

CALIFORNIA COASTAL COMMISSION

CENTRAL COAST DISTRICT OFFICE
725 FRONT STREET, SUITE 300
SANTA CRUZ, CA 95060
(831) 427-4863

Th13a



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report addendum posted on
Tuesday, March 5.

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Staff: MWatson
Staff report prepared: 02/14/2008
Hearing date: 03/06/2008

APPEAL STAFF REPORT

CDP APPLICATION DE NOVO HEARING

Appeal numberA-3-MRB-06-064, Black Hill Villas

Applicant.....Wayne Colmer

AppellantsCommissioners Meg Caldwell and Mary Shallenberger; Roger Ewing and Ray McKelligott

Local governmentCity of Morro Bay

Local decisionApproved with conditions by the Morro Bay City Council on November 13, 2006 (Coastal Development (CDP) Permit Number CP0-110).

Project location485 and 495 South Bay Boulevard, between South Bay Boulevard and Quintana Road, the Black Hill Natural Area portion of Morro Bay State Park, and the Blue Heron Mobile Home Park, and adjacent to the Chorro Flats Restoration Area, just over a mile inland from the shoreline in Morro Bay, San Luis Obispo County (APN 066-371-003).

Project descriptionSubdivision of two parcels (totaling 3.17 acres) into 17 residential parcels and one common area parcel; removal of two existing residential structures; grading and site preparation for new residential sites and new access roads; construction of roads, utility infrastructure, and 17 residential units.

File documents.....City of Morro Bay CDP File Number CP0-110; supplemental materials submitted by the Applicant dated April 6, 2007 and December 20, 2007; and City of Morro Bay certified Local Coastal Program (LCP).

Staff recommendation ...Approve with Conditions

Summary of staff recommendation: The proposed project was originally approved by the City of Morro Bay on November 13, 2006, and the City's approval was subsequently appealed to the Coastal Commission. On November 16, 2007, the Commission found a substantial issue was raised with respect to the proposed project's consistency with the City of Morro Bay LCP and took jurisdiction over the CDP application; the Applicant exercised his right to postpone the de novo hearing on the CDP application at that time. Thus, this staff report and hearing are the culmination of that appeal process, and represent the Commission's CDP application review of the proposed project.



California Coastal Commission
March 6, 2008 Meeting in Carmel

Staff: Mike Watson Approved by:
Th13a-3-2008

The Applicant proposes to subdivide two existing parcels into 18 lots: 17 residential lots ranging from 3,000 square feet to slightly more than 6,100 square feet in size, and one common area parcel approximately 51,000 square feet in size (to accommodate an access roadway, and also covering a portion of a non-developable area of the site). The Applicant further proposes to develop each residential lot with a residential unit: fifteen detached two-story single family residences (with two car garages) of either 1,704 square feet or 1,895 square feet in size, and two townhouse units each consisting of three bedrooms, two baths, and 1,150 square feet (and that meet the County's standards for affordable units). The proposed project also involves grubbing and grading of the majority of the site, including re-contouring the upper slopes of an intermittent stream and drainage course that traverses the northern edge of the property.

The proposed project raises issues with respect to development within and adjacent to environmentally sensitive habitat areas (ESHAs). The proposed project site includes an unnamed intermittent stream (a tributary to Chorro Creek) and riparian corridor that extends from the northern flank of the Black Hill Natural Area, providing an important link and wildlife corridor between the Black Hill Natural Area and the Morro Bay Estuary. The intermittent stream and associated riparian habitat on the site are ESHA per the LCP. The LCP requires a minimum 100-foot development setback from this ESHA. The project includes subdivision in ESHA; development directly adjacent to the ESHA/stream (slope alteration, grading, and toe protection along the active channel); and residential development within 65 feet of this ESHA area. In addition, some trees have already been removed in this area within the past several years (and without coastal permits). Thus, the proposed project is inconsistent with the LCP's ESHA policies.

The LCP also protects other coastal resources and habitats that are not considered ESHA. Specifically, the LCP requires natural features and vegetation to be preserved to the maximum extent feasible, and protects such coastal resources from significant adverse effects. The site includes a grove of trees (cypress, eucalyptus, pine) that provide habitat for nesting raptors. This raptor nesting area does not meet the ESHA threshold in this case, but it is still protected by the LCP, including the requirement that it be preserved to the maximum extent feasible. The project includes removal of the raptor grove and elimination of this grove as raptor habitat. Thus, the proposed project is inconsistent with the LCP's coastal resource protection policies.

The LCP requires new development adjacent to State Park and recreation lands to be adequately set back to preserve the continuity of the park and to avoid degradation of said park lands. The site is located immediately adjacent to the Black Hill Natural Area, a 300-acre natural preservation area that is part of Morro Bay State Park. Black Hill Natural Area is mostly comprised of coastal sage scrub and maritime chaparral communities that are ESHA per the LCP, and includes Black Hill itself, which is also categorically ESHA per the LCP. The proposed project includes residential structures within five feet of the Black Hill Natural Area. Such siting raises questions with respect to fire safety and defensible space requirements. State fire rules require a 100-foot buffer, but the state defers to local rules in the City of Morro Bay. City fire rules at the time of project approval required a minimum 30-foot buffer, although these rules are not part of the LCP. State Parks requires 40 feet of defensible space in order to protect State Park land from inappropriate fire buffer manipulation. The trend over time with such rules has been moving towards larger and larger buffers/defensible space requirements, and there is little to



indicate that this trend will change in the future.

Given current (and potential future) fire safety standards, including those currently necessitating vegetation removal and reduced fuel zones, placing structures within 5 feet of the Black Hill Natural Area would be expected to lead to fuel modification within the State Park preserve that would degrade this area inconsistent with the LCP. This is the case even with the fire safety measures that are part of the project (sprinklers, fire resistant construction, fire hydrants, etc.). The proposed limited buffer (down to 5 feet) is inadequate to protect the Black Hill Natural Area as required by the LCP, and thus the proposed project is inconsistent with the LCP's hazard avoidance policies, and the other LCP siting and design policies protecting this natural resource.

The LCP requires that development be sited and designed to protect public views "as a resource of public importance" and to be visually compatible and integrated with its surroundings. The LCP specifically designates the Black Hill area as a public viewpoint of significant importance. The project proposes construction of 17 two-story residential units in an LCP designated visually significant and scenic location that is visible from State Highway 1, South Bay Boulevard, and Morro Bay State Park. The proposed residential development is out of character with surrounding environment, and will block and degrade Highway One views towards the Black Hill Natural Area and the Morro Bay Estuary. Specifically, the upper stories of the proposed residences would extend above existing vegetation and existing structural development and into the view of Black Hill as seen from northbound Highway One (views of the development would be blocked by natural topography when headed southbound). Thus, the proposed project is inconsistent with the LCP's public viewshed policies.

In an effort to address these LCP inconsistencies, the Applicant has recently indicated that he would be willing to pursue a modified project that would pull some development out of the required stream buffer; would mostly avoid the raptor nesting trees; would set residential structures 40 feet from the Black Hill Natural Area; would include some riparian enhancement; and would include tree planting to help screen the residences from Highway 1 views. Staff appreciates the Applicant's overtures in this respect, and believes that certain components of the Applicant's proposal could resolve LCP consistency issues (i.e., avoidance of the raptor trees and the application of the 40-foot fire safety buffer). However, even a project modified in this way would not be LCP consistent because it still contemplates development in the required ESHA buffer; it still allows some raptor nesting trees to be removed; it still includes development intruding in the viewshed (and even if tree screening was effective, such screening wouldn't be expected to provide upper canopy screening of second story elements for many, many years); and the restoration proposed would not adequately restore the natural functions of the stream and drainage course to the degree required by the LCP. The Applicant's proposal does, however, provide a basis from which to develop project modifications that can result in an approvable and LCP consistent project.

Specifically, an approvable project includes the Applicant's proposals for a revised 40-foot fire safety buffer and avoidance of most of the raptor habitat, and also includes avoidance of the rest of the raptor habitat, and meeting the 100-foot ESHA setback to the maximum extent feasible. On the later point, given the nature of the resources and access to the site, access to the developable area would still need to



occur within the 100 foot ESHA/stream buffer (the property would be landlocked otherwise). This can be allowed, per the LCP, as it allows for the LCP designated use to be accommodated, provided the incursion area is minimized and mitigations accompany such a buffer incursion. In this case, mitigation can appropriately be achieved on site through expanding on the Applicant's proposal to result in enhancement to the ESHA/stream area and its buffer (also correcting for past vegetation removal in this area). In terms of the public viewshed, in order to avoid new incursion into it, development must be limited to single story (i.e., 14 feet in height). With such project modifications and modifications that build on the Applicant's most recent proposals as a foundation, the Applicant can develop the site consistent with LCP resource protection requirements. Although the resultant developable area is smaller than the Applicant's proposed project and slightly smaller than the Applicant's most recent proposal, it meets the LCP's requirements at the same time as allowing for a reasonable development in light of the significant constraints that apply to this property.

Thus, **staff recommends that the Commission approve the project with conditions** to ensure that the project protects coastal resources consistent with the requirements of the certified LCP. The special conditions will bring the proposed project into conformance with the applicable LCP provisions, including conditions that:

- Require a minimum development setback of 100 feet for all components of the proposed development including residences, roadway, driveways, sidewalks, and storm water infrastructure, as measured from the top of the ESHA/stream bank, except for the minimum area necessary to provide usable site access;
- Require avoidance of the raptor grove out to the drip line of its associated trees;
- Require a 40-foot structural setback from the Black Hill Natural Area, within which development not requiring fire buffering could be sited (such as road access, driveways, front yard streetscape, other paved areas, etc.);
- Require restoration of the ESHA/stream and its buffer area as compensatory mitigation for previously removed vegetation and for encroachment of the roadway into the required 100-foot ESHA setback;
- Limit construction of residences to 14 feet in height from natural site grade.
- Require all site drainage to be appropriately filtered and treated to remove typical runoff pollutants prior to its use for on-site irrigation and/or discharge on or off-site;
- Require retention of trees, and planting of trees and other vegetation, to provide screening and transition between on and offsite areas;
- Require removal of non-native and invasive vegetation, and measures to protect against reintroduction on the subject site;



- Require that lighting be minimized to prevent illumination of habitat areas and to protect views of the night sky;
- Require an archeological monitor to be on site during all ground disturbing activities, including provision for a pre-project survey that includes participation by qualified local Native Americans, to ensure that cultural resources are not disturbed;
- Require construction BMPs designed to protect on-site resource areas, water quality, and sensitive coastal resources (including BMPs to address construction impacts; staging of equipment and materials; containing sediments and runoff; establishing grading parameters);
- Require the Applicant and all successors in interest to assume all risks for development due to the location of the project adjacent to the Black Hill Natural Area and potential fires; and
- Require recordation of a deed restriction that binds the Applicant and all successors in interest, including subsequent residential landowners, to the terms and conditions of this permit.

As so conditioned, staff recommends approval of the coastal development permit.

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1. Staff Recommendation on Coastal Development Permit

Staff recommends that the Commission, after public hearing **approve** a coastal development permit with conditions for the proposed development.

Motion. I move that the Commission approve Coastal Development Permit Number A-3-MRB-06-064 pursuant to the staff recommendation.

Staff Recommendation Of Approval. Staff recommends a **YES** vote. Passage of this motion will result in approval of the permit as conditioned and adoption of the following resolution and findings. The motion passes only by affirmative vote of a majority of the Commissioners present.

Resolution To Approve The Permit. The Commission hereby approves a coastal development permit for the proposed development and adopts the findings set forth below on grounds that the development as conditioned will be in conformity with the policies of the certified City of Morro Bay Local Coastal Program. Approval of the permit complies with the California Environmental Quality Act because either 1) feasible mitigation measures and/or alternatives have been incorporated to substantially lessen any significant adverse effects of the development on the environment, or 2) there are no further feasible mitigation measures or alternatives that would substantially lessen any significant adverse impacts of the development on the environment.

2. Conditions of Approval



A. Standard Conditions

1. **Notice of Receipt and Acknowledgment.** The permit is not valid and development shall not commence until a copy of the permit, signed by the Permittee or authorized agent, acknowledging receipt of the permit and acceptance of the terms and conditions, is returned to the Commission office.
2. **Expiration.** If development has not commenced, the permit will expire two years from the date on which the Commission voted on the application. Development shall be pursued in a diligent manner and completed in a reasonable period of time. Application for extension of the permit must be made prior to the expiration date.
3. **Interpretation.** Any questions of intent or interpretation of any condition will be resolved by the Executive Director or the Commission.
4. **Assignment.** The permit may be assigned to any qualified person, provided assignee files with the Commission an affidavit accepting all terms and conditions of the permit.
5. **Terms and Conditions Run with the Land.** These terms and conditions shall be perpetual, and it is the intention of the Commission and the Permittee to bind all future owners and possessors of the subject property to the terms and conditions.

B. Special Conditions

1. **Development Limitations.**

- (a) **ESHA/Stream Habitat Area and Buffer.** No development, as defined by LCP Section 17.12.199, shall occur within the ESHA/Stream Habitat Area and Buffer (see Exhibit 6) except for: (1) subdivision necessary to create a single parcel consisting of the ESHA/Stream Habitat Area and Buffer area; (2) habitat restoration, enhancement, and management consistent with this permit (see special condition 3); and (3) the minimum amount of road access development necessary to provide ingress/egress to the Development Area (see Exhibit 6) provided such road access is located as far south as possible, and is no wider than 28 feet if it includes a sidewalk and no wider than 24 feet if it does not.
- (b) **Raptor Habitat Area.** No development, as defined by LCP Section 17.12.199 shall occur within the Raptor Habitat Area (see Exhibit 6), except for: (1) subdivision necessary to create a single parcel consisting of the Raptor Habitat Area; and (2) raptor habitat restoration, enhancement, and management that has been approved as an amendment to this coastal development permit.
- (c) **Black Hill Natural Area Buffer.** Development within the Black Hill Natural Area Buffer (see Exhibit 6) shall be limited to roads, lawns, landscaping, fences, and residentially-related uses and development of a similar nature that do not themselves require a defensible fire safety zone. Development that requires a defensible fire safety zone, including but not limited to single family dwellings and garages, shall be prohibited within the Black Hill Natural Area Buffer.



- (d) **Development Area.** Within the Development Area (i.e., that area of the site outside of the ESHA/Stream Habitat Area and Buffer, and outside of the Raptor Habitat Area, and outside of the Black Hill Natural Area Buffer), development shall consist of subdivision and residential development that complies with all of these special conditions, and that complies with all applicable setbacks, density standards, and other City of Morro Bay building code and other requirements.

PRIOR TO ISSUANCE BY THE EXECUTIVE DIRECTOR OF THE NOTICE OF INTENT TO ISSUE THIS PERMIT (NOI), the Permittee shall submit for review and approval of the Executive Director, and upon such approval, for attachment as an exhibit to the NOI, a formal legal description and graphic depiction of each of the areas described in this condition and shown in Exhibit 6.

2. **Final Plans.** PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the Permittee shall submit two sets of Final Plans (in full-size format with a graphic scale) to the Executive Director for review and approval. The final plans shall be consistent with the following requirements:

- (a) **Development Limitations.** Final Plans shall be consistent with all development limitations of Special Condition 1.
- (b) **Building Heights.** The maximum building height for all residential structures shall be 14 feet from existing natural grade.
- (c) **Perimeter Wall.** A 6-foot tall masonry wall shall be constructed along the western edge of the Black Hill Natural Area Buffer (see Exhibit 6). Such wall shall be finished with rough hewn, unpainted concrete on its western side, and shall be capable of ensuring that noise from the site that can be heard on the Black Hill Natural Area side of the wall does not exceed 60 dBA CNEL (where “dBA CNEL” means a 24-hour energy equivalent level derived from a variety of single noise events, with weighting factors of 5 and 10 dBA applied to the evening (7pm to 10pm) and nighttime (10pm to 7am) periods, respectively, to allow for the greater sensitivity to noise during these hours).
- (d) **Fire Safety Requirements.** All City-approved fire safety requirements (City File Number CP0-110) including but not limited to, installation of automatic fire sprinklers, fire hydrants, use of fire resistant exterior construction materials, construction of a perimeter fire wall, and conspicuous addressing of each residence shall be incorporated into the Final Plans.
- (e) **Tree Protection.** Except for non-native and invasive trees to be removed pursuant to special condition 4, all trees located within the Black Hill Natural Area Buffer along the western property line and all other trees in the Development Area (see special condition 1 and Exhibit 6) shall be retained as feasible and/or replaced as necessary to ensure adequate development screening. Appropriate native trees shall be planted within the Development Area as necessary to ensure complete screening of structures from northbound Highway One, and shall be planted within the Black Hill Natural Area Buffer as necessary to ensure that activity areas associated



with residential development (i.e., decks, windows, etc.) are not visible from the Black Hill Natural Area. Any tree removal otherwise allowed shall be accomplished in such a manner as to ensure protection of retained trees and related habitats, including raptor habitat. Final Plans shall provide all tree protection parameters.

- (f) **Landscaping and Irrigation Details.** Final Plans shall include landscape and irrigation parameters prepared by a licensed Landscape Architect that shall identify all plant materials (size, species, quantity), all irrigation systems, and all proposed maintenance. All plant materials shall be selected to be complimentary with the mix of native habitats in the project vicinity, prevent the spread of exotic invasive plant species, and avoid contamination of the local native plant community gene pool. The landscape plans shall ensure that all structures are screened from public views as much as possible, including through the use of upper canopy trees, and including to meet the requirements of subsection (e) above.. The landscape plans shall also be designed to protect and enhance native plant communities on and adjacent to the site, including required restoration and enhancement areas, and to provide a transitional buffer between native habitat areas and authorized development. Landscaping (at maturity) shall also be capable of screening and camouflaging all residential development as seen from off site. All landscaped areas and fences on the project site shall be continuously maintained by the permittee; all plant material shall be continuously maintained in a litter-free, weed-free, and healthy growing condition. The planting of non-native invasive species, such as those listed on the California Invasive Plant Council's Inventory of Invasive Plants, is prohibited.
- (g) **Lighting Details.** Final Plans shall include lighting details that indicate the location, type, and wattage of all light fixtures. All lighting shall be minimized (in terms of number of lights and brightness) and must be sited, designed, and located to prevent illumination of the ESHA/Stream Habitat Area and Buffer area, the Raptor Habitat Area, the Black Hill Natural Area Buffer, the adjacent Black Hill Natural Area) and to protect views of the night sky. All lighting shall be the lowest intensity levels necessary to provide safety and security. All pedestrian lighting shall be low-profile, low-wattage bollard style lights. Pole mounted lighting shall avoided if feasible, and any that cannot be avoided shall be limited in height so that it is not visible from Highway One and so it does not illuminate the above non-illumination areas.
- (h) **Grading Details.** Grading and grubbing of the site shall be limited to the pads for the residences, driveway, road, and sidewalk contours, and shall be limited as much as possible to retain the existing natural landform. All unnecessary changes in the natural grade shall be prohibited.
- (i) **Post Construction Drainage.** Final Plans shall provide for a post-construction drainage system designed to filter and treat (i.e., designed to remove typical urban runoff pollutants) the volume of runoff produced from irrigation and from each and every storm and/or precipitation event up to and including the 85th percentile 24-hour runoff event for volume-based BMPs and/or the 85th percentile, 1-hour runoff event (with an appropriate safety factor) for flow-based BMPs, prior to its use for on-site infiltration, landscape irrigation and/or discharge. All drainage system components shall be consistent with the following:



- (1) All drainage system components shall be integrated with the ESHA/Stream Habitat Area and Buffer Restoration and Enhancement Plan (see special condition 3). Filtered and treated drainage shall be directed to the ESHA/Stream Habitat Area to the maximum extent feasible unless it would lead to habitat degradation and provided it is discharged in a non-erosive manner.
- (2) The drainage system and its individual components (such as drop inlets and filtration mechanisms) shall be sized according to the specifications identified in the California Storm Water Best Management Practice Municipal Handbook (California Storm Water Management Task Force, March 1993).
- (3) All development shall incorporate Low Impact Development (LID) BMP strategies and techniques (e.g., limiting impervious surfacing, maximizing infiltration in BMP design, reducing the hydraulic connectivity of impervious surfaces, etc.) as much as possible.
- (4) The drainage system shall include natural biologic filtration components, such as vegetated filter strips and grassy swales that are vegetated with native plant species capable of active filtration and treatment (e.g., rushes), as much as possible. If grades require, check-dams may be used in such biologic filters.
- (5) The drainage system shall include at least one engineered filtration unit to which all drainage shall be directed prior to use for on-site irrigation and prior to any discharge. The engineered filtration unit(s) shall be specifically designed to remove, at a minimum, potential vehicular contaminants, and shall include media designed to remove such contaminants.
- (6) All drainage system elements shall be permanently operated and maintained. At a minimum:
 - (i) All filtration/treatment components shall be inspected to determine if they need to be cleaned out or repaired at the following minimum frequencies: prior to October 15th each year; prior to April 15th each year; and during each month that it rains between November 1st and April 1st. Clean-out and repairs (if necessary) shall be done as part of these inspections. At a minimum, all filtration/treatment components must be cleaned prior to the onset of the storm season, no later than October 15th of each year; (ii) Debris and other water pollutants removed from filter device(s) during clean-out shall be contained and disposed of in a proper manner; and (iii) All inspection, maintenance and clean-out activities shall be documented in an annual report submitted to the City no later than June 30th of each year.

All requirements above and all requirements of the approved Final Plans shall be enforceable components of this coastal development permit. The Permittee shall undertake development in accordance with the approved Final Plans. Any proposed changes to the approved Final Plans shall be reported to the Executive Director. No changes to the approved Final Plans shall occur without a Commission amendment to this permit unless the Executive Director determines that no amendment is necessary.

3. ESHA/Stream Habitat Area and Buffer Restoration and Enhancement Plan. PRIOR TO



ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the Permittee shall submit for Executive Director review and approval four copies of an ESHA/Stream Habitat Area and Buffer Restoration and Enhancement Plan (REP) for the entire area shown as ESHA/Stream Habitat Area and Buffer in Exhibit 6. The REP shall provide for the restoration and enhancement of the subject area as self sustaining and functioning stream/riparian and associated upland habitat. The REP shall be prepared by a qualified expert in restoration ecology, and shall take into account the specific condition of the site (including soil, exposure, temperature, moisture, wind, etc.), as well as restoration and enhancement goals. At a minimum, the plan shall provide for:

- (a) A baseline assessment, including photographs, of the current physical and ecological condition of the restoration and enhancement area. All existing topography, stream features, and vegetation shall be depicted on a map.
- (b) A description of the goals of the plan, including in terms of topography, hydrology, vegetation, sensitive species, and wildlife usage.
- (c) A description of planned site area preparation and invasive plant removal.
- (d) A planting plan including the planting palette (seed mix and container plants), planting design, source of plant material, plant installation, erosion control, irrigation, and remediation. The planting palette shall be made up exclusively of native taxa that are appropriate to the habitat and City of Morro Bay region. Seed and/or vegetative propagules shall be obtained from local natural habitats so as to protect the genetic makeup of natural populations. Horticultural varieties shall not be used.
- (e) A plan for documenting and reporting the physical and biological “as built” condition of the site area within 30 days of completion of the initial plan implementation activities. This simple report will describe the field implementation of the approved plan in narrative and photographs, and report any problems in the implementation and their resolution.
- (f) A plan for interim monitoring and maintenance, including:
 - A schedule.
 - Interim performance standards keyed to final success criteria.
 - A description of field activities, including monitoring studies.
 - The monitoring period.
 - Provision for submission of annual reports of monitoring results to the Executive Director for the duration of the required monitoring period, beginning the first year after submission of the “as-built” report. Each report shall be cumulative and shall summarize all previous results. Each report shall document the condition of the site area with photographs taken from the same fixed points in the same directions. Each report shall also include a



“Performance Evaluation” section where information and results from the monitoring program are used to evaluate the status of the project in relation to the interim performance standards and final success criteria. To allow for an adaptive approach to management, each report shall also include a “Recommendations” section to address changes that may be necessary in light of study results or other new findings.

(g) Final success criteria for each habitat type, including, as appropriate:

- Species diversity, including total number of taxa, number of native taxa, and number of invasive non-native taxa.
- Percent cover of total vegetation, percent cover of native vegetation, and percent cover of invasive non-native taxa.
- Wildlife usage as evidenced by incidental observations.
- Erosion control.
- Control of invasive non-native plant taxa.
- Maintenance of suitable habitat for sensitive species or other individual “target” species.
- Requirement that success be determined after a period of at least three years wherein the study site has been subject to no remediation or maintenance activities other than weeding.

(h) Monitoring study design for each habitat type, including, as appropriate:

- Goals and objectives of the study.
- Field sampling design.
- Study sites, including experimental/revegetation sites and reference sites.
- Field methods, including specific field sampling techniques to be employed. Photomonitoring of experimental/revegetation sites and reference sites shall be included.
- Data analysis methods, including descriptive and inferential statistics with specified acceptable variance and significance levels to examine sample size, univariate and multivariate comparisons, and/or other parameters as appropriate and necessary to assess progress toward and meeting of success criteria.
- Presentation of results.
- Assessment of progress toward meeting success criteria.
- Recommendations.



- Monitoring study report content and schedule.
- (i) Provision for submission of a final monitoring report to Executive Director at the end of the final monitoring period. The final report must be prepared by a qualified restoration ecologist. The report must evaluate whether the site area conforms to the goals and success criteria set forth in the approved final resource plan.
- (j) Provision for possible further action. If the final report indicates that the project has been unsuccessful, in part or in whole, based on the approved success criteria, then the Permittee shall prepare a revised or supplemental resource plan to compensate for those portions of the original plan that did not meet the approved success criteria.

All requirements above and all requirements of the approved REP shall be enforceable components of this coastal development permit. The Permittee shall undertake development in accordance with the approved REP. Any proposed changes to the approved REP shall be reported to the Executive Director. No changes to the approved REP shall occur without a Commission amendment to this permit unless the Executive Director determines that no amendment is necessary.

4. **Invasive Plant and Tree Removal Plan.** PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the Permittee shall submit four copies of an invasive plant and tree removal plan prepared by a qualified biologist to the Executive Director for review and approval. The Removal Plan shall identify methods for removing, controlling, and preventing the introduction of invasive exotic plants and trees on the subject site. The Removal Plan shall be consistent with the ESHA/Stream Habitat Area and Buffer Restoration and Enhancement Plan (see special condition 3) and the site development limitations (see special condition 1) and shall apply for the life of the project. The Permittee shall undertake development in accordance with the approved Removal Plan. Any proposed changes to the approved Removal Plan shall be reported to the Executive Director. No changes to the approved Removal Plan shall occur without a Commission amendment to this permit unless the Executive Director determines that no amendment is necessary.
5. **Construction Plan.** PRIOR TO CONSTRUCTION the Permittee shall submit two sets of a Construction Plan (in full-size format with a graphic scale) to the Executive Director for review and approval. The Construction Plan shall, at a minimum, include the following:
 - (a) **Construction Areas.** The Construction Plan shall identify the specific location of all construction areas, all staging areas, all storage areas, all construction access corridors (to the construction site and staging areas), and all areas where development is prohibited (see Special Condition 1). All such areas within which construction activities and/or staging are to take place shall be minimized to the maximum extent feasible in order to minimize construction impacts on and offsite preservation areas.
 - (b) **Construction Methods and Timing.** The Construction Plan shall specify the construction methods to be used, including all methods to be used to keep the construction areas separated from all areas where development is prohibited (including using unobtrusive fencing or



equivalent measures to delineate construction areas). All erosion control/water quality best management practices to be implemented during construction and their location shall be noted.

