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# Th13a

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Staff: D. Robinson - SC  
Staff Report: 11/21/2014  
Hearing Date: 12/11/2014

## STAFF REPORT: DE NOVO HEARING

**Application Number:** A-3-MRB-06-064

**Applicant:** Wayne Colmer

**Project Location:** 485 and 495 South Bay Boulevard, located east of Morro Bay State Park and the Blue Heron Mobile Home Park and about 1.5 miles inland from the shoreline of 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/open space parcel, demolition of 2 existing residences and related structures, removal of 29 trees, construction of a new access road and related utility infrastructure, construction of 17 single-family dwellings (including two affordable units), offsite road and traffic improvements, restoration and enhancement of a stream/riparian area, and related grading and other development.

**Staff Recommendation:** Denial

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## SUMMARY OF STAFF RECOMMENDATION

The Applicant proposes to subdivide two existing parcels into 17 residential parcels and one common area/open space parcel, and to construct 17 single-family residences with two car garages, two of which would be built to City of Morro Bay standards for affordable units. The

proposed project includes demolition of two existing residences and two small associated structures, removal of 29 onsite trees, and construction of a new paved road providing access to the residences and utility infrastructure. The proposed project also includes offsite road and traffic improvements. The Applicant also proposes to restore and enhance an onsite stream and riparian area on the proposed common area/open space parcel, as well as to include storm water retention and filtration measures designed to retain runoff and eliminate sediment input into the stream channel and adjacent riparian area. The project site is located at the corner of South Bay Boulevard and Quintana Road, in the eastern extent of the City of Morro Bay.

A similar project was originally approved by the City in November 2006, and the City's approval was subsequently appealed to the Coastal Commission. In November 2007, the Commission found a substantial issue was raised with respect to the proposed project's consistency with the City's Local Coastal Program (LCP) and took jurisdiction over the coastal development permit (CDP) application. In March 2008, the Coastal Commission approved, with conditions, a CDP for that project. The Commission was sued over its CDP decision, and the San Luis Obispo County Superior Court ultimately remanded the matter back to the Commission to re-hear the item consistent with the Court's decision, which required the Applicant to more clearly identify all biological resources, including explicitly all environmentally sensitive habitat areas (ESHAs) and their precise boundaries/limits, and to consult with the California Department of Fish and Wildlife (CDFW). Other than requiring more precise biological determinations and consultation, the Court's decision does not direct anything other than a review of the project against the applicable LCP policies, and does not direct the Commission to any particular CDP decision outcome.

Since then, the Applicant has provided updated biological and related information as required by the Court, and has slightly modified the proposed project (including by moving the entrance driveway and several homes further away from the on-site stream/riparian corridor and proposing the width of the entrance driveway to be 20 feet). That proposed project is evaluated here, and this staff report and hearing are the culmination of the Court remand process, and represent the Commission's CDP application review of the currently proposed project.

The project site contains several types of ESHAs, as defined by the LCP, which limit development on the site. First, there is an intermittent stream (a tributary to Chorro Creek) and riparian corridor ESHA that provides a link and wildlife corridor between the Black Hill area of Morro Bay State Park<sup>1</sup> and eventually Morro Bay, via the Chorro Creek watershed. Second, there is an area of wetlands, characterized by salt-tolerant vegetation (e.g., saltgrass), adjacent to the stream and on-site, which is also considered ESHA by the LCP. Third, there is an off-site riparian area directly across from the proposed project's entrance accessway that is also ESHA. Finally, the site also includes a large stand of mature trees that provides nesting and roosting habitat for the red shouldered hawk, and while not considered ESHA, nonetheless receive some level of protection under the LCP.

LCP ESHA provisions require 100-foot setbacks from ESHA, and don't allow for setback reductions for new subdivisions, like the proposed project. In this case, the stream/riparian areas and the wetlands constitute ESHA to which the 100-foot setback applies. For the stream/riparian

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<sup>1</sup> Referred to in the LCP as the "Black Hill Natural Area" and "Black Mountain."

areas, however, the LCP prescribes a more specific setback of 50 feet in urban areas (the project site is defined as urban in the LCP), and the 50-foot setback also cannot be reduced for new subdivisions. This more specific 50-foot setback policy for stream/riparian areas is controlling because when a more specific policy and a general policy conflict, as is the case with the ESHA 100-foot setback versus the stream/riparian 50-foot setback, the more specific policy applies. Thus, the LCP requires a 50-foot minimum setback for the stream/riparian area, and a 100-foot minimum setback for the wetland area.

Although much of the project is located outside of the required setback areas, two portions are not. Specifically, a small section of sidewalk is located about 5 feet within the minimum 100-foot wetland setback (taking up a space totaling approximately 125 square-feet), and a portion of the new access road and sidewalk at the entrance to the site is located in the minimum 50-foot stream/riparian setback. Although the wetland setback issue could likely be readily resolved through fairly minor redesign, the stream/riparian setback issue presents fatal problems for the project as there isn't adequate space outside of the minimum setback to provide for improved road access onto the property, and there is no other feasible alternative means of access. The LCP allows for setback reductions on existing sites if the required setbacks render the site unusable for its intended use, but, as indicated above, it does not allow for such reductions for new subdivisions, like this one. Thus, the project is not approvable under the LCP, and must be denied. Similarly, a portion of the off-site improvements that are part of the project include road widening that would necessarily extend into stream/riparian areas and/or their buffers, which is also not approvable under the LCP and must be denied. The project also includes other LCP inconsistencies because it would remove a portion of an important tree stand that the LCP requires to be preserved to the maximum extent feasible, and it would result in degradation of the Highway One view. Although these inconsistencies would be correctable if the project were otherwise approvable, it is not and thus these inconsistencies also support denying the proposed project.

Staff thus recommends that the Commission deny the CDP for the project, and further recommends that the Commission provide direction to the Applicant to pursue a project alternative that can address LCP inconsistencies. Such denial is not a final adjudication by the Commission of the potential for development on this site, as it does not preclude the Applicant from applying for some other development or use of the site, such as a more minor redevelopment of the existing houses that utilizes the existing access road, or a development that utilizes access through the neighboring mobile home park. Further, there is existing residential development on the project site that can continue to be utilized. The motion to effect this recommendation is found on page 5 below.

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### APPENDICES

Appendix A – Substantive File Documents

### EXHIBITS

- Exhibit 1. Location Maps
- Exhibit 2. Aerial and Site Photos
- Exhibit 3. Existing and Proposed Layout and Proposed Planting Plan
- Exhibit 4. Habitat Maps and Site Plans
- Exhibit 5. Applicable Morro Bay LCP Maps and Figures
- Exhibit 6. Commission Staff Ecologist's Memos
- Exhibit 7. CDFW Streambed Alteration Agreement
- Exhibit 8. Time Series Images of Site
- Exhibit 9. Applicant Visual Simulations from Highway One
- Exhibit 10. Correspondence Received
- Exhibit 11. Ex Parte Communication

## **I. MOTION AND RESOLUTION**

Staff recommends that the Commission, after public hearing, deny a CDP for the proposed project. To implement this recommendation, staff recommends a **NO** vote on the following motion. Failure of this motion will result in denial of the CDP and adoption of the following resolution and findings. The motion passes only by affirmative vote of a majority of the Commissioners present

***Motion:*** *I move that the Commission approve Coastal Development Permit A-3-MRB-06-064, and I recommend a no vote.*

***Resolution to Deny:*** *The Commission hereby denies a coastal development permit for the proposed development on the grounds that the development will not conform with the policies of the City of Morro Bay's Local Coastal Program and denial of the proposed project is an action to which the California Environmental Quality Act does not apply.*

## **II. FINDINGS AND DECLARATIONS**

The Commission finds and declares as follows:

### **A. PROJECT LOCATION, DESCRIPTION AND BACKGROUND**

#### **Location and Existing Site Conditions**

The proposed project is located on two contiguous lots totaling 3.17 acres on the eastern edge of the City of Morro Bay. The property address is 485 and 495 South Bay Boulevard, and it is situated adjacent to the southwest corner of the South Bay Boulevard/Quintana Road intersection. Highway One is located approximately 500 feet to the north of the project site. See **Exhibit 1** for location maps.

The project site is located on the northern flank of Black Hill and is bordered along the entire west property line by Morro Bay State Park. Quintana Road forms the northern boundary of the property, with the Blue Heron Terrace Mobile Home Park located to the south. An access road which provides access to the site and the mobile home park separates the development site from Chorro Flats, to the east. The main stem of Chorro Creek, one of the largest contributors to the Morro Bay Estuary, is located across South Bay Boulevard from the subject site.

The project 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 Morro Bay State Park downstream and across the site to a box-culvert that is located beneath the driveway entrance and South Bay Boulevard. This corridor conveys water in an eastward direction across the property from the state park 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.

Existing development on the site includes two single-family residences and two small accessory structures located on the upland portion of the property. The larger residence is a two-story residence that is approximately 2,100 square feet in size, and the smaller residence is approximately 1,250 square feet. A small one-room cabin (approximately 200 square feet) is located on the upland part of the property and another small electrical shed is located on the lower part of the property near the entrance to the site. A partially paved driveway approximately 12 feet wide provides access to the existing residences from the road. See **Exhibit 2** for aerial and site photographs.

### **Project Description**

The proposed project includes the removal of both of the existing residences and associated structures, along with 29 trees, and subdivision of the two existing parcels into 17 residential parcels and a single common area/open space parcel. Each of the 17 parcels would be developed with a two-story single-family residence, two of which would provide for affordable housing. In addition, the project includes a 20-foot wide paved access road with a 5-foot sidewalk (and parallel parking spaces along a portion) into and through the property providing access to each of the residential lots, as well as providing subsurface utility infrastructure.

The proposed project would require grubbing and grading of approximately 70 percent of the site, and would include re-contouring of the upper slopes of the intermittent stream (of the right bank when looking downstream) that traverses the northern portion of the property for riparian habitat enhancement purposes. In addition, the project would include implementation of a Riparian Enhancement Plan (latest edition dated June 3, 2014) for the open space area of the site (covering an area of approximately 58,933 square feet, or roughly 43% of the site), including restoration, tree planting,<sup>2</sup> and temporary and permanent water quality and erosion control measures. Finally, the project includes offsite streetscape improvements along the access road, Quintana Road, and South Bay Boulevard, including widening of South Bay Boulevard for turn lanes, and roadway improvements at the intersection of Quintana and South Bay Boulevard (e.g., four-way signalization, signalized pedestrian crosswalk, etc.). See **Exhibit 3** for existing and proposed layouts and the Applicant's proposed planting plan for the riparian enhancement area.

### **Background and Court Remand**

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 that 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. On March 6, 2008, the Coastal Commission approved, with conditions, a CDP for a project roughly as described above. On April 11, 2008, the Commission approved revised findings that were based on the Commission's action at the March 6, 2008 hearing. On August 19, 2008, the Commission was asked by a local group named "Save the Park" to revoke the

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<sup>2</sup> The Applicant proposes to plant 79 trees within the riparian enhancement area, as well as at least 17 street trees within the main road and house development area.

CDP. After a public hearing in December 2008, the Commission declined to revoke the CDP.

Save the Park sued the Commission on its 2008 approval, alleging that the development, even with protective measures, would disrupt and disturb the ESHA located on the property, most notably wetlands and riparian areas. On June 21, 2010, the San Luis Obispo County Superior Court decided in favor of Save the Park in part, and remanded the matter to the Commission to re-hear the item consistent with the Court's decision.

The remand required the Applicant to provide additional biological information, including identifying all ESHA boundaries/limits, and consulting with the California Department of Fish and Wildlife (CDFW). The Applicant provided the required biological information, and ESHA identification and boundaries, and has consulted with the CDFW. CDFW provided a Streambed Alteration Agreement (dated August 28, 2013; see **Exhibit 7**), recommending a number of protective measures to protect fish and wildlife resources for all construction work located within their jurisdictional area within the stream and top of the bank.

The Applicant has submitted a number of updated biotic reports, including a biological resource assessment report (dated September 24, 2012), a raptor survey report (dated November 14, 2012), a habitat assessment update for the California red-legged frog (dated September 14, 2012), a protocol-level Morro shoulderband snail survey (dated August 20, 2012), an ESHA mapping survey (including for wetlands and riparian vegetation) (dated September 21, 2012), and an evaluation of the site as habitat for monarch butterflies (dated February 28, 2012). In addition, the Applicant has submitted a United States Fish and Wildlife Service (USFWS) concurrence determination regarding the Morro shoulderband snail. See **Appendix A** for these and other substantive file documents.

Importantly, other than requiring more precise biological determinations and consultation with CDFW, the Court's decision does not direct anything other than a review of the project against the applicable LCP policies, and does not direct the Commission to any particular CDP decision outcome.

## **B. BIOLOGICAL RESOURCES**

### **Applicable Policies**

The certified LCP protects biological resources including ESHA and other habitats, as well as park lands. These policies establish, among other things, minimum setbacks and buffers from sensitive habitat areas. Similar to Coastal Act Section 30240, the LCP's ESHA policies also protect parks and recreation areas in a manner comparable to the LCP's ESHA protections. Other LCP policies protect biological resources that are not necessarily ESHA, but worthy of protection nonetheless. Applicable LCP policies include:

***LCP Chapter 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.*

*(1) Coastal Wetlands (a) "Wetland" means lands within the coastal zone which may be covered periodically or permanently with shallow water and include saltwater marshes, freshwater marshes, open or closed brackish water marshes, swamps, mudflats and fens.*

...

*(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.*

***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).*

***IP Section 17.40.040(D)(3). Types of Environmentally Sensitive Habitat Areas.*** *A number of types of environmentally sensitive habitat areas exist within the city. The nature of these ecosystems and their susceptibility to possible degradation by different human activities varies among habitat types. Uses acceptable in one type of habitat area may be unacceptable in a more sensitive one. Therefore, environmentally sensitive habitat areas must be classified into one of the following types before determining*

*permitted uses:*

*a. Wetlands. Lands which may be covered periodically or permanently with shallow water, including saltwater marshes, freshwater marshes, open or closed brackish water marshes, swamps, mudflats and fens.*

...

*d. Stream Corridors (Streams and Adjacent Riparian Habitats). A "stream" is a natural water course as designated on the most recently published United States Geological Survey map, 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. A "riparian habitat" is an area characterized by an association of plant species which grow adjacent to freshwater watercourses, including perennial and intermittent streams, lakes and other bodies of fresh water.*

***IP Section 17.40.040 (A)(1).*** “Environmentally sensitive habitat overlay zones shall extend not only over an ESH area itself but shall also include buffers necessary to ensure continued protection of the habitat areas.”

***IP Section 17.40.040 (D)(4). Buffers Required, General.*** *The following minimum buffers shall be applied to environmentally sensitive habitat areas, except as provided elsewhere in this chapter.*

*a. Wetlands. The minimum buffer surrounding wetlands shall be one hundred feet; review area: minimum of two hundred fifty feet.*

*b. Streams. The minimum buffer for streams shall be one hundred feet in non-urban areas and fifty feet in urban areas.*

...

*d. Other. The minimum buffer for estuaries, restricted areas and all other environmentally sensitive habitat areas shall be one hundred feet.*

***IP section 17.40.040(D)(6)(a).*** *Reducing buffers: In all cases, except for wetlands, buffers may be reduced in accordance with the following standards if the application of the buffer specified in Section 17.40.040(d)(4) on a previously subdivided parcel would render that subdivided parcel unusable for its designated use.*

***IP Section 17.40.040(D)(8).Subdivisions Prohibited.*** *The further subdivision of any ESH area shall be prohibited except where the sensitive habitat area is to be transferred in fee to a public agency for a wildlife refuge or for a wildlife management area.*

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...*

Finally, the LCP explicitly adopts the Coastal Act's Chapter 3 policies as the guiding policies of the LUP :

***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.*

### **Resource Setting and Analysis**

#### *Black Hill and Morro Bay State Park*

The subject property is located near the base of Black Hill (a 661-foot volcanic peak) and adjacent to the 2,700-acre Morro Bay State Park. Morro Bay State Park contains a variety of coastal habitats from freshwater riparian habitat and saltwater marshes, to grasslands and coastal sage scrub habitat. Morro Rock, a 23-million-year-old volcanic plug, is the most prominent landscape in Morro Bay State Park and part of the region's "Nine Sisters", a chain of volcanic plugs stretching between Morro Bay and San Luis Obispo.<sup>3</sup> Black Hill, adjacent to the project site and also within Morro Bay State Park, is also part of the Nine Sisters, and it is a popular site for hiking and enjoying panoramic views of Morro Bay.

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 adjacent Morro Bay State Park is categorically identified and mapped as ESHA on Figure 28 of the City's LCP (see **Exhibit 5**). As identified in the certified LCP, the plant community there consists mainly of native coastal sage scrub, but also contains species characteristic of maritime chaparral. The low lying areas immediately adjacent to the project site exhibit some of the same characteristics as these sensitive habitats, though this adjacent area 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.

