CALIFORNIA COASTAL COMMISSION
CENTRAL COAST DISTRICT OFFICE
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Appeal Filed:	12/01/2006
49th day (waived):	1/19/2007
Substantial Issue found:	11/16/2007
CDP approved:	3/6/2008
Staff:	Mike Watson
Staff report prepared:	3/24/2008
Hearing date:	4/11/2008

Revised Findings
for
Appeal/CDP Application A-3-MRB-06-064

Appeal number.....**A-3-MRB-06-064, Black Hill Villas**

Applicant.....Wayne Colmer

Appellants.....Commissioners Meg Caldwell and Mary Shallenberger; Roger Ewing and Ray McKelligott

Local government .....City of Morro Bay

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

Project location .....485 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 description.....Subdivision 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**

Staff Note

On March 6, 2008, the Coastal Commission approved, with conditions, a coastal development permit for the project described above. At that time, the Commission adjusted the parameters of the approved project relative to the staff recommendation: to allow development to within 50 feet of the on-site ESHA/stream; to allow a portion of the raptor tree grove to be removed; to allow the residential structures to extend as high as 25 feet; to limit exterior colors to earthone hues; and to modify riparian

enhancement plan parameters. The findings and conditions that follow have been revised to reflect the Commission's March 6, 2008 action. Deletions to the previous report text are shown in ~~strike-through~~ text format, and additions are shown in <u>underlined</u> text format.[1] Commissioners who are eligible to vote on the revised findings are those from the prevailing side who were present at the March 6, 2008 hearing. In this case, Commissioners Achadjian, Blank, Burke, Clark, Hueso, Kruer, Neely, Potter, Reilly, and Secord are eligible to vote on these revised findings.

Staff Recommendation on Revised Findings

Staff recommends that the Commission adopt the following revised findings in support of its approval with conditions of a coastal development permit for the proposed development on March 6, 2008.

> **Motion.** I move that the Commission adopt the revised findings in support of the Commission's action on March 6, 2008 approving with conditions the development proposed under appeal/CDP application number A-3-MRB-06-064 pursuant to the staff recommendation.
>
> **Staff Recommendation of Adoption.** Staff recommends a **YES** vote. Passage of this motion will result in adoption of the following resolution, revised findings and conditions as set forth in this report. The motion requires a majority vote of the members from the prevailing side present at the March 6, 2008 hearing, with at least three of the prevailing members voting. Commissioners eligible to vote on the revised findings are Commissioners Achadjian, Blank, Burke, Clark, Hueso, Kruer, Neely, Potter, Reilly, and Secord. If the motion fails, the revised findings are postponed to a later meeting.
>
> **Resolution.** The Commission hereby adopts the findings and conditions set forth below for approval with conditions of a coastal development permit for the proposed development on the grounds that the findings support the Commission's decision made on March 6, 2008 and accurately reflect reasons for it.

Summary of ~~Staff Recommendation~~ <u>Commission Action</u>

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.

The Applicant proposes to subdivide two existing parcels into 18 lots: 17 residential lots ranging from

[1] Changes to section numbering (as a result of removing staff recommendation sections regarding the CDP application) are <u>not</u> shown in cross-through and underline for better clarity. In addition, heading text that was underlined in the original report remains underlined – it does not represent additional text being added.

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. Without adequate vegetative screening and exterior treatment, the ~~The~~ proposed residential development could ~~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. The Commission finds that the Applicant's proposal, if properly refined, can be found adequate in this case to protect resources consistent with the LCP. Specifically, a 50-foot stream/ESHA setback, a 40-foot Black Hill Natural Area setback, a 25-foot height limitation, protection of most of the raptor habitat, riparian enhancement/replanting, and related measures all form the foundation of an approvable project. Special conditions are applied to thus refine the approvable project, including conditions that: ~~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~~ 50 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 most 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~~ 25 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 Commission approves the coastal development permit.

~~Staff~~ Report Contents

Exhibits

Click on the link at left to go to the exhibits.

~~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.~~

1. 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 ~~100~~50-foot 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; and (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 Protection Area.** No development, as defined by LCP Section 17.12.199 shall occur within the eastern portion of the Raptor Habitat Area (i.e., extending about 225 feet from the eastern property line) (see Raptor Habitat Protection Area portion of Raptor Habitat Area in Exhibit 6), except for: (1) subdivision necessary to create a single parcel consisting of the Raptor Habitat Protection 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 40-foot 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 Protection 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. Development located within 50 feet of the edge of the ESHA/Stream Habitat Area and Buffer (see special condition 1) shall be limited to development substantially in conformance with the development shown on the figure titled "Comparison of Habitat Areas Site Plans" in the document titled "Black Hill Villas A-3-MRB-06-064" received by the Commission at the March 6, 2008 Commission hearing (see Exhibit 12).