(c) **Construction Requirements.** The Construction Plan shall include the following construction requirements specified by written notes on the Construction Plan. Minor adjustments to the following construction requirements may be allowed by the Executive Director if such adjustments: (1) are deemed reasonable and necessary; and (2) do not adversely impact coastal resources.

- All work shall take place during daylight hours.
- Construction (including but not limited to construction activities, and materials and/or equipment storage) is prohibited outside of the defined construction, staging, and storage areas.
- The construction site shall maintain good construction site housekeeping controls and procedures (e.g., clean up all leaks, drips, and other spills immediately; keep materials covered and out of the rain (including covering exposed piles of soil and wastes); dispose of all wastes properly, place trash receptacles on site for that purpose, and cover open trash receptacles during wet weather; remove all construction debris from the site; etc.).
- All erosion and sediment controls shall be in place prior to the commencement of construction as well as at the end of each workday.
- All disturbed areas shall be hydro-seeded immediately upon conclusion of construction activities in that area.
- The Applicant shall notify planning staff of the Coastal Commission's Central Coast District Office at least 3 working days in advance of commencement of construction, and immediately upon completion of construction.

All requirements above and all requirements of the approved Construction Plan shall be enforceable components of this coastal development permit. The Permittee shall undertake development in accordance with the approved Construction Plan. Any proposed changes to the approved Construction Plan shall be reported to the Executive Director. No changes to the approved Construction Plan shall occur without a Commission amendment to this permit unless the Executive Director determines that no amendment is necessary.

6. Construction Site Documents & Construction Coordinator. DURING ALL CONSTRUCTION:

(a) **Construction Site Documents.** Copies of the signed coastal development permit and the approved Construction Plan shall be maintained in a conspicuous location at the construction job site at all times, and such copies shall be available for public review on request. All persons involved with the construction shall be briefed on the content and meaning of the coastal development permit and the approved Construction Plan, and the public review requirements



applicable to them, prior to commencement of construction.

- (b) **Construction Coordinator.** A construction coordinator shall be designated to be contacted during construction should questions arise regarding the construction (in case of both regular inquiries and emergencies), and their contact information (i.e., address, phone numbers, etc.) including, at a minimum, a telephone number that will be made available 24 hours a day for the duration of construction, shall be conspicuously posted at the job site where such contact information is readily visible from public viewing areas, along with indication that the construction coordinator should be contacted in the case of questions regarding the construction (in case of both regular inquiries and emergencies). The construction coordinator shall record the name, phone number, and nature of all complaints received regarding the construction, and shall investigate complaints and take remedial action, if necessary, within 24 hours of receipt of the complaint or inquiry.

- 7. **Archaeology.** PRIOR TO THE ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the Permittee shall submit two copies of an archaeological mitigation and monitoring plan prepared by a qualified archaeologist for review and approval of the Executive Director. The Plan shall provide for an archaeological monitor to be present during all ground disturbing activities. The Plan shall also include a description of monitoring methods, including provision for a pre-project survey that includes participation by qualified local Native Americans, frequency of monitoring, procedures for halting work on the site and a description of reporting procedures that will be implemented during ground disturbing activities to ensure that cultural resources are not disturbed. The Plan shall include a list of the personnel involved in the monitoring activities and their qualifications, and shall include qualified local Native Americans as project monitors. At a minimum, the Plan shall provide for the following:

PRIOR TO COMMENCEMENT OF CONSTRUCTION, the archaeological monitor shall conduct a training session with construction personnel discussing the cultural sensitivity of the area and the protocol for discovery of cultural resources during construction. The archaeological monitor shall also inform all qualified local Native Americans of the timing of construction and their opportunity to participate in construction monitoring.

SHOULD ARCHAEOLOGICAL RESOURCES BE ENCOUNTERED DURING ANY CONSTRUCTION, all activity that could damage or destroy these resources shall be temporarily suspended until qualified archaeologist and Native American representatives have examined the site and mitigation measures have been developed that address and proportionately offset the impacts of the project on archaeological resources.

DURING ALL GROUND DISTURBING ACTIVITIES, the Permittee shall retain a qualified archaeologist, approved by the Executive Director, to monitor all earth disturbing activities per the approved monitoring plan. The Permittee shall also include qualified local Native Americans as project monitors as applicable. If an area of cultural deposits is discovered during the course of the project, all construction shall cease in the vicinity of the resource, and a new plan shall be



submitted that avoids such resources that shall be submitted for the review and approval of the Executive Director.

- 8. Assumption of Risk, Waiver of Liability and Indemnity Agreement.** The Permittee acknowledges and agrees, on behalf of itself and all successors and assigns: (i) that the site is subject to extreme fire hazards; (ii) to assume the risks to the Permittee and the property that is the subject of this permit of injury and damage from such hazards in connection with this permitted development; (iii) to unconditionally waive any claim of damage or liability against the Commission, its officers, agents, and employees for injury or damage from such hazards; (iv) to indemnify and hold harmless the Commission, its officers, agents, and employees with respect to the Commission's approval of the project against any and all liability, claims, demands, damages, costs (including costs and fees incurred in defense of such claims), expenses, and amounts paid in settlement arising from any injury or damage due to such hazards; and (v) that any adverse effects to property caused by the permitted project shall be fully the responsibility of the landowner.
- 9. Compliance with Local Conditions of Approval.** All conditions imposed by the City of Morro Bay (City File Number CP0-110) under a legal authority other than the California Coastal Act continue to apply.
- 10. Deed Restriction.** PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the Applicants shall submit to the Executive Director for review and approval documentation demonstrating that the Applicants has executed and recorded against the parcel(s) governed by this permit a deed restriction, in a form and content acceptable to the Executive Director: (1) indicating that, pursuant to this permit, the California Coastal Commission has authorized development on the subject property, subject to terms and conditions that restrict the use and enjoyment of that property; and (2) imposing the special conditions of this permit as covenants, conditions and restrictions on the use and enjoyment of the Property. The deed restriction shall include a legal description of the entire parcel or parcels governed by this permit. The deed restriction shall also indicate that, in the event of an extinguishment or termination of the deed restriction for any reason, the terms and conditions of this permit shall continue to restrict the use and enjoyment of the subject property so long as either this permit or the development it authorizes, or any part, modification, or amendment thereof, remains in existence on or with respect to the subject property.

Recommended Findings and Declarations

The Commission finds and declares as follows:

3. Project Location, Description, and Background



The proposed project is located on two contiguous lots totaling 3.17 acres in western San Luis Obispo County within the City of Morro Bay. The subject parcel is situated adjacent to the southwest corner of the South Bay Boulevard/Quintana Road intersection. The street address is 485 and 495 South Bay Boulevard, though the site is accessed from Quintana Road. Highway 1 extends through the Chorro valley here on its way from inland City of San Luis Obispo through to the coast at Morro Bay and then on to Cayucos and further north to Cambria. See Exhibit 1.

The project site is located on the northern flank of Black Hill and bordered along the entire west property line by Black Hill Natural Area, a component of the larger Morro Bay State Park. Quintana Road forms the northern boundary of the property with the Blue Heron Terrace mobile home park to the south. South Bay Boulevard separates the development site from the Chorro Flats Sediment Capture and Wetland Restoration Project to the east. The main stem of Chorro Creek is located across South Bay Boulevard from the subject site, just west of the sediment capture and wetland restoration project sites.

The subject site is located near the base of Black Hill and is fairly sloped from north to south (approximately 60 feet in elevation gain moving toward Black Hill). The site includes a seasonal stream that crosses the northern (lower elevation) section of the property, more or less parallel to Quintana Road. This stream is an unnamed tributary to Chorro Creek. The stream corridor slopes down from its origins in the Black Hill Natural Area downstream and across the site to a box-culvert beneath the driveway entrance and South Bay Boulevard. This corridor conveys water in an eastward direction across the property from Black Hill towards Chorro Flats and ultimately into Chorro Creek. Numerous mature trees occupy the site, including Monterey cypress, Monterey pine and blue gum eucalyptus. A row of elm trees is located along the western property line adjacent to State Park property. Open areas on the upper portion of the site support a mix of annual grasses, herbaceous weeds, and ornamental plants. See Exhibit 2 for photos of the subject site.

Existing development on the site includes two single-family residential structures and one small accessory structure located on the upland portion of the property. The larger residence is a two-story structure approximately 2,100 square feet in size, and the smaller residence is approximately 1,250 square feet. The accessory structure is approximately 200 square feet in size and is currently used for storage. A narrow paved driveway provides access from South Bay Boulevard to the existing residences. Again, see Exhibit 2 for site photographs.

The proposed project involves the removal of the existing structures, subdivision of two existing parcels into 17 residential lots and a single common area parcel. The residential lots would range in size from 3,000 square feet to slightly more than 6,100 square feet in size and the common area property is proposed to be 51,000 square feet. Fifteen residential lots would be developed with detached two-story single-family residences and two-car garages (either 1,704 square feet or 1,895 square feet in size total), and two lots would include townhouses consisting of three bedrooms, two baths, and 1,150 square feet that meet the County's standards for affordable units. The project would involve significant grubbing and grading of the site, including re-contouring the upper slopes of the intermittent stream that traverses the northern portion of the property. More than 50 trees are also slated for removal. The project includes streetscape improvements along Quintana Road and South Bay Boulevard, landscaping, pedestrian



pathways, and temporary and permanent water quality and erosion control measures.

Applicant has recently indicated that he would be willing to pursue a modified project that would pull some development away from the stream; would avoid the raptor nesting trees; would set residential structures 40 feet from the Black Hill Natural Area; would include some riparian enhancement; and would include tree planting to help screen the residences from Highway 1 views. Specifically, the Applicant has indicated a willingness to realign the main access roadway, to increase the setback for residential structures from the ESHA/stream corridor and the Black Hill Natural Area, and to supplement the landscape plan to include rear yard upper canopy trees. In this scenario, the setback from the Black Hill Natural Area would be increased to 40 feet, and grading in the immediate vicinity of the stream and riparian corridor would be eliminated, but the main roadway and related development and uses (sidewalks, cars, storm water infrastructure, etc.) would be sited roughly 50 feet from the stream corridor. All residences would maintain a 100 foot setback from the stream and riparian corridor, but at least one residence would still encroach into the on-site raptor habitat. These possible project modifications help provide useful context regarding one version of an alternate project that could be pursued at this site, but the proposed project for the purposes of the Commission's review remains that that was originally proposed and approved by the City during the local review process. See Exhibit 3 for project site plan details and see Exhibit 4 for the adopted City of Morro Bay staff report, findings, and conditions of approval for the project. See Exhibits 8 and 9 for the Applicant's recent correspondence regarding possible project modifications.

4. Coastal Development Permit Findings

The standard of review for this application is the City of Morro Bay certified LCP.

A. ESHA and Other Habitats and Park Lands

1. Applicable LCP ESHA, Other Habitat, and Park Land Protection Policies

The certified LCP contains policies that provide for the protection of ESHA and that, among other things, establish minimum setbacks and buffers from sensitive areas. Similar to Coastal Act Section 30240, the LCP's ESHA policies also protect parks and recreation areas in a similar manner to ESHA. Other LCP policies protect coastal resources that are not necessarily ESHA, but worthy of protection nonetheless. Applicable LCP policies include:

***LUP Policy 11.01** 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...*

***LUP Policy 11.02** 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 maintain the habitat's functional capacity.*



LUP Policy 11.06 *Buffering setback areas a minimum of 100 feet from sensitive habitat areas shall be required. In some habitat areas setbacks of more than 100 feet shall be required if environmental assessment results in information indicating a greater setback area is necessary for protection. No permanent structures shall be permitted within the setback area except for structures of a minor nature such as fences or at-grade improvements for pedestrian and equestrian trails. Such projects shall be subject to review and comment by the Department of Fish and Game prior to commencement of development within the setback area. For other than wetland habitats, if subdivision parcels would render the subdivided parcel unusable for its designated use, the setback area may be adjusted downward only to a point where the designated use is accommodated but in no case is the buffer to be less than 50 feet. The lesser setback shall be established in consultation with the Department of Fish and Game. If a setback area is adjusted downward mitigation measures developed in consultation with the Department of Fish and Game shall be implemented.*

LUP Policy 11.14 *A minimum buffer strip along all streams shall be required as follows:*

- (1) a minimum buffer strip of 100 feet in rural areas;*
- (2) a minimum buffer strip of 50 feet in urban areas.*

If the applicant can demonstrate that the implementation of the minimum buffers on previously subdivided parcels would render the subdivided parcel unusable for its designated use, the buffer may be adjusted downward only to a point where the designated use can be accommodated, but in no case shall the buffer be reduced to less than 50 feet for rural areas and 25 feet for urban areas. Only when all other means to project modifications are found inadequate to provide for both the use and the larger minimum buffer. The lesser setback shall be established in consultation with U.S. Fish & Wildlife and the California Department of Fish & Game and shall be accompanied by adequate mitigations. The buffer area shall be measured landward from the landward edge of riparian vegetation or from the top of the bank (e.g., in channelized streams). Maps and supplemental information may be required to determine these boundaries.

Adjustments to the minimum buffer must protect the biological productivity and water quality of the streams. Assessment of impact shall include, but not be limited to the following factors:

- (a) Soil type and stability of stream corridors;*
- (b) How surface water filters into the ground;*
- (c) Slope of land on either side of the stream; and*
- (d) Location of the 100 year flood plain boundary.*

Where riparian vegetation has been previously removed, except for stream channelization, the buffer shall allow for the re-establishment of riparian vegetation to its prior extent to the



greatest degree possible.

LUP Policy 11.18 *New subdivision shall be prohibited in areas designated as environmentally sensitive habitat areas. New subdivisions proposed adjacent to wetland areas shall not be approved unless the to-be-created parcels contain building sites entirely outside the maximum applicable buffer (i.e., 100 feet for wetlands and rural streams, and 50 feet for urban streams).*

LUP Policy 11.23 *As a condition of approval of development prior to commencement of any development, property owners/applicants shall dedicate appropriate permanent easements over portions of the property determined to be sensitive habitat, such as dunes, beach, wetlands, or riparian corridor.*

XII. Environmentally Sensitive Habitat. C. Sensitive Habitat Areas. *To ensure the implementation of the Coastal Act policies addressing environmentally sensitive habitat areas, it is necessary to inventory those resources within the Coastal Zone. The following criteria was used in determining which areas warrant specific protection under the Coastal Act as environmentally sensitive habitats:*

...

(3) specialized wildlife habitats which are vital to species survival;

(4) outstanding representative natural communities which have an unusual variety or diversity of plant and animal species;

...

Those resources that meet one or more of these criteria will be designated as an environmentally sensitive habitat area. The following discussion will review these coastal resources under the appropriate habitat type. These are defined below and shown in Figure 29.

...

(2) Coastal Streams/riparian habitat; (a) A stream or a river is a natural watercourse as designated by a solid line or dash and three dots symbol shown on the United States Geological Survey map most recently published, or any well defined channel with distinguishable bed and bank that shows evidence of having contained flowing water as indicated by scour or deposit of rock, sand, gravel, soil, or debris. (b) A riparian habitat is an area of riparian vegetation. This vegetation is an association of plant species which grows adjacent to freshwater watercourses, including perennial and intermittent streams, lakes, and other bodies of fresh water.

In addition to ESHA protection specifically, the LCP also protects other coastal resources and habitats that are not considered ESHA:

LUP Policy 9.06 *... Natural features, landforms, and native vegetation, such as trees, shall be preserved to the maximum extent feasible...*



LUP Policy 0.1 *The City adopts the policies of the Coastal Act (PRC Sections 30210 through 30263) as the guiding policies of the Land Use Plan. [PRC 30250]... New residential, commercial, or industrial development, except as otherwise provided in this division, shall...not have significant adverse effects, either individually or cumulatively, on coastal resources.*

The LCP also contains provisions for minimizing hazards and protecting life and property:

LUP Policy 9.01 *All new development located within areas subject to natural hazards from geologic, flood and fire conditions, shall be located so as to minimize risks to life and property.*

2. Resource Setting

The subject site is located near the base of Black Hill and includes a small seasonal stream that crosses the northern quarter of the property, more or less parallel to Quintana Road (See Exhibit 3). The stream slopes from its origins in the Black Hill Natural Area across the subject property and then under South Bay Boulevard towards Chorro Flats and into the Chorro Creek watershed, one of the largest contributors to the Morro Bay Estuary. The remaining three-quarters of the site is located on slopes above the stream channel. The site slopes upward from the stream elevation approximately 60 feet to the southwestern corner of the site. The upland areas support a plant community consisting mainly of annual grasses, herbaceous weeds, and ornamental plants. Two single-family residential structures (2,100 square feet and 1,250 square feet respectively) and one small accessory structure (approximately 200 square feet) are located on upland portion of the property. Numerous trees also grow on the site including large and mature Monterey cypress, Monterey pine and blue gum eucalyptus. A row of elm trees is also currently present along the western property line adjacent to the State Park property. A few native species like coyote bush and Californian poppy are also growing in the upland area.

The stream channel crossing the northern quarter of the property is an unnamed tributary of Chorro Creek, and is an aquatic and habitat link between Black Hill Natural Area and Chorro Flats and Chorro Creek. The stream corridor area on the property has been disturbed via alteration and manipulation of the stream course and drainage channel and ongoing weed abatement practices over time. Several large Monterey pine and eucalyptus trees have recently been removed.¹ Bark and leaf litter from the Blue Gum trees has affected the abundance and diversity of plant species growing along the stream channel. Bare soil, non-native grasses, and invasive herbaceous weeds dominate the low-lying area, though sagebrush, coyote brush, salt grass, morning glory, and California poppy are present in the area. Arroyo willow, marsh baccharis, and blackberry also exist along the stream banks. The stream corridor meets the certified LCP definition of a coastal stream and riparian habitat area.

The biotic survey prepared for the project did not map the existing vegetation and similarly did not give

¹ Commission staff observed evidence of recent tree removal within the stream and riparian corridor during a site visit on February 2, 2007, and this tree removal was corroborated by the Applicant's Riparian Enhancement Plan (received in the Commission's Central Coast District office on April 6, 2007). The Commission has been unable to uncover any evidence that a CDP has been approved for the tree removal. The City's staff report likewise indicates that as many as 16 of the proposed 52 trees slated for removal have already been felled. The matter has been referred to the Commission's Enforcement Division for further investigation.



the location of soil samples taken for the site. However, at least half of the soil samples taken resulted in positive identification of hydric soils – a wetland indicator. Furthermore, salt grass (*Distichlis spicata*), a wetland species, was identified in the area adjacent to the stream along with several other non-native plants that have wetland plant status. In other words, and as is often typical of stream and riparian areas, the on-site stream area also displays wetland characteristics, though the precise boundary of the wetland in this sense has not to date been mapped.

The origins of the stream channel are found in the upper slopes of the Black Hill Natural Area. The stream extends along the north-eastern flank of Black Hill across the property towards Chorro Flats and into the Chorro Creek watershed. The Black Hill Natural Area portion of Morro Bay State Park encompasses more than the 300 acres of upland coastal sage scrub and maritime chaparral habitat, and is inland of and outside of the eastern edge of Morro Bay's urban center. The site of the proposed development is further separated from the urban center by Black Hill itself and is bordered by Black Hill and the Black Hill Natural Area (Morro Bay State Park) on the west, Quintana Road to the north, South Bay Boulevard to the east, and the Blue Heron mobile home park to the south. The site is located within the Morro Bay city limits and urban services line. However, the subject property and stream/drainage channel that traverses it, is in all other senses rural in nature. It is located outside of the true urban area of the City of Morro Bay (which is located further to the north and west), and it is adjacent to the State Park on the lower flanks of Black Hill itself.

A number of biologic surveys were prepared for the project to assist in the environmental assessment of the proposed development. Field surveys for monarch butterflies and the suitability of individual trees and tree stands as monarch wintering habitat were conducted in March and April 2004 (by Dennis Frey and Shawna Stevens). No roosting individuals or clusters of monarchs were found on the property. The surveyors found that the orientation of the tree stands and spatial pattern or layout did not favor and is not typical of a monarch over-wintering site. The findings of the field survey, habitat microclimate analysis, database research, and interviews with residents familiar with the property indicate that the habitat is not used by monarchs for wintering purposes.

Raptor surveys were conducted twice per month during peak nesting season, including March, April, and May. Red-shouldered hawks (*Buteo lineatus*) were present on the property during all raptor surveys. Sightings of other raptor species including turkey vultures, American kestrels (*Falco sparverius*), and red-tailed hawks (*Buteo jamaicensis*) were also verified. Similarly, evidence of barn owl (*Tyto alba*) activity on the property was found and recorded. The surveyors reported that the mature stands of eucalyptus and Monterey cypress on the property provide excellent raptor nesting and roosting opportunities. The stand of trees are tall enough and dense enough to support the large stick nests preferred by these avian species, and together with the canopy of surrounding smaller trees, also provide adequate camouflage and protection to support nesting and foraging activities. Several large stick nests were discovered and raptors were observed using these nests. Raptors prey on small rodents, fish, and reptiles, and are important to the overall ecological functioning of the riparian habitat plant and animal community, as well as the Black Hill Natural Area to the west. Reports from residents living in the adjacent mobile home park indicate that red-shouldered hawk nesting has occurred on the property over the years, supporting a conclusion that the identified raptor species return year after year to the same



trees to nest (i.e., nest fidelity).

Likewise, protocol level surveys were conducted for Morro shoulderband snail and California red-legged frog, since the project site is within the known range of these species. Three live Morro shoulderband snails and four empty shells were found during surveys of the project site. All Morro shoulderband snail specimens encountered on site were identified as *Helminthoglypta walkeriana* var. *morroensis*. Until recently, the taxonomic difference between Morro shoulderband snails occurring in sandy soils around the Morro Bay Estuary (*Helminthoglypta walkeriana*) and the snails occurring at inland locations (*Helminthoglypta walkeriana* var. *morroensis*) was not clearly understood, and both were afforded protection under the Federal Endangered Species Act (ESA). However, based on recent investigations of distribution and morphological traits, *Helminthoglypta walkeriana* var. *morroensis* was found to be distinct enough from the endangered *Helminthoglypta walkeriana* variety to warrant a different taxonomic status. According to the project environmental report, the snails encountered on the project site are separate and distinct from those protected under the ESA. Additionally, the report indicated that vegetation on the project site does not offer a great deal of suitable habitat for the ESA protected variety of Morro shoulderband snails. Morro shoulderband snails are predominantly associated with coastal scrub communities and only a few of the typical coastal scrub plant species were represented on the project site. An estimated two-thirds of the site is located beneath the canopies of large Monterey cypress, Monterey pine, and blue gum eucalyptus. Bark and leaf litter and pine needles pervade the vegetation beneath their canopy and render any potential habitat unsuitable for the snail. The project environmental report did note however, that the underlying soils are listed as Baywood fine sand, and that the area is adjacent to the boundary of the range for Morro shoulderband snail (*Helminthoglypta walkeriana*).

The intermittent stream on the site was surveyed for the presence of California red-legged frog (CRLF). The channel is approximately 315 feet in length and drains to the east through a box-culvert into Chorro Creek, a preferred refuge for red-legged frogs. The channel was dry at the time of the surveys and no pools or standing water were present anywhere on the property. Observations from the field surveys indicate that arroyo willows are present in two locations along the stream bank, but that the site otherwise lacks other well-developed riparian habitat. By contrast, the channel along the State Park land on the northern flank of Black Hill and directly upland of and feeding into the project site, supports a dense riparian corridor dominated by arroyo willows. It is reasonable to conclude that the aforementioned alteration and manipulation of the stream channel on the site has arrested the natural extension of this willow riparian community. California red-legged frog was not encountered during the survey nor were there many habitat features that would attract or provide protection for red-legged frogs. Nevertheless, the project environmental report concludes that CRLF are present in the main stem of Chorro Creek within one-half mile of the site, and that the terrain separating the creek and the project site does not pose a significant barrier to the dispersal of red-legged frogs. Thus, the possibility of CRLF to be periodically present on the site during wet period conditions and/or when migrating between appropriate hydration points up and down stream cannot be dismissed.

As identified in the certified LCP, the adjacent Black Hill Natural Area (BHNA) plant community consists mainly of native coastal sage scrub, but also contains species characteristic of maritime



chaparral. Due to the presence of a variety of sensitive plants and animals, and the cohesiveness of the undisturbed wild land, the upper portion of the Black Hill Natural Area is categorically identified and mapped as ESHA on Figure 28 of the City's LCP. The low lying BHNA area immediately adjacent to the project site exhibits some of the same characteristics as the BHNA sensitive habitat, though it is mainly occupied by non-native species (i.e., exotic grasses and woody tree species). Native species such as coyote bush and sage brush are present but only in small numbers and distribution. There does not appear to be any sensitive plant or animal species directly adjacent to the project site and the dominant plant species appear to be introduced. As such, although the larger BHNA is predominantly considered to be ESHA by the LCP, it does not appear that the area directly adjacent to the subject site is ESHA. That is not to say that this immediately adjacent area is not a valuable coastal resource and preservation area (and part of a designated State Park Natural Area for these reasons), but rather to indicate that the strip adjacent to the subject site does not meet the ESHA threshold under the LCP.

The certified LCP identifies coastal streams, wetlands, and riparian habitat as ESHA (see LUP Policy XII.C.2, previously cited). While the intermittent stream and its adjacent habitat on site have been disturbed over the years, including apparently more recently without benefit of coastal permits, its hydrologic function has been maintained, and the stream channel serves as an important wildlife corridor and aquatic link between Black Hill Natural Area and Chorro Flats/Chorro Creek (including the restoration project underway there). Thus, on site, the low-lying intermittent stream and associated wetland/riparian habitat are ESHA. Offsite and immediately adjacent to the project area, the Black Hill Natural Area is open space park land and an important natural preserve, but the ESHA portion of it is not located immediately adjacent to this site. The mature stands of eucalyptus, pine, and cypress trees provide nesting and foraging opportunities for raptors that exhibit nesting fidelity, and are important to the overall ecological functioning of the riparian habitat plant and animal community. They do not provide habitat for listed species, and are not considered ESHA by the LCP, but they remain important coastal resources demanding protection

In sum, the subject site includes an ESHA/stream/wetland area along the stream channel along its northern boundary, it includes preserved natural park land bordering it to the west, and the site provides valuable raptor nesting and foraging areas otherwise (see Exhibit 1).