#### *The Chorro Creek Watershed*

A portion of the Chorro Creek watershed, including Chorro Flats, lies immediately adjacent to the subject site to the east and south, and is one of the largest contributors to the Morro Bay Estuary. The portion of this watershed that is directly east of South Bay Boulevard is categorically identified and mapped as ESHA on Figure 28 of the City's LCP, and the approximately 83 acres of wetland and wildlife habitat that was restored is likewise considered ESHA pursuant to the LCP (see **Exhibit 5**). This low lying rural area was the site of a major restoration enhancement project beginning in the 1990s, and continues to receive funding and support from various stakeholders in aims of restoring and enhancing its wetland and wildlife habitat. The project was designed to reestablish riparian habitat and improve water quality entering Morro Bay by reducing upstream sediment flows. Partners converted approximately 100 acres of agricultural land to a floodplain by realigning the Chorro Creek channel (i.e., removing levees and planting native riparian vegetation chosen for its ability to trap sediments). The

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<sup>3</sup> The volcanic plugs were formed when magma swelled up and then solidified inside softer rock, which later eroded away.

project restored approximately 67 acres of riparian and wetland habitat.<sup>4</sup> Importantly, the triangular shaped riparian area that is located between South Bay Boulevard and the access road leading to the project site was a part of this restoration project.<sup>5</sup>

#### *On-Site Description*

The property includes a small seasonal stream that crosses the northern quarter of the property, more or less parallel to Quintana Road. The stream slopes from Morro Bay State Park across the northern portion of the subject property and then under South Bay Boulevard and into the Chorro Creek watershed. This stream channel provides an aquatic and habitat link between the Black Hill area of Morro Bay State Park and Chorro Flats, all of which eventually connect to Morro Bay. The stream corridor on the property has been disturbed via alteration and manipulation of the stream course and drainage channel and ongoing weed abatement practices over time, yet still is a critical hydrologic feature in this area. The seasonal channel receives surface runoff from a drainage area of approximately 275 acres.

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. However, a few native species, such as coyote bush and Californian poppy, are also found in the upland area. 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.

Numerous trees also grow on the site, including large and mature Monterey cypress, Monterey pine and blue gum eucalyptus. A row of elm and other trees are also present along the western property line adjacent to Morro Bay State Park. However, several trees, including mature Monterey pine and eucalyptus trees, have been removed on this site in the past,<sup>6</sup> including some that have apparently been felled by weather since 2007.<sup>7</sup> These trees were located primarily in the low-lying area near the seasonal stream/riparian and wetland area and/or adjacent to the raptor habitat area. See **Exhibit 8** for a time series of photographs of the site, including the tree canopy.

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<sup>4</sup> Partners involved in protecting and enhancing the Chorro Creek watershed include the Natural Resources Conservation Service, Coastal San Luis Resource Conservation District, California Coastal Conservancy, Morro Bay National Estuary Program, Farm Bureau, Bay Foundation of Morro Bay, San Luis Obispo County, California Men's Colony Prison Water Treatment Plant, Camp San Luis Obispo, U.S. Environmental Protection Agency, Central Coast Regional Water Quality Control Board, California State Water Resources Control Board, and numerous private landowners.

<sup>5</sup> At one time, the entrance access road from Quintana to the Blue Heron Terrace Mobile Home Park ran across this section to connect with South Bay Boulevard, which is why the current address for the property is 485 and 495 South Bay Boulevard. During the restoration project, the road was realigned to Quintana road, and culverts were installed to allow creek waters to flow from the subject property to the Chorro Flats area to the east.

<sup>6</sup> On February 2, 2007, Commission staff observed evidence of then recent tree removal within the stream and riparian corridor during a site visit, 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, as updated). Other documents, such as the City's original staff report and a tree inventory from Michael Tutt (dated June 23, 2004), likewise indicate that as many as 16 trees have been removed. The Commission's Enforcement Division has an active case on purported unpermitted removal of certain trees. (See also Section E, *Violation* below.)

<sup>7</sup> The Applicant has provided information showing that 3 trees have been felled by weather since 2007.

*ESHA*

Based on the 2010 San Luis Obispo County Superior Court decision, and because approximately 7 years has passed since the original Commission hearings on this project (and approximately 10 years since the original biotic reports were completed), the Applicant submitted six biotic reports between 2012 and 2013 to aid in the environmental analysis of the project (see **Appendix A**).

The updated information shows the extent of required setbacks based on different types of ESHA (stream/riparian and wetland). The Applicant's submitted material identified the limits of the site's wetland vegetation and stream/riparian areas on the northern part of the property and identified the raptor habitat area for purposes of determining ESHA and appropriate buffers. The Applicant's resultant habitat maps show the limits of the wetland and associated wetland vegetation area (such as saltgrass), the stream, the arroyo willow riparian area, the top of the riparian bank, and the raptor habitat area. See **Exhibit 4** for the Applicant's most recent habitat and site maps. The Applicant's Biological Resource Assessment Report found several areas on the subject site with the potential to meet the ESHA criteria: the seasonal channel that crosses the northern part of the site, the large stand of trees growing on the lower part of the site and along the on-site access road, and the wetlands adjacent to the seasonal channel.

LCP Land Use Plan (LUP) Chapter XII.C.2 and Implementation Plan (IP) Section 17.40.040(d)(3) categorically identify coastal streams and riparian habitat and wetlands as ESHA. The Commission's ecologist, Dr. Jonna Engel, concurs that the stream/riparian corridor and wetland areas are ESHA. Dr. Engel does not believe that the stand of trees qualifies as ESHA, but recommends that this stand "be preserved and protected to the greatest extent possible" (see also discussion below and Dr. Engel's memos in **Exhibit 6**).

*Stream/Riparian and Wetland ESHA*

In terms of the stream and riparian habitat which exists on the northern portion of the subject property, the seasonal channel is approximately 325 feet in length and flows west to east between the Black Hill area of Morro Bay State Park and the Chorro Flats/Chorro Creek watershed to the east. The seasonal channel receives surface runoff from a drainage area of approximately 275 acres, primarily located to the north and south of the channel. The State Park land on the northern flank of Black Hill, directly upland of and partly feeding into the project site (along with various other inputs), supports a dense riparian corridor dominated by arroyo willows. The stream channel empties into an adjacent riparian area via a box-culvert into Chorro Flats and the larger Chorro Creek watershed on the east side of South Bay Boulevard.

In 2012, the Applicant prepared a focused survey-level report on the California red-legged frog (CRLF), which is listed as a federally threatened species and a California Species of Special Concern.<sup>8</sup> The report for CRLF found slightly higher habitat values (expansion of the arroyo willow canopy and the increased abundance of hydrophytic vegetation in the channel) along the watercourse that traverses the subject property than in 2004 (when earlier surveys were undertaken). This habitat would be expected to provide increased sheltering and foraging habitat

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<sup>8</sup> The Applicant has also submitted updated no-take concurrence letters from the U.S. Fish and Wildlife Service (US F&WS) for the California red-legged frog.

functions for CRLF. In addition, the 2012 report indicates that the increased vegetation and cover in the channel may provide suitable breeding habitat in wet years. Thus, the stream corridor contains suitable habitat for CRLF, enhancing its overall habitat value, and providing support for adjacent CRLF habitat.

While the intermittent stream and its adjacent habitat on site have been disturbed over the years<sup>9</sup> (e.g., including through the removal of several trees, as discussed above), its hydrologic function has been maintained, and the stream channel serves as a link, providing potential habitat for CRLF, and a northern riparian connection between Morro Bay State Park and the Chorro Flats/Chorro Creek watershed area, two more significant CRLF habitat areas. Thus, the low-lying stream/riparian area is ESHA.

In addition, the triangular shaped riparian area that is located between South Bay Boulevard and the access road leading to the project site that was a part of the above-described Chorro Creek restoration project also constitutes ESHA per the LCP because it is a riparian area.

Lastly, the on-site wetlands are characterized by salt-tolerant vegetation and are a separate habitat type, as compared to the freshwater stream/riparian habitat. The area identified on the habitat plans as saltgrass is wetland and also separately constitutes ESHA per the LCP.

See also Dr. Engel's memos on these ESHA determinations in **Exhibit 6**.

#### *ESHA Setbacks*

LCP ESHA provisions require 100-foot setbacks from ESHA (see LUP Policies 11.02 and 11.06). These same provisions include language identifying when such setbacks can be reduced, with LUP Policy 11.06 stating that:

*...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 LCP includes similar language with respect to streams, with LUP Policy 11.14 stating:

*...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. ...*

These provisions allow decreases from the minimum setback requirements only if implementation of the minimum buffers would render a previously subdivided parcel unusable for its designated use (e.g., see the references to "previously subdivided parcels" in LUP Policy 11.14 and IP Section 17.40.040(d)(6)(a)). In other words, if the LCP setback policies as applied to these properties would render a parcel unusable for its designated use, then a reduction can be

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<sup>9</sup> Including as recently as 2013, when staging occurred on the northern portion of the property for construction of an adjacent pump station by the City of Morro Bay.

pursued consistent with the policies.<sup>10</sup> In this case, the Applicant is proposing a new subdivision. The new subdivision stage is when LCP setback and other policies need to be applied to ensure that new parcels can be developed consistent with LCP requirements. Thus, the LCP does not allow for ESHA setback reductions, including with respect to stream/riparian ESHA, for new subdivisions.

As detailed above, stream/riparian areas and the wetlands constitute ESHA to which the 100-foot setback applies. For the stream/riparian areas, however, the LCP prescribes a more specific setback of 100 feet in rural areas and 50 feet in urban areas. Despite the rural nature of the area, including that the project site is located some 1.5 miles from the City core near the Embarcadero and downtown Morro Bay, by LCP definition this site is located in an urban area (see the City's Land Use Map in **Exhibit 5**).<sup>11</sup> Thus, the stream/riparian setback policies that apply require a minimum 50-foot setback. This more specific 50-foot setback policy for stream/riparian areas is controlling because when a more specific policy and a general policy conflict, as is the case with the ESHA 100-foot setback versus the stream/riparian 50-foot setback, the more specific policy applies.

Thus, the LCP requires a 50-foot minimum setback for the stream/riparian areas (both on and off site), and a 100-foot minimum setback for the onsite wetland area.

#### *On-Site Raptor Habitat*

Several raptor surveys have been conducted on the site by the Applicant's consultants. Initial surveys occurred in March, April, and May 2004. 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*). 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 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. Raptors prey on small rodents, fish, and reptiles, and are important to the overall ecological functioning of the riparian habitat plant and animal community, including the Black Hill area of Morro Bay State Park to the west and the Chorro Flats restoration area to the east. 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). These reports are verified by the Applicant's reports and Dr. Engel's memo (**Exhibit 6**)

The results of the 2012 raptor survey continue to indicate that there is raptor activity on the site and show the importance of the subject stand of trees to support such activity. The biologists

<sup>10</sup> In no case can a wetland setback be reduced, as the setback reduction provisions explicitly omit wetlands (see LUP Policy 11.06 and IP Section 17.40.040(d)(6)(a)).

<sup>11</sup> The LCP defines "urban" as those land areas within the urban-rural boundary as described in the LCP (Section 17.12.655). "Nonurban area" means those land areas that are within the City but are outside the urban-rural boundary as described in the LCP (Section 17.12.656). The site is located within the LCP-mapped rural-urban boundary, and thus is considered by the LCP to be urban for purposes of this policy.

found one active nest and evidence of perching/roosting in nine of the thirteen surveyed trees by the red-shouldered hawk. While five other species were detected (i.e., turkey vultures, American kestrels, red-tailed hawks, barn owl, and the great horned owl) none were found to be actively roosting or nesting in the onsite trees.

Although the tree stand is a valuable natural resource, it does not rise to the level of ESHA. For tree stands to be ESHA due to being habitat for raptor species, there must be a well-documented history of use of these trees and adjacent foraging areas by a suite of raptor species or one or more listed raptor species spanning several years (supported by formal raptor surveys, field notes, and observations by qualified ornithologists). Dr. Engel has evaluated the site and the biological reports and surveys and has determined that the tree stand in question has been documented to support only one raptor species, the red shouldered hawk, which is not a listed species. It therefore does not constitute ESHA (again, see **Exhibit 6**). However, while not designated ESHA, the onsite stand of trees does provide a habitat function for the red-shouldered hawk and other birds and animals, and the LCP requires it to be preserved to the maximum extent feasible, and Dr. Engel recommends that it be preserved and protected to the greatest extent possible.<sup>12</sup> Thus, the removal of trees, labeled on the habitat plans as, “Tree and Canopy to be Removed” is not consistent with the LCP if it is feasible to retain them. As a new subdivision proposal, it is reasonable and feasible to avoid the entire tree stand, including the eucalyptus tree (E2) that has an active nest and has been surveyed as having a nest multiple times because the subdivision lots could be rearranged or eliminated to avoid such tree removal. Therefore, the proposed removal of trees of E2, E3, E4 and E5 and their associated canopies is inconsistent with the LCP (see **Exhibit 4** for the location of these trees).

In addition, as described above, numerous trees have been removed on the site in the vicinity of the ESHA areas, in the recent past. These trees were located primarily in the low lying area near the seasonal stream/ riparian and wetland area. These trees, if still in existence, would have provided additional habitat for the species listed above and other animals, as well as providing for more general benefits (e.g., shade, oxygen, etc.). Their removal would therefore appear to be similarly inconsistent with the LCP (see also Section E, *Violation*, below).

#### *Other Habitats*

The Applicant has also submitted updated surveys for Morro shoulderband snail and monarch butterfly habitat. In terms of the Morro shoulderband snail, protocol level surveys were conducted originally in the fall of 2004, since the project site is within the known range of this species.<sup>13</sup> Three live shoulderband snails and four empty shells were found during surveys undertaken at that time. However, at the time of the 2004 survey the two forms of the shoulderband snail were recognized as a single species. Today, the species that was identified on the project site is classified as a separate species known as the Chorro shoulderband snail. The

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<sup>12</sup> LUP Policy 9.06 requires that “natural features, landforms, and native vegetation, **such as trees**, shall be preserved to the maximum extent feasible...” (emphasis added)

<sup>13</sup> The 2004 report indicated that vegetation on the project site did not offer a great deal of suitable habitat for the ESA protected variety of Morro shoulderband snail. The Morro shoulderband snail is predominantly associated with coastal scrub communities and only a few of the typical coastal scrub plant species are found 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, which appear to render any potential habitat unsuitable for the snail.



Chorro shoulderband snail is considered secure and not recognized as a state or federally listed species or afforded any other special status. In the updated survey in 2012, four species of snails were encountered on the site; however none were the ESA-protected Morro shoulderband snail.<sup>14</sup>

Lastly, the 2012 “Evaluation of the Black Hill Villas Parcel as a Winter Habitat for Monarch Butterflies” found a similar result to that survey undertaken in 2004: that the forested areas of the site are not a suitable site for overwintering monarch butterflies.

### **Project Inconsistent with the LCP**

The proposed project is inconsistent with the LCP’s natural habitat protection provisions and cannot be approved for a number of different reasons. First, the LCP requires ESHA to be protected against any significant disruption of habitat values, and requires a minimum 50-foot buffer from the stream/riparian ESHAs and a minimum 100-foot buffer from the wetlands; these buffers cannot be reduced for new subdivisions. The LCP further requires that natural features and coastal resources, including trees, be protected and preserved to the maximum extent feasible, and requires that new development avoid significant adverse effects on coastal resources more generally. In addition, the LCP requires that any development on this site be sited and designed to avoid impacts that would significantly degrade the adjacent ESHA, including the Black Hill area of Morro Bay State Park and the Chorro Flats area.

Although much of the project is located outside of the required habitat setback areas, two portions are not. Specifically, a small section of sidewalk is located about 5 feet within the minimum 100-foot wetland setback (occupying approximately 125 square-feet), and a portion of the new access road and sidewalk at the entrance to the site is located in the minimum 50-foot stream/riparian setback area (see **Exhibit 4**). Although the wetland setback issue could likely be readily resolved through fairly minor redesign, the stream/riparian setback issue presents fatal problems for the project as there isn’t adequate space outside of the minimum setback to provide for improved road access onto the property, and there is no other feasible alternative means of access. The only two possible routes of access are along the general alignment of the existing accessway or through the mobile home park (generally to the south), as the other property boundaries are flanked by State Park lands generally to the west and by the stream/riparian area generally to the north. The Applicant indicates that the mobile home park will not allow access, which means that the only possible means of accessing the site is in the area where such access is proposed. And this area is within the required 50-foot setback, inconsistent with the LCP.

Similarly, a portion of the off-site improvements that are part of the project include road widening (of South Bay Boulevard) that would necessarily extend into stream/riparian areas and/or their buffers, which is also not approvable under the LCP.

In addition, while the Applicant has proposed to retain several Monterey cypress trees and one eucalyptus tree within the identified raptor habitat area (those growing along the property line between the existing access driveway and the Blue Heron Terrace Mobile Home Park), the project proposes to remove a number of eucalyptus trees and associated overlapping canopies within this habitat area, and approximately 16 trees of various types along the western property

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<sup>14</sup> The Applicant has also submitted an updated no-take concurrence letter from US F&WS for the Morro shoulderband snail, dated December 3, 2012.

boundary (for a total of 29 trees to be removed). In addition, the stand of trees (labeled E2, E3, E4, and E5) that is proposed to be removed could be feasibly retained, even if the property were subdivided for new residential development. Thus, the proposed removal of the western portion of the stand of trees is not consistent with the LCP (see **Exhibit 3**, Existing Layout, for this row of trees adjacent to the Off-site Black Hill area, Morro Bay State Park).

