement Funds to the City.

The City's acquisition of land in the WRR PD area would both mitigate cumulative traffic impacts of the Pacific Ridge subdivision and implement coastal resource policies in the City's certified 1985 Land Use Plan, 1996 Local Coastal Program, and 2020 Land Use Plan Update. The City's 2020 Coastal Land Use Plan Update prioritizes acquisition/retirement of lots in the WRR PD area in light of its significant habitat, coastal access and recreation, fractured ownership, and scenic value. Public acquisition would also avoid hazards, including the LUP's projection that under business as usual conditions, the bluff face is projected to recede as much as 200 feet by 2100 which would bring it into the West of Railroad PD. **Att. 23** at 2-55. Public acquisition would allow space for managed retreat of the Coastal Trail as the bluffs erode.

The June 18, 2008 Coastal Commission staff report for the Ailanto Modified CDP describes the restrictions on the City's use the \$2.6 million of Lot Retirement Funds. Key provisions include:

**Ailanto Coastal Commission staff report (Att. 25 at pp. 28-29) that provides:**

*Rather than directly retire lots of record as was required by the Commission's original approval of the Ailanto project, under the terms of both the modified development proposal and settlement agreement, the applicant proposes to pay the City an in-lieu fee of \$2,835,000, or \$45,000 per lot, to acquire and retire development rights on existing legal parcels in the City. The \$45,000 fee, which will be paid in installments three, five and six years after approval of the permit, is roughly equal to the \$32,500 called for in the City's study, when adjusted for inflation. In addition, consistent with the settlement agreement the applicant proposes that any payments made after this timeline would be increased based on the median home price in San Mateo County. Therefore, the fee proposed by the applicant and reflected in the settlement agreement is adequate to mitigate the creation of the 63 new residential lots. In order to further implement this mitigation, the settlement requires the City to seek to amend its LCP to include a lot retirement program. Any expenditures of the in-lieu fee made prior to amending the LCP, require the written agreement of the Executive Director.*

**Ailanto Coastal Commission staff report (Att. 25 at Ex. 1 - Settlement Agreement) that provides:**

**5(D).** *The applicant shall pay to the City the total sum of \$2,835,000 as a cumulative traffic mitigation contribution fee ("the in-lieu CTMC fee"). The in-lieu CTMC fee represents the payment of \$45,000 per lot, for each of the sixty-three parcels on which homes will be built. The in-lieu CTMC fee shall be used by the*

*City for the purpose of acquiring and retiring development rights on existing legal parcels in the City. [...]*

**9. Formal Lot Retirement Program/Consultation Between City and**

**Commission:** *By this Settlement Agreement, the City commits to implementing the lot retirement program described in Paragraph 5(D). The City shall also seek to amend its local coastal program to include a lot retirement program. Until such an amendment occurs, the City shall obtain the written agreement of the Commission's Executive Director prior to expending any of the in-lieu CTMC fee specified herein, other than expenditures from the one-time \$150,000 initial payment.*

Accordingly, by using the Lot Retirement Funds to purchase and protect property in the WRR PD area, the City is not imposing any additional burden on the City's budget. The acquisition further aligns with 2020 LUP Lot Retirement policy 2-21 which provides that: "The City shall also seek to amend its local coastal program to include a lot retirement program." **Att. 23**, p. 2-22

**DISCUSSION**

The Resolution of Necessity for preservation from development and retirement of the Property (Project) provides that the public interest and necessity require the Project, the Project is planned and located in the manner that will be most compatible with the greatest public good and the least private injury, the Property sought to be acquired is necessary for the Project, and the offer required by Section 7267.2 of the Government Code has been made to the owner or owners of record of the Property.

The Property proposed for acquisition consists of San Mateo County APNs 056-096-240, 056-096-480, 056-127-030, 056-127-040, 056-128-090, and 056-125-210. The Property is located in the WR PD area, as shown in the map included in this staff report. **Att. 26**. Thomas J. Gearing and Daniel K. Gearing own the Property. The City requires the Property to implement the Project. The 1985 Local Coastal LUP, 1996 certified Local Coastal Program, and 2020 LUP Update encourage the City to buy property in the WRR PD area, such as the Property, to protect significant habitat and scenic values, provide an area for green infrastructure to control drainage and manage erosion, manage retreat of the Coastal Trail, mitigate cumulative traffic impacts through its lot retirement program, and maintain public access and recreational opportunities.

The Project is exempt from the requirements of the California Environmental Quality Act, Public Resources Code sections 21000 et seq. (CEQA), under CEQA Guidelines 14 CCR section 15301 (Existing Facilities) and section 15061(b)(3) (no possibility of effect on environment) because the City's acquisition of the Property will cause no change in the current physical condition of the Property as vacant land and will result in no change to the current use of the Property as vacant land.