3. LCP Consistency Analysis

A. Proposed Project Inconsistent with LCP

The LCP requires that the ESHA/stream area be protected against any significant disruption of habitat values, and requires a minimum 100-foot buffer from this area.² The LCP further requires that any development on this site be sited and designed to avoid impacts that would significantly degrade the BHNA. In addition, the LCP requires that natural features, native vegetation such as trees (i.e., raptor

² Note that the LCP explicitly calls for a 100-foot ESHA buffer (LUP Policy 11.06) and also specifies a 100-foot minimum stream buffer in rural areas, such as this. In urban areas, stream buffers can be reduced to 50 feet. As indicated, the subject site is in a rural portion of the City adjacent to Morro Bay State Park and BHNA, and the 100-foot minimum stream buffer matches the 100-foot minimum ESHA buffer at this site.



habitat), and coastal resources be protected and preserved to the maximum extent feasible, and requires that new development avoid significant adverse effects on coastal resources more generally.

The proposed project includes subdivision and related development within and adjacent to the ESHA/stream/wetland/riparian habitat on the northern portion of the site. This includes subdivision and construction of single-family homes, sidewalks, fences, access road, drainage facilities, parking areas, grading, and slope protection within the ESHA/stream corridor and the required 100-foot ESHA/stream buffer. In addition, the proposed project involves grading and grubbing of the site within about 10 feet of the stream bank, and removal of more than 50 mature upper canopy trees, including trees used for raptor nesting on the site. The proposed project further includes urban development and land disturbance directly adjacent to the Black Hill Natural Area park wildlands to the west. Specifically, as shown in Exhibit 6, the proposed development is either within or immediately adjacent to ESHA, State Park wildland, and raptor habitat.

The key ESHA policy in the City of Morro Bay LUP states that ESHA shall be protected against any significant disruption of the habitat values and only those uses dependent upon such resources may be allowed within such areas (LUP Policy 11.01). Furthermore, in order to protect ESHA and/or park lands, development directly adjacent to ESHA and parks and recreation lands such as the proposed development, must be sited and designed to prevent impacts that would significantly degrade such areas, and must maintain the habitat's functional capacity (LUP Policy 11.02). The LCP requires a minimum 100-foot ESHA buffer within which almost all development (other than minor structures such as fences and trails) is prohibited (LUP Policy 11.06). Additionally, LUP Policy 11.14 requires minimum buffers from all streams and riparian corridors (50 feet for urban streams; 100 feet for rural streams) and wetlands (100 feet), and where riparian vegetation has been removed, the re-establishment of riparian vegetation to its prior extent. Finally, LUP Policy 11.18 prohibits new subdivisions in areas designated as ESHA.

The proposed project includes subdivision in ESHA, and it includes site preparation and grading in order to facilitate residential development of the property adjacent to the ESHA/stream channel. In addition, the proposed project includes construction of single-family residences, roads, utilities, fencing, patios, and exotic landscaping within the required ESHA/stream buffer. Furthermore, the project would site similar development immediately adjacent to the Black Hill Natural Area park land. In addition, the project would result in the removal of multiple raptor nesting trees. The trees are growing along the southern property line between the existing access driveway and the Blue Heron Terrace Mobile Home Park. These trees are used by migratory birds and raptors for nesting, roosting, and foraging in the area of the stream and riparian corridor, and in BHNA. Due to their predator-prey relationship with other animal species in the area, the raptors and their habitat are considered important to the overall ecological functioning of these habitat areas as well. Removal of the raptor nesting trees will interfere with the birds ability to nest and forage within, and adjacent to, the ESHA/stream corridor and BHNA. As such, it will not only directly affect the raptor nesting habitat (by removing it) but it will alter predation patterns of the ESHA/stream corridor and BHNA community and therefore significantly disrupt the habitat values of those areas as well.



In sum, the proposed development is located in and immediately adjacent to these environmentally sensitive habitat areas, State Park wildlands, and raptor habitats, and would introduce urban disturbances and stresses that would, in both the short and long terms, significantly disrupt and degrade these areas inconsistent with the LCP. These on and offsite resource areas and their functionality depends on both plants and animals, and on their being able to function as naturally as possible. Development such as that proposed in and on the immediate periphery of these areas cannot be found consistent with the long term maintenance of them because it would introduce disturbances in the form of noise, lights, pets, human activity, landscaping irrigation, herbicides, pesticides, and invasive species among other things, that by their very nature and proximity, and by the lack or buffering space, would adversely impact these areas. In the case of the raptor habitat, it would be removed entirely, and the indirect effects of this on adjacent habitats, including due to modified predation patterns, would lead to additional degradation of them. Domestic animals may hunt and disturb associated organisms (native pollinators, other insects, birds, coyotes, rabbits, rodents, amphibians, etc.) that are dependent upon the underlying habitat.

Avoidance of direct impacts and use of buffers to help avoid indirect impacts (to protect against human and animal disturbances, disruptions, and degradation, etc.) is required by the LCP. Direct removal of habitats, such as that proposed in terms of the raptor habitat, obviously has a direct detrimental effect. In addition, human and human-related activity immediately adjacent to habitats (in the form of noise pollution, light pollution, foot traffic, landscaping, irrigation, herbicides, etc.) disturbs the whole community, as described above. Buffers can capture and absorb these and other impacts associated with development. Buffers are also necessary to maintain the ability of both plants and animals to move about and disperse within the habitat. Development located at the edge of the habitat impinges upon the ability of seeds to establish (e.g., through increased shading, soil compaction, site coverage, and changes in localized wind patterns), and hinders the ability of animal species to travel in natural patterns. Stresses introduced by development affects the natural behaviors of organisms that use these sensitive habitats. Reproduction/mating, foraging and feeding, rearing and feeding young, predator/prey interactions are some of the behavioral aspects that may be negatively influenced by the stress of adjacent development. Buffers protect against invasive plant and animal species that can arrive on car tires (both during and after construction), fill soils, and in myriad other ways throughout the life of the development. Buffers further allow for a healthy and thriving “edge environment” which supports extensive biodiversity (species richness), oftentimes higher than the biodiversity present in the two separate habitat types. Such biodiversity is known to facilitate resilience among species and communities, and buffers help maintain the dynamics between one habitat type and another. This is particularly important at the dynamic interface associated with the subject site where this property is immediately adjacent to Black Hill Natural Areas, and near to the Chorro Flat restoration area (and Chorro Creek), and where the on-site ESHA/stream area acts as a corridor between the two.

Equally important, buffers protect development from fire. At this site, such fire safety buffers are particularly important given the BHNA wildland-urban interface to the west, a natural area that has been set aside and left alone as a means of allowing it to flourish in its natural state. A natural state that also can include fire – particularly given the prevalence of fuel in this area, including maritime chaparral



throughout the larger BHNA, and particularly given the area hasn't burned for some 75 years.³ The Department of Park and Recreation (DPR) has raised concerns regarding the potential fire danger associated with residential development in such close proximity to parks and open space lands. As noted, the site of the proposed development backs up to the Black Hill Natural Area, a 300-acre undeveloped open space park land. The Black Hill Natural Area is owned and maintained by the State of California. The Department of Parks and Recreation has indicated that fuel modification on State Park property may not be permitted, and recommends that all habitable structures maintain at least a minimum 40-foot setback from the property line in order to meet minimum park standards for defensible space. Furthermore, the Department of Forest and Fire Protection has released its 2007 Draft Fire Hazard Severity Zone Maps for Local Responsibility Areas (LRAs) and identifies the Black Hill Natural Area and the subject parcels as being located in a very high fire severity zone.

Per the LCP, all development must be sited and designed to avoid hazards and to minimize unavoidable hazards (see Fire Hazard findings that follow and LUP Policy 9.01). Although the LCP does not explicitly identify minimum fire safety buffers for wildland interfaces such as this, the issue of fire safety and the need for such buffers has become more and more of a statewide issue and concern, particularly in light of recent fires that have left a trail of destruction in their wake. The State of California recently adopted a revised standard requiring a 100-foot defensible fire safety space requirement that applies for all properties along the wildland interface area (per State Public Resource Code Section 4291). In this case, the City did not require this setback in their local review because they are not subject to state fire codes,⁴ and instead approved the proposed project with specific fire safety mitigations (such as a requirement for sprinklers in all new structures, use of fire resistant construction (closed eaves, stucco exterior, etc.), construction of a masonry wall 2 to 6 feet in height along the shared boundary with State Park property, installation of fire hydrants, etc.). Though such mitigations are appropriate in a rural setting such as this, they are not an adequate substitute for a buffer distance when a property backs up on a natural area such as BHNA. In addition, over time, perhaps even in the very short term, the residences will likely need to clear for defensible space purposes. If they were to clear for the 100-foot defensible fire safety space, this would extend into the BHNA. Such a conflict is reasonably foreseeable and would lead to direct significant disruption and degradation of this resource, contrary to the LCP.

Finally, buffers provide ecosystem services including soil stabilization, interception of eroded materials, absorption of runoff and pollutants (pesticides, herbicides, etc.), treatment of runoff (filter mechanism), fixation of nitrogen, and storage of nutrients. Buffers can also serve to slow the rate of storm water flow and encourage infiltration.

In sum, buffers can limit the development's impact on these affected natural habitats, thereby ensuring protection of ESHA, State Park natural wildland, and raptor habitat against human disturbances and

³ It is also becoming more commonplace for resource management entities to practice preventative, controlled burns in order to facilitate the health of the plant community and diminish the likelihood of a catastrophic fire. In addition, from a habitat standpoint, maritime chaparral plants require very hot and fast fires (whether human-induced or natural) for seed release and regeneration. A buffer allows for such a fire without the level of danger to the development that would exist without it.

⁴ Local jurisdictions which provide their own fire fighting capabilities are not subject to state fire safety mandates.



stresses, and can create space to allow continued functionality of these habitats and natural communities.

In conclusion, the proposed project cannot be found consistent with the LCP. Contrary to the LCP, the proposed project includes subdivision in ESHA, removal of identified raptor habitat, and incompatible development directly adjacent to the on site stream and the adjacent BHNA. The proposed project would be expected to significantly disrupt ESHA habitat values, significantly degrade BHNA wildlands, including because of fire safety concerns, unnecessarily alter natural features, and adversely impact coastal resources (i.e., raptor habitat area). The proposed project does not meet the LCP's minimum 100-foot ESHA/stream buffer requirements, and includes residential development within 65 feet of stream ESHA, and includes grading and grubbing within 10 feet of said stream ESHA. In sum, the proposed project clearly has not adequately identified, avoided, and buffered coastal resources at this sensitively located site, and it is clear that it would result in coastal resource degradation that cannot be found consistent with the LCP, and cannot be approved in its current form.

As previously noted, the Applicant has recently identified possible modifications to the proposed project to address these LCP concerns. These potential modifications include increasing the setback from the Black Hill Natural Area to 40 feet to address fire safety issues and to avoid the need for fuel modification on state property, increasing the setbacks for residential structures (100 feet) and eliminating grading in the immediate vicinity of the stream and riparian corridor in exchange for the placement of other development (roadway, sidewalks, cars, storm water infrastructure, urban landscaping, etc.) in closer proximity to (roughly 50 feet) the designated ESHA, and avoiding most of the raptor habitat trees. However, although the 40-foot Black Hill Natural Area set back would resolve BHNA LCP issues, even a project modified in this way would not be LCP consistent. As noted above, the 100-foot ESHA buffer applies to *all* development including roadways, structures, sidewalks, etc., and such incursion would not meet the 100-foot buffer requirement. Such incursion is also not unavoidable (see also below in relation to ingress/egress from site). Some of the raptor habitat area would also still be removed, contrary to the LCP. In short, and similar to the proposed project, the Applicant's most recent proposal cannot be found consistent with the LCP for similar reasons.

B. Modifications Necessary to Approve Project Consistent with the LCP

There are feasible project modifications available that could address the above ESHA/stream, park land, and raptor habitat LCP inconsistencies and result in an approvable and LCP consistent project. Primarily, this requires adjustment of the allowable development footprint to avoid and buffer the resources as described above.

ESHA/Stream Protection

With respect to the ESHA/stream area, the LCP prescribes a minimum 100-foot buffer. Such a distance is fairly common statewide, and although wider buffers are generally more effective at protecting habitat, 100 feet should be sufficient in this case to protect against the types of adverse impacts described above that would be expected due to residential development. No development, other than habitat enhancement (see also below) may occur in this buffer area. See Exhibit 6 for a graphic depiction of the ESHA/stream area and the required buffer, and see special condition 1.



Black Hill Natural Area Protection⁵

With respect to the Black Hill Natural Area, there isn't a specific LCP-prescribed park and recreation lands buffer distance, however the LCP does require that development adjacent to parks and recreation land be sited and designed to prevent impacts that would significantly degrade such areas. In other words, the type of use and development proposed (in this case residential) and the type of park and recreation land involved together dictate what would be an appropriate buffer to protect against the types of impacts specified by the LCP. In some cases, a very narrow buffer might be sufficient (e.g., for a residential site adjacent to a developed park with play structures, etc.), and in others a very large buffer might be appropriate (e.g., for a residential site adjacent to a park designed to accommodate hang-gliders). In this case, the park and recreation lands involved are a State-designated Natural Area of high resource value and sensitivity that is predominately ESHA and that has been designed to be left alone to function as naturally as possible (without human use, activity, and interruption). This type of park land generally calls for a wider buffer to allow the natural functions described above to continue without adverse impacts from adjacent uses and development intruding on them. In this case, a 40-foot buffer should provide adequate separation to ensure protection of the adjacent park land as required by the LCP, as well as meet the minimum standards for defensible space as mandated by State Parks and the City's fire code (although these State Park and City standards are not a part of the LCP, and can only provide guidance on this point). This represents a reasonable setback to avoid the kind of problems identified above.

With regard to the fire safety issues and the necessary associated buffer from BHNA, although a separate fire buffer might typically be applied (i.e., in addition to the 40-foot park wildland buffer) so as to protect the function and utility of the park wildland buffer itself, in this case there are other complementary fire safety/buffer measures that can be applied in addition to the 40-foot park wildland buffer to allow the site to be reasonably developed given the constraints present here. Specifically, the fire safety measures applied by the City in its local review are all still relevant (i.e., sprinklers, fire resistant construction, fire hydrants, wall along State park boundary). The wall provides a dual function as a fire safety tool and as a means of screening residential noise, lights, and activities as seen from within BHNA. In addition, it is possible to develop the site in such a way that the utility of 40-foot wildland buffer is maximized, including for fire safety, and the site's potential development area is maximized as well (recognizing that the various resource areas and issues each remove a portion of the site from potential development, including the 100-foot ESHA/stream buffer mentioned above, and the raptor habitat and viewshed issues discussed further below). This can be accomplished by allowing at-grade improvements (e.g., roadway, sidewalk, landscaping, etc.) and minor non-permanent structures (i.e., fences, park equipment, etc.) that do not require fuel modification or other measures for fire safety within the 40-foot wildland buffer, and ensuring that the masonry wall is tall and thick enough to filter out any noise, lights, and activities that might occur on the site and in the combined buffer area. In this way, any fire safety clearing would take place on the Applicant's property and would not extend into the adjacent natural area (i.e., residences and structures requiring fire clearance would be no closer than 40 feet from BHNA). This fire safety zone could still be used for development (streets, lawns, play

⁵ See also fire hazard avoidance findings that follow.



structures, etc.) that doesn't itself require fire clearance. Given the potential level of use within the 40-foot area, and to ensure the utility of the 40-foot park wildland buffer distance to protect BHNA function, the wall would need to be six feet tall and capable of sufficiently attenuating noise (the wall would essentially become an inert object as seen from the BHNA side of the development). Tree and vegetation screening to ensure residential activity areas are screened from view from within BHNA is also necessary (see also tree protection findings below). In this way, the buffer utility is maximized at the same time as ensuring adequate development area for the applicant.

See Exhibit 6 for a graphic depiction of the Black Hill Natural Area and the required buffer, and see special condition 1.

Raptor Habitat Protection

With respect to the on-site raptor habitat area, the proposed development must avoid the raptor grove, including avoiding any direct removal of trees and avoiding any activities that might adversely impact the grove. This can be accomplished by ensuring that development is kept out of the driplines of the raptor grove. Although it is sometimes necessary to include an additional buffer around raptor nesting trees to further protect the trees from development and ensure that nesting raptors are not disturbed, such additional buffering is typically applied in cases with long documented history of nesting by listed raptors, and when such trees are considered ESHA. In this case, the nesting raptors are not federally or state-listed, the habitat does not rise to the ESHA level (as previously indicated), and the documentation about their use patterns is primarily anecdotal. Accordingly, in this case, a dripline buffer should be sufficient to protect this habitat. This finding is partially premised on the fact that the Monterey cypress and Eucalyptus trees used by the raptors are mature trees and very tall, and they are growing on a slopes above the existing roadway, thus there is good vertical separation between the raptor nest areas and the proposed development below. In addition, the row of trees is growing at least partly within and/or immediately adjacent to the 100-foot ESHA/stream buffer, which de facto also acts as a buffer for the raptor habitat. See Exhibit 6 for a graphic depiction of the raptor grove and the associated dripline, and see special condition 1.

Road Access Issues

With respect to site access, access can only be gained from a public street off of the property's South Bay Boulevard frontage. The northern portion of the site is occupied by the ESHA/stream corridor, the western property line abuts the State Park, and the remainder is flanked by the Blue Heron Terrace Mobile Home Park (see Exhibit 1). The South Bay Boulevard property frontage is about 180 feet in length, and about 160 feet of that frontage is comprised of the ESHA/stream corridor and the required 100-foot stream buffer. The remaining twenty feet or so is occupied by the large upper canopy trees that are part of the raptor habitat grove oriented perpendicular to South Bay Boulevard. As described above, these mature trees provide nesting and roosting opportunities for raptors, and are critical to the overall functioning of the on-site and adjacent habitat plant and animal community.

Existing access to the site is located approximately 40 feet from the south corner of the property, between the hedgerow of trees and the drainage culvert beneath South Bay Boulevard. The



proposed/improved access driveway would be constructed on top of the existing unimproved access road and, as a consequence, within the 100-foot ESHA/stream buffer. LCP Policies 11.06 and 11.14 contain provisions that allow a reduction to the 100-foot buffer when necessary to accommodate a designated use of the site, but stipulates that the buffer not be reduced to less than 50 feet, and further require that mitigation measures be developed to restore and re-establish riparian vegetation as mitigation for the buffer incursion as well as to offset any prior removal of vegetation in the buffer (such as apparently has been the case on this site, as described earlier). The development that is the subject of this permit action would be so precluded by a strict application of the LCP's 100-foot minimum ESHA/stream habitat buffer and thus a minor downward adjustment to accommodate road access to the otherwise "landlocked" developable area is warranted in accordance with the LCP.⁶ This is particularly the case inasmuch as the proposed road access location from South Bay Boulevard is probably sited in the least environmentally damaging location with respect to the ESHA/stream and raptor habitat grove in that respect. Accordingly, a portion of the road access is allowed within the 100-foot buffer area, but no closer to the ESHA/stream than 50-feet. See Exhibit 6 for a graphic depiction of the road exception area, and see special condition 1.

With respect to the configuration of the road within the buffer, it needs to be the minimum width necessary so as to limit its intrusion into the LCP required buffer to the maximum extent feasible. In this respect, the road and any sidewalk (and any curb and gutter) together can be at most 28 feet wide, or 24 feet if there is no sidewalk. This will allow adequate space for ingress and egress, and for any emergency response (including through the use of rolled curbs as proposed), and will promote pedestrian access into and out of the residential subdivision. See special condition 1.

Other On-Site Tree Protection

The remaining trees growing on the site (outside of the ESHA/stream area and outside of the raptor grove) consist of some scattered trees in the upland portion of the site and a row of elm, eucalyptus and Monterey pine growing mostly beneath existing utility lines along the western property boundary. With respect to the western property boundary trees, they have been significantly altered via limb pruning and topping over the years in relation to the lines. These trees do not appear to provide significant nesting and perching opportunities for raptors and thus they may be removed if necessary. However, any such tree removal and any development otherwise must ensure that activity areas associated with residential development (i.e., decks, windows, etc.) are screened from view as seen from within the Black Hill Natural Area to ensure that such movement does not impact BHNA wildlife habitat, and that development is screened from view as seen from northbound Highway 1 (see special condition 2). There may be some tree removal for residential siting purposes, and in order to rid the site of non-native and invasive species (see also finding below), but the final mix of vegetation and trees on site must be capable of these screening functions. In any case, given the size of the trees that might be removed, and their proximity to trees that provide nesting and roosting opportunities for raptors, there is a potential for

⁶ The same could not be said with respect to the potential modified site plan recently forwarded by the Applicant (see Exhibit 8). In that site plan, the same ingress/egress allowance is necessary, but it includes an additional area of buffer incursion that is not. This additional area of incursion is avoidable, and not allowable under the LCP.



the proposed tree removal to disrupt nesting and roosting activities which could lead to unsuccessful breeding and foraging. Accordingly, special condition 2 requires tree removal to be minimized, and for any necessary tree removal to be accomplished in a manner that ensures that all trees to be retained are protected and raptors are not disturbed during nesting.

Lighting Requirements

In order to protect against impacts of lights and glare extending into the ESHA/stream area, the BHNA, and the raptor grove during the evening, special condition 2 requires submittal of a lighting plan indicating the location, type, and wattage of all light fixtures. Lighting must be minimized (in terms of number of lights and brightness) and must be designed and located to prevent illumination of the ESHA/stream area, the BHNA, and the raptor grove and to protect views of the night sky. All lighting shall be the lowest intensity levels necessary to provide safety and security. If pedestrian lighting is contemplated for the subdivision, low-profile, low-wattage bollard style lights along the pedestrian sidewalk shall be used. Pole mounted lighting shall avoided if feasible, and any that cannot be avoided shall be limited in height so that it is not visible from Highway One and so it does not illuminate the ESHA/stream area, the BHNA, and the raptor grove.

Water Quality

To protect the biological productivity of the ESHA/stream, and downcoast receiving waters (including Chorro Creek) and to prevent urban runoff and sedimentation from degrading the habitat values of these areas and the adjacent park land, special condition 2 requires preparation of drainage, erosion, and sedimentation control plans to be implemented both pre and post construction. Among other things, the plans require implementation of construction best management practices (such as designation of staging areas for equipment and materials, installation of silt fences, temporary detention basins and other control measures to intercept, filter, and remove sediments contained in runoff from the construction, staging, and stockpiling areas). The post-construction drainage plan requires identification of all necessary infrastructure and best management practices necessary to ensure that post-construction drainage from the project including runoff from the residences, roadway, paths, parking areas, and other impervious surfaces does not result in erosion, sedimentation, or degradation of coastal water quality (see also water quality findings that follow). The drainage system must be designed to filter and treat the volume of runoff produced from each and every storm event up to and including the 85th percentile 24-hour runoff event prior to its use for on-site irrigation or its discharge offsite. See special condition 2.

Restoration Required

Finally, in order to allow for the road incursion into the required 100-foot ESHA/stream buffer (and to mitigate its impacts, and the impacts of prior vegetation removal, as directed by the LCP, including LCP Policy 11.14 (Buffers; Mitigation Required)), special condition 3 requires the applicant to submit a revised Riparian Habitat Restoration and Enhancement Plan to restore and revegetate the ESHA/stream area and its 100-foot buffer to a natural functioning condition with native plant species that are endemic to Morro Bay, and that are capable of providing for screening of the residential development otherwise. The plan shall provide for all non-native and invasive species to be removed and controlled within the



restoration area. The plan must also include provisions for ongoing maintenance, annual monitoring, and performance criteria to ensure successful restoration/remediation of the site. The objective of the plan and the associated restoration shall be to return the ESHA/stream channel to a functioning system, similar to the resource extending upstream on the Black Hill Natural Area. See special condition 3.

Exotic Vegetation and Tree Removal Required

In order to protect the on and offsite ESHA areas and related habitats, including the significant BHNA habitat and Chorro Creek, exotic vegetation on the site outside of preservation areas must be removed and kept from the site. Special condition 4 requires the applicant to submit an Invasive Plant and Tree Removal Plan that prohibits the introduction of non-native invasive species and identifies methods for removing, controlling, and preventing the introduction of invasive exotic plants and trees on the subject site. The Plan must be implemented consistent with the ESHA/Stream Habitat Area and Buffer Restoration and Enhancement Plan (see special condition 3) and shall apply for the life of the project.

C. ESHA, Other Habitat, and Park Land Protection Conclusion

The project, as conditioned, can be found consistent with the LCP policies cited in this finding above because it has been sited and designed to avoid direct impacts to ESHA and related resources, and to avoid degradation and disruption of ESHA and related resources on and off the site, including by clustering development in the least environmentally sensitive area of the site, appropriately buffering on and offsite resources, and ensuring that development impacts otherwise are addressed (including limiting and controlling lighting, filtering and treating drainage, etc.). In sum, as conditioned, the project will ensure the protection and enhancement of the identified habitats and be consistent with the certified City of Morro Bay LCP.

B. Visual Resources

1. Applicable LCP Visual Resource Policies

The LCP includes visual resource policies designed to protect public views to and along the shoreline, the coastal area more generally, and designated scenic areas. More specifically, LUP policies 12.01 and 12.02 state, in relevant part:

***LUP Policy 12.01** The scenic and visual qualities of coastal areas shall be considered and protected as a resource of public importance. Permitted development shall be sited and designed to protect views to and along the ocean and scenic and coastal areas, to minimize the alteration of natural land forms, to be visually compatible with the character of surrounding areas, and where feasible, to restore and enhance visual quality in visually degraded areas. New development in highly scenic areas such as those designated on Figure 31, shall be subordinate to the character of its setting.*

***LUP Policy 12.02** Permitted development shall be sited and designed to protect views to and along the coast and designated scenic areas and shall be visually compatible with the*



surrounding areas...

LUP Policy 12.06 *New development in areas designated on Figure 31 as having visual significance shall include as appropriate the following:*

- (a) Height/bulk relationships compatible with the character of surrounding areas or compatible with neighborhoods of special communities which, because of their unique characteristics are popular visit destination points for recreation uses.*
- (b) Designation of land for parks and open space in new developments which because of their location are popular visitor destination points for recreation uses.*
- (c) View easements or corridors designed to protect views to and along the ocean and scenic and coastal areas.*

2. Visual Resource Setting and LCP Consistency Analysis

Partly because of its geographic setting between the volcanic upland areas of Black Hill and the upper reaches of the Morro Bay estuary, and partly because of its rural, central California setting, the project area is located in a significant public viewshed. See Exhibit 2 for photographs of the site and setting. The site of the proposed development is nestled on the northern flank of Black Hill directly adjacent to the Black Hill Natural Area component of Morro Bay State Park. As described earlier, this State Park natural area occupies some 300 acres adjacent to the project site. Across South Bay Boulevard to the east lies the Chorro Flats wetland restoration area. An unnamed tributary to Chorro Creek extends from the BHNA area across the subject property and to Chorro Flats (and ultimately to Chorro Creek and Morro Bay proper). The site is visible from several vantages including from Highway One, South Bay Boulevard, and Morro Bay State Park. The City's certified Land Use Plan (Figure 31) designates the Black Hill Natural Area as a public viewpoint of significant importance.