Further, although the trees along the western property boundary (consisting of a row of elm, eucalyptus and Monterey pine growing mostly beneath existing utility lines) are not ESHA because they do not provide significant nesting and roosting/perching habitat, they are nevertheless important biological resources, including given their size and location adjacent to the State Park ESHA.<sup>15</sup> LUP Policy 11.02 requires development in areas adjacent to ESHA and parks and recreation areas (such as the adjacent Black Hill area of Morro Bay State Park in this case) be sited and designed to prevent impacts which would significantly degrade such areas, and requires that habitat functional capacity be maintained. While the removal of these 16 trees, which are in a state of declining health, would not likely significantly degrade such adjacent park ESHA, the removal of these trees in a *new* subdivision application is likewise inconsistent with Policy 9.06.<sup>16</sup> In addition, the proposed development is located immediately adjacent to these environmentally sensitive habitat areas, State Park wildlands, and raptor habitats, and would introduce urban disturbances and stresses that could, in both the short and long term, disrupt and degrade these areas, including removal of a significant portion of the on-site tree stand, inconsistent with the LCP. These onsite and offsite resource areas and their functionality depend on both plants and animals, and on these areas being able to function as naturally as possible.

Finally, LUP Policy 11.18 prohibits new subdivisions in areas designated as ESHA (and their buffers, according to the IP Section 17.40.040 (A)(1) and (D)(8)), except where the ESHA area “is to be transferred in fee to a public agency for a wildlife refuge or for a wildlife management area” (see IP Section 17.40.040 (D)(8)). In this case, the proposed project includes subdivision of two parcels into 17 parcels and one common area/open space parcel. The open space/common area parcel would include the onsite ESHA habitat and buffer area in the northern portion of the property (wetland and stream/riparian), but it would also include the access road and everything else not a part of the 17 residential lots. It is also not proposed to be transferred to an appropriate agency for ESHA management and preservation. Thus the subdivision is also inconsistent with the LCP on these point as well. Although some of these issues might be able to be corrected through conditions of approval, because the project cannot be approved at this time due to the above-described LCP inconsistencies, special conditions to address these ESHA subdivision issues are not appropriate at this time.

### **ESHA Conclusion**

The proposed project includes development in required minimum ESHA buffers, removal of a tree stand providing raptor habitat, and development directly adjacent to the State Park natural area. Although the project could be conditioned by the Commission to relocate proposed

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<sup>15</sup> According to the Applicant’s raptor survey report (November 14, 2012) and biological resource assessment report (September 24, 2012), these trees do not provide significant nesting and perching opportunities for raptors.

<sup>16</sup> The Applicant has submitted an arborist report, dated March 20, 2014 (Steve Franzmann, Greenvale Tree Company), which indicates that this western row of elm trees “are in a state of declining health” and due to the “multiple topping cuts” from PG&E over a period of multiple years and “the dieback and the areas of disease, these trees should be removed.”

development to address some of these inconsistencies, there is no place to locate the proposed new access road to a location that would not be in a required ESHA buffer. Thus, the proposed project cannot be found consistent with the LCP and cannot be approved.

## C. VISUAL RESOURCES

### Applicable 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 visitor 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.*

### Analysis

The project site is located in a significant public viewshed area, 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, which is visible from Highway One. See **Exhibit 2** for aerial photographs of the site and adjacent setting. The site of the proposed development is nestled on the northern flank of Black Hill directly adjacent to the Black Hill area 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 and the Chorro Creek watershed. 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 "Black Mountain" as a public

viewpoint of significant importance (see **Exhibit 5**).

The proposed 17 two-story, 25-foot tall, residences would be constructed directly adjacent to and sandwiched between the Blue Heron Mobile Home Park and the State Park. 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 Highway One viewshed backdrop, their visual prominence is reduced due to their modest height and scale and intervening vegetation located between the site and Highway One. 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 the low profiles of the mobile homes and the existing vegetation, the mobile homes appear to be set somewhat into the lower flank of Black Hill, thus tempering their impact on the public viewshed.

In contrast, the proposed new 17 residential units would be two stories in height (25 feet) 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 likely 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 (see **Exhibit 9** for the Applicant's visual simulations from Highway One).<sup>17</sup> Exacerbating the visual impact is the Applicant's proposal to remove approximately 29 trees from the project site. While some trees are proposed to be retained, a number of trees slated for removal currently provide some screening of the mobile home park units, and together with existing trees on the western property boundary and adjacent State Park property, help blur the line between urban development and open space land. These 29 trees would be removed to allow for nearly 7,000 cubic yards of grading, and grubbing over more than 70% of the property to create cleared, level building sites.

The LCP 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. The LCP also requires new development to be subordinate to the character of the setting in designated scenic areas, such as adjacent to the Black Hill area of Morro Bay State Park. The LCP also requires that new development maintain specific height/bulk relationships with surrounding areas and neighborhoods, and requires the provision of view easements and corridors (see LUP Policy 12.06, and LUP Figure 31 in **Exhibit 5**).

### **Project inconsistent with the LCP**

The proposed development is not consistent with the LCP's visual resource policies identified above. The two-story design of the residences will degrade important views by placing additional urban development within the northbound Highway One viewshed. Specifically, the upper stories of the proposed residential development would extend above existing vegetation and

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<sup>17</sup> While this visual simulation is representative of the Applicant's previously configured home design, the rendering does represent an estimate of expected visual impacts.

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) (see **Exhibit 9**). Removal of significant trees, and grading almost all of the project site to create cleared, level building pads, would appear to maximize (as opposed to minimize, as required by the LCP) natural landform alteration. The 25-foot, 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. While the new homes would not need to be the same size as the neighboring mobile home parks, they must still better blend in with the established development pattern than the two story structures proposed by the applicant.

In sum, the LCP designates this viewshed as ‘publicly important’ and ‘significant’ and the incursion of the proposed project into this viewshed results in additional visual incompatibility in the public viewshed. Accordingly, the proposed project does not conform to the certified LCP policies regarding the protection, and enhancement, of scenic and visual resource areas.

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) contemplates that the Black Hill viewshed is visually significant and demanding of even greater development sensitivity. If the proposed project were otherwise approvable, then in order to bring the project into conformance with the LCP visual resource provisions, the proposed new residences would need to be limited to 1-story, no higher than 14 feet above grade, and constructed in such a way as to not be visible from Highway One, including through use of screening trees and vegetation, as needed. In addition, the property line adjacent to the mobile home park would need to be landscaped with appropriate native plants and trees to blend the new residential development in with the existing natural aesthetic. The Applicant could be given flexibility to design residential units within the allowable building area, but such structures would still need to comply with the LCP requirements that they protect significant public views, such as Highway One in this case.

### **Visual Resources 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 protection of this viewshed. Although special conditions, including conditions to add additional screening and reduce the height and overall scope of the development, could potentially bring the project into conformance with the LCP’s visual resource protection policies, because the project cannot be approved at this time due to its inconsistencies with the LCP’s ESHA protection provisions, special conditions to address the project’s visual resource impacts are not appropriate at this time.

## **D. HAZARDS**

### **Applicable Policies**

LUP Policy 9.01 requires that new development be located to minimize risks from hazards, including fire hazards, and states:

***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.*

### **Analysis**

The majority of the adjacent State Parks' Black Hill 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 that is present. In addition, there is a stand of eucalyptus and Monterey pine trees on the State Park adjacent to the subject site, which has 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.<sup>18</sup>

Certain aspects of the proposed development (roadways, street ends, vehicle parking spaces) would be located immediately adjacent to the State Park natural area (see **Exhibit 3 and 4**), within 40 feet of the State Parks' property line. However, all residential structures would be located more than 40 feet from the property boundary.

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 of a statewide issue and concern in recent years.

The State has adopted a revised standard requiring a 100-foot defensible fire safety space requirement that applies to all properties along the wildland-urban interface area (per State Public Resource Code Section 4291) in State Responsibility Areas (SRAs). However, 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

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<sup>18</sup> See [http://www.calfire.ca.gov/fire\\_prevention/fire\\_prevention\\_wildland\\_zones.php](http://www.calfire.ca.gov/fire_prevention/fire_prevention_wildland_zones.php).

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 from State Park land. With prior 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. The residential units as currently proposed would be located at least 40 feet away from the Black Hill Natural Area along the western property boundary, consistent with the City's required fire buffer and the State Park recommended buffer.

### **Hazards Conclusion**

The primary environmental hazard affecting this site is fire. The project as currently proposed would locate all residential units at least 40 feet from the border with the adjacent State Park. Provided it were accompanied by provisions to ensure that defensible space requirements were not allowed to be extended onto the adjacent State Park property, and all such measures needed to be accommodated on the Applicant's property, this buffer would protect the life and property on the site from the fire hazards associated with development at this site. Thus, if this project were otherwise consistent with the LCP, it could be found consistent with the hazards protection provisions of the LCP with the proposed 40-foot park wildland buffer and associated requirements. However, because the proposed project cannot be found consistent with the LCP for other reasons, the requisite fire hazard safety is immaterial to this CDP decision.

## **E. Water Quality**

### **Applicable 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.*

### **Analysis**

As required by certified LUP Policies 11.17 and 11.19, the biological productivity of the environmentally sensitive habitat areas must 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 stream/riparian ESHA (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).

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, and removal of approximately 29 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 home 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 stream/riparian ESHA and wetland ESHA, and ultimately Chorro Creek and Morro Bay.

As the percentage of impervious surfaces increases, less stormwater is infiltrated into the soil and more ends up as runoff. The increased site runoff can pick up a greater amount of pollutants, potentially degrading coastal water quality. Natural stream channels and their associated habitat may be subject to erosion from the increased runoff and may be lined with rocks or concrete to handle the increased water volumes, which also impacts stream habitats. In addition, as deep infiltration decreases, the water table drops, reducing groundwater that supports wetlands, riparian vegetation, domestic wells, and other uses.

Through the City's local review in 2006, the proposed project was required to install oil/water separators in storm drain inlets throughout the development. The City also required the Applicant to utilize best management practices and to include low impact development techniques to the "maximum extent possible" to protect water quality. In addition, the City required the project to be subject to a construction erosion control plan to prevent sediment and debris from entering the city right-of-way and adjacent sensitive waterways.

As a special condition of its approval in 2008, the Coastal Commission required a post-construction drainage system designed to filter and treat the site runoff up to and including the 85<sup>th</sup> percentile 24-hour runoff event for volume based BMPs and/or the 85<sup>th</sup> percentile, 1-hour runoff event for flow-based BMPs (with an appropriate factor of safety), prior to its use for on-site infiltration, landscape irrigation and/or discharge. In addition, as part of the construction plan, the Commission conditioned requirements (e.g. requiring cleaning up all leaks, drips and other spills immediately, and keeping materials covered and out of the rain, etc.) to protect against impacts to water quality.



The Applicant's Riparian Enhancement Plan indicates a Storm Water Pollution Prevention Plan (SWPPP) will be required.<sup>19</sup> The proposed SWPPP will include construction of on-site water retention facilities designed to hold 100 percent of the water from an 85<sup>th</sup> percentile storm event in the area. Percolation discharge will be filtered with bio-filters and above and below ground water retention basins and tanks. Implementation of the SWPPP will result in 100% of the storm water being retained on-site unless there is a catastrophic storm event (greater than an 85<sup>th</sup> percentile storm event in the area).

### **Water Quality Conclusion**

Although special conditions to codify this submittal by the Applicant to submit a post-construction drainage system designed to adequately filter and treat the site runoff, including conditions requiring construction best management practices, and low impact development measures, could potentially bring the project into conformance with the LCP's water quality protection requirements, such conditions are not appropriate at this time, given the project's inconsistency with the LCP's ESHA policies, discussed above, which require denial of the proposed project.

## **F. Archaeological Resources**

### **Applicable 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 archaeologist 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;*

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<sup>19</sup> Morro Bay City Planner Cindy Jacinth has likewise indicated that since this project was approved in 2008, the City has adopted its Stormwater Management Plan and thus any subdivision approved today would also be subject to conditions regarding post-construction stormwater requirements.

*c. Coverage of archaeological site by at least 24 inches of sterile sand.*

### **Analysis**

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 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 the find, archaeological measures to mitigate for development impacts are warranted because of the potential that intact prehistoric cultural materials may exist within CA-SLO-1183.

### **Archaeological Resources Conclusion**

Although special conditions, including conditions to require archaeological monitoring of all ground disturbance activities, could potentially bring the project into conformance with the LCP’s archaeological resource policies, such conditions are not appropriate at this time, given the project’s inconsistency with the LCP’s ESHA policies, discussed above, which require denial of the proposed project.

## **G. Water and Sewer Services**

### **Applicable Policies**

LUP Policy 3.01 requires that new development shall only be approved if the City finds that water and sewer are available to serve the proposed use. LUP policy 3.02 lists water allocation priorities in Morro Bay and LUP Policy 3.03 lists priorities for residential land uses.

***LUP Policy 3.01.** The City of Morro Bay shall approve future growth in conjunction with water and sewage treatment availability. Development shall be approved only if the City finds that sewer and water services are available to serve the proposed use. ...*

***LUP Policy 3.02. In any system the City of Morro Bay uses for water allocation, the City shall insure the following uses receive priority for available water and wastewater treatment facilities:***

*Commercial Fishing/Agriculture  
Coastal-Dependent Land Uses  
Coastal-Related Land Uses  
Essential Public Services and Basic Industries  
Public Recreation  
Commercial Recreation  
Visitor-Serving Land Uses  
Residential and other Commercial and Industrial Land Uses*

***LUP Policy 3.03. Residential land uses shall be allocated water based on the following order of varying residential parcels:***

- 1) Presently subdivided parcels within existing developed areas;*
- 2) Presently subdivided parcels contiguous to developed areas or unsubdivided parcels within existing developed areas;*
- 3) Unsubdivided parcels contiguous to developed areas;*
- 4) Unsubdivided parcels isolated from either presently developed or subdivided areas.*

### **Analysis**

The availability of water and sewer services for new development is a pressing coastal resource issue in Morro Bay, as it is throughout the state of California, and in the case of adequate water is more dire now than it was 8 years ago, when the City of Morro Bay first approved this project with conditions.

On January 17, 2014, Governor Brown declared a drought emergency for the State of California. While the City of Morro Bay does not currently have a moratorium or Stage 3 Water Shortage Emergency, like the community of Cambria to the north does, it is still facing the impacts of a severe drought. In fact, on January 22, 2014, the City of Morro Bay implemented *Mandatory Water Conservation Requirements for Severely Restricted Water Supply Conditions*, and on May 13, 2014, the City adopted Resolution 32-14, which develops a 2:1 water retrofit program for new development. While this requirement is only applicable to projects that did not have a complete application by May 13<sup>th</sup>, it does indicate that the City is taking a closer look at water allocations and water conservation.

In terms of water allocations to new uses, the LCP does include clear priorities. LUP Policy 3.02 provides a clear basis for which projects should be allowed water over others. In this case, the proposed project is the lowest priority for water allocations: *residential and other commercial and industrial land uses*. It is also, according to LUP Policy 3.03, very near to the bottom (3 out of 4) on the list of priorities for allocating water to residential land uses: *unsubdivided parcels contiguous to developed areas*.

Based on the above, the proposed project raises significant questions in terms of water availability for new uses and priorities for new development. While the Applicant was approved

by the City of Morro Bay with a finding of water adequacy,<sup>20</sup> such finding was from 2006 and thus it is not clear if there is actually water to serve the proposed development at this time. It is possible the project could be conditioned to demonstrate adequacy of water, but because it needs to be denied for other reasons, such conditions are not necessary here.

In terms of sewer availability, again, LUP Policy 3.01 prohibits development unless the City finds that sewer services are available to serve the proposed use. City staff has indicated that the original City approved sewer conditions (#CP0-110) would still apply in this case for this project, but that the City's public works staff would need to do a full review of the project to ensure there is adequate infrastructure to serve the proposed 17-unit subdivision development. Therefore, absent this information, it is unclear at this time if the project would have adequate sewer facilities.<sup>21</sup>

## **H. Violation**

On February 2, 2007, Commission staff observed evidence of then recent tree removal within the stream and riparian corridor during a site visit, 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). Other documents, such as the City's staff report and a tree inventory from Michael Tutt (dated June 23, 2004) likewise indicate that as many as 16 trees have been felled.

The Applicant indicates that the removal of the 16 trees was authorized and properly allowed by the City of Morro Bay, and has provided evidence that the City believed no permit was necessary.<sup>22</sup> However, there is nothing in the LCP that would allow for these trees to be removed without a CDP, and the Commission has been unable to find any evidence that CDPs were issued. Thus the past tree removal that has occurred on the property appears to potentially be a violation of the Coastal Act.

Although tree removal has taken place on the Colmer property without the benefit of a CDP, consideration of this application by the Commission has been based solely upon the policies of the certified LCP. Action by the Commission on the CDP does not constitute a waiver of any legal action with regard to the alleged violation nor does it constitute an admission as to the legality of any development undertaken on the subject site without a CDP.