The public interest and necessity require acquisition of the Property for the Project. The Property is required to: a) protect significant habitat and scenic values, provide an area for green infrastructure to control drainage and manage hazards/erosion, manage retreat of the Coastal Trail, and maintain public access and recreational opportunities in connection with implementing the City's 1985 LUP, its 1996 certified Local Coastal Program, and its 2020 LUP Update in the WRR area, and b) to mitigate cumulative traffic impacts through the City's lot retirement program.

The Project will be most compatible with the greatest public good because it will maintain public access and recreational opportunities by allowing for managed retreat of the Coastal Trail and protect significant habitat and scenic values by providing drainage control to manage erosion. To minimize the amount of private injury, the Project is being implemented through acquisition of vacant lots. These lots have been vacant since the City's incorporation in 1959 and no developer has submitted a specific plan to the City to develop residential uses in the WRR PD area.

On December 22, 2020, the City delivered to the Property owners a Notice of Decision to Appraise. **Att. 27**. On January 21, 2021 the City made a formal offer in the amount of \$91,000 (combined total) to purchase the Property for the fair market value as determined by the City's appraisal. Offer Letter to T. Gearing, **Att. 28**; Offer Letter to D. Gearing, **Att. 29**. The offer letters notified the Gearings that the City would reimburse them up to \$5,000 for the cost of their own appraisal.

On February 26, 2021, the City mailed a notice to the Gearings advising them that the City Council would hold a hearing at a regular City Council meeting on March 16, 2021 at 7:00 p.m. to consider adoption of a Resolution of Necessity to acquire the Property by eminent domain. Notice of Hearing to T. Gearing, **Att. 30**; Notice of Hearing to D. Gearing, **Att. 31**.

As of the date of this report, City staff has been unable to reach an agreement with Daniel or Thomas Gearing for acquisition of the Property.

The adoption of the Resolution of Necessity would start the eminent domain process to acquire the Property. The Property is described in **Attachment 32** and identified on **Attachment 26**, both attached to the Resolution. City staff recommends that the City Council adopt the Resolution of Necessity to start the formal eminent domain process at this time to allow staff to move forward in implementing the Project. Staff, however, will be open to discussing a resolution of this matter with the Gearings at any point during the eminent domain process.

The amount of compensation the City is required to pay to the Gearings to acquire the Property is not at issue in this proceeding. The amount of compensation will be determined in a court trial following the adoption of the Resolution of Necessity. However, to obtain immediate possession of the property and secure the date of value, the City Attorney seeks authorization to deposit the amount of probable compensation of \$91,000 with the court.

The City plans to acquire other parcels in the WRR PD area in addition to the Gearing Property. On March 9, 2020, the City sent Notices of Decision to Appraise to owners of five additional parcels in the WRR PD area (Additional Parcels). If the City acquires the Property, the Additional Parcels, and other property in the WR PD area, it will use Lot Retirement Funds until such funds are depleted.

**ATTACHMENTS:**

1. Resolution of Necessity
2. Ocean Boulevard Tract (Book 3 of Maps at Page 90)
3. Map of Frank T. Brophy's Subdivision of the Miramonte Tract (Book 3 of Maps at Page 92)
4. Amended Map of Arleta Park and Additions (Book 7 of Maps at Page 6)
5. City Council Reso. 25-76
6. City Council Res. 14-81
7. City Council Reso. 26-85 (attaching 1985 LUP)
8. October 8, 1985 Coastal Commission Letter Certifying LUP
9. 1985 Land Use Plan Map
10. City Council Reso. 82-92
11. Coastal Commission Letter Certifying IP
12. Quitclaim Deed from C. Kendrick to T. Gearing (APNs 056-127-030 and 056-127-040)
13. Quitclaim Deed from C. Kendrick to T. Gearing (APN 056-128-090)
14. Deed from A. Lucia to T. Gearing
15. Deed in Lieu of Foreclosure from F. and A. Troncao to T. Gearing
16. Grant Deed to APN 064-041-130 (Gearing to Zadran for \$4,500)
17. Quitclaim Deed from J. Kendrick to D. Gearing
18. City Council Reso. 54-03
19. Deed of Conservation Easement (San Mateo County Recorder # 2004-018801)
20. Deed of Conservation Easement (San Mateo County Recorder # 2004-018800)
21. Deed of Conservation Easement (San Mateo County Recorder # 2005-210758)
22. Half Moon Bay Bicycle and Pedestrian Master Plan
23. 2020 LUP Update – available at [www.PlanHMB.com](http://www.PlanHMB.com)
24. City Council Reso. 2020-94
25. June 18, 2008 Coastal Commission Staff Report
26. Diagram of Property
27. Notice of Decision to Appraise
28. January 21, 2021 Offer Letter to T. Gearing
29. January 21, 2021 Offer Letter to D. Gearing
30. February 26, 2021 Notice of Hearing to T. Gearing
31. February 26, 2021 Notice of Hearing to D. Gearing
32. Description of Property

***All attachments (bookmarked PDF) are available for viewing at [this link](#).***