The proposed 17 two-story residences will be constructed directly adjacent to and sandwiched between the Blue Heron Mobile Home Park and the Black Hill Natural Area. The existing mobile homes are low-profile, single-story dwellings. Although they appear out of character with the open space and rural nature of the surroundings, their visual prominence is reduced due to their modest height and scale and intervening vegetation. That is not to say that the mobile home park is undetectable or concealed from Highway One, South Bay Boulevard, and Morro Bay State Park. These dwellings are visible from these public vantages; however, because of their low profile and existing vegetation they appear to be set somewhat into the lower flank of Black Hill, thus tempering their impact on the public viewshed.

In contrast, the proposed new 17 residential units would be two stories in height and would be constructed at a base elevation that is several feet higher than the mobile home park. Due to the orientation of the site, the lower levels of the proposed residences would appear to be mostly screened by the mobile home park, as seen from north (west) bound Highway One. However, because the proposed units would be two stories in height, much of these second story elements would extend above the roofline of the existing mobile home park units and into the public viewshed. Exacerbating the



visual impact is the Applicant's proposal to remove nearly all the mature trees from the project site. Many of the trees slated for removal currently provide screening of the mobile home park units, and together with existing trees on the adjacent State Park property, help the blur the line between urban development and open space land, providing a significant visual transition area. The trees would be removed as part of site grading of nearly 7,000 cubic yards of grading, and grubbing over more than 70% of the property to create cleared, level building sites.

The LCP clearly requires that scenic and visual qualities at this location be protected (as a resource of public importance), and also requires new development to be sited and designed to protect views to and along scenic areas, and where feasible to enhance the visual quality of visually degraded areas (LUP Policies 12.01 and 12.02). The LCP further requires that alteration of natural land forms be minimized and that new development be compatible with the character of the surroundings. It also requires new development to be subordinate to the character of the setting in designated scenic areas, such as adjacent to the Black Hill Natural Area, requires that new development maintain specific height/bulk relationships with surrounding areas and neighborhoods, and requires provisions of view easements and corridors (LUP Policy 12.06 and LUP Figure 31).

The proposed development is inconsistent with the LCP's visual resource policies identified above. The two-story design of the residences will degrade important views by placing additional urban development within the northbound Highway One viewshed. Specifically, the upper stories of the proposed residential development would extend above existing vegetation and existing structural development and into the view of Black Hill as seen from northbound Highway One (views of the development would be blocked by natural topography when headed southbound). Removal of significant trees, and grading almost all of the entire project site to create cleared, level building pads would appear to maximize (as opposed to minimize, as required) natural landform alteration. The two-story design and tree removal is likewise out of character with both the existing built and natural environments. In addition, the proposed new two-story residences do not conform to the height/bulk relationships of the established surrounding development, which is that of modest, single-story dwellings. In sum, the LCP designates this viewshed as 'publicly important' and 'significant' and even the modest incursion into it results in visual incompatibility, and is more than the LCP allows in that respect. Accordingly, the proposed project does not conform to the certified LCP policies regarding the protection, and enhancement, of scenic and visual resource areas.⁷

The required siting and design modifications identified in the preceding findings above, including the establishment of a development area outside of the 100-foot ESHA/stream buffer, outside of the raptor nesting grove, and outside the park wildland buffer, and retention of a significant number of trees on the site, will result in fewer potential residences and greater screening of the remaining development than there would be otherwise. Even with these changes, though, the project still raises issues with respect to the above described LCP visual resource protection requirements. In other words, even with these changes, 2-story residential developments, particularly if more densely clustered to maximize the

⁷ The Applicant's recent potential modifications likewise would be inconsistent with the LCP for the same reasons because the residences in that case would also be two-story and a similar layout.



Applicant's return on investment within the allowed development envelope, will still extend above existing development and vegetation and introduce additional development into a significant viewshed. LCP Policies 12.01 and 12.02 require new development to be visually compatible and subordinate to the character of the setting, and where feasible, to restore and enhance visually degraded areas, and LUP Policy 12.06 (and LUP Figure 31) clearly contemplate that the Black Hill viewshed is visually significant and demanding of even greater development sensitivity.

In order to bring the project into conformance with the LCP provisions, the proposed new residences would need to be limited to 1-story no higher than 14 feet above grade and constructed in such a way as to not be visible from Highway One, including through use of screening trees and vegetation as needed. In addition, the property line adjacent to the mobile home park must be landscaped with appropriate native plants and trees to blend the new residential development in with the existing natural aesthetic. The Applicant would be given flexibility to design residential units as proposed within the allowable building area, but such structures could not be visible from Highway One.

Accordingly, special condition 2 requires the submittal of revised final plan details including site plans and elevations for the new residential structures, roadways, and lot configurations. In order to preserve the open character of the site and surroundings, and to minimize landform alteration, development shall be contained within the allowable disturbance area established by special condition 1 and as generally shown in Exhibit 6. Lot size, building pad orientation, and roadway configuration should take into consideration existing trees, required open space, and drainage patterns. To avoid introducing additional urban development into the public viewshed, all residences shall be limited to 14 feet in height, as measured from natural grade to the ridge height. Special condition 1 further requires all new development to conform to all applicable setbacks, density requirements, and other development standards of the Morro Bay certified LCP.

Tree removal shall be allowed only as described in the ESHA, other habitat, and park land findings above. Additionally, the Applicant is required to submit a revised landscaping plan (special condition 2) that includes planting both upper and lower canopy tree and shrub species native or naturalized to the area (e.g., Monterey cypress, Monterey pine, coyote bush, etc.) along the eastern property boundary adjacent to the mobile home park to provide screening and visual relief of the proposed new residences. Such screening augmentation builds upon the Applicant's recent indication that he would be amenable to planting upper canopy trees in each east facing rear yard to help screen the proposed new development from Highway One views.

As a means to limit landform alteration as much as possible as required by the LCP, special condition 2 requires the submittal of final grading plans that prohibit all unnecessary changes in the natural grade of the site. Grading shall be limited to the building pads for the residences, driveway, and roadway contours.

3. Visual Resource Conclusion

The project as proposed does not adequately protect the publicly important and LCP designated



significant viewshed of Black Hill as seen from north (west) bound Highway One, as required by the LCP. The subject site is located within a significant public viewshed, and the project would introduce additional structural development that would be incompatible with it into that viewshed, inconsistent with the LCP. Modifications to reduce project viewshed impacts are feasible and necessary. As conditioned, the Commission finds that the proposed project can be found consistent with the certified LCP's visual resource policies (i.e., LUP Policies 12.01, 12.02, and 12.06).

C. Fire Hazards

1. Applicable LCP Fire Hazard Provisions

***LUP Policy 9.01** All new development located within areas subject to natural hazards from geologic, flood, and fire conditions, shall be located so as to minimize risks to life and property.*

Given that the operative requirement in this policy is to minimize risk, and given that fully minimizing is to avoid, this policy requires that fire risks be avoided, and where unavoidable, minimized as much as possible.

2. Fire Hazard Setting and LCP Consistency Analysis

The majority of the adjacent State Parks' Black Hill Natural Area consists of dense scrub and chaparral vegetation. Much of this vegetation relies on fire for seed release, and the leaves and bark of scrub/chaparral plant species contain flammable resins that encourage combustion and burning. The longer the interval between fires, the greater the risk of a particularly intense and destructive fire because of the large amount of highly flammable dead vegetation. In addition, there is a stand of eucalyptus and Monterey pine trees on the State Park adjacent to the subject site, which have deposited a significant amount of bark and leaf litter to the already abundant dead vegetation. Several Monterey pines appear to have succumbed to pine pitch canker. The dead lichen covered trees and snags provide further evidence of the extreme fire hazard of the area. More recently, the California Department of Forest and Fire Protection's 2007 Draft Fire Hazard Severity Zones for Local Responsibility Areas identifies the Black Hill Natural Area and the subject parcels as a "very high fire severity" zone.⁸

Certain aspects of the proposed development (siting and construction of single family residences, street ends, and vehicle parking spaces) would be located immediately adjacent to the State Park natural area (see Exhibit 3). In some cases, the proposed new residences and/or parking areas would be constructed to within five feet of this natural area. Even with the proposed construction of a block perimeter wall, the proposed structures would remain at risk of fire because of the close proximity of the residences and human activity to a natural area within which natural fire processes are at play.⁹ From discussions with the Department of Parks and Recreation staff, the Black Hill Natural Area has not had a major fire in

⁸ See http://www.calfire.ca.gov/fire_prevention/fire_prevention_wildland_zones.php.

⁹ This is also the case because the height of the wall as proposed varies from 2 to 6 feet, and as such is not tall enough (particularly the lower sections) to provide the kind of buffering utility necessary.



decades.¹⁰

The proposed project does not adequately acknowledge the fire hazards at this site, does not adequately set back structures to avoid and minimize the threat from a fire, and does not allow for adequate defensible space all on the subject property that will avoid impacts to BHNA. The proposed project places development in immediate risk of fire, and has not minimized this risk appropriately. As such, the proposed project is inconsistent with the hazard avoidance policies of the LCP. The certified LCP, and in particular LUP Policy 9.01, requires a protective approach (i.e., risk minimization through avoidance of development in high fire hazard areas). Specifically, LUP Policy 9.01 states that all new development in areas which are subject to natural fire hazards shall be sited to minimize risk to life and property. In order to fully minimize the risk to life and property in this location, development directly adjacent to the high fire hazard area (i.e., Black Hill Natural Area) must be avoided, and an adequate buffer for defensible space provided. Although the LCP does not explicitly identify minimum fire safety buffers for wildland-urban interfaces such as this, the issue of fire safety and the need for such buffers has become more and more of a statewide issue and concern, particularly in light of recent fires that have left a trail of destruction in their wake. The State recently adopted a revised standard requiring a 100-foot defensible fire safety space requirement that applies for all properties along the wildland-urban interface area (per State Public Resource Code Section 4291) in State Responsibility Areas (SRAs), and this was the basis for the recommended 100-foot fire safety buffer in Commission staff's November 2007 report to the Commission. Since the release of the November 2007 staff report, new information has come to light that indicates that local jurisdictions with municipal fire departments, such as Morro Bay, may choose to adopt some or all of the fire safety regulations in the California Fire Code, but are not required to do so. Accordingly in this case, as the agency of first response, the City fire department can establish its own fire safety standards. The City fire department standards specify a minimum 30-foot setback for all new structures within the wildland-urban interface zone, although these rules are not part of the LCP. State Parks requires 40 feet of defensible space in order to protect State Park land from inappropriate fire buffer manipulation, although this standard is likewise not part of the LCP.

In sum, the LCP requires that the fire risk be avoided and, where unavoidable, minimized, but it does not specify a particular buffer distance. The State identifies a minimum 100-foot buffer, the City identifies a 30-foot buffer, and State Parks identifies a minimum 40-foot buffer. With recent legislative changes and enhanced concern for ensuring adequate fire safety in new development, the trend over time with such buffering rules has been moving towards larger and larger buffers/defensible space requirements, and there is little to indicate that this trend will change in the future. Given these facts, and in this case, the Commission finds that 40 feet is the minimum distance necessary to satisfy the LCP's hazard avoidance policies. Although the 100-foot buffer would provide greater hazard avoidance, and greater protection to State Parks Black Hill nature preserve, a 40-foot buffer in this case meets (non-LCP) guidance associated with City and State Parks' standards, and seems reasonable for this site. This finding is also premised on ensuring the complementary fire safety mitigations associated with the project are also included to help alleviate fire concerns (such as sprinklers in all new structures, fire

¹⁰ Personal communication between Commission staff planner Mike Watson and DPR Senior Environmental Scientist, Vince Cisero on August 15, 2007.



resistant construction (closed eaves, stucco exterior, etc.), masonry wall, readily accessible fire hydrants, etc.).¹¹

Thus, in order to minimize the risk from fire hazard and bring the project into conformance with the certified LCP, the proposed building sites must be adequately setback from the fire-dependent and highly flammable State Park wildland natural area in such a way as to allow adequate space for defensible space parameters. As discussed in the preceding findings of this report, the Applicant is required to relocate all primary structural development (i.e., residences, garages, auxiliary units, etc.) 40 feet from the western property line to protect Black Hill Natural Area consistent with the LCP. Revising the project in this way is also necessary for achieving consistency with the fire hazard avoidance policies of the LCP. As noted previously, although an additional fire buffer might typically be applied (i.e., in addition to the 40-foot park wildland buffer) so as to protect the function and utility of the park wildland buffer itself, in this case the other complementary fire safety/buffer measures can be applied in addition to the 40-foot park wildland buffer to have the same or similar utility and that will allow the site to be reasonably developed while respecting the constraints present here. Again as discussed in the preceding findings, non-permanent structures (i.e., fences) that do not require buffering or fuel modification as well as at-grade improvements (roads, landscaping, sidewalks, etc.) may be constructed within the 40-foot setback, but development necessitating defensible fire safety space (e.g., the residences) could not. The buffer area not only protects the adjacent State Park BHNA land from the impacts of development, but also protects the life and property on the site from the fire hazards associated with development adjacent to this natural area.

See exhibit 6 for a graphic depiction of the required buffer, and see special condition 1.

3. Fire Hazard Conclusion

Although the proposed project includes a number of good fire safety precautionary measures, it also locates the primary residences, roads, and parking immediately adjacent to a 300-acre natural area where natural fire processes are at play without adequate setback to allow for defensible space requirements on site, contrary to LCP fire hazards policies that prohibit new development in areas of high fire danger. Modifications are necessary if the project is to be found consistent with the LCP in this regard. As conditioned to ensure adequate defensible space on-site and for complementary fire safety measures, the project can be found consistent with the LCP's fire hazard provisions.

D. Water Quality

1. Applicable LCP Water Quality Protection Policies

The LCP contains policies that provide for the protection of coastal waters and wetland habitat. In addition to the ESHA and other habitat policies cited earlier (incorporated herein by reference) that

¹¹ The 40-foot buffer area is also consistent with the Applicant's recently submitted potential revised site plan that indicates that the Applicant is amenable to a project that respects the 40-foot fire safety buffer; see Exhibit 8.



protect these resource areas, LCP Policies 11.17 and 11.19 state as follows:

LUP Policy 11.17 *The biological productivity of the City's environmentally sensitive habitat areas shall be maintained and where feasible restored through maintenance and enhancement of the quantity and quality of Morro and Chorro groundwater basins and through prevention and interference with surface water flow. Stream flows adequate to maintain riparian and fisheries habitat shall be protected.*

LUP Policy 11.19 *No vehicle traffic shall be permitted in wetlands and pedestrian traffic shall be regulated and incidental to the permitted uses. New development adjacent to wetlands shall not result in adverse impacts due to additional sediment, runoff, noise, or other disturbance.*

2. Water Quality Setting and LCP Consistency Analysis

The proposed project includes a wide range of activities that have the potential to increase runoff and adversely affect water quality. Demolition of the existing residences, grading of over 70% of the site area, and removal of more than 50 mature trees individually and cumulatively have the potential to cause sedimentation and pollutant loading of the adjacent stream and drainage area and adjacent State Park Natural Area during construction. In addition, the construction of 17 residential homes/townhomes, driveways, realignment, widening, and formal improvement/expansion of the existing access roads, will increase the amount of site coverage from about 10% currently to more than 60% after construction is complete and this too will alter runoff patterns. Because the primary use of the new subdivided property is residential, one can also expect the additional runoff to contain typical urban runoff pollutants. Streets, driveways, and parking areas will be used for vehicle traffic and parking of cars, light trucks, motor homes, etc. Runoff from these sites is expected to include pollutants associated with motor vehicles (e.g., oils, brake dust, fluids, etc.), floatables (such as paper, cigarette butts, other trash, etc.), as well as other types of urban pollutants typically associated with residential uses (including pesticides, herbicides, rodenticides, pet waste, etc.). In sum, the development of the site will alter drainage patterns, and will introduce additional uses and development that have the potential to increase pollutant loading within runoff to the detriment of receiving water bodies; in this case the onsite ESHA/stream and ultimately Chorro Creek and Morro Bay. This is the case both in terms of the project as proposed, and the project as it must be modified to meet LCP requirements (as thus far already discussed in this report).

Recent studies have shown that even an increase of 10% in impervious surfaces can lead to a serious degradation in coastal aquatic ecosystem health. With undisturbed land, as much as 25% of all rain infiltrates into the subsurface aquifers and only 10% ends up as runoff. As the percentage of impervious surfaces increases, less water infiltrates and more ends up as runoff. In urbanized areas, over one-half of all rain becomes surface runoff and deep infiltration is only a fraction of what it was naturally. The increased surface runoff requires more infrastructure to minimize flooding. Natural waterways end up being used as drainage channels, and are frequently lined with rocks or concrete to move water more quickly and prevent erosion. In addition, as deep infiltration decreases, the water table drops, reducing groundwater for wetlands, riparian vegetation, wells, and other uses.



As required by certified LUP provisions 11.17 and 11.19 above, the biological productivity of the environmentally sensitive habitat areas shall be maintained and enhanced through the maintenance and enhancement of the quality of surface water flows. Additionally, new development adjacent to wetland areas must not result in adverse impacts due to sedimentation and /or polluted runoff. Development adjacent to ESHA/stream resources (such as present on this site) must be sited and designed to prevent significant degradation and to maintain the habitat's functional capacity (LUP Policy 11.02).

As noted above, there are potential construction impacts that could affect coastal waters. Site preparation will require the use of heavily machinery and vehicles (e.g., dump trucks, graders, pickups, etc.). There will be trees, utilities, asphalt, and debris to be removed. Site soils and drainage patterns will be disturbed. Construction of the residences and roads will introduce new potentially toxic materials to the adjacent water course (e.g., cement, oils, paints, etc.). The proposed project includes construction of typical curb, gutter, and storm water facilities. Through the City's local review, the proposed project includes installation of oil/water separators between all drainage water inlets and the street gutter. In addition the project is required to be subject to an erosion control plan to prevent sediment and debris from entering the city right-of-way and adjacent sensitive waterways. Even with these protective measures, the volume of runoff will not be reduced and the efficacy of using oil-water separators to adequately filter and treat urban pollutants has been, in the Commission's experience, inadequate. This is particularly the case given the significance of the receiving water bodies in this case, with the seasonal stream on-site connecting into Chorro Flats and Chorro Creek, and ultimately to the Morro Bay Estuary. Accordingly, the proposed development could significantly degrade ESHA/stream resources, coastal waters and aquatic habitats, and it is inconsistent with the LCP.

Fortunately, construction BMPs to ensure water quality standards are well known to the Commission, and there is an emerging body of knowledge forming on post-construction BMPs that can address water quality concerns for residential subdivisions such as this. Accordingly, this project must implement required construction BMPs to ensure that sediment and debris and other construction related materials/pollutants do not enter into the adjacent stream and drainage. In addition, and in terms of post-construction BMPs, the revised developable area and BHNA/fire safety buffer area introduce the potential for the project to incorporate a combination of natural and engineered filtration and treatment BMPs in series in such a way that typical runoff pollutants are effectively removed from the resultant runoff prior to its use for on-site irrigation and/or prior to its discharge offsite. Specifically, all development should be premised on Low Impact Development (LID) BMP strategies and techniques (e.g., limiting impervious surfacing, maximizing infiltration in BMP design, reducing the hydraulic connectivity of impervious surfaces, etc.), and there appears to be adequate space for a treatment train drainage collection scheme that allows for gross pollutant removal (e.g., trash racks) and vehicle specific pollutant removal (e.g., media filled engineered units) prior to discharge to a natural BMP (like a grassy filter strip and swale) that together will appropriately filter and treat site drainage prior to its use for irrigation or discharge. Thus, special condition 2 requires the applicant to submit a post-construction drainage plan to ensure that all runoff generated from the residences, roadway, paths, parking areas, and other impervious surfaces is limited, and does not degrade coastal water quality. Such plan shall clearly identify a drainage system designed to collect, filter, and treat all runoff prior to its discharge from the site and to remove vehicular contaminants and other typical urban runoff pollutants



more efficiently than standard silt and grease traps and oil/water separators. The Commission fully expects such plan to be premised on LID BMP strategies and techniques, and fully expects that the drainage system will incorporate a treatment train approach with BMPs in series, including natural BMPs and pollutant specific BMPs (engineered systems with media filtration and treatment for expected vehicular pollutants), and that the drainage system will be designed to filter and treat the volume of runoff produced from each and every storm event up to and including the 85th percentile 24-hour runoff event prior to its use for onsite irrigation or its discharge offsite. See special condition 2.

3. Water Quality Conclusion

The proposed project does not adequately minimize the potential for adverse impacts from site drainage, and does not adequately protect important receiving water bodies water quality with respect to site drainage and runoff as required by the LCP. Fortunately, construction and post-construction BMPs can be applied to this site and this situation in such a way as to clearly ensure that site runoff is minimized, collected, filtered, and treated in such a way as to protect receiving water bodies and associated habitats. As conditioned, the project can be found consistent with the City's certified LCP policies protecting water quality and related habitats.

E. Archaeological Resources

1. Applicable LCP Archaeological Policies

The City's LCP policies protect archaeological resources. They state:

LUP Policy 4.01 Where necessary significant archaeological and historic resources shall be preserved to the greatest extent possible both on public and privately held lands.

LUP Policy 4.03 An archaeological reconnaissance performed by a qualified archaeologist shall be required as part of the permit review process for projects with areas identified as having potential archaeological sites. An archaeological reconnaissance will be required for all projects requiring an Environmental Impact Report under CEQA.

LUP Policy 4.05 Where archaeological resources are discovered during construction of new development, or through other non-permit activities (such as repair and maintenance of public works projects) all activities shall cease until a qualified archaeological knowledgeable in Chumash culture can determine the significance of the resource and designate alternative mitigation measures. Development that impacts archaeological resources shall be required to mitigate impacts in one of the following manners:

- a. Removal of artifacts;
- b. Dedication of impacted area as permanent open space;
- c. Coverage of archaeological site by at least 24 inches of sterile sand.



2. Archaeological Setting, LCP Consistency Analysis, and Conclusion

The site was last surveyed for archaeological resources in May 2006 (by Sean A. Lee, Central Coast Archaeology) to establish the presence or absence of cultural deposits and determine whether historic materials visible on the northern, low-lying portion of the property would be impacted by the proposed development of the proposed project. The survey identified two distinct soil types present on the property. The low-lying area adjacent to Quintana Road contains brown loamy clays consistent with soils of a former marsh or estuarine area. The archaeological surveyor concluded “prehistoric cultural materials were neither visible on the surface, nor were they anticipated as this was clearly part of an older wetland and/or drainage.” Nothing of significance was discovered in this area other than relatively fresh shell fragments and modern broken glass. Given this, no further archaeological investigations or recommended mitigations are necessary for this portion of the project site.

The second soil type present on the subject property consists of fine grayish-brown sand consistent with prehistoric midden soils. Seven test sites were hand-excavated. All seven sites produced high concentrations of prehistoric cultural materials including flaked stone debitage, weathered, fragmented prehistoric marine shell, and fragmented, burned mammal and fish bone. In addition, heavier concentrations of prehistoric midden deposits were found to be present on the southern side of the property near the Mobile Home Park. This upper portion of the project site is within the boundary of CA-SLO-1183, a prehistoric archaeological site recorded in 1986. An analysis of the deposits suggests that it has most likely been impacted by historic development and habitation of the subject property, as well as the construction of the neighboring Blue Heron Mobile Home Park. Nevertheless, even though the site has been compromised historically, it was determined that due to the sensitivity of find, it warrants archaeological measures to mitigate for development impacts because of the potential that intact prehistoric cultural materials may exist within CA-SLO-1183.

Through the City’s local review process, the proposed project includes recommended archaeological mitigation measures to avoid disruption of sensitive archaeological resources. The measures include archaeological monitoring during all grading and ground disturbing activities by a qualified archaeologist, avoidance of resources, recovery of materials, consulting with Native American representatives on the appropriate treatment of human remains, evaluating resources consistent with CEQA when previously undiscovered archaeological resources are found, and providing a Native American monitor. In order to ensure that archaeological resources are protected to the maximum extent possible as provided by LUP policies 4.01, 4.03, and 4.05, special condition 7 incorporates these archaeological mitigations and further requires that a Native American representative be present during any ground disturbance activities to monitor for potential impacts to cultural resources.

As conditioned, the project can be found consistent with the certified LCP policies for protecting archaeological resources.

F. Future Notice

The terms and conditions of this approval are meant to be perpetual. In order to inform future owners of



the requirements of the permit, and add a level of legal implementation of this fact, this approval is conditioned for a deed restriction designed to record the project conditions against the affected property. See special condition 10.

G. California Environmental Quality Act (CEQA)

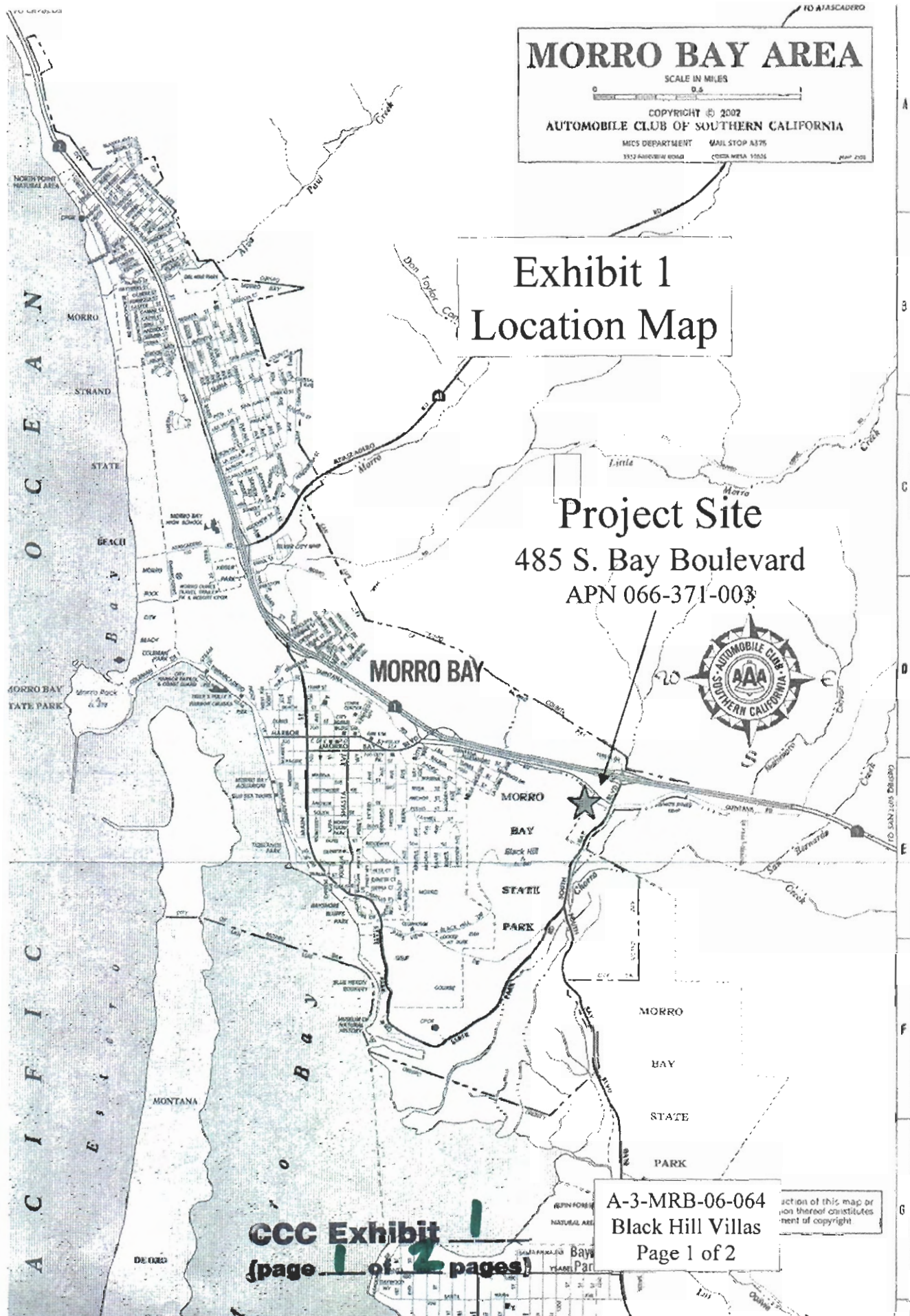
Section 13096 of the California Code of Regulations requires that a specific finding be made in conjunction with coastal development permit applications showing the application to be consistent with any applicable requirements of CEQA. Section 21080.5(d)(2)(A) of CEQA prohibits a proposed development from being approved if there are feasible alternatives or feasible mitigation measures available, which would substantially lessen any significant adverse effects which the activity may have on the environment.