## **I. CDP Determination Conclusion**

As discussed in the above findings, the proposed project is inconsistent with LCP policies related

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<sup>20</sup> The finding stated that, "The City has available adequate water to serve the proposed subdivision based upon the water regulations and water equivalency table Exhibit A, enforced at the time of approval of the Vesting Tentative Parcel Map pursuant to the certified Water Management Plan and General Plan LU-22.1."

<sup>21</sup> In 2013, the City's Lift Station #3, located on the corner of Quintana and South Bay Boulevard was replaced (CP0-369). The staff report indicates that the lift station services the Bayside Care Center, the Bay Pines Mobile and Travel Trailer Park, and the Blue Heron Mobile Home Park, and indicates that "daily station capacity is to remain approximately the same."

<sup>22</sup> Email from Michael Prater (Planning Manager, Public Works Department) to Wayne Colmer, February 25, 2008, stating that, "at the time of removal the City operated under the authorization to remove 4 trees per year per lot" and that "it is the City's understanding removal of these 16 trees followed the guidelines and no permit was necessary."

to ESHA, visual resources, water quality and archaeological resources. When the Commission reviews a proposed project that is inconsistent with the LCP, like this one, there are several options available to it. In many cases, the Commission will approve the project but impose terms and conditions to bring the project into conformance with the LCP. In other cases, the range of possible changes is significant enough as to make conditioned approval infeasible. In these situations, the Commission will frequently deny the project and provide guidance to applicants on the type of development changes that must be made for Coastal Act and/or LCP conformance. These denials are without prejudice inasmuch as applicants are given direction on what they need to do to propose an alternative project that can meet the applicable policies. In rare cases, there are no feasible conditions that could bring the project into conformance with the Coastal Act, and there are no obvious feasible alternatives consistent with the Coastal Act that the Commission might suggest to an applicant. When this happens, the Commission might deny the project without further guidance to the applicant at that stage, or it might consider approval of a different project that is the minimum necessary to avoid a taking of private property without just compensation.

In this case, the proposed project cannot be constructed consistent with the LCP because the proposed new access road would be constructed within a required 50-foot stream/wetland ESHA buffer, and there is no other location for the proposed road access (see **Exhibit 3** and **4**). Although the remainder of the inconsistencies, including related to visual resources, water quality, and archaeological resources, could potentially be addressed through project changes, even if the Commission were to suggest changes through conditions to try to bring the project into compliance with other aspects of the LCP, it is not possible to condition the currently proposed project to be consistent with the LCP's ESHA policies, absent an alternative access route. And there do not appear to be any other options for site access at this time.

This denial, however, is not a final adjudication by the Commission of the potential for development on this parcel, as it does not preclude the Applicant from applying for some other development or use of the site. For example, the two existing residences could be redeveloped on the site, outside of the ESHA buffers, while utilizing the existing driveway access. In addition, the Applicant could explore what alternative projects could be developed while relying only on the existing driveway access. And finally, the Applicant could work with the neighboring property owner to gain access to the site through the existing mobile home park. If the Applicant does not wish to pursue any of the above alternatives, there are existing residential developments on the property that can continue to be used in their current state.

## **J. CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA)**

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

***CEQA Guidelines (14 CCR) Section 15042. Authority to Disapprove Projects.** [Relevant Portion.] A public agency may disapprove a project if necessary in order to avoid one or more significant effects on the environment that would occur if the project were approved as proposed.*

***Public Resources Code (CEQA) Section 21080(b)(5). Division Application and***

***Nonapplication.*** ...*(b) This division does not apply to any of the following activities: ... (5) Projects which a public agency rejects or disapproves.*

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

Section 13096 (14 CCR) requires that a specific finding be made in conjunction with CDP applications about the consistency of the application with any applicable requirements of CEQA. This report has discussed the relevant coastal resource issues with the proposed project. 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 detailed in the findings above, the proposed project would have significant adverse effects on the environment as that term is understood in a CEQA context.

Pursuant to CEQA Guidelines (14 CCR) Section 15042 “a public agency may disapprove a project if necessary in order to avoid one or more significant effects on the environment that would occur if the project were approved as proposed.” Section 21080(b)(5) of the CEQA, as implemented by Section 15270 of the CEQA Guidelines, provides that CEQA does not apply to projects which a public agency rejects or disapproves. The Commission finds that denial, for the reasons stated in these findings, is necessary to avoid the significant effects on coastal resources that would occur if the project was approved as proposed. Accordingly, the Commission’s denial of the project represents an action to which CEQA, and all requirements contained therein that might otherwise apply to regulatory actions by the Commission, do not apply.

APPENDIX A – SUBSTANTIVE FILE DOCUMENTS

City of Morro Bay CDP File Number CP0-110.

City of Morro Bay certified Local Coastal Program (LCP) Court Remand – Ruling and Order Granting Peremptory Writ of Mandate, Filed June 21, 2010.

Tenera Environmental. Riparian Enhancement Plan, dated June 3, 2014.

Tenera Environmental. Updated habitat site plan for the Black Hill Villas subdivision. Received June 6, 2014 and revised August 11, 2014.

Tenera Environmental. Erosion Control Plan. Received August 11, 2014.

Tenera Environmental. Erosion Control Development Plan. Received September 17, 2014.

Tenera Environmental. Black Hill Villas Project Raptor Survey Report, dated November 14, 2012.

Tenera Environmental. Black Hill Villas Project Biological Resource Assessment Report, dated September 24, 2012.

Tenera Environmental. Black Hill Villas Project Wetland Delineation-ESHA Mapping Survey, dated September 21, 2012.

Tenera Environmental. Habitat Assessment Update for the California Red-legged Frog, Black Hill Villas Project, San Luis Obispo County, dated September 14, 2012.

Tenera Environmental. Black Hill Villas Project Morro Shoulderband Snail Protocol Survey Report, dated August 20, 2012.

Tenera Environmental. Black Hill Villas Project Morro Shoulderband Snail Protocol Survey Report, dated January 14, 2005.

Tenera Environmental. South Bay-Quintana Property Multi-Species Habitat Assessment Report, dated June 4, 2004.

Leong, Kingston, L.H. (Cal Poly State University). Evaluation of Black Hill Villas Parcel, Morro Bay, California as a winter habitat for Monarch Butterflies, *Danaus plexippus* (L.), dated February 28, 2012.

Frey, Dennis and Shawna Stevens. Biological Survey: Monarch Butterfly and Raptor Report, Quintana and South Bay Boulevard Site, Morro Bay, California, dated May 2004.

California Department of Fish and Wildlife. Streambed Alteration Agreement (SAA), dated August 28, 2013.

United States Fish and Wildlife Service. No-take concurrence letter for the California Red-Legged Frog, dated January 3, 2013.

United States Fish and Wildlife Service. No-take concurrence letter for the Morro Shoulderband snail, dated December 3, 2012.

SCALE IN MILES  
0 0.5 1

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AUTOMOBILE CLUB OF SOUTHERN CALIFORNIA

MICS DEPARTMENT MAIL STOP A375  
3535 FAIRVIEW ROAD COSTA MESA 92626

MAP 2526A



**Project Site**  
485 and 495  
South Bay Boulevard



Exhibit 1  
A-3-MRB-06-064  
Page 1 of 3







Figure 3. Aerial view of project location showing parcel boundaries (red outline) and surrounding land uses.

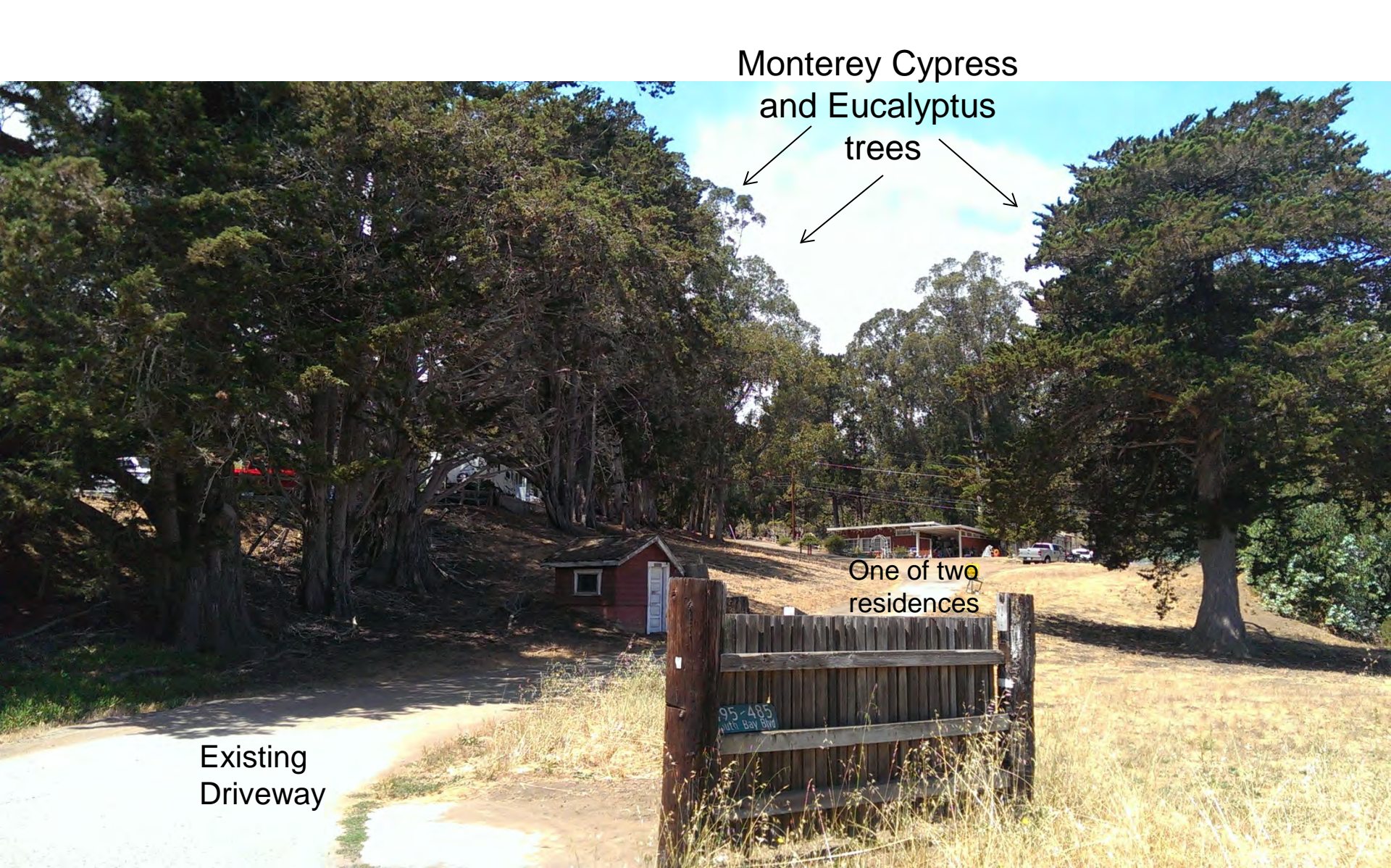












Monterey Cypress  
and Eucalyptus  
trees

Existing  
Driveway

One of two  
residences

95-485  
North Bay Blvd

← Access Road →





One of the  
existing homes

Riparian  
vegetation

Existing Driveway



Monterey  
Cypress  
and  
Eucalyptus  
trees



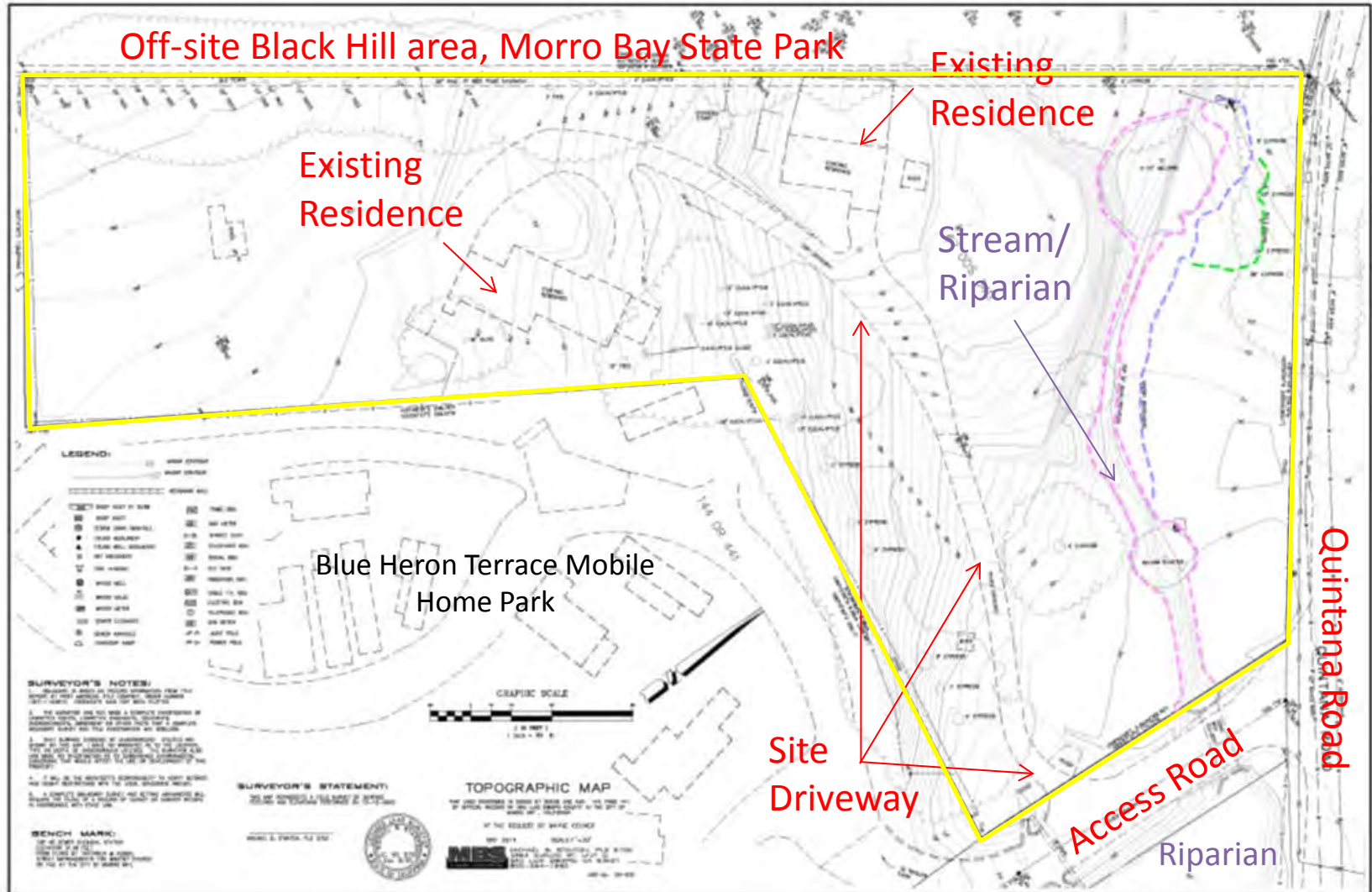


Stand of trees along  
western property boundary with Black  
Hill/Morro Bay State Park

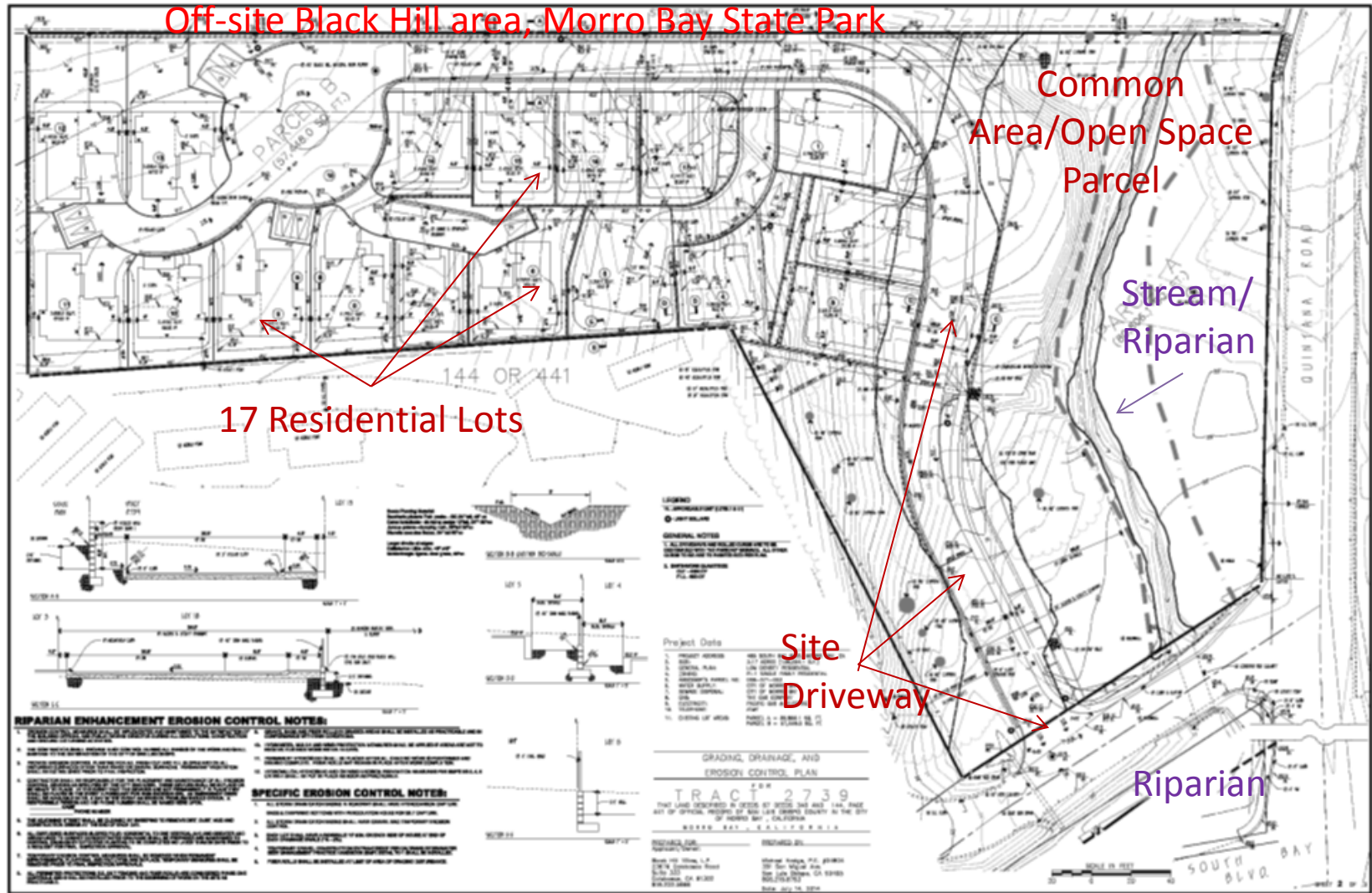




# Existing Layout



# Proposed Layout



# Planting Plan

Black Hill Villas, L.P.