(b) **Building Heights.** The maximum building height for all residential structures shall be ~~14~~ 25 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 protected raptor habitat (see Special Condition 1. Final Plans shall provide all tree protection parameters.

(f) **Landscaping and Irrigation Details.** 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 plants used on site shall be native species from local stock appropriate to the Black Hill area. Non-native and/or invasive plant species shall be prohibited. 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. Non-native and/or invasive plant species shall not be allowed to persist on the site (see also Special Condition 4). The planting of non-native and/or invasive plant 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 Protection 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.

(j) **See-Through Railings and Partitions Prohibited.** See-through (e.g., glass, plastic, etc.) patio or deck railings, partitions, and similar structures shall be prohibited on the site.

(k) **Earthtone Colors Only.** All exterior hues (i.e., paints, surface treatments, etc.) shall be earthtone colors.

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 be substantially consistent with the parameters of the enhancement plan submitted to the Commission (titled "Black Hill Villas DRAFT Riparian Enhancement Plan" dated received in the Commission's Central Coast District Office on April 6, 2007). 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:~~ The REP shall include measurable performance standards and success criteria, a planting palette limited to native species from local stock appropriate to the Black Hill area, and monitoring designed to meet performance standards and success criteria.

~~(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. Ata 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:

2. 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.

The 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 most of 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.

3. 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.[2] 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 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 (*Distichils 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.

[2] 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.

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. morrensis*) 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.[3] 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 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

[3] 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.

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 it 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.[4] 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,

[4] 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.

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,[5] 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 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

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

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. The Commission finds that the Applicant's proposal, if properly refined, can form the foundation of an approvable project that can be found adequate in this case to protect resources consistent with the LCP (see modifications to approve project below). ~~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~~ Commission finds that a 50-foot buffer 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. In addition, and to further protect the ESHA/stream area, only an access road and related utilities and very limited residential development would be allowed within 50 feet of the edge of the buffer (see Exhibit 12). See Exhibit 6 for a graphic depiction of the ESHA/stream area and the required buffer, see Exhibit 12 for the limited development allowed adjacent to that buffer, and see special conditions 1 and 2.

Black Hill Natural Area Protection[6]

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

[6] See also fire hazard avoidance findings that follow.

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~~50-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 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 eastern portion of the raptor grove (the area of the raptor grove within roughly 225 feet of the eastern property boundary; see the raptor habitat protection portion of the raptor habitat area depicted in Exhibit 6), including avoiding any direct removal of trees and avoiding any activities that might adversely impact this portion of the grove. This can be accomplished by ensuring that development is kept out of the driplines of this portion 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 limited development area and the 50-foot ESHA/stream buffer, which de facto also acts as a kind of buffer for the raptor habitat. See Exhibit 6 for a graphic depiction of the protected portion 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 area within 100 feet of it ~~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.[7] 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 Exhibits 6 and 12 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 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,

[7] ~~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.~~ See Exhibits 6 and 12 for a graphic depiction.

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 protected portion of 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 protected portion of 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~~ 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. Specifically, without adequate vegetative screening and exterior treatment, the ~~The~~ two-story design of the residences ~~will~~ could degrade important views by placing additional unscreened/uncamouflaged 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 could result~~s~~ 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.[8]

The required siting and design modifications identified in the preceding findings above, including the establishment of a development area outside of the ~~100~~50-foot ESHA/stream buffer, outside of the majority 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 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 contemplates that the Black Hill viewshed is visually significant and demanding of even greater development sensitivity.

[8] The Applicant's recent potential modifications provide a foundation for developing an approvable project~~ 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~~.

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~~ 25 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, and through ensuring that exterior colors are limited to earthtone hues. 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~~ 25 feet in height, as measured from natural grade to the ridge height, screened by trees and vegetation (see also below), and appropriately colored. 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.[9]

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.[10] From discussions with the Department of Parks and Recreation staff, the Black Hill Natural Area has not had a major fire in decades.[11]

The proposed project does not adequately acknowledge the fire hazards at this site, does not adequately

[9] See http://www.calfire.ca.gov/fire_prevention/fire_prevention_wildland_zones.php.

[10] 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.

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

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 resistant construction (closed eaves, stucco exterior, etc.), masonry wall, readily accessible fire hydrants, etc.).[12]

[12] 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.

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 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-or-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 as 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 as 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).