On June 15, 2006, the City of Morro Bay acting as the lead CEQA agency, completed an initial study for the project that concluded that, with the addition of mitigation measures, the project would not have significant environmental impacts. The City incorporated said mitigation measures into their approval of the project.

The Coastal Commission's review and analysis of land use proposals has been certified by the Secretary of Resources as being the functional equivalent of environmental review under CEQA. This staff report has discussed the relevant coastal resource issues with the proposal, and has recommended appropriate suggested modifications to avoid and/or lessen any potential for adverse impacts to said resources. All public comments received to date have been addressed in the findings above. All above findings are incorporated herein in their entirety by reference.

As such, there are no additional feasible alternatives nor feasible mitigation measures available which would substantially lessen any significant adverse environmental effects which approval of the proposed project, as modified, would have on the environment within the meaning of CEQA. Thus, if so modified, the proposed project will not result in any significant environmental effects for which feasible mitigation measures have not been employed consistent with CEQA Section 21080.5(d)(2)(A).





MORRO BAY AREA

SCALE IN MILES



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AUTOMOBILE CLUB OF SOUTHERN CALIFORNIA

MICS DEPARTMENT

MAIL STOP A375

1912 AMHERST ROAD

CHICO, MEX. 92026

MAP 202

Exhibit 1 Location Map

Project Site

485 S. Bay Boulevard

APN 066-371-003



CCC Exhibit 1
(page 1 of 2 pages)

A-3-MRB-06-064

Black Hill Villas

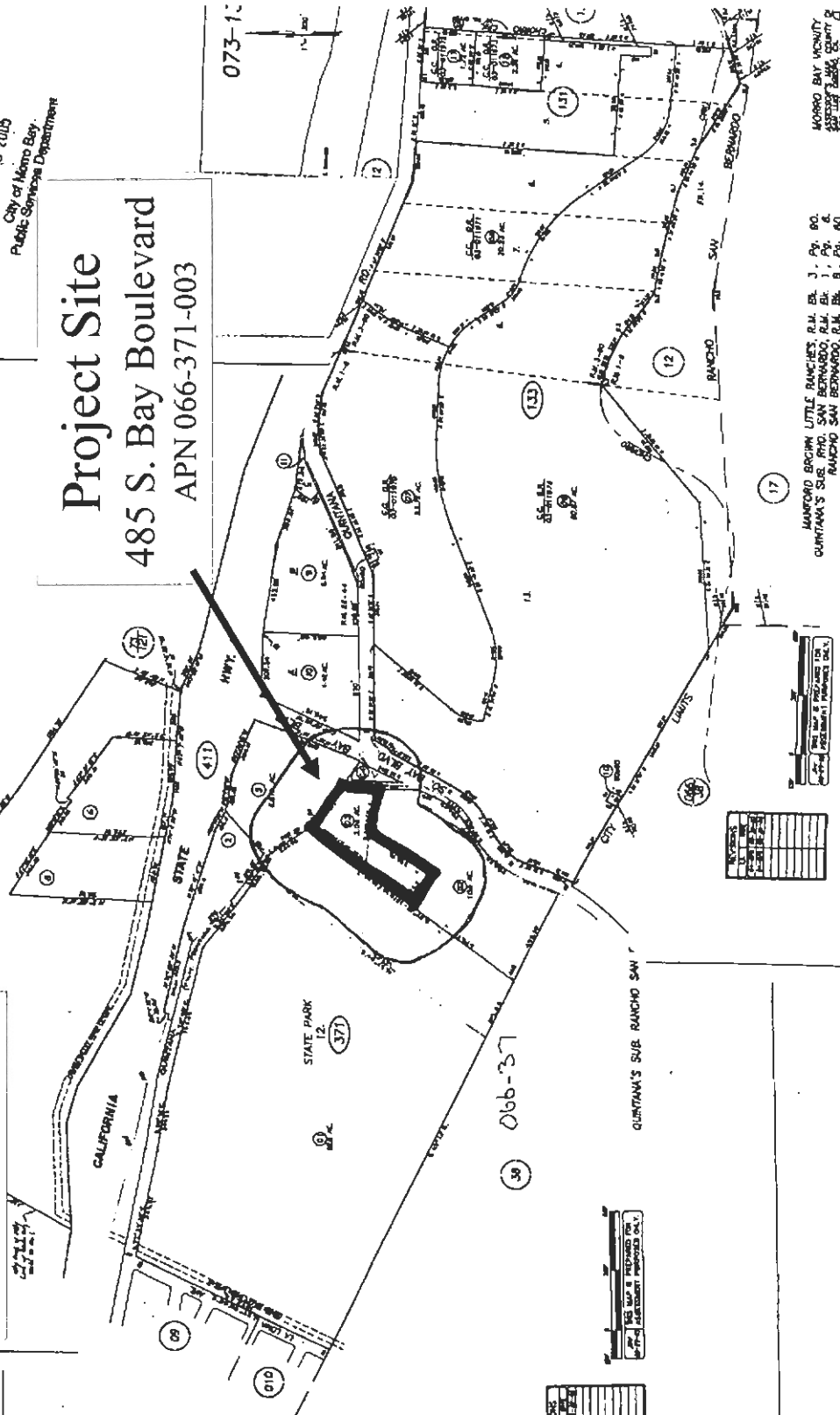
Page 1 of 2

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Exhibit 1 Location Map

RECEIVED
APR 28 2005
City of Mono Bay
Public Services Department

Project Site
485 S. Bay Boulevard
APN 066-371-003



A-3-MRB-06-064
Black Hill Villas
Page 2 of 2

Exhibit 2

Site Photographs

Pacific Ocean

Morro Bay Estuary

Black Hill
Natural Area

Portofino
Wetland Restoration
Area

S. Bay Boulevard

Project Site

Stream Corridor

Pointer 35°21'36.94"N 120°49'42.41"W Elev 48 m

© 2007 Europa Technologies
Image © 2007 DigitalGlobe
Image NASA

Streaming 100%

Eye alt 330 m

Google

AS-06-064
Black Hill Villas
Sheet 1 of 3



Degraded Stream Channel

Exhibit 2
Site Photographs

Box Culvert leading underneath South Bay Boulevard

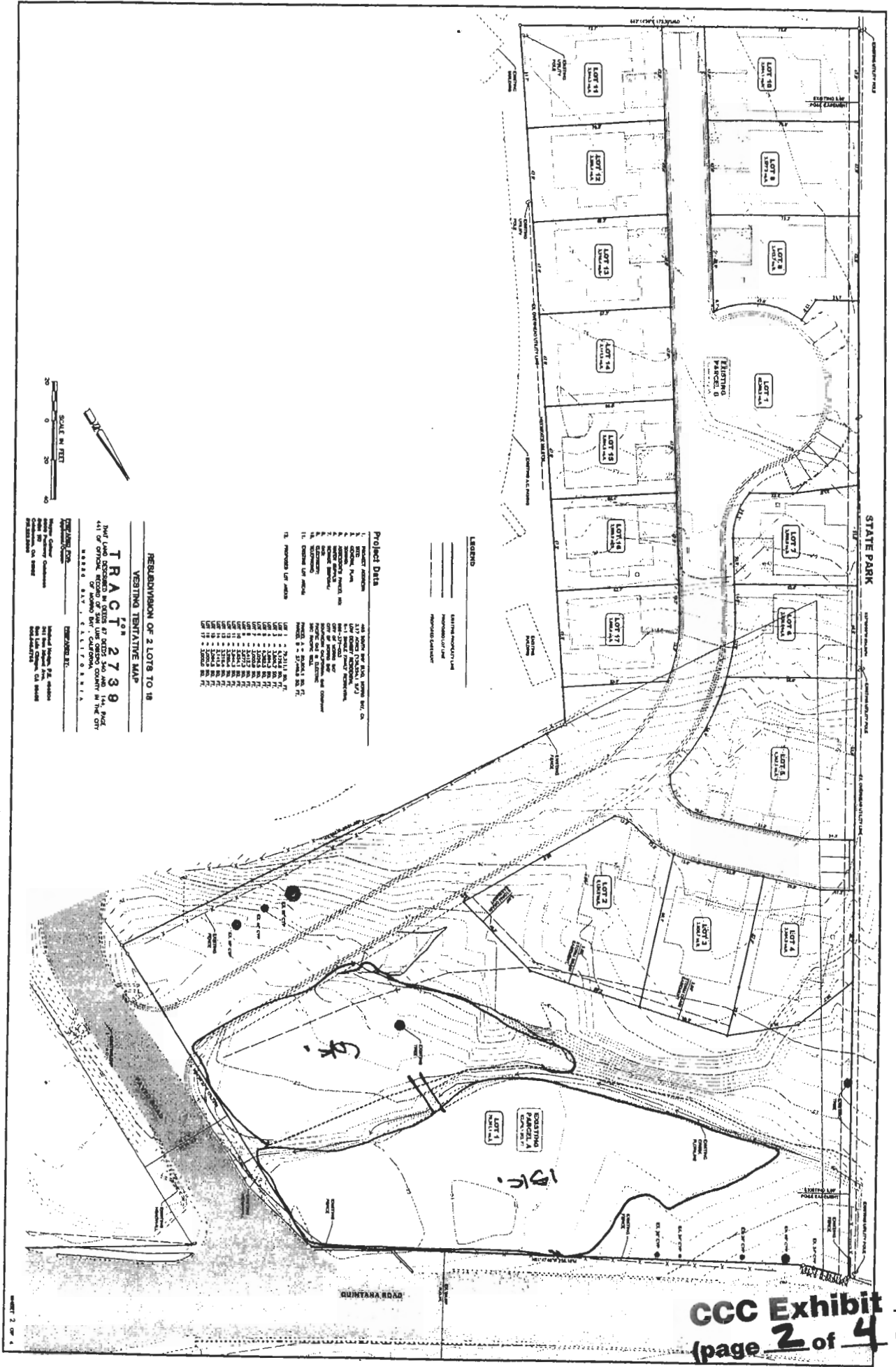
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Black Hill Villas
Page 2 of 3

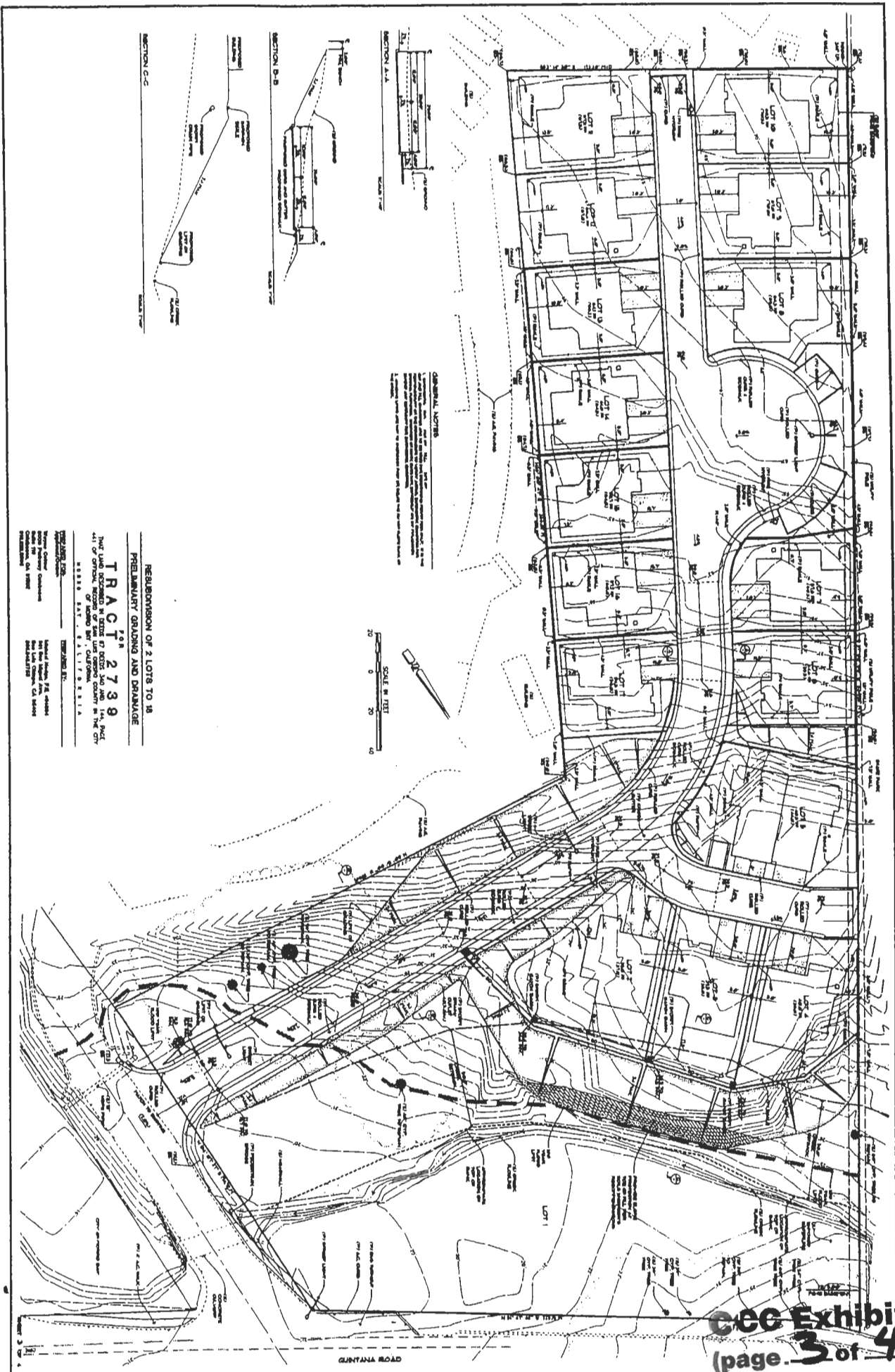
Eucahyptus and pines growing along western property line
on adjacent State Park lands.

Exhibit 2 Site Photographs

Stream and drainage channel

A-3-06-064
Black Hill Villas
Page 3 of 3



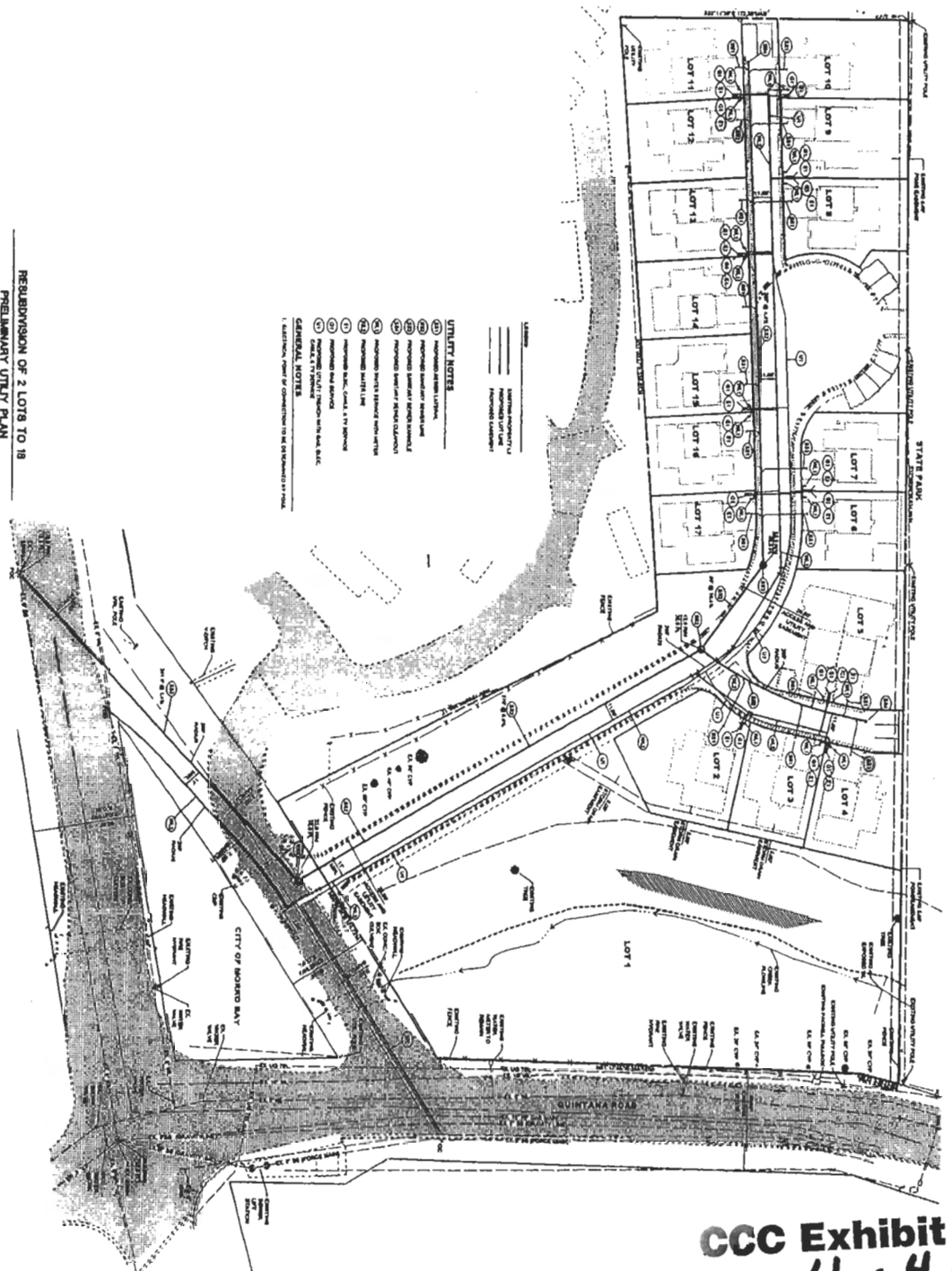


RESUBDIVISION OF 2 LOTS TO 18
 PRELIMINARY UTILITY PLAN

TRACT 2739
 TWO LOTS OCCUPYING 20 ACRES 20.00 AND 14.00 ACRES
 ALL OF WHICH ARE IN THE CITY OF LOS ANGELES, COUNTY OF LOS ANGELES, STATE OF CALIFORNIA

PREPARED BY: **THE L. B. RAY COMPANY, INC.**
 10000 Wilshire Blvd., Suite 1000
 Los Angeles, California 90024

DESIGNED BY: **THE L. B. RAY COMPANY, INC.**
 10000 Wilshire Blvd., Suite 1000
 Los Angeles, California 90024



- UTILITY NOTES**
1. All utility lines shown on this plan are assumed to be in accordance with the City of Los Angeles Department of Public Works.
 2. All utility lines shown on this plan are assumed to be in accordance with the City of Los Angeles Department of Public Works.
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AGENDA NO: _____

Meeting Date: _____

Action: _____

Staff Report

TO: HONORABLE MAYOR AND CITY COUNCIL

DATE: NOVEMBER 13, 2006

FROM: MIKE PRATER, SENIOR PLANNER

SUBJECT: APPEAL OF THE PLANNING COMMISSIONS NO ACTION DECISION FOR A VESTING TENTATIVE TRACT MAP, VARIANCE, CONDITIONAL USE PERMIT AND COASTAL DEVELOPMENT PERMIT FOR PROPOSED CLUSTER SUBDIVISION OF 17 RESIDENTIAL LOTS, & 1 OPEN SPACE LOT. (S00-038/UP0-070/CP0-110/AD0-027)

APPLICANT: WAYNE COLMER

APPELLANT: WAYNE COLMER

PLEASE BRING YOUR OCTOBER 9, 2006 COUNCIL REPORTS

If additional copies are needed please let the City Clerk know.

RECOMMENDATION:

Staff recommends the City Council approve the appeal, adopt the Mitigated Negative Declaration, and approve the project.

FISCAL IMPACT:

The proposed project would contribute development fees. The project's fiscal effects would be potentially negative, but are expected to be inconsequential. Cumulatively, the effect of new residential development requires more costs to serve than is generated by property tax revenues. To the extent that the occupants of the new residences spend within the City limits, then sales tax receipts can generate some additional revenue to offset those costs. In addition, fees are collected for services such as water and sewer.

SUMMARY:

The project was appealed because a no action decision by a vote of 3:1:1 was reached at the Planning Commission level because section 16.12.060 requires a 2/3 affirmative vote of the total Planning Commissioner membership.

An appeal is allowed even though there was not a 2/3 affirmative vote because Government Code Section 66452.5 allows for an appeal of any action with respect to a tentative map. The City Council should consider if the project qualifies as a cluster design and/or community housing project, as well as, if the

Prepared by: _____

Dept. Review: _____

City Manager Review: _____

CCC Exhibit 4
(page 1 of 16 pages)

density and character is adequate and all added conditions justify compatibility with the General Plan/Local Coastal Plan.

BACKGROUND:

On August 21, 2006, the Planning Commission considered the proposed application at a regularly scheduled public hearing. After considering public testimony, the Planning Commission voted 3-1-1 (Johnson voted no; Tefft abstained), which did not give the project a 2/3 vote for approval; therefore the decision is considered as no action taken.

The project would require City Council action regardless of the appeal nature because creating five or more parcels under this type of design requires City Council action with majority approval. This proposal would create seventeen (17) residential parcels with one (1) open space parcel. After some discussion, the majority of the Planning Commission wanted to add the following new conditions: (the project needed 2/3 vote for approval to get a recommendation which is why these conditions are explained as a majority request)

1. Add a sidewalk in front of units 2, 3, and 4.
2. Add two parallel parking spaces near the pathway to the common area, (Victory garden).
3. Add a pathway on the landscape plan to parallel the creek.
4. Provide a note on the plans along the property line between the State Park and the Cul de sac "no fencing."
5. Provide a 3 to 1 replacement of removed trees on the landscape plan and determine if any additional trees can be saved.
6. Provide a schedule re-evaluating the health of all trees on the property.
7. Add a signalized pedestrian crosswalk across South Bay Blvd.
8. Minimize street lighting glare to the maximum extent possible.

APPEAL:

Wayne Colmer has appealed the no action decision and contends the project could be interpreted to qualify as meeting the regulations for both cluster design and a community housing project. The Council should evaluate the project under both criteria. If the Council finds the project meets the criteria under one or the other or both then the project can be approved. Primarily, the objectives for a Cluster design warrant a buffering of open space from an area needing preservation, and a Community Housing project objective is providing an open space area for the project residents' enjoyment.

DISCUSSION:

The project site consists of two existing parcels totaling 3.17 acres. Parcel A is the low-lying property at 1.85 acres and parcel B is the upland property at 1.32 acres. The proposed project site is zoned R-2. The applicant is proposing to re-subdivide the two parcels to create 18 parcels; 17 residential lots and 1 common lot containing driveways and open space. The residential parcels range from 3,000 to 6,123 square feet in area. Each lot would have a detached single-family residence with either a Plan 1, that's 1,704-sq. ft. or Plan 2 that's 1,895-sq. ft. Both plans provide a two-car garage. The attached townhouse lots (lots 5 & 6) will consist of three bedrooms, two baths, 1,150 sq. ft. with similar architecture to the Plan 2A elevation. The attached homes will meet the inclusionary affordability requirement. The open

space area totals approx. 51,000 sq. ft. (21,710 sq. ft. has less than a 10% slope) or 37% is proposed for preservation. The applicant is proposing to construct all 17 homes in one phase.

CLUSTER SUBDIVISIONS:

Under the subdivision ordinance cluster divisions are mentioned as a concept allowed in Section 16.12.060. However, the ordinance does not go on further to establish standards. Therefore, staff has included other projects approved by the City using this concept and basic common practices used by other communities. As a general rule of thumb, when clustering, a project should preserve 30 to 40 percent of the site. As an example, the City Council recently approved a tract map for the Methodist Church that allowed 10 percent to be community gardens. The Planning Commission felt the project better met the intent of a cluster development.

As a cluster design the subdivision must produce a more desirable and livable community than minimum requirements with such items as enhanced livability, appearance, health, safety, convenience or general welfare with new concepts in the arrangement of lots, circulation pattern providing permanent open space access to blocks, schools, shopping centers and other uses. The Subdivision Ordinance specifies the subdivision "shall comply with the following: A. Improved design based on density control and better community environment. The standards set out... may be varied only when the gross density of an area is not increased and where said design has approval of the City Council, and where in their opinion said deviation will: 1. Produce a more desirable and livable community than the minimum requirements; 2. Create better community environment through dedication of public areas, or setting out permanent scenic easements of open spaces... 3. Reduce the danger of erosion."

A variety of studies and reports were conducted that evaluated the project's impacts that include: 1) biological surveys including monarch butterflies, raptor surveys, snail surveys, frog surveys, field surveys were also conducted for tidewater goby and steelhead, and a tree report with inventory; 2) cultural resources; 3) soils/geology; 4) drainage; and 5) traffic. All of these reports were prepared by qualified professionals and reviewed by city staff. The most discussed topics at the Planning Commission were traffic along South Bay Blvd. and Quintana, open space (cluster design standards versus community housing standards), and tree removal/replacement. As mentioned above, the Planning Commission added a condition for 3 to 1 replacement along with re-evaluating the trees to save as many as possible. The applicant has expressed some concerns with this replacement ratio because the low-lying area is the only designated location for the replacement and a 3 to 1 ratio will become a future fire hazard and one of the goals of the project is to keep a wildlife corridor open between Chorro Creek and the State Parks property by not over growing the area. The applicant would also like credit for the trees that are dead or dying or were damaged by PG&E to not count towards this replacement ratio.