Riparian Enhancement Plan



Figure 6. Planting Plan showing locations of trees, shrubs, and hydroseed areas within the Riparian Enhancement Area.



# Habitat and Site Plan Overview

Off-site Black Hill area, Morro Bay State Park

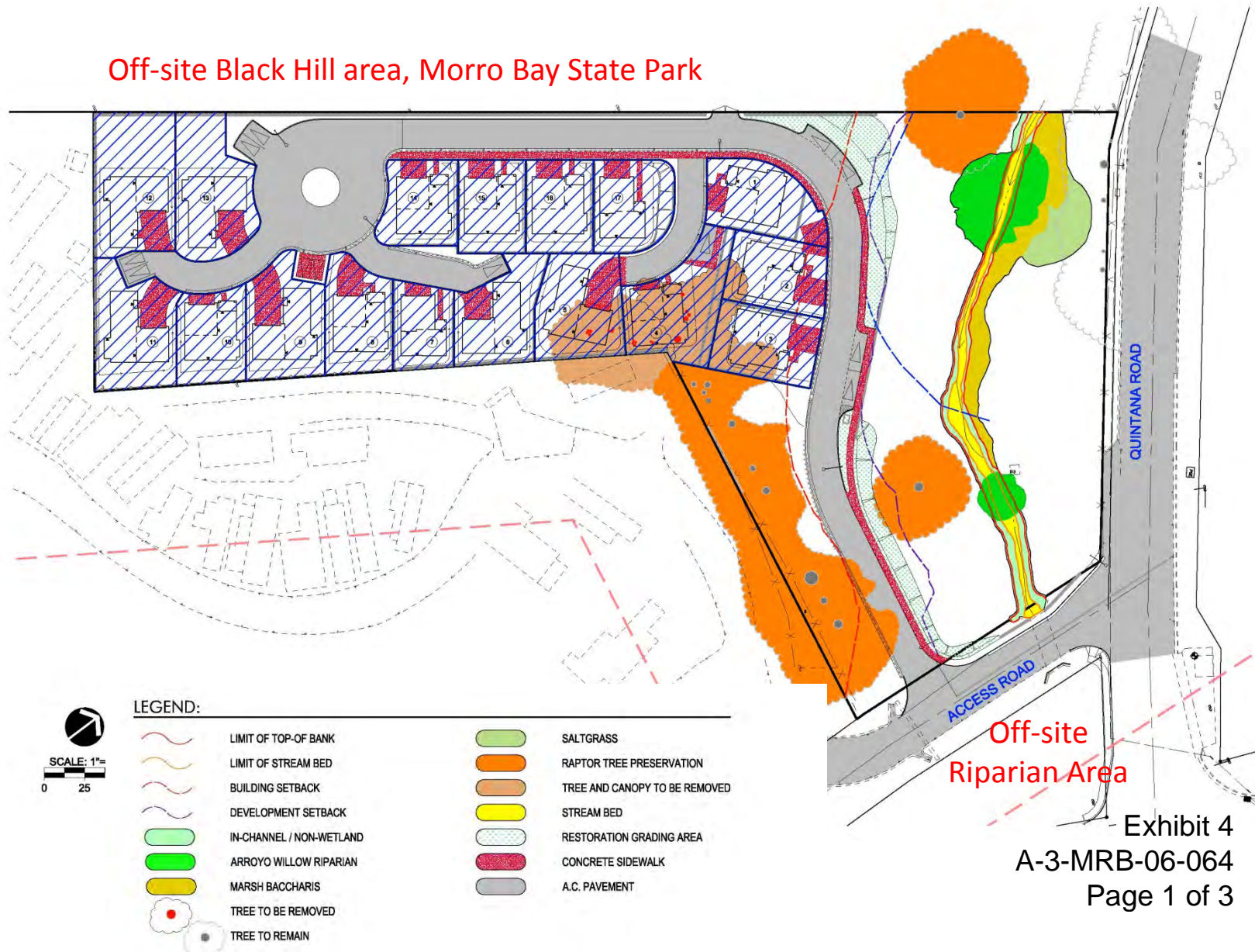


Exhibit 4

A-3-MRB-06-064

Page 1 of 3

# Habitat and Site Plan (North Portion)

## LEGEND:

	LIMIT OF TOP-OF BANK		SALTGRASS
	LIMIT OF STREAM BED		RAPTOR TREE PRESERVATION
	BUILDING SETBACK		TREE AND CANOPY TO BE REMOVED
	DEVELOPMENT SETBACK		STREAM BED
	IN-CHANNEL / NON-WETLAND		RESTORATION GRADING AREA
	ARROYO WILLOW RIPARIAN		CONCRETE SIDEWALK
	MARSH BACCHARIS		A.C. PAVEMENT
	TREE TO BE REMOVED		
	TREE TO REMAIN		





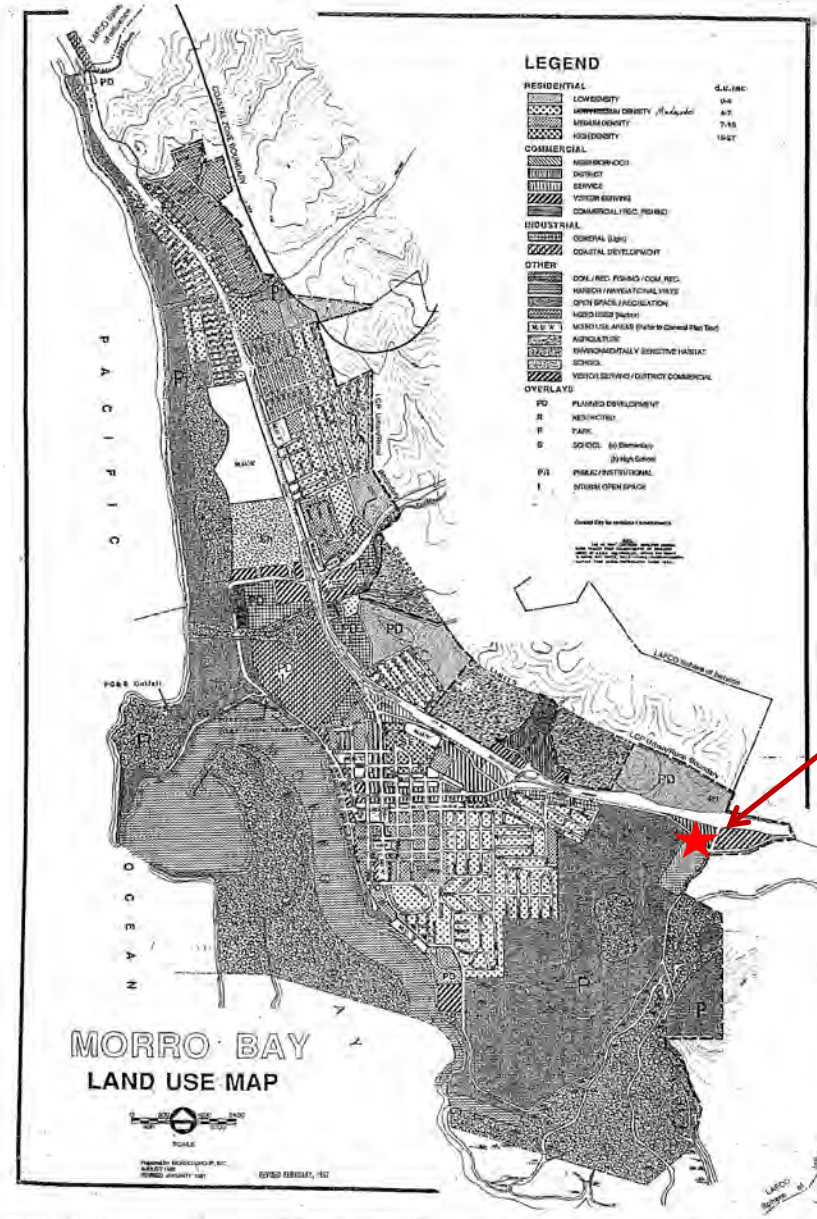


Approximate off-site riparian 50-foot setback buffer

Approximate property line



# Morro Bay Land Use Map



Project  
Site



Figure 28 – Environmentally Sensitive  
Habitat Areas (ESHA)

City of Morro Bay  
Coastal Land Use Plan  
Chapter XII

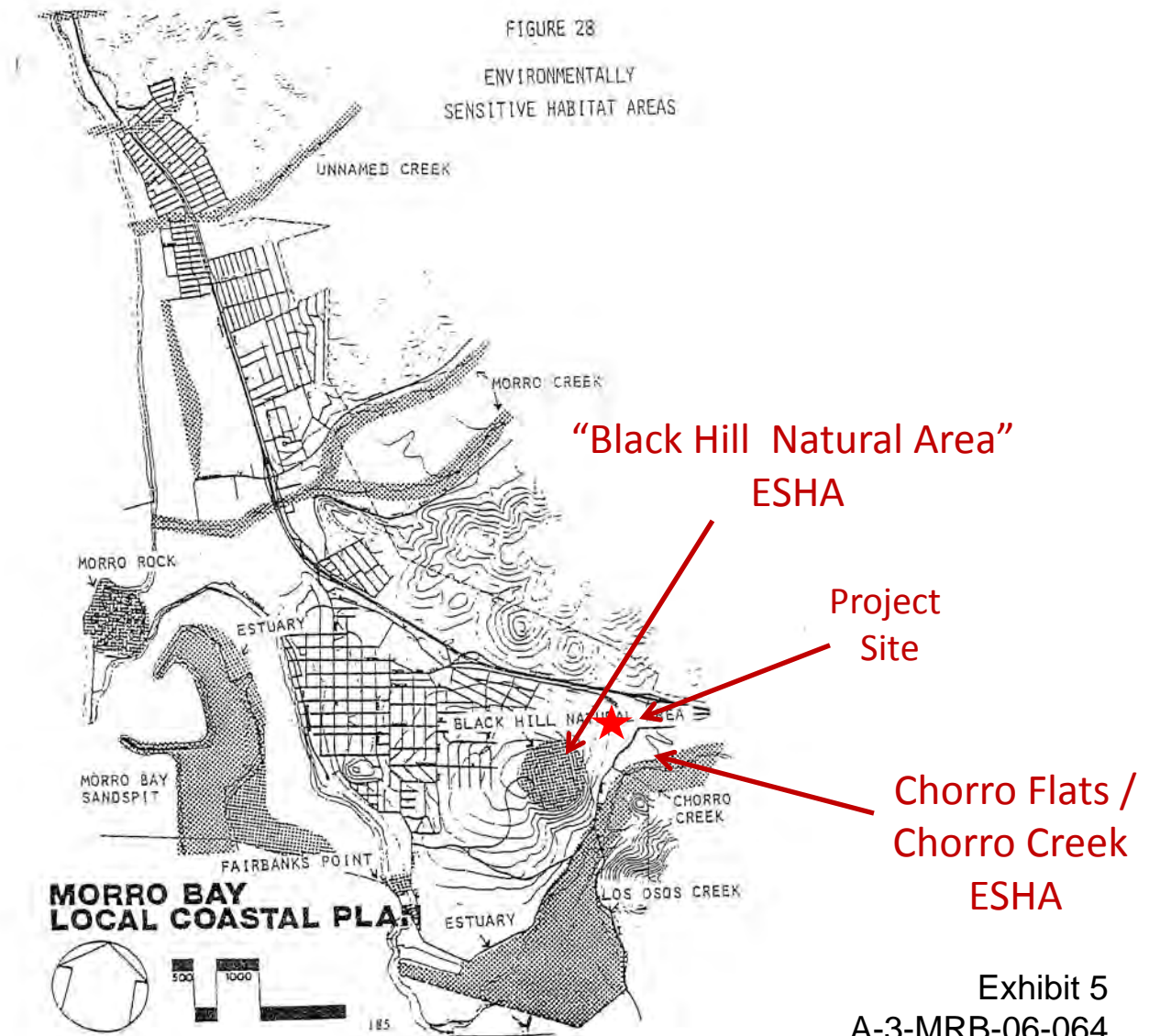
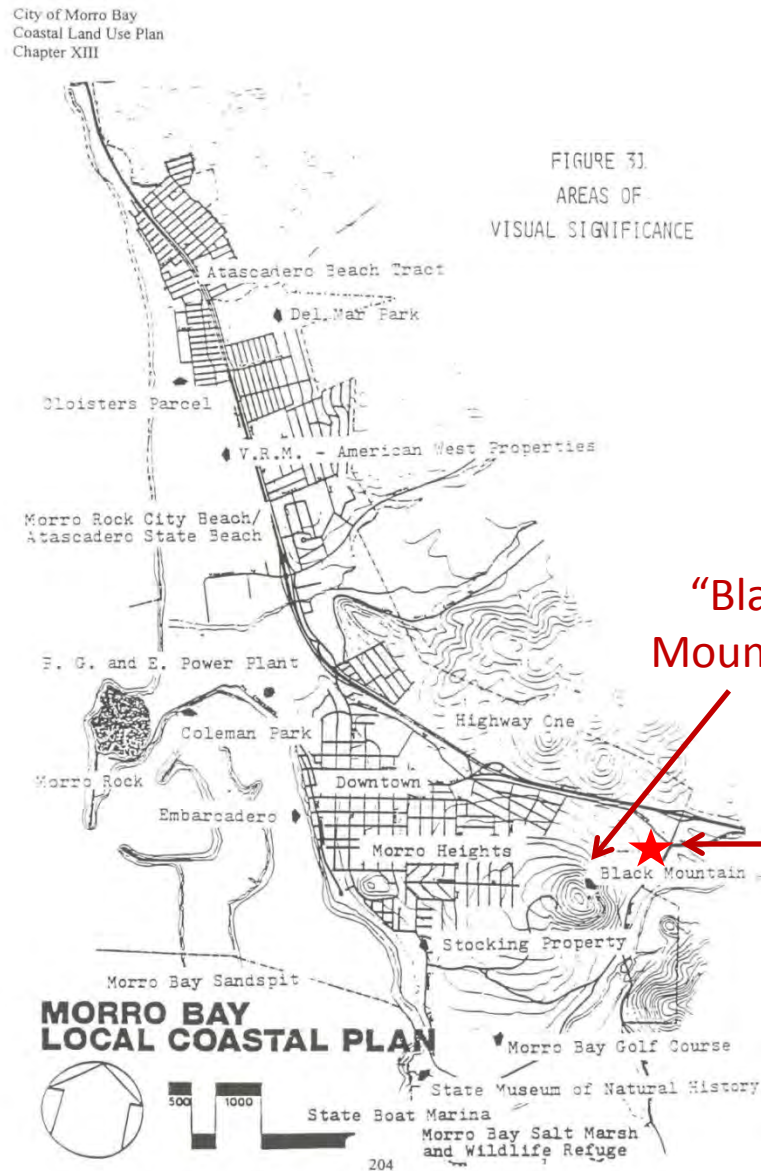




Figure 31 – Areas of Visual Significance



## MEMORANDUM

FROM: Jonna D. Engel, PhD, Ecologist  
TO: Daniel Robinson, Coastal Analyst  
SUBJECT: Black Hill Villas Project, Morro Bay, California  
DATE: October 29, 2014

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### Documents reviewed:

Tenera Environmental. October 21, 2014. Letter report, re: Offsite basin investigation. Submitted to: Mr. Wayne Colmer, Black Hill Villa LP and Daniel Robinson, California Coastal Commission.

