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Comments on the Draft Environmental Impact Report for Mariner's Cove

1) The RMH dwelling density fails to meet RM requirements of the General Plan and Local Coastal Program (LCP)

The Draft Environmental Impact Report (DEIR [page 1-1]) states that the project site comprises 13.3 gross acres; 9.1 acres of this parcel cannot be developed because of its proximity to wetlands in the ecological reserve. The remaining developable portion of the project site is 4.2 acres. The proposed project includes construction of 40 condominiums clustered in 2 rows of buildings each with 2 to 6 units per building. While the applicant states that the density of the project would be 4.1 units per acre, a more straightforward calculation (*i.e.*, 40/4.2) suggests a higher density of 9.5 dwelling units/developable acre. The DEIR (page 3-19) states that project site has a General Plan designation of “Residential Medium Density” (RM, 4 – 8 dwelling units/acre). While in agreement with the applicant’s initial claim of 4.1 units/acre, the applicant then states in apparent contradiction that clustering of 40 condominiums on 4.2 acres would require a zone change from RM to Residential Medium-High (RMH, 8 – 14 dwelling units per acre) density. (DEIR figure 3-12 page 3-20)

Rebuttal:

The applicant proposes to build 40 condominiums on 4.2 developable acres at a density of 9.5 dwelling units/developable acre. While this RMH density contradicts the General Plan assignment of RM (4 – 8 unit/acre), we suggest that a density assignment of RM, while possibly well-suited in a Conservation Area settings, will be inappropriate and destructive for nearby wetlands habitat used by migratory and endangered bird species.

Statement from the AHL LCP that supports our concern:

- The Council may allow up to the maximum General Plan density only if - the higher density will not adversely impact the surrounding area (AHL LCP page 13).

2) The wetlands boundaries are inaccurately drawn.

DEIR (page 1-3, special condition #10) states that prior to filing a coastal development permit application for future development within Planning Area “A”, an exact delineation of existing wetlands shall be required. DEIR figure 1-3 (page 1-6) admits that wetlands may exist outside the wetlands preserve shown on this map, and within the residential planning areas. The exact location of all wetlands shall be delineated as part of the coastal development permit process prior to development approval.

Rebuttal:

Acknowledgement that wetlands may exist outside the buffer strip and within the residential planning area indicates that careful reassessment of wetlands boundaries is needed. In addition, the applicant states that they cannot meet the HMP requirements for a 100-foot minimum buffer strip between wetlands and development (DEIR page 2-2; page 5.1 -12). We recommend that a minimum buffer strip of 100 feet, while possibly adequate in a Conservation Area set aside for human use, will be insufficient to protect adjacent threatened and environmentally-sensitive wildlife habitats from significant impact and irreparable damage.

Statement from the AHL LCP that supports our concern:

- A buffer strip of at least 100 feet in width shall be maintained in a natural condition around the perimeter of all delineated wetlands... The width of the buffer may be increased as determined on a case-by-case basis, in consultation with the State Department of Fish and Game... In no case shall a buffer of less than 100 feet in width be permitted. (AHL LCP page 24).

Statements from the MHCP on Estuarine Conditions support our concern:

- For land uses adjacent to the preserve (AHL), do not allow land uses within 200 feet of estuarine areas that would contribute to degraded water quality, changes in surface water or ground water hydrology, or increased runoff, erosion, and sedimentation. (Appendix E page E-1). The following activities shall be strictly regulated or prohibited (within 200 feet of preserve areas:
 - Activities that would contribute pesticides, fertilizers, oil, or other pollutants
 - Use of chemical pesticides for mosquito control (rely on biological agents)
 - Human access during the (bird) breeding season

3) The applicant proposes grading, overexcavation and recompaction within wetland areas.

Table 2-1 page 2-14 states that overexcavation and recompaction of surface soils, in conjunction with placement of design fills, on the project site is needed because liquefaction potential has been identified in the upper 20 feet. In addition, groundwater is present approximately three to four feet below existing ground surface in the lagoon lowland on the southern portion of the project site.