CONCLUSION:

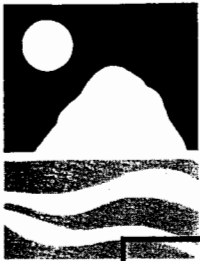
The project is a Planned Unit Development that can be found consistent with the zoning ordinance and subdivision regulations. It makes use of the cluster concept to buffer from the seasonal drainage channel. The average lot size is reduced by 50% of the typical 6,000 sq. ft. standard. The zoning of the site would allow for forty-seven units (47) residential units consistent with the General Plan/Coastal Land Use Plan. The applicant is only proposing seventeen units (17). The project has been determined to qualify for a Mitigated Negative Declaration under CEQA.

ATTACHMENTS:

Attachment A – City Council report of October 9, 2006, under separate cover previously forwarded

Attachment B – Applicant/Appellant appeal letter

The various studies and reports are available for City Council members in the Council's Administrative read file in the City Clerks office



City of Morro Bay

Morro Bay, CA 93442 • 805-772-6200

www.morro-bay.ca.us

REGULAR COASTAL DEVELOPMENT PERMIT, CONDITIONAL USE PERMIT, VARIANCE AND TENTATIVE TRACT MAP

CASE NO: S00-038/UP0-070/CP0-110/AD0-027

THIS PERMIT IS HEREBY APPROVED AND ISSUED FOR:

SITE ADDRESS: 485 S. Bay Blvd

APPLICANT: Wayne Colmer

APN: 066-371-003

LEGAL: A resubdivision of Parcels A & B into Tract 2739

DATE APPROVED: August 8, 2005

APPROVED BY: CITY COUNCIL

APPROVED BASED UPON ATTACHED FINDINGS (Findings and Conditions of Approval Attached)

CEQA DETERMINATION: NEGATIVE DECLARATION

DESCRIPTION OF APPROVAL: Subdivide the site into seventeen (17) residential parcels with one (1) open space parcel under the cluster design concept.

THIS APPROVAL IS CONDITIONAL AND IS VALID *ONLY IF CONDITIONS (ATTACHED) ARE MET AND ONLY AFTER THE APPLICABLE APPEAL PERIOD*. Failure to comply with the conditions of this permit shall, at the discretion of the Public Services Director pursuant to Municipal Code Section 17.60.150, render this entitlement null and void.

PERMIT EFFECTIVE DATE & INFORMATION APPLICABLE TO YOUR PROJECT IS OUTLINED FOLLOWING THE BOX CHECKED BELOW: ENABLE THE APPLICABLE CHECK BOX BELOW.



YOUR PROPERTY IS LOCATED IN THE CITY OF MORRO BAY JURISDICTION, THERE IS AN APPEAL PERIOD OF TEN (10) Calendar days, WITHIN WHICH TIME YOUR PERMIT IS APPEALABLE TO THE CITY COUNCIL



YOUR PROPERTY IS LOCATED IN THE COASTAL COMMISSION APPEALS JURISDICTION. This City decision is appealable to the California Coastal Commission pursuant to the California Public Resource Code, Section 30603. The applicant or any aggrieved person may appeal this decision to the Coastal Commission within TEN (10) Working days following Commission receipt of this notice. Appeals must be in writing and should be addressed to: California Coastal Commission, 725 Front Street, Ste. 300, Santa Cruz, CA 95060, Phone: 408-427-863. If you have any questions, please call the City of Morro Bay Public Services Department, 772-6261.

IF THIS BOX IS CHECKED, SEND CERTIFIED/RETURN RECEIPT TO CALIF. COASTAL COMMISSION

IF NOT APPEALED, YOUR PERMIT WILL BE EFFECTIVE: November 28, 2006

ATTEST:

DATE: November 14, 2006

Mike Prater, Senior Planner

FOR: Bruce Ambo, Public Services Director

THIS IS A DISCRETIONARY APPROVAL AND DOES NOT CONSTITUTE A BUILDING PERMIT

FINANCE
595 Harbor Street

ADMINISTRATION
595 Harbor Street

FIRE DEPARTMENT
715 Harbor Street

HARBOR DEPARTMENT
1275 Embarcadero Road

CITY ATTORNEY
955 Shasta Avenue

POLICE DEPARTMENT
850 Morro Bay Boulevard

CCC Exhibit 4
PUBLIC SERVICES
(page 5 of 16 pages)

RECREATION AND PARKS
1001 Kennedy Way

EXHIBIT A
FINDINGS FOR APPROVAL
S00-038/UP0-070/CP0-110/ AD0-027

California Environmental Quality Act (CEQA)

- A. That for purposes of the California Environmental Quality Act, Case No. S00-038/UP0-070/CP0-110/ AD0-027 is subject to a Mitigated Negative Declaration based on hazards issues. Any impacts associated with the proposed development will be brought to a less than significant level through the Mitigations required as conditions of approval.

Subdivision Map Act Findings

- B. The proposed map to create seventeen residential lot and an open space parcel project, where the new parcels will have single-family residences that are consistent with the General Plan and Coastal Land Use Plan because residential development and the given parcel sizes are allowed under the land use designation and zoning & subdivision ordinance.
- C. The design and improvements to create Black Hill Villas subdivision is consistent with the General Plan and Coastal Land Use Plan because all public improvements will be constructed.
- D. The site is physically suitable for the type and density of development proposed because the site is zoned for multi-family but after considering the environmental constraints eighteen residential units better fit the site and still complies with the land use designation.
- E. The design of the subdivision and related improvements will not cause substantial environmental damage or substantially and avoidably injure fish or wildlife or their habitat because all precautions will be implemented to catch and direct all runoff.
- F. The design of the subdivision and improvements will not cause serious public health problems.
- G. The design of the subdivision and related improvements will not conflict with easements, acquired by the public at large, for access through or use of, property within the proposed subdivision because no easements are required for the public.
- H. As conditioned, the design, architectural treatment, and general appearance of all buildings and open space areas are in keeping with the character of the surrounding area pursuant to 17.48.200, and will not be incompatible with the uses permitted in the surrounding areas and zoning district; and
- I. The City has available adequate water to serve the proposed subdivision based upon the water regulations and water equivalency table Exhibit A, enforced at the time of approval of the Vesting Tentative Parcel Map pursuant to the certified Water Management Plan and General Plan LU-22.1.
- J. Improved design based on density control and better community environment. The standards set out in Section 16.12.020 to 16.12.050 may be varied because the gross density of the area is not increased
- K. In the Planning Commission opinion said deviation will:

1. Produce a more desirable and livable community than the minimum requirements;
 2. Create better community environment in keeping with the single-family residential nature and style of the area;
 3. Reduce the danger of erosion.
- L. The variation as authorized will result in a community which is a substantial improvement over a community which could have been developed in that this allows the opportunity to provide residential units for ownership rather than apartment which is a greater need in the City.

Conditional Use & Coastal Development Permit Findings

- M. That the project is an allowable use in its zoning district and is also in accordance with the certified Local Coastal Program and the General Plan for the City of Morro Bay based on the analysis and discussion in the attached staff report; and
- N. The establishment, maintenance, or operation of the use applied for will not be detrimental to the health, safety, morals, comfort and general welfare of the persons residing or working in the neighborhood of such proposed use as the project is consistent with all applicable zoning and plan requirements as indicated in the attached staff report; and
- O. The use will not be injurious or detrimental to property and improvements in the neighborhood or the general welfare of the City since the project, as conditioned, will be conducted consistent with all applicable City regulations, as indicated in the attached staff report.

Variance Findings

- P. This variance granted, as conditioned, will not constitute a grant of special privilege inconsistent with the limitations upon other properties in the vicinity and Zoning District in which the subject property is situated. The slope of the property is a limitation on the development of the site and the applicant has proposed a density less than permitted to accommodate development of the site; and
- Q. Because of special circumstances applicable to the subject property, including size, shape, topography, location or surroundings, as discussed in the staff report, the strict application of the Municipal Code is found to deprive the subject property of privileges enjoyed by other properties in the vicinity and under identical zone classification and strict application of Municipal Code would result in practical difficulties and unnecessary hardship; and
- R. The variance is consistent with the Local Coastal Land Use Plan and the General Plan since a variance to setbacks are zoning requirements and there are no policies that effect these standards were no public view is impacted.

Architectural Consideration

- S. As required by Ordinance Section 17.48.200 the Planning Commission find that the architectural treatment and general appearance of all proposed building, structures and open areas are in keeping with the character of the surrounding areas, are compatible with any design themes adopted by the city, and are not detrimental to the orderly and harmonious development ;of the city or to the desirability of investment of occupation in the neighborhood.

EXHIBIT B

CONDITIONS OF APPROVAL S00-038/UP0-070/CP0-110/ AD0-027

STANDARD CONDITIONS

1. This permit is granted for the use as described in the staff report and the on plans received by the Public Services Department on September 7, 2006 ("Exhibit C" of the staff report). The approval is modified, however, by the following Conditions of Approval:
2. Inaugurate Within Two Years: If the approved use is not established within two (2) years of the effective date of this approval, this approval will automatically become null and void. However, upon written request by the applicant prior to the expiration date of this approval, up to two (2) one-year time extensions may be granted. Said extensions may be granted by the Public Services Director, upon finding that the project complies with all applicable provisions of the Morro Bay Municipal Code, General Plan and Local Coastal Program Land Use Plan (LCP) in effect at the time of the extension request.
3. Changes: Minor changes to the project description and/or conditions of approval shall be subject to review and approval by the Public Services Director. Any changes to this approved permit determined not to be minor by the Director shall require the filing of an amendment subject to Planning Commission review.
4. Compliance with the Law: All requirements of any law, ordinance or regulation of the State of California, City of Morro Bay, and any other governmental entity shall be complied with in the exercise of this approval. This project shall meet all applicable requirements under the Morro Bay Municipal Code, and shall be consistent with all programs and policies contained in the certified Coastal Land Use Plan and General Plan for the City of Morro Bay.
5. Hold Harmless: The applicant, as a condition of approval, hereby agrees to defend, indemnify, and hold harmless the City, its agents, officers, and employees, from any claim, action, or proceeding against the City as a result of the action or inaction by the City, or from any claim to attack, set aside, void, or annul this approval by the City of the applicant's project; or applicants failure to comply with conditions of approval. This condition and agreement shall be binding on all successors and assigns.
7. Compliance with Conditions: The applicant's establishment of the use and/or development of the subject property constitutes acknowledgement and acceptance of all Conditions of Approval. Compliance with and execution of all conditions listed hereon shall be required prior to obtaining final building inspection clearance. Deviation from this requirement shall be permitted only by written consent of the Public Services Director and/or as authorized by the Planning Commission. Failure to comply with these conditions shall render this entitlement, at the discretion of the Director, null and void. Continuation of the use without a valid entitlement will constitute a violation of the Morro Bay Municipal Code and is a misdemeanor.
8. Water Saving Devices: Prior to final occupancy clearance, water saving devices shall be installed in the project in accordance with the policies of the Morro Bay Coastal Land Use Plan and as approved by the Building Official.

9. Screening of Equipment/Utility Meters/Fencing: All roof-mounted air conditioning, or heating equipment, vents, ducts and/or utility meters shall be screened from view from adjoining public streets in a manner approved by the Director of Public Services. Prior to building permit issuance, the approved method of screening shall be shown on the project plans.
10. Construction Hours: Pursuant to MBMC Section 9.28.030 (I), noise-generating construction related activities shall be limited to the hours of seven a.m. to seven p.m. daily, unless an exception is granted by the Director of Planning & Building pursuant to the terms of this regulation.
11. Utility Services: All water and sewer impact fees shall be paid at the time the building permit is issued.
12. Property Line Verification. It is owner's responsibility to verify lot lines. Prior to foundation inspection the lot corners shall be staked and setbacks marked by a licensed professional.
13. CBC & UBC Compliance. The entire project, including all setbacks and openings in exterior walls, shall comply with the Building Code, as determined by the Building Official.
14. Zoning Compliance. Proposed fencing on the site shall be shown on plans submitted for a building permit and shall comply with zoning regulations including Chapter 17.49 Community Housing Project Regulations, Residential Conversions and Demolitions.
15. Park In-lieu Fee. Prior to recordation of the Final Map requirements of the City of Morro Bay for dedication of land for park purposes and/or payment of fee-in-lieu thereof shall be met (MBMC Section 16.16.030).

PUBLIC WORKS CONDITIONS

16. Sewer Master Plan Impact Fee: Prior to the issuance of a building permit, the Applicant/Developer shall pay to the City an impact fee toward the construction of municipal sewer improvements as determined by the Engineering Division in accordance with the Sewer System Master Plan.
17. Tract Map: \$1,100 fee. The City Master Fee Schedule requires the Applicant/Developer pay a Tract Map Fee of \$1,100 + direct costs for checking, inspection, and other provided work performed by contracted engineering services. The final map shall be furnished on Mylar and in electric format. The files need to be in the format of .dwg or .dxf. PDFs are not required but may be submitted in addition to confirm record of original drawings. The Applicant/Developer shall submit a current title report.
18. Traffic Engineering Study Report: A fee shall be paid proportionate to the project impacts. Applicant/Developer shall submit a traffic engineering report analyzing the increased traffic volumes resulting from this project. The report shall also include circulation within the tract: an analysis of the proposed project entrance considering sight distance, the proposed driveway slope, lighting and turn lane requirements; street striping on Quintana and on South Bay Blvd.'s; and a recommendation for the location of a public transit waiting facility.
19. Public Improvements: \$404 Plan Check Fee + additional costs. Public Improvements are required as set forth in MBMC Section 14.44. Pursuant to Chapter 12.04 all improvement work shall

conform to the City's Standard Drawings and Specifications. Prior to map recordation the Applicant/Developer shall: (1) submit \$404 Plan Fee with public improvement plans designed by a civil engineer registered in California. Existing improvements may remain except for portions in need of repair, or which do not meet City standards. (2) include the City's general notes on the improvement plans. (3) submit cost estimates calculated on the City's Engineering Estimate Worksheet. (4) complete the City's Reimbursement Agreement, the City's Improvement Agreement and it's insurance requirements. (5) deposit a financial security with the City in the amount of 150% of the estimated construction cost of the public improvements. (6) acquire encroachment permits. Prior to project completion sign off by Public Works, asbuilt drawings shall be furnished on Mylar and in electronic format CD. The files need to be in the format of .dwg or .dxf. PDFs are not required but may be submitted in addition to confirm record of original drawings. The Applicant/Developer shall pay any additional costs incurred for Public Works staff services, which exceed two site visits/inspections, and four total hours for plan check, office/counter meetings, telephone, copies, email, etc. The City will prepare an invoice for additional costs, which shall be paid prior to final occupancy sign-off of the project.

20. Public Improvement & Grading Plans Submittal: The Public Improvement Plans shall be titled as such and submitted to the Engineering Division of the Public Services Department. The Improvement plans shall be separate of the Grading Plans. The Grading, Drainage, and Retaining Wall Plans shall be submitted to the Building Department for their approval and issuance of a "Grading or Building Permit". It is acceptable to provide the Grading and Drainage plans for the City Engineer's information only, but they will be reviewed and approved by the Building Department.
21. Water Pressure Reducer: Applicant/Developer shall install a pressure reducer on private property for each proposed home.
1. 22. Street Tree: A street tree(s) planting area shall be installed at the back of sidewalk in a semi circle (3' radius) formed into back of sidewalk. The circle shall extend 1' into the back of sidewalk and there shall be at least a 5' wide sidewalk width from there to the curb. Install per B-12 Planting Detail, but precast cover and support structure shall be omitted and the planter location to be at back of sidewalk.
23. Oil-Water Separator: To reduce pollution to creek, bay and ocean waters, the Applicant/Developer shall install an oil-water separator/isolator on site between all drainage water inlets and the street gutter. Inlet and/or outlet structure design shall address silt and hydrocarbon containment and be approved by the City.
24. Sewer Lateral For New Structures: A dedicated sewer lateral is required for each proposed single-family unit.
25. Sewer Backwater Valve: A sewer backwater valve shall be installed into each lateral on site to prevent a blockage or maintenance of the private or municipal sewer main from causing damage. (MBMC 14.24.070)
26. Repair & Replacement of Public Improvements: Prior to project completion the Applicant/Developer shall repair curb, street, sewer line, water line, or any public improvements which were damaged as a result of construction operations for this project.

27. Erosion and Sedimentation Control Plan: The Tentative Map shall make reference to control measures for protection against erosion of adjacent property and prevent sediment or debris from entering adjacent properties, waterway, or ecologically sensitive area. Such control also serves as an aid in meeting the National Pollutant Discharge Elimination System (NPDES) Permit Program as Authorized by the Clean Water Act and administered by the State of California. The Plan shall be approved by the City prior to building permit issuance.

28. Flood Hazard Permit and Development:

The National Flood Insurance Program Rate Map for the City of Morro Bay, prepared by FEMA, identifies a portion of the Applicant/Developer's project as being in a Special Flood Hazard Area 100 year flood Zone.

Prior to Public Works approval of the Grading Plan, the following below shall be met:

A FEMA approved Conditional Letter of Map Amendment.

Submit the required fee, which is currently \$171, for Flood Hazard Development (Morro Bay Municipal Code Section 14.72, Flood Damage Protection)

Other permits and approvals required for projects with a creek may include State Department of Fish and Game #1601, and Federal Corps of Engineers #404, Water Quality Control Board Certification and State Coastal Zone Management Act compliance. It is the Applicant/Developer's responsibility to obtain all necessary permits.

PLANNING CONDITIONS

29. Archaeology: In the event of the unforeseen encounter of subsurface materials suspected to be of an archaeological or paleontological nature, all grading or excavation shall immediately cease in the immediate area, and the find should be left untouched until a qualified professional archaeologist or paleontologist, whichever is appropriate, is contacted and called in to evaluate and make recommendations as to disposition, mitigation and/or salvage. The developer shall be liable for costs associated with the professional investigation and implementation of any protective measures as determined by the Director of Public Services.
30. Covenants, Codes and Restrictions (CC&Rs) or maintenance agreements shall be submitted with the final Tract Map for review and approval by planning staff and the City Attorney. An easement over each lot will also be provided for the common open space area. The Tract Map, easement and CC&Rs shall clearly indicate the common open space area. The CC&Rs shall include clear provisions for the continued maintenance of the common open space area and shall include provisions for the City to force maintenance of common area if the owners of the parcels fail to do so voluntarily. CC&Rs shall also restrict all landscaping, fencing and buildings throughout the project to continued consistency with plans hereby approved, unless otherwise approved by the Planning Commission or staff.
31. Colors and Materials: Prior to issuance of a building permit, the Planning and Building Director shall ensure compliance of all exterior colors and materials, including fencing materials as approved on the attached Exhibit(s). All other colors and materials not so specifically approved may be approved by the Director according to the following objectives: achieve compatibility

with colors and materials used in the on-site improvements; achieve compatibility with the architectural design of the improvements; achieve compatibility with surrounding land uses and properties; preserve the character and integrity of the zone.

32. Undergrounding of Utilities: Pursuant to MBMC Section 17.48.050, prior to final occupancy clearance, all on-site utilities including electrical, telephone and cable television shall be installed underground.
33. Common Driveway Access and Maintenance: An easement or covenant consistent with Section 17.44.030 E shall be recorded for all parcels to have access to the common driveway and backing areas over parcels to allow for access to the parking provided. The easement or covenant shall include the responsibilities of maintaining the roadway.
34. Exterior Lighting: Pursuant to MBMC Section 17.52.080, prior to building permit issuance, complete details of all exterior lighting shall be shown on the project plans for review and approval by the Director of Public Services. All exterior lighting shall be low level with a height of fixture not to exceed a maximum of 20 feet and shall achieve the following objectives; avoid interference with reasonable use of adjoining properties; shielded to minimize on-site and off-site glare; provide adequate on-site lighting; limit fixture height to avoid excessive illumination; provide structures which are compatible with the total design of the proposed facility.
35. Landscape and Irrigation Plan: Prior to the issuance of a building permit, a landscaping plan, prepared and stamped by a licensed Landscape Professional, (i.e., Landscape Architect, Architect, or Landscape Contractor) shall be submitted for review and approval by the Director of Public Services in accordance with all requirements of Section 17.48.290 of the MBMC. Said plan shall include a planting plan showing the species, number, size, and location of all plant materials. An irrigation plan shall include the proposed method and location of irrigation. Native and/or drought tolerant plant and tree species shall be used to the maximum extent feasible. Trees shall be selected from the Master City Street Tree List prepared by the Public Works Department. The landscape plans shall also include fencing details, utility meter screening, and screening of the trash enclosure.
36. Timing of Landscaping: Prior to issuance of a final Certificate of Occupancy, all required plantings, groundcover and irrigation systems shall be in place to the satisfaction of the Director of Public Services. The landscape consultant shall provide a watering schedule and certify that all plantings and irrigation systems have been installed pursuant to the approved plans prior to issuance of the final Certificate of Occupancy.
37. Maintenance of Landscaping: All required plant materials shall be maintained in accordance with the watering schedule as specified in the approved landscape plan notes. All landscaping shall be cared for, maintained, watered, fertilized, fumigated, pruned and kept in a healthy growing condition for the life of the project. Where required plant(s) have not survived, it shall be promptly replaced with new plant materials of similar species, functional, size, and characteristics as specified in the approved landscape plant notes.
38. Conditions of Approval on Building Plans: Prior to the issuance of a Building Permit, the final Conditions of Approval shall be attached to the set of approved plans. The sheet containing Conditions of Approval shall be the same size as other plan sheets and shall be the last sheet in the set of Building Plans.

39. The applicant is required to pay the Department Fish and Game fee for a Negative Declaration filing of De minimus Impact Finding along with a fee of \$1,275 to the County Clerk. The funds shall be made payable to the "County of San Luis Obispo" and delivered to the Public Services Department within five days of the approval. The funds will be forwarded along with the Environmental Determination to the County Clerk in accordance with California Code of Regulation Title 14, Division 1, Subdivision 3, Chapter 4, Section 753.5. Filing the Notice of Determination along with the fee is required within 10 days of the project approval and has the effect of starting a 30-day statute of limitations period for challenges to the decision in place of 180-day period otherwise in effect.

ENVIRONMENTAL CONDITIONS

40. **BIOLOGICAL:**

- a. A habitat enhancement plan for area within the floodplain shall be required. The five existing cypress trees located along Quintana Road shall be left in place to create a stand of trees of mixed height and age class. Details of the enhancement plan should be coordinated among the developer, the project landscape architect, City staff and a raptor biologist.
- b. Future tree removal and commencement of construction activities should be withheld until a field survey has been performed and a determination is made the completion of fledging period has ended, if fledging birds are present.
- c. A survey of the site by a qualified biologist prior to tree removal to determine if active nests are present shall be required.
- d. A concurrence authorization is obtained from the USFWS stating that the project will not result in the take of the regulated variety of the MSS. If USFWS concurrence is not granted then a Habitat Conservation Plan (HCP) will be required prior to construction.
- e. A concurrence authorization is obtained from the USFWS stating that the project will not result in the take of the California red-legged frog. Otherwise the following mitigations are required, the mitigation measures are suggested even if the concurrence determination is granted.
 1. Grading and grubbing activities should occur only during the dry season (generally June 15 to October 15).
 2. Applicant should retain a qualified biologist to conduct a pre-activity survey for California red-legged frogs and/or MSS prior to the initiation of site work.
 3. The applicant and contractors should employ Best Management Practices (BMPs) during grading and construction.
 4. The applicant should provide restoration of the small floodplain and drainage channel on the lower section of the parcel using native riparian plants and trees. This should be coordinated with the habitat enhancement plan.
- f. If on-site refueling is necessary then it should be conducted at the upland location way from the drainage channel and floodplain.

Monitoring: Public Services staff shall ensure that the applicant has obtained a qualified biologist and review the habitat enhancement plan. PS staff will review the concurrence determination by USFWS and/or the HCP.

41. **CULTURAL RESOURCES:**

- a. Archaeological monitoring of all grubbing, demolition, and excavation activities in the development area by a qualified archaeologist and Native American. Collection of historic and prehistoric cultural remains deemed significant and if necessary, analysis of any features encountered including but not limited to historic refuse dumps and diagnostic prehistoric habitation deposits.
- b. Selection and processing of prehistoric marine shell for radiocarbon dating.
- c. The applicant/property owner shall provide an archaeological monitoring evaluation plan prepared by a qualified archaeologist for all construction excavations associated with grading activity. The plan shall identify all the ground disturbance activity monitored including dates the archaeologist and culturally affiliated, indigenous individual recognized by the Native American Heritage Commission were present. The evaluation report shall describe all the densities or features of artifacts associated with a particular activity encountered. Any isolated human remains encountered during construction shall be protected and their disposition be undertaken consistent with Public Resources Code 5097.98.

Monitoring: The applicant in the event of a discovery of human remains shall notify planning & Building staff. P&B staff shall ensure that any finds are evaluated by an approved cultural resource professional and that any required mitigation is completed.

42. GEOLOGY/SOILS:

- a. The applicant shall provide project-specific soils and geotechnical reports required by the Building Official. Project design and construction shall be consistent with recommendations contained in soils and geology reports, as required by the Building Official.

Monitoring: Public Services staff shall ensure that plans are consistent with the soils and geology reports prior to the issuance of a building permit and during subsequent site inspections.

43. HAZARDS/ HAZARDOUS MATERIALS:

- a. The applicant shall install fire sprinklers and fire hydrants to the satisfaction of the Fire Chief.
- b. The applicant shall work with the Fire Department to meet the intent of the code requirement to buffer around the structures.

Monitoring: Public Services and Fire Department staff shall ensure that plans are consistent with the building and fire codes prior to the issuance of a building permit and during subsequent site inspections.

44. HYDROLOGY/WATER QUALITY:

- a. The applicant shall file the paperwork for a conditional letter of map revision (CLOMR-F and LOMA) with FEMA to register the detail study conditions to determine the 100-year flood level.
- b. Prior to the issuance of building or grading permits, the applicant shall submit an erosion control plan. The Plan shall show control measures to provide protection against erosion of adjacent property and prevent sediment or debris from entering the City right of way, adjacent properties, any harbor, waterway, or ecologically sensitive area. Such control also serves as an aid in meeting the National Pollutant Discharge Elimination System (NPDES) Permit Program as Authorized by the Clean Water Act and administered by the State of California.
- c. To reduce pollution to creek, bay and ocean waters, the Applicant/Developer shall install an oil-water separator/isolator on site between all drainage water inlets and the street gutter.

Inlet and/or outlet structure design shall address silt and hydrocarbon containment and be approved by the City.