Tenera Environmental. September, 2014. Updated project site plan for the Black Hill Villas subdivision (Coastal Development Permit Application Number A-3-MRB-06-064). Street, parking, and sidewalk setbacks and raptor habitat revisions. Submitted to: Daniel Robinson, California Coastal Commission.

Tenera Environmental. November 15, 2013. Updated project site plan for the Black Hill Villas subdivision (Coastal Development Permit Application Number A-3-MRB-06-064). Submitted to: Ms. Jeannine Manna, California Coastal Commission.

Tenera Environmental. November 14, 2012. Black Hill Villas Project Raptor Survey Report. Submitted to: Black Hill Villas L.P; Mr. Wayne Colmer, Colmer Construction Inc.

Tenera Environmental. September 24, 2012. Black Hill Villas Project Biological Resource Assessment Report. Submitted to: Black Hill Villas L.P; Mr. Wayne Colmer, Colmer Construction Inc.

Tenera Environmental. September 21, 2012. Black Hill Villas Project Wetland Delineation-ESHA Mapping Survey. Submitted to: Black Hill Villas L.P; Mr. Wayne Colmer, Colmer Construction Inc.

Tenera Environmental. September 14, 2012. Habitat Assessment Update for the California Red-legged Frog, Black Hill Villas Project, San Luis Obispo County. Submitted to: Mr. Chris Kofron, Ventura Fish And Wildlife Service Office.

Tenera Environmental. August 20, 2012. Black Hill Villas Project Morro Shoulderband Snail Protocol Survey Report. Submitted to: Black Hill Villas L.P; Mr. Wayne Colmer, Colmer Construction Inc.

Leong, Kingston, L. H. (Cal Poly State University). February 28, 2012. Evaluation of Black Hill Villas Parcel, Morro Bay, California as a winter habitat for Monarch Butterflies, *Danaus plexippus* (L.). Submitted to Wayne Colmer, Colmer Construction.

Tenera Environmental. April 3, 2007. Black Hill Villas DRAFT Riparian Enhancement Plan. Submitted to: Mr. Wayne Colmer.

Tenera Environmental. January 14, 2005. Black Hill Villas Project Morro Shoulderband Snail Protocol Survey Report. Submitted to Mr. Wayne Colmer.

Tenera Environmental. June 4, 2004. South Bay-Quintana Property Multi-Species Habitat Assessment Report. Submitted to Mr. Wayne Colmer.

Frey, Dennis and Shawna Stevens. May 2004. Biological Survey: Monarch Butterfly and Raptor Report, Quintana and South Bay Boulevard Site, Morro Bay, California. Prepared for: Wayne Colmer, Colmer Construction.

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In a memorandum dated January 31, 2014, I reviewed over a decade of biological information listed above under “documents reviewed”, for the proposed Black Hill Villas project, as well as site photographs and google earth aerials, and determined that the site supports an area of wetland and riparian and raptor environmentally sensitive habitat (ESHA). Here I make an ESHA determination for the natural resources in an offsite basin area and revise my raptor habitat ESHA determination based on further review of the existing and recently submitted biological information, several discussions of the biological resources on and off-site with Tenera biologist, Dan Dugan, review of past Commission actions, and consultation of the raptor habitat with CCC senior ecologist, Dr. John Dixon.

Just offsite, between South Bay Boulevard and the shared entrance drive of the Black Hill Villas (BHV) site and the Blue Heron Terrace mobile home park, is a basin area separating the BHV property to the west and the Chorro Flats Sediment Capture and Wetland Restoration Project to the east. The Chorro Creek tributary enters and exits the basin through culverts and is bounded by riparian habitat that covers approximately 65% of the northern portion of the basin. According to Tenera (October 21, 2014), “At the time of the site visit the northern portion of the basin supported a riparian-stream community similar to the riparian-stream habitat on the Black Hill Villas site.” Tenera notes that the northern 65% of the basin supports many of the same species found

within the Chorro Creek tributary riparian-stream habitat including arroyo willow, marsh baccharis, and common spikerush.

Permanent and ephemeral creeks/streams and riparian habitat are extremely rare in coastal California and are easily disturbed by human activities and development. For these reasons I find that the unnamed tributary of Chorro Creek and the associated riparian habitat within the offsite basin (as well as on the BHV site – see January 31, 2014 memorandum) rise to the level of ESHA. I concur with the riparian-upland boundary delineation of this area shown on the exhibit titled “Offsite Riparian-Upland Community Boundary” submitted by Tenera to the Commission on October 24, 2014.

In reconsidering my raptor habitat ESHA determination I reviewed past actions where tree stands supporting raptors have been determined by the Commission to be ESHA. To date there has only been a couple examples where a group of trees has been shown to provide especially valuable ecosystem services to raptor species such that the Commission designated those trees as ESHA<sup>1</sup>. These determinations were based on evidence of use of trees and adjacent foraging areas by a suite of raptor species or by one or more listed raptor species spanning several years in the form of formal raptor surveys, field notes, and observations by qualified ornithologists. The rationale behind these determinations has been that a tree stand that has supported a suite of raptor species or one or more listed raptor species for many years plays an especially valuable ecosystem role because of the important ecological functions they provide for raptor perching, roosting and nesting, for foraging, and for use as movement corridors.

In my memorandum dated January 31, 2014, I found that the tree stand consisting of Monterey cypress and eucalyptus delineated by Tenera as raptor roosting and nesting habitat rose to the level of ESHA, in part, because it supported at least six species of raptors. However, upon further review of the biological reports and discussions with Tenera biologist Dan Dugan, I discovered that only one species of raptor (red shouldered hawk) was in fact documented utilizing the delineated raptor tree stand for nesting, roosting and perching. The other five species of raptors (red-tailed hawks, American kestrel, turkey vulture, barn owl and great horned owl), rather than being directly observed utilizing the tree stand, were observed flying over the site, vocalizing on or near the site, or indirectly determined to use the site via observations of white wash, presence of owl pellets, and/or anecdotal evidence obtained from neighbors. Therefore I am rescinding my January 31, 2014 ESHA determination for this tree stand because only one common species of raptor, red shouldered hawks, have been documented to utilize this tree stand. While I find that this tree stand does not rise to the level of ESHA, it has been shown to be an important stand of trees for supporting

<sup>1</sup> Eg., Brightwater (5-05-020) and Parkside (Huntington Beach LCPA 1-06) developments at Bolsa Chica in Huntington Beach, and Arco Dos Pueblos golf course proposal (A-4-STB-93-154-A2) north of Goleta.

red-shouldered hawk nesting, roosting, and perching and this function should be preserved and protected.

In conclusion I find that the offsite basin that supports a continuation of the Chorro Creek tributary and associated riparian habitat rises to the level of ESHA. Additionally, I find that the tree stand delineated as raptor habitat that I identified as ESHA in my January 31, 2014 memorandum, upon further review and consideration as described above, does not rise to the level of ESHA, but should be preserved and protected to the greatest extent possible.

## MEMORANDUM

FROM: Jonna D. Engel, Ph.D., Ecologist  
TO: Daniel Robinson, Coastal Analyst  
SUBJECT: Black Hill Villas Project, Morro Bay, California  
DATE: January 31, 2014

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### Documents reviewed:

Tenera Environmental. November 15, 2013. Updated project site plan for the Black Hill Villas subdivision (Coastal Development Permit Application Number A-3-MRB-06-064). Submitted to: Ms. Jeannine Manna, California Coastal Commission.

Tenera Environmental. November 14, 2012. Black Hill Villas Project Raptor Survey Report. Submitted to: Black Hill Villas L.P; Mr. Wayne Colmer, Colmer Construction Inc.

Tenera Environmental. September 24, 2012. Black Hill Villas Project Biological Resource Assessment Report. Submitted to: Black Hill Villas L.P; Mr. Wayne Colmer, Colmer Construction Inc.

Tenera Environmental. September 21, 2012. Black Hill Villas Project Wetland Delineation-ESHA Mapping Survey. Submitted to: Black Hill Villas L.P; Mr. Wayne Colmer, Colmer Construction Inc.

Tenera Environmental. September 14, 2012. Habitat Assessment Update for the California Red-legged Frog, Black Hill Villas Project, San Luis Obispo County. Submitted to: Mr. Chris Kofron, Ventura Fish And Wildlife Service Office.

Tenera Environmental. August 20, 2012. Black Hill Villas Project Morro Shoulderband Snail Protocol Survey Report. Submitted to: Black Hill Villas L.P; Mr. Wayne Colmer, Colmer Construction Inc.

Leong, Kingston, L. H. (Cal Poly State University). February 28, 2012. Evaluation of Black Hill Villas Parcel, Morro Bay, California as a winter habitat for Monarch Butterflies, *Danaus plexippus* (L.). Submitted to Wayne Colmer, Colmer Construction.

Tenera Environmental. April 3, 2007. Black Hill Villas DRAFT Riparian Enhancement Plan. Submitted to: Mr. Wayne Colmer.

Tenera Environmental. January 14, 2005. Black Hill Villas Project Morro Shoulderband Snail Protocol Survey Report. Submitted to Mr. Wayne Colmer.

Tenera Environmental. June 4, 2004. South Bay-Quintana Property Multi-Species Habitat Assessment Report. Submitted to Mr. Wayne Colmer.

Frey, Dennis and Shawna Stevens. May 2004. Biological Survey: Monarch Butterfly and Raptor Report, Quintana and South Bay Boulevard Site, Morro Bay, California. Prepared for: Wayne Colmer, Colmer Construction.

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I have been asked to review new biological information submitted for the proposed Black Hill Villas project and to provide my biological opinion regarding the natural resources located on the site. I am familiar with the site and the proposed project as I reviewed biological reports prepared for the project when it was first before us in 2007. In order to make a new environmentally sensitive habitat ("ESHA") determination for the site I have reviewed all the biological reports listed under "documents reviewed" above. In addition I have reviewed site photographs and google earth aerials. I have also discussed the biological resources on the site with Tenera Environmental biologist, Dan Dugan, on several occasions.

The proposed Black Hill Villas project is located on two contiguous lots totaling 3.17 acres in western San Luis Obispo County within the City of Morro Bay at the urban/rural boundary. The proposed project consists of subdivision of the two parcels into 17 residential lots and a single open space parcel. The project property is bordered to the west along its entire length by the 300 acre Black Mountain Natural Area that is an extension of Morro Bay State Park. Chorro Flats Sediment Capture and Wetland Restoration Project lies east of the property across South Bay Boulevard. This area consists of hundreds of acres of open space that are connected to the upper reaches of Morro Bay Estuary. Quintana Road forms the northern boundary of the property; north of Quintana Road is the Rock Harbor Christian Fellowship Church site which is bordered to the north by Highway 1. North of Highway 1 are thousands of acres of undeveloped open space that extend to Cerro Alto and Tassajera peaks and beyond. The Blue Heron Terrace mobile home park borders the property to the south and east.

Natural resources on the site include an unnamed tributary of Chorro Creek (referred to in the various biological reports as a small seasonal stream channel, an ephemeral creek, and an intermittent creek) that crosses the northern section of the property parallel to Quintana Road. This creek tributary forms a connection between Black Mountain Natural Area and the Chorro Flats Sediment Capture and Wetland Restoration Project. Bordering this tributary of Chorro Creek are patches of riparian habitat and areas of wetland habitat. Just south and parallel to the creek tributary is a stand of trees that supports raptor nesting, roosting, and perching. Tenera Environmental ("Tenera") mapped the boundaries of these areas on an updated site plan, *Updated project site plan for the Black Hill Villas subdivision (Coastal*

Development Permit Application Number A-3-MRB-06-064), submitted to Ms. Jeannine Manna, Coastal Commission Coastal Analyst, November 15, 2013.

The unnamed tributary of Chorro Creek that crosses the site is an important creek and riparian habitat area. The riparian habitat adjacent to the creeks is dominated by arroyo willow (*Salix lasiolepis*) but also includes California blackberry (*Rubus ursinus*), poison oak (*Toxicodendron diversilobum*), sneezeweed (*Helenium puberulum*), water parsley (*Oenanthe sarmentosa*), common spikerush (*Eleocharis palustris*), common threesquare (*Scirpus pungens*), and iris-leaved rush (*Juncus xiphioides*). While the creek and its adjacent riparian habitat have been disturbed over the years, they continue to serve as a wildlife corridor and aquatic link between Black Mountain Natural Area and Chorro Flats Sediment Capture and Wetland Restoration Project. Watercourses are known to serve as important corridors for wildlife migration and dispersal<sup>1</sup>. Both large and small mammals use the zones along streams to move in search of new territory, food sources, and mates. Waterways are also important dispersal corridors for plant propagules and aquatic animals as well as for delivering sediments and nutrients<sup>2</sup>. Although biological surveys have not found California red-legged frogs in this tributary of Chorro Creek, they likely cross and spend time on the property because they are known to inhabit nearby sections of Chorro Creek<sup>3</sup>.

Maintaining and restoring riparian habitat along creeks, streams, and rivers is critical to preserving biodiversity in California, as in all parts of our country and world. While less than 10% of California's historic riparian areas remain, those that do are biodiversity hotspots<sup>4</sup>. And although riparian ecosystems generally occupy small areas on the landscape, they are usually more diverse and have more plants and animals than adjacent upland areas. In the western United States, riparian areas comprise less than 1% of the land area, but are among the most diverse, productive, and valuable natural resources<sup>5</sup>.

Permanent and ephemeral creeks/streams and riparian habitat are extremely rare in coastal California and are easily disturbed by human activities and development. For these reasons I find that the unnamed tributary of Chorro Creek and the associated riparian habitat on the proposed project site rise to the level of ESHA. I concur with the boundary delineations for these areas in the Black Hill Villas project site plan updated by Tenera in November 2013. It is important to note that on the updated Black Hill Villas project site plan the unnamed tributary of Chorro Creek is labeled "wetland" and colored blue and the

<sup>1</sup> Mount, J.F. 1995. California Rivers and Streams: The Conflict Between Fluvial Process and Land Use. University of California Press, Berkeley, CA; 359 pgs.

<sup>2</sup> Mount (1995) op. cit.

<sup>3</sup> Scott, N.J. and G.B. Rathbun. March 2007. Biology and management of the California red-legged frog (*Rana draytonii*). Santa Cruz County Resource Conservation District and Elkhorn Slough Coastal Training Program workshop.

<sup>4</sup> Natural Resources Conservation Service, U.S. Department of Agriculture. 1996. Riparian Areas Environmental Uniqueness, Functions, and Values, RCA Issue Brief # 11.

<sup>5</sup> California Department of Fish and Game. 1996. California Environmental Resources Evaluation System (CERES). Biodiversity News, Vol. 4. No. 1.



associated riparian habitat is the “arroyo willow riparian” area that is colored chartreuse.

The wetland area on the property is located along the north side of the creek near Quitana Road. The wetland area consists of patches of saltmarsh species including saltgrass (*Distichlis spicata*) and saltmarsh baccharis (*Baccharis glutinosa*). I concur with the wetland boundary delineations for these areas as shown on the Tenera November 2013 updated Black Hill Villas project site plan where the saltgrass is a sage green color and the saltmarsh baccharis is a mustard yellow color. In 2010 the State of California Natural Resources Agency released its “State of the State’s Wetlands” report that states “from the 1780’s to the 1980’s California lost approximately 91 percent of its wetlands.”<sup>6</sup> The percentage of coastal wetlands that have been lost is even larger and the City of Morro Bay Local Coastal Plan identifies wetlands as ESHA. Wetlands are a rare and threatened habitat along the coast of California and they are habitat types that are easily disturbed by human activities and development. Therefore I find that the wetlands on the proposed project site are ESHA.

Biological surveys for raptors on the proposed project site were first conducted by Frey and Stevens in 2004 in their *Biological Survey: Monarch Butterfly and Raptor Report, Quintana and South Bay Boulevard Site, Morro Bay, California*. Frey and Steven’s reported that:

“The mature trees and stands of eucalyptus and Monterey cypress found on the property provide excellent roosting and nesting opportunities for large raptors such as the red-shouldered hawk (*Buteo lineatus*), the red-tailed hawk (*Buteo jamaicensis*), and barn owl (*Tyto alba*). The wooded nature of the site extends outside the site boundaries into adjacent property, providing a large tract of land with suitable habitat for a variety of raptorial species. The site is also situated across South Bay Boulevard from a well-structured riparian area, a typical foraging habitat for species such as the red-shouldered hawk.”

Frey and Stevens surveyed the site twice a month in the morning for several hours each survey during the peak nesting period from March through May. Red-shouldered hawks were present on the property during every raptor survey and they also recorded red-tailed hawks, several other raptor species, and evidence of owls. Frey and Stevens observed whitewash and owl pellets on the property and based on resident reports believe that barn owl and great horned owl occur on and near the property. They also reported that “Based on resident reports, red-shouldered hawk nesting activity has been observed on the property in years past.” They observed two raptor nests in a Monterey cypress tree they labeled C4 and believe the nests were inactive during the 2004 breeding season. They observed red-shouldered hawks roosting in Monterey cypress’ C1, C4, and C7. An active red-shouldered hawk nest was discovered in eucalyptus tree E2 and roosting was also observed in E3. Barn owl pellets were found under eucalyptus trees E3 and E4.