Rebuttal:

The application describes failure to meet even the minimum protection of the adjacent wetlands. Since wetland habitat extends into the proposed development areas (DEIR figure 1-3 page 1-6), no development should be allowed in these areas. Statements from the AHL LCP that supports our concern:

- The permanent protection of the State's natural and scenic resources is a paramount concern to present and future residences of the State and nation" (AHL LCP page 12).
- Environmentally sensitive habitat areas shall be protected against any significant disruption of habitat values, and only uses dependent on such resources shall be allowed within such areas (AHL LCP page 22)

4) The applicant fails to establish a 100-foot buffer surrounding the development boundary

The DEIR (page 1-3, special condition #10) states that a 100-foot minimum buffer strip must surround the delineated wetlands. In addition, a buffer strip of at least 100-feet in width shall be maintained in a natural condition around the perimeter of all delineated wetlands. Examination

of the Key Map (DEIR figure 5.5-2 page 5.5-9) illustrates a failure to meet this minimum requirement (see areas near “proposed filtration swale”).

Rebuttal:

Statement from the AHL LCP supports our concern:

- A 100-foot buffer width shall be measured from the edge of preserved habitat nearest the development to the closest point of development (AHL LCP page 31).

Statements from the MHCP on Estuarine Conditions also support our concern:

- For land uses adjacent to the preserve (AHL), do not allow land uses within 200 feet of estuarine areas that would contribute to degraded water quality, changes in surface water or ground water hydrology, or increased runoff, erosion, and sedimentation. (Appendix E page E-1)

5) The applicant fails to provide safeguards that restrict noise levels above 60dB.

- The MHCP on Estuarine Conditions restricts activities that create noise levels greater than 60dB (Appendix E page E-2).

. How loud is 60dB? Listed below are common examples of different noise levels that might be expected to arise in housing developments¹:

| dB | Activity |
|----|---|
| 90 | Lawnmower, loud home stereo |
| 80 | Moderate home stereo, ringing telephone |
| 75 | Average city street |
| 70 | Freeway traffic, TV audio |
| 60 | Normal conversation |
| 50 | Large office background noise |
| 40 | Quiet office or residential area |

If this housing development is approved, there will be no reasonable way to achieve a noise limit of 60dB for daily activities of residents or visitors.

6) The application contradicts LCP requirement that trails within the 100-foot wetlands buffer strip must be placed within the first 15 feet closest to the developed area.

Examination of the Key Map (DEIR figure 5.5-2 page 5.5-9) illustrates a failure to appropriately locate the trail within the minimum 100-foot buffer strip. Statement from the AHL LCP that supports our concern:

- No development, grading or alterations, including clearing of vegetation, shall occur in the buffer area, except for b) recreational trails and public pathways within the first 15 feet of the buffer closest to the development, provided that construction of the trail or pathway and its proposed use is consistent with the preservation goals for the adjacent habitat, and that appropriate measures are taken for physical separation from sensitive areas. (AHL LCP page 32; figure 5.5-2 page 5.5-9)

¹ <http://www.geocities.com/rf-man/db.html>

7) The applicant proposes grading within the required minimum 100-foot wetlands buffer strip.

The DEIR (page 2-2) states that 79,063 cubic yards of earth would be cut and removed from the site. The project site would then be filled with approximately 20,220 cubic yards of earth, resulting in the need to export 58,843 cubic yards of earth material. A small area of isolated grading into the 100-foot jurisdictional wetlands buffer in the southwest corner would be required in order to eliminate the mound of stockpiled dirt and restore the terrain to natural.

Rebuttal:

The application describes failure to meet even the minimum requirements for wetlands. Rebuttal statement from the AHL LCP stated on page 3 issue 6 supports our concern.

8) The project fails to meet local, state and federal requirements for protecting CA Gnatcatchers and Coastal Sage Scrub

There are 3 known pairs of CA Gnatcatchers (Federally Threatened) located on or near the development site (Table 2-1 page 2-6 section 5.1; figure 5-2.3 page 5.2-13). Coastal Sage Scrub, the protected habitat for CA Gnatcatchers, is pervasive throughout the planned development area (Table 5-2.1 page 5.2-3). The applicant states that they cannot meet AHL LCP requirements for preserving 75% of the CA Gnatcatchers and 67% of the Coastal Sage Scrub onsite (DEIR page 5.1-12) and, according, proposes irrelevant off-site mitigation at Kelly Ranch Village “C”.

Rebuttal:

Adverse effects on more than 75% of onsite CA Gnatcatchers will impact all Gnatcatcher pairs in the area. We request that the Planning Commission not allow off-site mitigation which will, in effect, fragment portions of the adjacent ecological reserve and diminish its utility as habitat for migratory birds and other endangered species. Instead, we request that you rule in favor of preserving all CA Gnatcatchers located on-site and Coastal Sage Scrub in their established habitat.