- d. The applicant and development team shall utilize best management practices and include low impact development techniques to the maximum extent possible.

Monitoring: Public Services staff along with FEMA shall concurred with analysis prior to grading permit issuance. PS staff shall review the erosion control plan and ensure compliance with all NPDES requirements.

45. **NOISE:**

- a. Project construction within 500 feet of any existing residences shall be limited to the hours of 7 a.m. to 7 p.m. on Monday through Sunday and all large construction equipment will be equipped with "critical" grade noise mufflers. Engines will be tuned to insure lowest possible noise levels. Back up "beepers" will also be tuned to insure lowest possible noise levels. All necessary measures to muffle, shield or enclose construction equipment shall be implemented in order to insure that noise levels at the property line of the nearest parcels do not exceed 75 dBA.

Monitoring: Planning & Building staff will make periodic site visits to ensure construction hours are adhered too and noise levels are within the allowable limits during construction.

46. **TRANSPORTATION/CIRCULATION:**

- a. Traffic impact fees shall be paid proportionate to the net percentage increase in peak hour traffic flows generated by the proposed project.
- b. Roadway improvements shall be made at the intersection of Quintana and South Bay Blvd. Particular attention shall be made to widening South Bay Blvd for turning lanes including all striping, signing, and delineations as required and approved by the City Engineer.
- c. Improvements for site distance along eastbound Quintana.
- d. Two Bus turn-outs; one located south of existing turnout on Quintana and one relocated on South Bay Blvd. where the school district currently drops off and picks up.
- e. A pedestrian path shall be installed that allows pedestrians to cross the narrow box culvert along South Bay Court that links to the new bus turnout.
- f. A D/G community path shall be installed that runs along Quintana from the driveway of South Bay Court to the intersection of South Bay Blvd.
- g. In order to maintain a safe condition while construction activity occurs the applicant shall work with the City Engineer to determine what specific improvements shall be completed before grading and construction activity begins.

Monitoring: Public Services staff shall ensure all improvements and traffic impact fees are paid prior to the issuance of a building permit.

FIRE CONDITIONS

47. Provide approved numbers (addresses) in such a position as to be plainly visible and legible from the street fronting the property. Lettering shall be a minimum of 5" high on a contrasting background. [UFC, Sec. 901.4.4] *Add note on plans.*
48. Provide NFPA 13-D automatic fire sprinklers. Submit all plans and specification sheets for the fire sprinkler system to the Building Department for review and approval prior to installation.

The sprinkler system shall be in accordance with NFPA Standard 13-D, including garage coverage. Please provide the following standard information on the plans:

- A. Owners name, north arrow, occupancy of each room and make of fire sprinklers proposed.
 - B. Provide manufacturers literature/cut-sheets indicating UL approval for all valves, hangers, sprinkler heads, alarm devices, gauges, etc.
 - C. The fire sprinkler contractor shall do their own static water pressure test and show the information on the plans.
 - D. Please indicate on the plans where proposed utilities/appliances are located. Will these appliances effect the location or temperature rating of any fire sprinklers?
 - E. Provide a symbol index on the plan for future reference.
 - F. Please include a 10% water pressure reduction in the hydraulic design of the fire sprinkler system.
 - G. Show location of inspector's test on the plans.
 - H. Comply with manufactures maximum and minimum clearances from walls to sprinkler heads.
49. The project shall conform to all applicable requirements of the Uniform Building Code and Uniform Fire Code, including fire hydrants and any additional requirements deemed necessary, to the satisfaction of the Fire Chief. The Fire Chief shall be satisfied prior to the issuance of a building permit and prior to occupancy of the building.

PLANNING COMMISSION/CITY COUNCIL CONDITIONS:

50. The following additions conditions shall be part of the approved project.
- a. Add a sidewalk in front of units 2, 3, and 4.
 - b. Add two parallel parking spaces near pathway to the common area, (Victory garden).
 - c. Add a pathway on the landscape plan to parallel the creek.
 - d. Provide a note on the plans along the property line between the State Park and the Cul de sac "no fencing."
 - e. Provide a 2 to 1 replacement of removed trees that are alive on the landscape plan and determine if any additional trees can be saved. 20% of the replacement trees must be species that provide the appropriate height for raptors approx. 60 feet high.
 - f. Provide a schedule re-evaluating the health of all trees on the property.
 - g. Add a signalized pedestrian crosswalk across South Bay Blvd.
 - h. Minimize street lighting glare to maximum extent possible.
 - i. 4 way Signalization at Quintana and South Bay Blvd intersection

CALIFORNIA COASTAL COMMISSION

CENTRAL COAST DISTRICT OFFICE
725 FRONT STREET, SUITE 300
SANTA CRUZ, CA 95060
(831) 427-4863
www.coastal.ca.gov

**COMMISSION NOTIFICATION OF APPEAL**

DATE: December 4, 2006

TO: Bruce Ambo, Planning Director
City of Morro Bay, Planning Department
955 Shasta Avenue
Morro Bay, CA 93442-1900

FROM: Steve Monowitz, District Manager

RE: Commission Appeal No. A-3-MRB-06-064

Please be advised that the coastal development permit decision described below has been appealed to the California Coastal Commission pursuant to Public Resources Code Sections 30603 and 30625. Therefore, the decision has been stayed pending Commission action on the appeal pursuant to Public Resources Code Section 30623.

Local Permit #: CPO-110

Applicant(s): Wayne Colmer

Description: A Planned Unit Development that includes subdivision of two parcels totaling 3.17 acres into 17 residential parcels and one open space parcel, authorization of grading, new roadway, and home sites.

Location: 485 S. Bay Blvd (resubdivision of Parcels A & B into Tract 2739), Morro Bay (San Luis Obispo County) (APN(s) 066-371-003)

Local Decision: Approved w/ Conditions

Appellant(s): Roger Ewing; Ray McKelligott; California Coastal Commission, Attn: Commissioner Meg Caldwell; Commissioner Mary K. Shallenberger

Date Appeal Filed: 12/1/2006

The Commission appeal number assigned to this appeal is A-3-MRB-06-064. The Commission hearing date has not yet been established for this appeal. Within 5 working days of receipt of this Commission Notification of Appeal, copies of all relevant documents and materials used in the City of Morro Bay's consideration of this coastal development permit must be delivered to the Central Coast District office of the Coastal Commission (California Administrative Code Section 13112). Please include copies of plans, relevant photographs, staff reports and related documents, findings (if not already forwarded), all correspondence, and a list, with addresses, of all who provided verbal testimony.

A Commission staff report and notice of the hearing will be forwarded to you prior to the hearing. If you have any questions, please contact Mike Watson at the Central Coast District office.

cc: Wayne Colmer

Mike Prather, Senior Planner

CCC Exhibit 5
(page 1 of 13 pages)

CALIFORNIA COASTAL COMMISSION

CENTRAL COAST DISTRICT OFFICE
725 FRONT STREET, SUITE 300
SANTA CRUZ, CA 95060
(831) 427-4863
HEARING IMPAIRED: (415) 904-5200

**APPEAL FROM COASTAL PERMIT
DECISION OF LOCAL GOVERNMENT**

Please review attached appeal information sheet prior to completing this form.

SECTION I. Appellant(s):

Name, mailing address and telephone number of appellant(s):

Meg Caldwell, Chairperson

California Coastal Commission

45 Fremont Street, Suite 2000

San Francisco, CA 94105

(415) 904-5200

Mary Schallenberger

California Coastal Commission

45 Fremont Street, Suite 2000

San Francisco, CA 94105

(415) 904-5200

SECTION II. Decision Being Appealed

1. Name of local/port government: **City of Morro Bay**

2. Brief description of development being appealed:

A Planned Unit Development that includes subdivision of two parcels totaling 3.17 acres into 17 residential parcels and one open space parcel, authorization for grading, new roadway, and home sites.

3. Development's location (street address, assessor's parcel number, cross street, etc.):

485 South Bay Boulevard at the intersection of S. Bay Blvd. and Quintana Road.

APN 066-371-003

4. Description of decision being appealed:

a. Approval; no special conditions: _____

b. Approval with special conditions: XX

c. Denial: _____

Note: For jurisdictions with a total LCP, denial decisions by a local government cannot be appealed unless the development is a major energy or public works project. Denial decisions by port governments are not appealable.

TO BE COMPLETED BY COMMISSION:

APPEAL NO: A-3-MRB-06-064

DATE FILED: 12/1/06

DISTRICT: Central Coast

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COASTAL COMMISSION
CENTRAL COAST AREA
Exhibit 5
(page 2 of 13 pages)

APPEAL FROM COASTAL PERMIT DECISION OF LOCAL GOVERNMENT (PAGE 2)

5. Decision being appealed was made by (check one):

a. ☐ Planning Director/Zoning
Administrator

c. ☐ Planning Commission

b. ☒ City Council/Board of
Supervisors

d. ☐ Other: _____

6. Date of local government's decision: November 13, 2006

7. Local government's file number: CP0-110

SECTION III Identification of Other Interested Persons

Give the names and addresses of the following parties: (Use additional paper as necessary.)

a. Name and mailing address of permit applicant:

Wayne Colmer

5000 Parkway Calabasas, Suite 110

Calabasas. CA 91302

b. Names and mailing addresses as available of those who testified (either verbally or in writing) at the city/county/port hearings (s). Include other parties which you know to be interested and should receive notice of this appeal.

(1) _____

(2) _____

(3) _____

(4) _____

SECTION IV. Reasons Supporting This Appeal

Note: Appeals of local government coastal permit decisions are limited by a variety of factors and requirements of the Coastal Act. Please review the appeal information sheet for assistance in completing this section, which continues on the next page.

APPEAL FROM COASTAL PERMIT DECISION OF LOCAL GOVERNMENT (PAGE 3)

State briefly your reasons for this appeal. Include a summary description of Local Coastal Program, Land Use Plan, or Port Master Plan policies and requirements in which you believe the project is inconsistent and the reasons the decision warrants a new hearing. (Use additional paper as necessary.)

See Attached.

Note: The above description need not be a complete or exhaustive statement of your reasons of appeal; however, there must be sufficient discussion for staff to determine that the appeal is allowed by law. The appellant, subsequent to filing the appeal, may submit additional information to the staff and/or Commission to support the appeal request.

SECTION V. Certification

The information and facts stated above are correct to the best of my/our knowledge.

Signed: Meg Caldwell
Appellant or Agent

Date: 12/1/06

Agent Authorization: I designate the above identified person(s) to act as my agent in all matters pertaining to this appeal.

Signed: _____

Date: _____

(Document2)

State briefly your reasons for this appeal. Include a summary description of Local Coastal Program, Land Use Plan, or Port Master Plan policies and requirements in which you believe the project is inconsistent and the reasons the decision warrants a new hearing. (Use additional paper as necessary.)

See Attached.

Note: The above description need not be a complete or exhaustive statement of your reasons of appeal; however, there must be sufficient discussion for staff to determine that the appeal is allowed by law. The appellant, subsequent to filing the appeal, may submit additional information to the staff and/or Commission to support the appeal request.

SECTION V. Certification

The information and facts stated above are correct to the best of my/our knowledge.

Signed: Mary K. Shallenburg
Appellant or Agent

Date: 12/1/06

Agent Authorization: I designate the above identified person(s) to act as my agent in all matters pertaining to this appeal.

Signed: _____

Date: _____

Reasons for Appeal of Morro Bay Coastal Development Permit CP0-110

The City's approval of the above referenced permit, authorizing the subdivision of two existing parcels totaling 3.17 acres into 17 residential parcels roughly 3,300 square feet each and a one-acre open space parcel, is inconsistent with the Morro Bay certified Local Coastal Program protecting environmentally sensitive habitats, parks and recreation areas, and visual resources. Specifically, the project is inconsistent with the certified LCP for the following reasons:

- LUP Policy 11.02 requires the protection of Environmentally Sensitive Habitat Areas (ESHA) and prohibits development that would degrade or reduce the functional capacity of ESHA. The site of the approved subdivision includes a coastal stream that may provide habitat for the California red legged frog and other important native species, and that discharges to the Morro Bay National Estuary. The site has also been documented as providing habitat for the Morro shoulderband snail. In addition, the site contains mature trees that provide nesting and potential breeding habitat for raptors. The proposed development will not protect these ESHAs consistent with LCP requirements because it involves grading and grubbing over 70% of the site, as well as the removal of over 50 mature trees, which will remove Morro shoulderband snail and raptor habitat. The project also involves significant grading directly adjacent to the coastal stream, as well as structural development within approximately 65 feet of the stream, which will adversely impact the functional capacity of stream and nearby wetland habitats.
- LUP Policy 11.02 also requires protection of public parks and recreation areas. The project site is directly adjacent to Morro Bay State Park. The close proximity of the new residential lots to park property may adversely impact park resources by necessitating the removal of mature trees within the park to address fire safety and other hazards.
- LUP Policy 11.14 establishes a minimum buffer of 100' for rural streams and 50' for urban streams. It maintains that these buffers shall be adhered to unless the practice would preclude an economic use of the property. Similarly, LUP Policy 11.18 prohibits new subdivisions adjacent to wetland areas unless the new building sites are located entirely outside the maximum applicable buffer (100' for rural streams and 50' for urban streams). The approved project is inconsistent with these standards because it involves grading and site disturbance right up to the bank of an on-site stream. Additionally, the approval assumes the site is urban when in fact the property is separated from urban areas by open space (i.e., Black Hill Natural Area and the Morro Bay estuary), and is more rural in character. Thus, the approved lot design, which would result in grading directly adjacent to the creek, as well as residential development approximately 65 feet from the stream, is inconsistent with the LCP's minimum 100-foot riparian setback.
- LUP Policies 12.01 and 12.06 reference Areas of Visual Significance and include provisions to ensure these scenic areas are protected through appropriate site and

building design, view easements and or corridors, minimizing grading and landform alteration, maintaining compatible height and bulk relationships with surrounding development, and where feasible by restoring and enhancing visually degraded areas. The proposed project, which will be visible from Highway One, South Bay Boulevard, and Morro Bay State Park, is inconsistent with these policies because it includes the removal of over 50 mature trees, grading over 70% of the site, and the introduction of a dense development of seventeen two-story homes in an otherwise scenic rural setting. The proposed residential development is out of character with the existing development in the immediate area and will block and degrade public views across the property towards the Black Hill Natural Area, Morro Bay, and the coast.

CALIFORNIA COASTAL COMMISSION

CENTRAL COAST DISTRICT OFFICE
725 FRONT STREET, SUITE 300
SANTA CRUZ, CA 95060-4508
VOICE (831) 427-4863 FAX (831) 427-4877

**APPEAL FROM COASTAL PERMIT DECISION OF LOCAL GOVERNMENT**

Please Review Attached Appeal Information Sheet Prior To Completing This Form.

SECTION I. Appellant(s)

Name: Roger Ewing and Ray McKelligott

Mailing Address: P.O. Box 1323 and Blue Heron Terrace, 475 S. Bay Blvd #22

City: Morro Bay

Zip Code: 93442

Phone: 805.772.1652

805.772.8728

SECTION II. Decision Being Appealed

1. Name of local/port government:

City of Morro Bay

2. Brief description of development being appealed:

Cluster development plan (with CDP) abutting State Park hillside

3. Development's location (street address, assessor's parcel no., cross street, etc.):

485 S. Bay Blvd

APN - 066-371-003

South Bay Blvd and Quintana St.

4. Description of decision being appealed (check one.):

- ☐ Approval; no special conditions
☒ Approval with special conditions:
☐ Denial

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COASTAL COMMISSION
CENTRAL COAST AREA

Note: For jurisdictions with a total LCP, denial decisions by a local government cannot be appealed unless the development is a major energy or public works project. Denial decisions by port governments are not appealable.

TO BE COMPLETED BY COMMISSION:

APPEAL NO: A-3-MRB-06-064

DATE FILED: 12/1/06

DISTRICT: Central Coast

CCC Exhibit 5
(page 8 of 13 pages)

APPEAL FROM COASTAL PERMIT DECISION OF LOCAL GOVERNMENT (Page 2)

5. Decision being appealed was made by (check one):

- ☐ Planning Director/Zoning Administrator
☒ City Council/Board of Supervisors
☐ Planning Commission
☐ Other

6. Date of local government's decision: November 13, 2006

7. Local government's file number (if any): S00-038/UPO-070/CPO-110/AD0-027

SECTION III. Identification of Other Interested Persons

Give the names and addresses of the following parties. (Use additional paper as necessary.)

a. Name and mailing address of permit applicant:

Wayne Colmer
5000 Parkway Calabasas, Suite 110
Calabasas, CA 91302

b. Names and mailing addresses as available of those who testified (either verbally or in writing) at the city/county/port hearing(s). Include other parties which you know to be interested and should receive notice of this appeal.

(1) Gary Johnson
1165 Morro St.
Morro Bay, CA 93442

Ray Oliveira
475 South Bay Blvd, #57
Morro Bay, CA 93442

(2) Bill Davies
Blue Heron Terrace, 465 S. Bay Blvd #7
Morro Bay, CA 93442

Doug Stuart
501 Pinon
Morro Bay, CA 93442

(3) Dorothy Cutter
290 Cypress
Morro Bay, CA 93442

Cheryl Stice
Blue Heron Terrace
475 South Bay Blvd #23
Morro Bay, CA 93442

(4) Darryl Wong
444 S. Flower, Suite 3860

Los Angeles, CA 90071
(letter enclosed)

Rich Hansen
475 South Bay Blvd #20
Blue Heron Terrace
Morro Bay, CA 93442

APPEAL FROM COASTAL PERMIT DECISION OF LOCAL GOVERNMENT (Page 3)

SECTION IV. Reasons Supporting This Appeal

PLEASE NOTE:

- Appeals of local government coastal permit decisions are limited by a variety of factors and requirements of the Coastal Act. Please review the appeal information sheet for assistance in completing this section.
- State briefly **your reasons for this appeal**. Include a summary description of Local Coastal Program, Land Use Plan, or Port Master Plan policies and requirements in which you believe the project is inconsistent and the reasons the decision warrants a new hearing. (Use additional paper as necessary.)
- This need not be a complete or exhaustive statement of your reasons of appeal; however, there must be sufficient discussion for staff to determine that the appeal is allowed by law. The appellant, subsequent to filing the appeal, may submit additional information to the staff and/or Commission to support the appeal request.

1. from the Coastal Act

Section 30240. (a) Environmentally sensitive habitat areas shall be protected against any significant disruption of habitat values, and only uses dependent on those resources shall be allowed within those areas.

(b) 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 those areas, and shall be compatible with the continuance of those habitat and recreation areas.

30240 corresponds to our LCP sections 11.01 and 11.02 - quoted here.

Policy 11.01 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. The City shall either prepare a wetlands/estuarine map or, if funding does not permit such preparation, adopt the National Wetland Inventory by U.S. Fish and Wildlife Service dated 1979, as the mapping illustration of the wetland and estuarine areas contained within City boundaries. If the City adopts the National Wetland Inventory Mapping as their LUP wetlands map, then because that map does not precisely delineate the extent of wetland habitats and types, all proposed development located within 1000 feet of the mapped wetland boundaries shall be required to submit additional mapping based on U.S. Fish and Wildlife and Coastal Commission Statewide Interpretive Guidelines done by a qualified biologist. The additional mapping will be submitted for review and approval from U.S. Fish and Wildlife and the California Department of Fish and Game. After public agency approval has been obtained, the City shall define buffer areas around the wetland areas. The buffer areas shall be 100 feet around all wetland areas except where biologists identify the need for a greater buffer to protect the overall wetland system or a particular resource. Developments permitted within wetland and/or buffer areas are limited to the uses listed in Section 30233(c) of the Coastal Act.

We are not sure that our policy 11.01 has ever been applied.

Policy 11.02 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 maintain the habitat's functional capacity.

Our Response

This project will significantly degrade this area and be incompatible with the continuance of the habitat:

CCC Exhibit
(page 10 of 13 pages)

Loss of trees (52+ to be cut, 17 already cut; a mixture of elm, cypress, pine, and eucalyptus) on the development site plus many more under the conditions of a letter to the developer from the Department of Parks and Recreation, 7/24/06, from Vincent Cicero regarding the potential for tree failure or significant fuel for fire:

"It is the responsibility of the landowner to provide a 40 foot setback from the property line. (The DPR will not do this)...The preferred options is to permanently remove all trees on DPR land, re-establish the grassland/coastal scrub vegetation, and provide a 40-ft setback." (letter attached)

We disagree with this idea and believe that the developer should provide the buffer INSIDE the development rather than using the adjacent recreation area. Increasing the buffer into the State Park will also increase the area of land on the hillside that will lose all trees. This project is immediately adjacent to Morro Bay State Park and to Highway 1, A Registered National Scenic Byway and an All-American Road. This is neither (as stated in Section 30240) compatible nor a continuance of "those habitat recreation areas."

2. from the Coastal ACT

30251. The scenic and visual qualities of coastal areas shall be considered and protected as a resource of public importance. Permitted development shall be sited and designed to protect views to and along the ocean and scenic coastal areas, to minimize the alteration of natural land forms, to be visually compatible with the character of surrounding areas, and, where feasible, to restore and enhance visual quality in visually degraded areas. New development in highly scenic areas such as those designated in the California Coastline Preservation and Recreation Plan prepared by the Department of Parks and Recreation and by local government shall be subordinate to the character of its setting. (30251 corresponds with our LCP 12.01 and 12.02)

LCP 12.06.C also supports Coastal Act 30251 when it says:

"View easements or corridors designed to protect views to and along the ocean and scenic and coastal areas."

Our Response:

This development will not be visually compatible with the character of surrounding areas: A mobile home park to the south and a hillside in a state park with trees. See enclosed photos of site.

3. Morro Bay's General Plan (LU) section 17.6, noted in staff report on the project to the Planning Commission 8/21/06:

"The hillsides are an important amenity and should be given special consideration when they are chosen for residential development. Some of the concerns that should be given to hillside development are as follows:

1. Grading should be kept to a minimum

....

5. In a tract of homes, design should be such that development does not simply begin at the bottom and continue unceasingly to the top."

Our response:

On number 1: Please note: Staff report to Morro Bay Planning Commission on August 21, 2006 states: "The project would entail demo of existing structures, removal of additional trees (52 total, 17 already removed before the tract map), and the grubbing and re-grading of nearly 70% of the site".

On number 2: Please see the map of the project with street rising nearly straight up the hill from 22 to 72 feet.

APPEAL FROM COASTAL PERMIT DECISION OF LOCAL GOVERNMENT (Page 4)

SECTION V. Certification

The information and facts stated above are correct to the best of my/our knowledge.

Roger L. Ewing

Raymond F. McEllegat

Signature of Appellant(s) or Authorized Agent

Date: 11/28/06

Note: If signed by agent, appellant(s) must also sign below.

Section VI. Agent Authorization

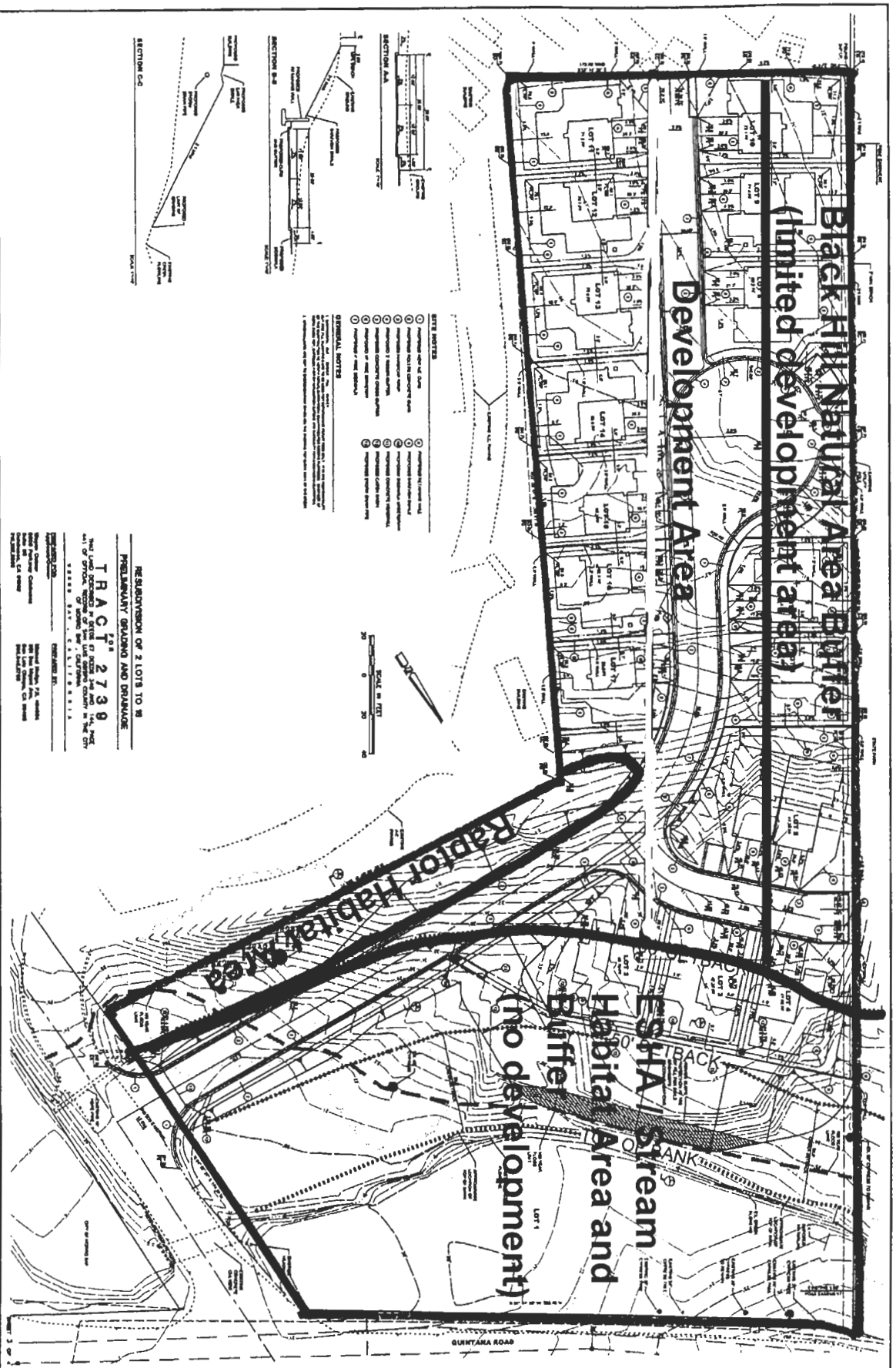
I/We hereby
authorize

to act as my/our representative and to bind me/us in all matters concerning this appeal.