<sup>6</sup> Natural Resources Agency State of California. June 2010. State of the State’s Wetlands; 10 Years of Challenges and Progress. A-3-MRB-06-064 Exhibit 6 Page 8 of 10

In 2012 Tenera conducted raptor surveys on the proposed project site. Tenera stated in reference to the Frey and Stevens 2004 surveys; "Considerable raptor activity was documented on the property including the American kestrel, barn owl, red-shouldered hawk, red-tailed hawk, and turkey vulture. Additionally red-shouldered hawk nesting activity was observed and documented on the site." Like the Frey and Steven's surveys, Tenera conducted raptor surveys on a semi-monthly basis from March through May 2012. Tenera observed six raptor species on and in the site vicinity during their raptor surveys; red-shouldered hawk, red-tailed hawk, American kestrel (*Falco sparverius*), barn owl, great horned owl (*Bubo virginianus*) and turkey vulture (*Cathartes aura*). A red-shouldered hawk pair nested on the proposed project site and an American kestrel pair was found nesting on adjacent land in the Black Hill Natural Area. On the November 2013 updated Black Hill Villas project site plan, Tenera delineates the raptor habitat; that is those trees that currently and historically have supported raptor nesting, roosting, and/or perching. Tenera delineated the raptor habitat by mapping the drip lines of the individual trees which comprise the raptor habitat tree stand. I believe that this is the appropriate method for delineating the raptor habitat. In addition to delineating the raptor habitat on their November 2013 updated Black Hill Villas site plan, Tenera also identifies individual trees in the raptor habitat and provides a table of nesting and roosting activity for the respective trees. I find that this raptor habitat tree stand rises to the level of ESHA for the following three reasons:

1. The tree stand has been shown to provide nesting, roosting, and/or perching habitat for at least six species of raptors in 2004 and 2012. Anecdotal information suggests that the site has supported raptors before 2004 and I have no reason to believe that the tree stand has not provided important raptor nesting, roosting, and/or perching habitat between 2004 and 2012 and to the present time. The evidence of continued use of these trees by raptors through the years is documentation that they represent a very import raptor habitat.
2. The proposed project site is located on the edge of the City of Morro Bay urban/rural boundary and is bounded on three sides by large areas of natural habitat with extensive foraging habitat. Raptors are top predators that perform important ecosystem functions integral to the persistence and health of the surrounding native habitats including those supported at the Black Hill Natural Area, Chorro Flats Wetland Restoration Area, and the large expanse of open space between the property and Cerro Alto and Tassajera peaks to the north. Therefore the tree stand that supports raptor nesting, roosting, and/or perching is especially valuable because of its role in providing essential raptor habitat.
3. At some point in the last decade or so, 16 trees have been cut down on the proposed project site and another 3 have fallen down from natural causes. The tree stand that supports nesting, roosting, and perching habitat is vulnerable to disturbance by human activities and development. Therefore, the remaining trees within the stand that comprises raptor habitat are extremely valuable and

should be protected in order to facilitate the success and persistence of raptor species in the area.

In conclusion I find that the unnamed tributary of Chorro Creek and the associated riparian habitat, the wetland habitat, and the raptor habitat on the proposed project site are either rare or especially valuable because of their role in the ecosystem and are easily disturbed by human activities and development and therefore all rise to the level of ESHA. I concur with the boundary delineations for these habitats as represented on the Tenera November 2013 updated site plan for the Black Hill Villas project. I recommend that these boundary delineations be used to designate where buffer areas begin/are measured from.



California Natural Resources Agency  
DEPARTMENT OF FISH AND WILDLIFE  
Central Region  
1234 East Shaw Avenue  
Fresno, California 93710  
(559) 243-4593  
[www.wildlife.ca.gov](http://www.wildlife.ca.gov)

EDMUND G. BROWN, Jr., Governor  
Charlton H. Bonham, Director



August 28, 2013

Dan Dugan  
141 Suburban Road, Suite A2  
San Luis Obispo, California 93401

Subject: Final Lake or Streambed Alteration Agreement  
Notification No. 1600-2012-0220-R4  
Unnamed Tributary to Chorro Creek; San Luis Obispo County

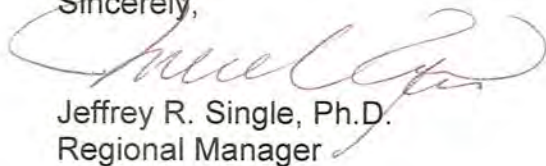
Dear Mr. Dugan:

Enclosed is the final Stream Alteration Agreement (Agreement) for the Black Hill Villas Project (Project). Before the Department of Fish and Wildlife (Department) may issue an Agreement, it must comply with the California Environmental Quality Act (CEQA). In this case, the Department, acting as a Responsible Agency, filed a Notice of Determination (NOD) on the same date it signed the Agreement. The NOD was based on information contained in the Mitigated Negative Declaration the Lead Agency prepared for the Project.

Pursuant to CEQA Guidelines sections 15075(g) and 15094(g), filing of a NOD starts a 30-day statute of limitations during which a party may challenge the filing agency's approval of the Project. You may begin your Project before the 30-day period expires if you have obtained all necessary local, State, and Federal permits or other authorizations; however, if you elect to do so it will be at your own risk.

If you have any questions regarding this matter, please contact Robb Tibstra, Environmental Scientist, at (805) 594-6116 or [rtibsta@wildlife.ca.gov](mailto:rtibsta@wildlife.ca.gov).

Sincerely,



Jeffrey R. Single, Ph.D.  
Regional Manager

cc: Robb Tibstra, Environmental Scientist



# NOTICE OF DETERMINATION

**TO:** Office of Planning and Research  
Post Office Box 3044  
Sacramento, California 95814

**FROM:** California Department of Fish and Wildlife  
Central Region  
1234 East Shaw Avenue  
Fresno, California 93710

**SUBJECT:** Filing of Notice of Determination in compliance with Section 21108 or 21152 of the Public Resources Code.

**PROJECT TITLE:** Black Hill Villas Project; Agreement 1600-2012-0220-R4.

**STATE CLEARINGHOUSE NUMBER:** 2006061099

**LEAD AGENCY:** City of Morro Bay.  
**CONTACT:** Mike Prater, (805) 772-6261

**RESPONSIBLE AGENCY:** California Department of Fish and Wildlife  
**CONTACT:** Robb Tibstra, Environmental Scientist (805) 594-6116

**PROJECT LOCATION:** The Project is located at 485 and 495 South Bay Boulevard, Morro Bay, in the County of San Luis Obispo, California. The Project area consists of 3.17 acres on two (2) lots, collectively identified as Assessor's Parcel Number 066-371-003 (Tract 2739). It can be accessed on the southwest corner of the South Bay Boulevard and Quintana Road intersection. The site is located at Latitude 35° 21' 41.6" N, Longitude 120° 49' 35.0".

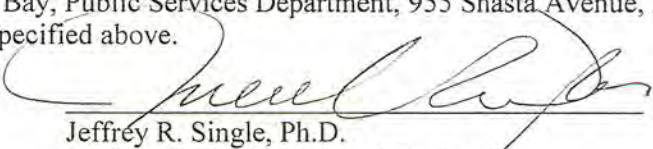
**PROJECT DESCRIPTION:** The California Department of Fish and Wildlife is executing a Streambed Alteration Agreement pursuant to Section 1602 of the Fish and Game Code. As part of a subdivision development, the Project consists of removing and re-compacting a portion of the unconsolidated fill directly adjacent to the right stream bank (looking downstream) and removal of existing tree stumps and sucker growth. The fill, approximately 12 feet high and extending 175 feet along the channel with an existing 1:1 slope, will be removed and re-contoured to a maximum 2:1 slope to improve the condition of the stream bank. Grading work will occur outside the active channel. Heavy equipment will be positioned on the top of bank to excavate and replace the soil. Revegetation and restoration of the riparian corridor will be implemented following the Riparian Enhancement Plan submitted with the Notification materials. All work will be conducted when the channel is dry, and no riparian trees will be removed as part of this Project.

This is to advise that the California Department of Fish and Wildlife as a Responsible Agency approved the Project described above on 8/29/13, and has made the following determinations regarding the above-described Project.

1. The Project will not have a significant effect on the environment.
2. A Mitigated Negative Declaration was prepared for this Project pursuant to the provisions of CEQA.
3. Mitigation measures were made a condition of the approval of the Project.
4. A Statement of Overriding Considerations was not adopted for this Project.

This is to certify that a copy of the MND prepared for this Project is available to the general public and may be reviewed at: City of Morro Bay, Public Services Department, 955 Shasta Avenue, Morro Bay, CA 93442. Please contact the person specified above.

Date: 8/29/13

  
Jeffrey R. Single, Ph.D.  
Regional Manager, Central Region  
California Department of Fish and Wildlife

Date received for filing at OPR: \_\_\_\_\_

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CALIFORNIA DEPARTMENT OF FISH AND WILDLIFE  
REGION 4—CENTRAL REGION  
1234 EAST SHAW AVENUE  
FRESNO, CALIFORNIA 93710



**STREAMBED ALTERATION AGREEMENT**  
NOTIFICATION NO. 1600-2012-0220-R4  
UNNAMED TRIBUTARY TO CHORRO CREEK  
SAN LUIS OBISPO COUNTY

**WAYNE COLMER**  
BLACK HILL VILLAS L.P.  
23679 CALABASAS ROAD #333  
CALABASAS, CALIFORNIA 91302

### **BLACK HILL VILLAS PROJECT**

This Streambed Alteration Agreement (Agreement) is entered into between the California Department of Fish and Wildlife (CDFW) and Black Hill Villas L.P. (referred to as Permittee), represented by Wayne Colmer.

### **RECITALS**

WHEREAS, pursuant to Fish and Game Code (FGC) section 1602, Permittee notified CDFW on November 26, 2012 that Permittee intends to complete the Project described herein.

WHEREAS, pursuant to FGC section 1603, CDFW has determined that the Project could substantially adversely affect existing fish or wildlife resources and has included Protective Measures in this Agreement necessary to protect those resources.

WHEREAS, Permittee has reviewed this Agreement and accepts its terms and conditions, including the Protective Measures to protect fish and wildlife resources.

NOW THEREFORE, Permittee agrees to complete the Project in accordance with this Agreement.

### **PROJECT LOCATION**

The Project is located at 485 and 495 South Bay Boulevard, Morro Bay, in the County of San Luis Obispo, California. The Project area consists of 3.17 acres on two (2) lots, collectively identified as Assessor's Parcel Number 066-371-003 (Tract 2739). It can be accessed on the southwest corner of the South Bay Boulevard and Quintana Road intersection (Exhibit A: Figure 1). The site is located at Latitude 35° 21' 41.6" N, Longitude 120° 49' 35.0".

## PROJECT DESCRIPTION

As part of a residential subdivision development, the Project consists of removing and re-compacting a portion of the unconsolidated fill directly adjacent to the right stream bank (looking downstream) of the unnamed tributary to Chorro Creek, and removal of existing tree stumps and sucker growth. The fill, approximately 12 feet high and extending 175 feet along the channel with an existing 1:1 slope, will be removed and re-contoured to a maximum 2:1 slope to improve the condition of the streambank. The area impacted is approximately 22,400 square feet. Grading work will occur outside the active channel. Heavy equipment will be positioned on the top of bank to excavate and replace the soil. Revegetation and restoration of the riparian corridor will be implemented following the Riparian Enhancement Plan submitted with the Notification materials. Exhibits B and C (Figures 2 and 3) show the areas of Project activity.

- All Project activities will occur when the channel is naturally dry.
- No trees will be removed as part of this Project.
- The Notification materials, including engineered plans, are made part of the Project description.

Equipment used will include earth-moving heavy equipment for bank stabilization and removal of fill, and various hand tools will be used for riparian enhancement activities.

## PROJECT IMPACTS

This Agreement is intended to avoid, minimize, and mitigate adverse impacts to the fish and wildlife resources that occupy the area of unnamed tributary to Chorro Creek within the Project area, and the immediate adjacent riparian habitat. Absent implementation of the Protective Measures required by this Agreement, the following species and habitat types could potentially be impacted within the area covered by this Agreement: the Federally threatened and State species of special concern (SSC) California red-legged frog (*Rana draytonii*), SSC Western pond turtle (*Actinemys marmorata*), SSC two-striped garter snake (*Thamnophis hammondi*), as well as other birds, mammals, fish, reptiles, amphibians, invertebrates, and plants that comprise the local ecosystem. The California Natural Diversity Data Base (CNDDB) and other CDFW files and references contain information on species that could be subject to potential impacts generated from this Project.

## PROTECTIVE MEASURES TO PROTECT FISH AND WILDLIFE RESOURCES

### 1. Administrative Measures

Permittee shall meet each administrative requirement described below.



- 1.1 Documentation at Project Site. Permittee shall make this Agreement, any extensions and amendments to this Agreement, and all related notification materials and California Environmental Quality Act (CEQA) documents, readily available at the Project site at all times and shall be presented to CDFW personnel, or personnel from another State, Federal, or local agency upon request.
- 1.2 Providing Agreement to Persons at Project Site. Permittee shall provide copies of this Agreement and any extensions and amendments to this Agreement to all persons who will be working on the Project at the Project site on behalf of Permittee, including but not limited to contractors, subcontractors, inspectors, and monitors.
- 1.3 Notification of Conflicting Measures. Permittee shall notify CDFW if Permittee determines or learns that a Protective Measure in this Agreement might conflict with a provision imposed on the Project by another local, State, or Federal agency. In that event, CDFW shall contact Permittee to resolve any conflict.
- 1.4 Project Site Entry. Permittee agrees that CDFW personnel may enter the Project site at any time to verify compliance with this Agreement.
- 1.5 Legal Obligations. This Agreement does not exempt the Permittee from complying with all other applicable local, State, and Federal law, or other legal obligations.
- 1.6 Unauthorized Take. This Agreement does not authorize the "take" ("take" defined in FGC Section 86 as to hunt, pursue, catch, capture, or kill; or attempt to hunt, pursue, catch, capture, or kill) of State- or Federally-listed threatened or endangered species. Any such "take" shall require separate permitting as may be required.
- 1.7 Trespass. To the extent that the Protective Measures of this Agreement provide for activities that require the Permittee to trespass on another owner's property, they are agreed to with the understanding that the Permittee possesses the legal right to so trespass.
- 1.8 Construction/Work Schedule. The Permittee shall submit a construction/work schedule to CDFW (mail, email to [Robert.Tibstra@wildlife.ca.gov](mailto:Robert.Tibstra@wildlife.ca.gov), or fax to (805) 542-4609, with reference to Agreement 1600-2012-0220-R4) prior to beginning any activities covered by this Agreement. The Permittee shall also notify CDFW upon the completion of the activities covered by this Agreement.
- 1.9 Training. Prior to starting any Project activity, Permittee shall provide all workers with training on the contents of this Agreement, the resources at stake, and the legal consequences of non-compliance.

## 2. Avoidance and Minimization Measures



To avoid or minimize adverse impacts to fish and wildlife resources identified above, Permittee shall implement each Measure listed below.

- 2.1 Construction/Work Hours. All non-emergency work activities during the construction phase will be confined to daylight hours. For purposes of this Agreement, "daylight hours" are defined as that daytime period between sunrise and sunset.
- 2.2 Flagging/Fencing. Prior to any activity within the stream, the Permittee shall identify the limits of the required access routes and encroachment into the stream and ponded areas. These "work area" limits shall be identified with brightly-colored flagging/fencing. Work completed under this Agreement shall be limited to this defined area only. Flagging/fencing shall be maintained in good repair for the duration of the Project. All areas beyond the identified work area limits shall be considered Environmentally Sensitive Areas (ESA) and shall not be disturbed.

2.3 Listed, Fully-Protected, and Special Status Species.

- (a) This Agreement does not authorize "take," or "incidental take," of any State- or Federally-listed threatened or endangered, or fully-protected species. Liability for any "take," or "incidental take," of such listed species remains the responsibility of the Permittee for the duration of the Project.
- (b) The Permittee affirms that no "take" of listed species will occur as a result of this Project and will take prudent measures to ensure that all "take" is avoided. The Permittee acknowledges that they fully understand that they do not have State "incidental take" authority. If any State- or Federally-listed threatened or endangered species occur within the proposed work area or could be impacted by the work proposed, and thus "taken" as a result of Project activities, the Permittee is responsible for obtaining and complying with required State and Federally threatened and endangered species permits or other written authorization before proceeding with this Project.
- (c) The Permittee shall immediately notify CDFW of the discovery of any such rare, threatened, or endangered species prior to and/or during Project implementation.
- (d) Prior to commencing Project activity, a qualified biologist shall conduct training sessions to familiarize all Project personnel with identification of the species listed in this Agreement, their habitat, general measures and protections afforded by the Endangered Species Act, measures implemented to protect these species, and a review of the Project boundaries. Documentation of such training shall be included provided to CDFW as specified in Section 4.2 below.
- (e) California Red-Legged Frog: Within 48 hours prior to commencing any Project activity, the Project site shall be surveyed for California red-legged

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frog by a qualified biologist. If any red-legged frogs are found prior to the Project or at any time during Project activities, work shall cease until CDFW and the U.S. Fish and Wildlife Service (USFWS) have been contacted and have given approval for work to continue. Permittee shall contact CDFW within 24 hours of any detection at (805) 594-6116. All survey results shall be reported to CDFW as specified in Section 4.2 below.