Statements from the AHL LCP that support our concern:

- Section 30240(a) of the Coastal Act establishes a specific mandate for resource preservation. It states, in part, “(e)nvironmentally sensitive habitat areas shall be protected against any significant disruption of habitat values”...” Environmentally sensitive habitat areas (ESHA) is defined in Section 30107.5 of the Coastal Act as “any area in which plant or animal life or their habitats are either rare or especially valuable because of their special nature or role in an ecosystem and which could be easily disturbed or degraded by human activities and developments.” (AHL LCP page 27).
- Properties containing Coastal Sage Scrub shall conserve a minimum 67% of the Coastal Sage Scrub and 75% of the Gnatcatchers onsite. (AHL LCP page 28)
- If impacts are allowed consistent with Policy 3-13-1.7, mitigation shall be provided at a ratio of 3:1 for riparian impacts and 4:1 for saltwater or freshwater wetland or marsh impacts. (AHL LCP page 29)

9) The project will have a significant and unavoidable negative impact on the adjacent Ecological Reserve

DEIR (section 2.0 page 2-2) states that the City of Carlsbad has determined that the proposed project may have a significant effect on the environment. In contradiction, the applicant and City of Carlsbad conclude (DEIR section 2.0 page 2-3) that the project has no significant unavoidable impacts.

Rebuttal:

We suggest that all of the discrepancies sited in this document will have unavoidable, significant, detrimental impact on the surround wetlands. The applicant's proposal to mitigate willful damage to the adjacent wetlands by offering to preserve off-site land at Kelly Ranch Village "C" is an irrelevant solution and inadequate compromise (Table 2-1 page 2-7). The summary effects of noise, pollution and concentrated areas of human activities will negatively impact migratory birds and other priority (*i.e.*, threatened or endangered) bird species (California Brown Pelican, Light-Footed Clapper Rail, Western Snowy Plover and Belding's Sparrow) associated with open water, estuarine and marsh habitats in our coastal lagoon (MHCP EIS/EIR page 3-32).

Statements from the AHL LCP that also support our concern:

- The permanent protection of the State's natural and scenic resources is a **paramount** concern to present and future residences of the State and nation (AHL LCP page 12).
- Development in areas adjacent to environmentally sensitive habitat areas and parks and recreation areas shall be sited and designed to prevent impacts which would significantly degrade such areas, and shall be compatible with the continuance of such habitat areas. (AHL LCP page 22).

10) The project will disturb paleontological and archeological resources.

The DEIR (page 4-1) describes how the project site is underlain with terrace deposits of Pleistocene-aged Bay Point Formations². At further depths, the Bay Point Formations was found to overlies terrace deposits of the Eocene-aged Santiago Formation³. Also found within the project area are Native American cultural resources that should remain undisturbed.

² The Pleistocene epoch occurred over 200,000 years ago during the time of the Ice Ages and first appearance of humans. Bay Point Formation refers to a geological unit containing primarily mollusks and some vertebrates (e.g., sharks, rays, bony fish).

³ The Eocene epoch occurred 35 to 57 million years ago during the time when modern mammals arose and dispersed across the world. Santiago Formation refers to a sandstone formation containing petrified wood of avocado, other trees, and terrestrial mammals.

CONCLUSIONS

The Draft EIR for Mariner's Cove does not meet minimum requirements of the AHL Portion of the HMP, the General Plan, and the MHCP. This non-compliance indicates to us the inherent difficulty and conflict with building a high density, planned community adjacent to an ecological reserve. The mission of the Agua Hedionda Lagoon Foundation is to preserve the lagoon and wetlands and, whenever possible, promote balanced use of the lagoon for recreation and business uses. We conclude that both Development and Reduced Development Plans are inconsistent with the overall intent of protecting our wetland species and habitat. For this reason, we recommend that the Planning Committee reject both Development Plans and approve the No Development/Open Space rezoning alternative.

Thank you for your consideration of our comments.

Sincerely,

William Kloetzer
On Behalf of the Agua Hedionda Lagoon Foundation

cc. AHLF Subcommittee Members (Al Cerda, David Danville, Sarah Huber, Diane Richards), Eric Munoz (AHLF president), Warren Wong (CDFG), Meleah Ashford (AHWMP), David Grubb (Sierra Club), Diane Nygaard (Preserve Calavera)