Signature of Appellant(s)

Date: _____

Exhibit 6: ESHA, Other Habitat, and Park Land Buffers



Chuck Meissner
929 Pecho Street
Morro Bay, CA 93442-2628
(805) 772-7105
chuck.meissner@sbcglobal.net

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AUG 06 2007

August 1, 2007

California Coastal Commission
725 Front Street, Suite 300
Santa Cruz, CA 95060

CALIFORNIA
COASTAL COMMISSION
CENTRAL COAST AREA

Regarding: Appeal A-3-MRB-06-064

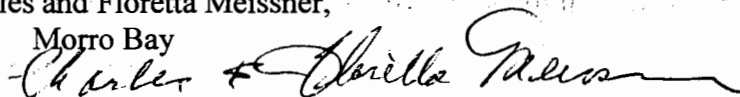
Gentlepersons:

"It was the people of California who voted to maximize coastal access and control shoreline development when they overwhelmingly approved proposition 20 in 1972, creating the Coastal Commission."* If one divides the population of California by the miles of state coastline I think the answer is over 33,000 people per mile of coastal access. This is a terrible responsibility for all of us who are stewards of the people's land. This present appeal to the commission is to stop an exploitation of one of Morro Bay's treasured corners.

The parcel in question is at the eastern corner of the city at the intersection of a main route into town and the main route from Highway One to State Park and Los Osos. These are country roads. One of these is on a hill and both these roads are somewhat winding and hazardous, especially at their crossing, and would require considerable modification for tract access near the intersection. This parcel abuts an important mobile home park. It also abuts the lower edge of Black Hill, which is part of our state park, a forested area with several remote but popular walking trails. A wildfire in this park could quickly wipe out this development. But the most important location consideration is the runoff stream on the lower end. Three streams merge and flow down through the property under the road to their confluence with Chorro Creek, a major stream from the Cal Poly area. Chorro Creek in this area, and below to the estuary, is choked with willows and is a flood zone. This parcel is surely a "wetland" and is a habitat for native flora and fauna.

It is our opinion that there is no reason to develop this parcel but to continue to mine the gold of coastal real estate. John Sutter could not stop the '49ers from ruining his land, but we are asking that you help us protect our coast. Thank you.

Charles and Floretta Meissner,
Morro Bay



*Blocking the Way to the Beach, Los Angeles Times, September 3, 1995.

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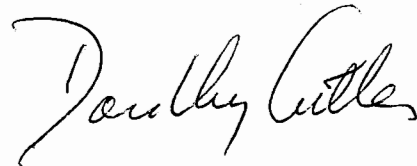
CALIFORNIA
COASTAL COMMISSION
CENTRAL COAST AREA

290 Cypress Ave.
Morro Bay, Ca. 93442
August 1, 2007

Dear Sir:

Please uphold the appeal #A-3-MRB-06-064. This is a terrible project for Morro Bay.

Thank you,



Dorothy Cutter

8-1-07

California Coastal Commission
RE: Commission Appeal No. A-3-

MRB-06-064

Please stop the housing
development from being
built behind 475 S. Bay
Blvd., Blue Heron Terrace
mobile home park.

We moved here two years
ago and picked the park
for its peace & quiet and
wildlife.

Now there is a chance
we will have two story
homes which will be
built five feet from
my backyard.

Why must the homes be
so large?
(over

- 2 -

If it is so the developer
can make a larger profit
maybe that property is
not the one for them
to develop.

The developer is putting
in a "rotary garden" next
to a stream. Needless
to say this will involve
pesticides and fertilizers
which will contaminate
the water as it runs
to the ocean.

Also we will have the
long existence of construction
noise, dust, and event-
ually street lights.

Please consider the
effect to this small
quiet area and all
the people who live

here for the beauty.
As a retired Real Estate
Broker and ~~and~~ Editor of
The Palm Springs Today
Newspaper, I'd like to
allow me to live out
my life in beauty,
peace, and quiet.

It development must
be done, please allow
only one story home
on larger lots, no "visiting
garden", and do not let
them remove and build
on the 40 ~~feet~~ the
state park has given them.
We want our trees.

Sincerely,
Cheryl Silice & James Silice
475 S Bay Blvd. #23 Morro Bay



SAN
Ms. Cheryl Silice
Spec 23
475 S Bay Blvd.
Morro Bay, CA 93442

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COASTAL COMMISSION
CENTRAL COAST AREA

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California Coastal Comm.
Central Coast District Office
725 Front St., Suite 300
Santa Cruz, CA 95060

Gentlemen,

Uphold the Commission
Appeal NO. A-3-MRB-06-064 !

Mr & Mrs Raymond R. Oliveira



Mr. & Mrs. R. Oliveira
475 S. Bay Blvd. # 57
Morro Bay, CA 93442-2442

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COASTAL COMMISSION
CENTRAL COAST AREA

CCC Exhibit 7
(page 5 of 9 pages)

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August 1, 2007

CALIFORNIA
COASTAL COMMISSION
CENTRAL COAST AREA

California Coastal Commission
Central Coast Review Office
725 Front St., Ste 300
Santa Cruz, Ca 95060

Subject: Commission Case #
#4-3-MES-06-064

I am writing in opposition to
the development noted above.

I have lived in Blue Theron Terrace
Mobile Home Park, 475 S Bay Blvd.
Morro Bay, Ca 93442 for 18 years.

The proposed development would
be at our Park.

Increased traffic, congestion,
noise and the destruction of
beautiful trees would be the
result of approving this development.

It would change the character
of our beautiful, peaceful area,
and might well lead to other
construction that would
continue the deterioration of
a lovely area thru entrance.

Please DO NOT approve this
project.

JACQUELINE L. WILTON
475 S BAY BLVD SP 43
MORRO BAY, CA 93442

Jacqueline L. Wilton
June 43
Blue Theron Terrace
Mobile Home

California Coastal
Commission
Central Coast DISTRICT OFFICE
725 FRONT ST. SUITE 300
SANTA CRUZ, CA 95060

Ms. Wilma A. Smith
509 Pinon Dr
Morro Bay, CA 93442-2433

Wed. Aug. 1, 2007

Honorable Commissioners:
(Sorry, handwritten because I do not have
a computer)

RE: Commission appeal No. A-3-MRB-06-064

Please uphold this appeal! (16 APTS. &
1 DUPLEX
PLANNED)

Mr. Colmer (out-of-town Developer) — has
had many problems with his projects here in
Morro Bay — and this is his 3rd
similar one.

The Planning Commission withheld
approval until he came back with
some changes — & then, by a close
margin it was approved. The City Council
also O.K.'d it on a 3 to 2 vote.

HOWEVER, he illegally came in
with chain-saws & cut down approx.
50 tall trees (homes for RAPTORS, OWLS,)
before the city even knew it. He
called & said the trees were going down
& 1 council person went right up to the
property & stopped it.

As designed;

- ① Too large buildings on small lots —
with NO OPEN SPACE at each space.
The OPEN SPACE is down at a much
lower end of the property — & he

(2)

says that "open space" can be developed as a Community GARDEN. No one, I'm sure, could carry (wheel-barrow) garden tools, materials, etc. Down a steep embankment to this STRIP of land. It borders a busy street, also — Quintana Rd. Children would not be safe there, no fencing or protection and far from their own yards. One side of the street in the Development is to have curb & sidewalks. What about the other side of the same street?

He also plans to cut ADDITIONAL high canopy trees — & RAPTORS are already confused & lack the former nesting places.

The man has asked the STATE PARK to let him leave 40 feet behind (& adjacent) his development. I as a TAX PAYER would never allow a Developer to be given any of MY PARK land. (This is called BLACK MOUNTAIN area).

He also states the PARK will be a "great advantage" to owners — a gate will allow them to venture into the PARK'S wilderness area, unsafe & many dead Monterey Pines there & possible wild fire hazard as it's dry & heavily brush covered.

There, also, is a creek running in the lower area — with a culvert to allow it to go under another main & heavily travelled road (So. Bay Blvd.) This creek is dry in the off-rain season, BUT I've seen 3'-4' of water in that intersection of So. B. Blvd. & So. Bay Blvd. YOU (1989, I believe)

③
I'm sure, have a detailed map & plan of
this development & can easily see
the problems.

A well in this creek-area also
presents a concern.

With 57 condos and increased
traffic will certainly endanger even more
the intersection & "in & out" roads
to the homes. Our City usually plans

2 cars per home. Mr. Colmer's
"Traffic expert" says there will be
only 37 more cars added to already
a dangerous situation. The City has
made the stipulation that he has to
put in a 4-WAY STOP sign at
the intersection of So. B. Blvd. & Quintana
(It is NOT in Cal Trans jurisdiction.)

Please, do not allow this Colmer
Development to become a reality. Ch, also,
there are no low cost or affordable
housing requirement in this plan, and
we need this level of housing.

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AUG 06 2007

CALIFORNIA
COASTAL COMMISSION
CENTRAL COAST AREA

Thank you.

Sincerely,

William B. Smith

(805 772-2141) h

Colmer Development

Black Hill Villas
(Quintana Road)
City of Morro Bay, California

PRODUCT TYPE:
HOMESCAPES & P.D.
2-STORY - 1400 - 1600 S.F.
TOTAL UNITS: 17



MOBILE HOME PARK

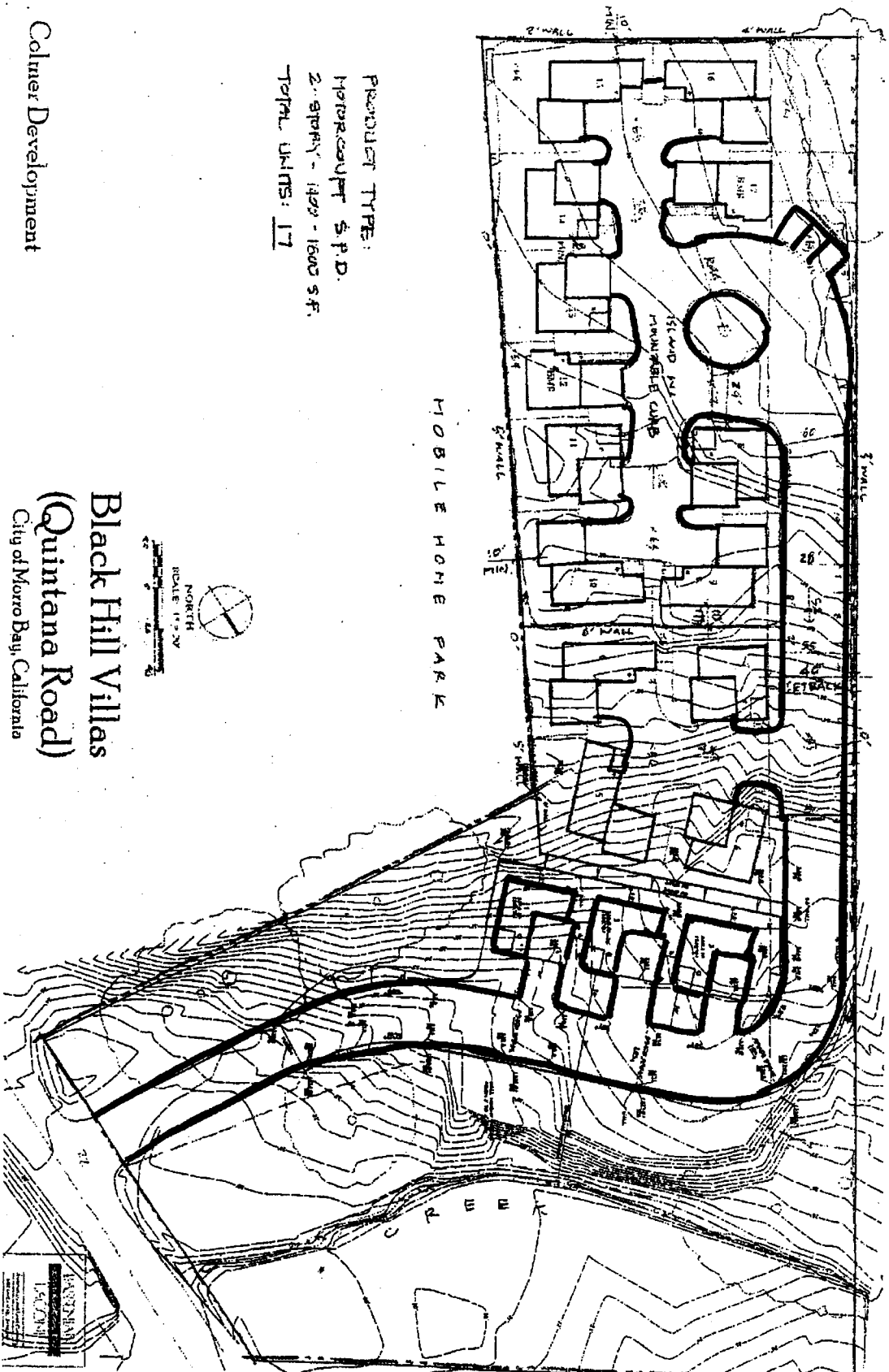


Exhibit 8

A-3-MRB-06-064

Black Hill Villas

Applicant's Proposed Revisions

**BLACK HILL VILLAS, L.P.
5000 Parkway Calabasas #110
Calabasas, CA 91302**

**P: (818) 222-5666 F: (818) 222-5668
Email: Colmer32@sbcglobal.net**

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DEC 20 2007

CALIFORNIA
COASTAL COMMISSION
CENTRAL COAST AREA

December 18, 2007

Mr. Mike Watson
Coastal Commission
725 Front Street, Suite 300
Santa Cruz, CA 95060-4508

Re: A-3-MRB-06-064, Black Hill Villas


Dear Mr. Watson:

Enclosed is a revised alternate plan. Hopefully, staff can support this new plan. The plan has 17 homes. All the homes are setback a minimum of 100 feet from the wetland drainage ditch. The access road is setback a minimum of 50 feet from the ditch. All the homes are setback a minimum of 40 feet from the State Park. The proposed landscaping for this project will include Monterey Cypress tree planting in each east facing rear yard that will help screen the second floor of the homes from visibility from Highway 1. This plan responds to all your concerns. We would like to discuss the alternate plan and the project status either by phone or at a meeting at your office.

Please try again to get my project scheduled for the January or February meeting. The hearing delays are now a financial hardship. I would like to remind you again of the promise you and Steve made, in return for my agreement to allow a postponement of the initial Substantial Issue hearing, to schedule the hearing on this project without excessive delays.

Also, please send me any new correspondence the staff has received related to my project since the staff report was published.

Sincerely,


Wayne Colmer

CCC Exhibit 9
(page 1 of 7 pages)
A-3-MRB-06-064

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DEC 07 2007

CALIFORNIA
COASTAL COMMISSION
CENTRAL COAST AREA

Robert F. Neumann

1698 Nipomo

Los Osos, CA 93402

Mr. Mike Watson
California Coastal Commission
725 Front Street
Santa Cruz CA, 95060

November 26, 2007

Regarding A-3-MRB-06-064, Black Hill Villas, Fire Safety Issues

Dear Mr. Watson,

I have been asked to review the above noted project and to make comment on the fire threat and mitigation measures proposed by the Morro Bay Fire Department. I am very familiar with the area, as I reside approximately 4 miles from the site. In addition I have written both the Fire and Hazard Mitigation Plans for the City of Morro Bay. (Qualifications attached)

History

Historically, wildland fires in San Luis Obispo County have burned thousands of acres and caused considerable property loss with an occasional life loss. The majority of these large fires have occurred in the northern and central interior portions of the County. Large fires on the coastal side of the county occur less frequently. Past large fires in the coastal areas of the county within the last thirty years include 2, both located in the Montana de Oro State Park area. These fire each burned approximately 500 acres and occurred in the late fall during dry off shore (east) wind events. Within the City limits of Morro Bay, the largest fire in recent memory was approximately 7 acres and occurred on the steep slopes of the hills located above Hwy #1 in north Morro Bay.

Fire Factors

Three factors contribute to wildland fire spread and threat:

- Topography: Canyons, hillsides, ridges and other "lay of the land" features will have a dramatic effect on fire spread. Aspect or orientation of the fuel beds also plays an important role, in general south facing slopes are subject to greater solar radiation, making them drier and thereby intensifying wildland fire behavior. Slope is a critical factor in fire spread, in general fire burns 16 times faster up hill.
- Weather: In this coastal region weather plays a key factor in the wildland fire potential. Rain fall occurs primarily between the months of November and April, and ranges between 20 to 25 inches per year. Summers are typically cool with fog and or high humidity the norm. Wind in the area, a key factor in spread, is quite predictable. It typically flows from the north, northwest and is moisture laden due to the close proximity of the ocean, minimizing the fire danger. The fall season will see dryer and warmer days, with occasional east to west wind flows (off shore). This in combination of the lack of rainfall will see the fire hazard threat increase. It should be noted that these winds do not have the intensity of the Southern California "Santa Ana's" and do not meet "Red Flag" warning criteria.

CCC Exhibit 9
(page 2 of 7 pages)

A-3-MRB-06-064

- Fuel: The arrangement of the fuel on the land is an important consideration. By breaking up or thinning fuel beds one can slow the rapid spread rates of wildfires. In addition, the removal of certain fuels in the horizontal plane can prevent fires from "laddering" into the tops of trees where it may burn hotter and be more difficult to contain.

Site Specifics

- Topography: The project site is slightly sloped and located near the base of Black Hill with a north aspect. The topography does not negatively impact fire spread or fire protection efforts. In fact is favorable as fire, if not driven by wind, will burn upslope away from the site through fuels that are typically slower burning based on the moisture they accumulated from the north aspect.
- Weather: The generally mild coastal climate keeps the wildland fire threat to the site at a minimum. As noted above, the normal wind flow is from the north, is cool and moisture laden and approaches the site flowing downhill. In the fall moderate east to west off shore wind flows do occasionally exist, and the area will experience its only true fire weather. However the area to the east of the site is developed by trailer parks, roadways or is covered by riparian vegetation which will not support fire spread. During these periods, a fire located on the State Park side of the project would be blown uphill and westward away from the project site.
- Fuels: There are very limited or no fuels on the 3 sides of the project. The remaining side adjoins the State Park/Black Hill Nature Preserve. The proposed structures in this immediate area are set back adequately from the property line and a block wall will be installed on the boundary halting any ground fire spread. The fuels beyond the block wall, into the preserve, range from light fuels to heavy timber. These fuels are arranged in a mosaic pattern and a PG&E service road and power line easement have reduced the heavy fuel loading in this area. The naturally occurring trees are widely spaced and do not present a crowning potential. The slope in this area remains slight and away from the project, therefore these fuels will not be subject to preheating. The distance to the steeper portion of Black Hill, where denser brush fields are found, is considerable; therefore these fuels do not present a hazard to the project based on distance.
- Significant Hazard: As noted above, PG&E power lines parallel the State Park side of the project. A number of non-native trees, located on the project site, are growing into the lines and will soon present a significant hazard. These trees should be removed.

Mitigation Measures

The Morro Bay Fire Department has required a number of mitigations to in dealing with the fire threat on the State Park side. These include fire sprinklers, non-combustible roofs, siding and decks, enclosed eaves, approved vents, dual glazed windows and fire resistant landscaping. Fire department access and water supply issues have been addressed.

One area of concern has not been addressed. Rain gutters, when not adequately maintained, will collected leaf material which becomes a receptive fuel bed for embers and sparks and can then transmit fire underneath the non-combustible roof materials. I recommend that rain gutters be protected by non-combustible leaf shields or not allowed.

CCC Exhibit 9
(page 3 **of** 7 **pages)**
 A-3-MRB-06-064

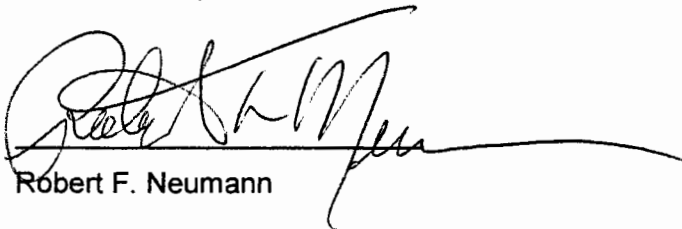
Alternate Site Plan

An alternate site plan has been developed. This plan increases the set backs along the State Park boundary with out compromising fire department access. The results of this increase are further separation from the fuels and a wider defensible space.

Conclusion

While the fuels located on the state park side of the project due present a threat, the combination of the favorable topography, the strong coastal weather influence, the required mitigation measures and setback area, of both plans, diminishes this hazard to an acceptable level.

The area fire history, which aligns with the areas weather patterns, indicates that should a fire occur it will either back slowly into the adjoining fuels, against the wind and down hill, or move from the project site up wind and to the west, upslope. In either situation, the construction type, mitigation measures, setbacks and fire department access routes will allow a fire to pass from or onto the site with little or no damage to the improvements.



Robert F. Neumann

ROBERT F. NEUMANN

1698 Nipomo
Los Osos, Ca.
805 528 2826

FIRE SERVICE EXPERIENCE

1/91 to 6/02	<u>Fire Chief</u> - San Luis Obispo City Fire Department
5/88 to 1/91	<u>Fire Battalion Chief/Fire Marshal</u> - San Luis Obispo City Fire Department
5/80 to 5/88	<u>Fire Captain</u> - San Luis Obispo City Fire Department
9/75 to 5/80	<u>Fire Inspector, Fire Engineer, Firefighter, Fire Dispatcher</u> - San Luis Obispo City Fire Department

OTHER EXPERIENCE

1976 to Present	<u>Owner/Operator</u> - Robert F. Neumann Construction
2002 to Present	<u>Program Coordinator</u> - SLO County Community Emergency Response Teams (CERT) - Volunteer Position
2002 to Present	<u>Owner/Operator</u> - Robert F. Neumann, Emergency Services Consultant

EDUCATION

Graduated 1974 California Polytechnic State University, San Luis Obispo, CA
Degree: Bachelor of Science
Major: Soil Science

A considerable amount of fire service and disaster preparedness training.

RELATED PROJECTS/EXPERIENCE

Disaster Manager I currently serve on a US Department of Interior - Park Service Type I Major Incident Command Team (MICT) as a Safety Officer (3 years) and have seven years experience as a Type I Operations Section Chief on a Calif. Dept of Forestry & Fire Protection Type I MICT. Team assignments include a wide range of experiences; from wildfires, airplane accidents, hurricane recovery (Katrina - 52 days), earthquakes and hazardous materials incidents.

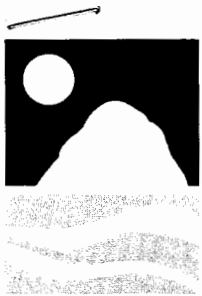
Related Experience

Cofounder and past Director (7 Years) of the SLO Co. Regional Hazardous Materials Response Team.

Founder and past Director (12 years) of the SLO Co. Fire Chiefs Association Critical Incident Response Team.

I currently serve on the board of directors of the County's Emergency Medical Service Agency and the County Fire Safe Council.

CCC Exhibit 9
(page 5 of 7 pages)
A-3-MRB-06-064



City of Morro Bay

Morro Bay, CA 93442 • 805-772-6200

www.morro-bay.ca.us

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JAN 16 2008

CALIFORNIA
COASTAL COMMISSION

RECEIVED

JAN 17 2008

California Coastal Commission
45 Fremont, Suite 2000
San Francisco, CA 94105-2219

CALIFORNIA
COASTAL COMMISSION
CENTRAL COAST AREA

January 11, 2008

RE: Permit Number A-3-MRB-06-064 Black Hill Villas – Colmer Subdivision Request

Honorable Chairman and Commissioners,

An appeal has been filed and your staff has conducted their analysis on the above referenced project. On behalf of the City staff, we would like to offer comments regarding the general topic of implementing our certified Local Coastal Plan Policies. The City's action on this matter has been clear and made apart of the administrative record. Additionally, the City staff would like to clarify our concerns with several points raised in the staff report presented by your staff.

First, the City requires applicants to prepare site-specific biological studies from qualified professionals. These reports are used to assist in determining which LCP policies best apply. We would recommend your commission support local assessments to best determine which properties exhibit environmental sensitive habitats ESHA qualities. For this particular site protocol level surveys were conducted and mitigations were required.

Secondly, the LCP states Policy 6.07 *"The City's Urban/ Reserve and Urban Services Line shall be drawn as follows: include all area within the City limits but exclude the Cabrillo property and the portion of the Williams property which is outside of the approximately 38 acre area adjacent to Highway One and designated for commercial and open area uses."* Under this policy the site would be considered urban.

Lastly, the City takes issue with California Coastal Commission not recognizing local jurisdiction regarding fire related decisions. The State Fire Codes for fire buffer setbacks intentionally excluded areas subject to city jurisdiction and allows local jurisdictions to establish the fire mitigation measures that are best for their area. Quite obviously this means that the State Codes for fire clearance allow the Fire Chief of local jurisdictions to establish the fire mitigation measures that are best for their area when proper clearance cannot be met.

Please feel free to contact me if you have any questions or would like additional information.

Sincerely,

Bruce Ambo, AICP
Public Services Director

Mike Pond,
Fire Chief

cc: Mayor and Council Members
Andrea Lueker, Interim City Manager
Rob Schultz, City Attorney
Mike Prater, Planning Manager
Coastal Commission Staff

CCC Exhibit 9
(page 6 of 7 pages)
A-3-MRB-06-064

FINANCE
595 Harbor Street

HARBOR DEPARTMENT
1275 Embarcadero Road

ADMINISTRATION
595 Harbor Street

CITY ATTORNEY
955 Shasta Avenue

FIRE DEPARTMENT
715 Harbor Street

POLICE DEPARTMENT
850 Morro Bay Boulevard

PUBLIC SERVICES
955 Shasta Street

RECREATION AND PARKS
1001 Kennedy Way

P.O. Box 1323
Morro Bay, CA 93443

November 20, 2007

Mr. Steve Monowitz
California Coastal Commission
725 First Street - Suite #300
Santa Cruz, CA 95060

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NOV 27 2007

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CENTRAL COAST AREA

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NOV 26 2007

CALIFORNIA
COASTAL COMMISSION

Dear Mr. Monowitz:

This is a letter of formal complaint regarding the lack of notification to appellants regarding item #F11b (A-3-MRB-06-064, Black Hill Villas) at your San Diego hearing last week.

As the appellants, we drove 7 hours from Morro Bay to San Diego on Thursday, so we would be ready for our scheduled item Friday morning. When we arrived at the Sheraton, we checked the posted public agenda and saw our item. We noticed that others had been stamped "postponed."

We filled out speaker slips while the Commission was in closed session and waited. Despite breaks in the meeting and checking with staff, no one told us that the applicant had requested a postponement on the De Novo. Having our speaker slips in hand, why didn't someone on staff tell us that the De Novo (public hearing) was postponed?

From the staff report, we knew staff was recommending in favor of a Substantial Issue Determination. We would not have driven the 700 mile round trip if we had been noticed that the De Novo hearing had been postponed. We believe that this postponement did not happen at the last minute.

Having spent two days of travel and expenses, we request that you schedule the next hearing of this item much closer to Morro Bay.

Respectfully



Ray Mc Kelligott
Appellant
805.772.8728



Roger Ewing
Appellant
805.772.1652

cc: Mr. Peter Douglas, Executive Director
✓ Dr. Charles Lester, Senior Deputy Director

CCC Exhibit 9
(page 7 of 7 pages)

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