- (f) Pacific Pond Turtle and Two-striped Garter Snake: Any turtles or snakes discovered at the site immediately prior to or during Project activities shall be allowed to move out of the area on their own volition; if this is not feasible, they shall be captured by a qualified biologist who holds a Scientific Collecting Permit for the species, and relocated out of harm's way to the nearest suitable habitat immediately upstream or downstream from the Project site.
- (g) A qualified biological monitor shall be available on-site during construction. The biological monitor shall survey for special status species ahead of any ground disturbing activity. Following completion of these activities and for the remainder of the Project, the monitor shall then visit the site daily each morning prior to the start of Project-related activities to ensure no special status species have re-entered the site, and to verify compliance with avoidance and minimization measures for special status species.
- (h) All trash shall be removed from the site daily to avoid attracting potential predators to the site. No pets shall be permitted to be at the site Project activities.
- (i) Work shall be limited to periods when there is no flow or standing water within the channel and within the Project area.

#### 2.4 Wildlife.

- (a) If any wildlife is encountered during the course of Project-related activities, said wildlife shall be allowed to leave the construction area unharmed.
- (b) Pursuant to FGC Sections 3503 and 3503.5, it is unlawful to "take," possess, or needlessly destroy the nest or eggs of any bird or bird-of-prey. To protect nesting birds, no ground disturbing activities or work within the riparian zone shall be completed from March 1 through August 31 unless the following surveys are completed by a qualified biologist within 30 days prior to commencing ground-disturbing activities.

Raptors: Survey for nesting activity of raptors within a 500-foot radius of the Project site. Surveys shall be conducted at appropriate nesting times and concentrate on mature trees. If any active nests are observed, these nests and nest trees shall be designated an ESA and protected by a 500-foot radius until the young have fledged and are no longer reliant on the nest tree or parental care.

Other Avian Species: Survey for nesting activity within a 250-foot radius of the Project boundaries. If any active nests are observed, these nests and nest trees shall be designated an ESA and protected with a minimum 250-foot buffer until the young have fledged and are no longer reliant on the nest tree or parental care.

CDFW may consider variances from these construction buffers when there is compelling biological or ecological reason to do so, such as when the construction area would be concealed from a nest site by topography.

## 2.5 Vegetation.

- (a) Trimming and clearing of vegetation shall be limited to the minimal amount necessary to complete the Project.
- (b) No trees shall be removed as part of this Project.
- (c) All invasive, exotic plant species disturbed by Project activities shall be removed from the Project site. Any Vinca, Cape or German ivy, Castor bean, Arundo, or other exotic plant species shall be bagged and disposed of appropriately. Exotic species shall not be used in mulching, composting, or otherwise placed in or around the Project site without CDFW approval. Heavy equipment and other machinery shall be inspected for the presence of undesirable species prior to on-site use and cleaned to reduce the risk of introducing exotic plant species into the Project site.

## 2.6 Vehicles.

- (a) Vehicles shall not operate in the channel at any time.
- (b) Any equipment or vehicles driven and/or operated adjacent to the stream shall be checked and maintained daily to prevent leaks of materials that, if introduced to water, could be deleterious to aquatic and terrestrial life.
- (c) Staging and storage areas for equipment, materials, fuels, lubricants, and solvents shall be located outside of the stream channel and banks. Stationary equipment such as motors, pumps, generators, compressors and welders, located within or adjacent to the stream, shall be positioned over drip-pans. Vehicles shall be moved away from the stream prior to refueling and lubrication.

## 2.7 Fill/Spoil.

- (a) Spoil storage sites shall not be located within the stream, or where spoil will be washed into the stream. Rock, gravel, and/or other materials shall not be imported into or moved within the bed or banks of the stream, except as otherwise addressed in this Agreement.

- (b) Fill shall be limited to the minimal amount necessary to accomplish the agreed activities. Excess fill material shall be moved off-site at Project completion.

## 2.8 Erosion.

- (a) No work within the banks of the stream shall be conducted during or immediately following significant rainfall events (one-half of 1-inch in any 24-hour period).
- (b) All disturbed soils within the Project site shall be stabilized to reduce erosion potential, both during and following construction. Temporary erosion control devices, such as straw bales, silt fencing, and sand bags, may be used, as appropriate, to prevent siltation of the stream. To minimize the risk of ensnaring and strangling wildlife, coir rolls, erosion control mats or blankets, straw or fiber wattles, or similar erosion control products shall be composed entirely of natural-fiber, biodegradable materials. Permittee shall not use "photodegradable" or other plastic erosion control materials.
- (c) Permittee shall not discharge silty water into the stream. The Permittee's ability to minimize siltation shall be the subject of preconstruction planning and feature implementation. Precautions to minimize siltation may require that the work site be isolated so that silt or other deleterious materials are not allowed to pass to downstream reaches. The placement of any structure or materials in the stream for this purpose, not included in the original Project description, shall be coordinated with CDFW. If it is determined that silt levels resulting from Project-related activities constitute a threat to aquatic life, activities associated with the siltation shall be halted until effective CDFW-approved control devices are installed, or abatement procedures are initiated.

## 2.9 Pollution.

- (a) Permittee shall not dump any litter or construction debris within the stream zone. All such debris and waste will be picked up daily and properly disposed of at an appropriate site.
- (b) Raw cement, concrete or washings thereof, asphalt, paint or other coating material, oil or other petroleum products, or any other substances that could be hazardous to fish or wildlife resulting from Project-related activities, shall be prevented from contaminating the soil and/or entering "Waters of the State".
- (c) The Permittee and all contractors shall be subject to the water pollution regulations found in the Fish and Game Code sections 5650 and 12015.
- (d) In the event that a spill occurs, all Project activities shall immediately cease until cleanup of the spilled materials is completed. CDFW shall be notified.

Exhibit 7

A-3-MRB-06-064

Page 9 of 22

immediately by the Permittee of any spills and shall be consulted regarding cleanup procedures.

- (e) All Project-generated debris, building materials, and rubbish shall be removed from the stream and from areas where such materials could be washed into the stream.

### **3. Compensatory Measures**

To compensate for adverse impacts to fish and wildlife resources identified above that cannot be avoided or minimized, Permittee shall implement each Measure listed below.

#### **3.1 Revegetation/Restoration.**

- (a) Permittee shall revegetate the Project area according to the Riparian Enhancement Plan (REP) included in the Notification. If any changes to the Plan are made following the April 3, 2007 version provided to CDFW, Permittee shall provide the revised Plan to CDFW for approval prior to implementing those changes. Annual reports that are prepared according to the REP shall be submitted to CDFW by December 30 each year until restoration performance criteria are met. CDFW will provide written concurrence when restoration goals have been met.
- (b) For any other exposed slopes or exposed areas on the stream banks caused by Project activities, these areas shall be seeded (with weed-free straw or mulch) with a blend of a minimum of three (3) locally native grass species. One (1) or two (2) sterile non-native perennial grass species may be added to the seed mix provided that amount does not exceed 25 percent of the total seed mix by count. Locally native wildflower and/or shrub seeds may also be included in the seed mix. The seeding shall be completed as soon as possible, but no later than November 15 of the year construction ends. A seed mixture shall be submitted to CDFW for approval prior to application. At the discretion of CDFW, all exposed areas where seeding is considered unsuccessful after 90 days shall receive appropriate soil preparation and a second application of seeding, straw, or mulch as soon as is practical on a date mutually agreed upon.
- (c) Where suitable vegetation cannot be reasonably expected to become established, non-erodible materials shall be used for such stabilization. Any installation of non-erodible materials not described in the original Project description shall be coordinated with CDFW. Coordination may include the negotiation of additional Protective Measures for this activity.

#### **4. Reporting Measures**

Permittee shall meet each reporting requirement described below.

##### **4.1 Obligations of the Permittee.**

- (a) The Permittee shall have primary responsibility for monitoring compliance with all Protective Measures in this Agreement. Protective Measures must be implemented within the time periods indicated in this Agreement and the program described below.
- (b) The Permittee (or the Permittee's designee) shall ensure the implementation of the Protective Measures of this Agreement, and shall monitor the effectiveness of the Protective Measures.

##### **4.2 Reports.** The Permittee shall submit the following Reports to CDFW:

- Construction/work schedule, submitted to CDFW prior to commencing ground-disturbing activity (Administrative Measure 1.8).
- Documentation of worker training relating to sensitive and listed species, submitted to CDFW within 14 days training completion (Avoidance and Minimization Measure 2.3(d)).
- Results of surveys for California red-legged frog, submitted to CDFW within 14 days of completing surveys (Avoidance and Minimization Measure 2.3(e)).
- Results of surveys for nesting birds if Project activity is scheduled during the avian nesting season, submitted to CDFW at least five (5) days prior to commencing Project activities (Avoidance and Minimization Measure 2.4(b)).
- Annual reports for the Riparian Enhancement Plan, submitted to CDFW by December 30 each year until performance criteria are met (Compensatory Measure 3.1(a)).
- A seed mixture to be used to control erosion, submitted to CDFW for approval prior to application (Compensatory Measure 3.1(b)).
- A Final Project Report to be submitted within 30 days after the installation and ground disturbing portion of the Project is completed. The final report shall summarize the Project including any problems relating to the protective Measures of this Agreement. "Before and after" photo documentation of the Project site shall be included.

## CONTACT INFORMATION

Any communication that Permittee or CDFW submits to the other shall be in writing and any communication or documentation shall be delivered to the address below by U.S. mail, fax, or email, or to such other address as Permittee or CDFW specifies by written notice to the other.

To Permittee:

Wayne Colmer  
Black Hill Villas L.P.  
23679 Calabasas Road #333  
Calabasas, California  
[waynecolmer@sbcglobal.net](mailto:waynecolmer@sbcglobal.net)  
(818) 222-5666

To CDFW:

California Department of Fish and Wildlife  
Region 4 – Central Region  
1234 East Shaw Avenue  
Fresno, California 93710  
Attn: Lake and Streambed Alteration Program – Robb Tibstra  
Notification #1600-2012-0220-R4  
Phone: (805) 594-6116  
Fax: (805) 542-4609  
[Robert.Tibstra@wildlife.ca.gov](mailto:Robert.Tibstra@wildlife.ca.gov)

## LIABILITY

Permittee shall be solely liable for any violations of this Agreement, whether committed by Permittee or any person acting on behalf of Permittee, including its officers, employees, representatives, agents or contractors and subcontractors, to complete the Project or any activity related to it that this Agreement authorizes.

This Agreement does not constitute CDFW's endorsement of, or require Permittee to proceed with the Project. The decision to proceed with the Project is Permittee's alone.

## SUSPENSION AND REVOCATION

CDFW may suspend or revoke in its entirety this Agreement if it determines that Permittee or any person acting on behalf of Permittee, including its officers, employees, representatives, agents, or contractors and subcontractors, is not in compliance with this Agreement.



Before CDFW suspends or revokes this Agreement, it shall provide Permittee written notice by certified or registered mail that it intends to suspend or revoke. The notice shall state the reason(s) for the proposed suspension or revocation, provide Permittee an opportunity to correct any deficiency before CDFW suspends or revokes this Agreement, and include instructions to Permittee, if necessary, including but not limited to a directive to immediately cease the specific activity or activities that caused CDFW to issue the notice.

## **ENFORCEMENT**

Nothing in is Agreement precludes CDFW from pursuing an enforcement action against Permittee instead of, or in addition to, suspending or revoking this Agreement.

Nothing in this Agreement limits or otherwise affects CDFW's enforcement authority or that of its enforcement personnel.

## **OTHER LEGAL OBLIGATIONS**

This Agreement does not relieve Permittee or any person acting on behalf of Permittee, including its officers, employees, representatives, agents, or contractors and subcontractors, from obtaining any other permits or authorizations that might be required under other Federal, State, or local laws or regulations before beginning the Project or an activity related to it.

This Agreement does not relieve Permittee or any person acting on behalf of Permittee, including its officers, employees, representatives, agents, or contractors and subcontractors, from complying with other applicable statutes in the FGC including, but not limited to, FGC sections 2050 *et seq.* (threatened and endangered species), 3503 (bird nests and eggs), 3503.5 (birds of prey), 5650 (water pollution), 5652 (refuse disposal into water), 5901 (fish passage), 5937 (sufficient water for fish), and 5948 (obstruction of stream).

Nothing in this Agreement authorizes Permittee or any person acting on behalf of Permittee, including its officers, employees, representatives, agents, or contractors and subcontractors, to trespass.

## **AMENDMENT**

CDFW may amend this Agreement at any time during its term if CDFW determines the amendment is necessary to protect an existing fish or wildlife resource.

Permittee may amend this Agreement at any time during its term, provided the amendment is mutually agreed to in writing by CDFW and Permittee. To request an amendment, Permittee shall submit to CDFW a completed CDFW "Request to Amend Lake or Streambed Alteration" form and include with the completed form payment of the corresponding amendment fee identified in CDFW's current fee schedule (see Cal. Code Regs., Title 14, § 699.5).



## **TRANSFER AND ASSIGNMENT**

This Agreement may not be transferred or assigned to another entity, and any purported transfer or assignment of this Agreement to another entity shall not be valid or effective, unless the transfer or assignment is requested by Permittee in writing, as specified below, and thereafter CDFW approves the transfer or assignment in writing.

The transfer or assignment of this Agreement to another entity shall constitute a minor amendment, and therefore to request a transfer or assignment, Permittee shall submit to CDFW a completed CDFW "Request to Amend Lake or Streambed Alteration" form and include with the completed form payment of the minor amendment fee identified in CDFW's current fee schedule (see Cal. Code Regs., Title 14, § 699.5).

## **EXTENSIONS**

In accordance with FGC section 1605(b), Permittee may request one (1) extension of this Agreement, provided the request is made prior to the expiration of this Agreement's term. To request an extension, Permittee shall submit to CDFW a completed CDFW "Request to Extend Lake or Streambed Alteration" form and include with the completed form payment of the extension fee identified in CDFW's current fee schedule (see Cal. Code Regs., Title 14, § 699.5). CDFW shall process the extension request in accordance with FGC 1605(b) through (e).

If Permittee fails to submit a request to extend this Agreement prior to its expiration, Permittee must submit a new notification and notification fee before beginning or continuing the Project this Agreement covers (FGC section 1605(f)).

## **EFFECTIVE DATE**

This Agreement becomes effective on the date of CDFW's signature, which shall be: 1) after Permittee's signature; 2) after CDFW complies with all applicable requirements under the California Environmental Quality Act (CEQA); and 3) after payment of the applicable FGC section 711.4 filing fee listed at [http://www.dfg.ca.gov/habcon/ceqa/ceqa\\_changes.html](http://www.dfg.ca.gov/habcon/ceqa/ceqa_changes.html).

## **TERM**

This Agreement shall remain in effect for five (5) years from the date it is signed by CDFW, unless it is terminated or extended before then. All Protective Measures in this Agreement shall remain in force throughout its term. Permittee shall remain responsible for implementing any Protective Measures specified herein to protect fish and wildlife resources after this Agreement expires or is terminated, as FGC section 1605(a)(2) requires.

## **CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA) COMPLIANCE**

In approving this Agreement, CDFW is independently required to assess the applicability of CEQA. The features of this Agreement shall be considered as part of the overall Project description.

If the CDFW determines that CEQA review is required, as a CEQA Lead Agency CDFW shall be responsible for preparing and circulating the appropriate document (Negative Declaration/Environmental Impact Report) and will make findings and submit a Notice of Determination to the State Clearinghouse. Alternatively, CDFW may determine that the Project, as mitigated by the Measures of this Agreement, is Exempt from CEQA, in which case, a Notice of Exemption will be filed.

## **EXHIBITS**

The documents listed below are included as exhibits to this Agreement and incorporated herein by reference.

- A. Figure 1. Project Location USGS Quad Map.
- B. Figure 2. Project Area and Streambed Perimeter
- C. Figure 3. Project Plan

## **AUTHORITY**

If the person signing this Agreement (signatory) is doing so as a representative of Permittee, the signatory hereby acknowledges that he or she is doing so on Permittee's behalf and represents and warrants that he or she has the authority to legally bind Permittee to the Protective Measures herein.

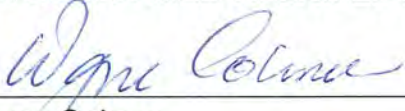
## AUTHORIZATION

This Agreement authorizes only the Project described herein. If Permittee begins or completes a Project different from the Project this Agreement authorizes, Permittee may be subject to civil or criminal prosecution for failing to notify CDFW in accordance with FGC section 1602.

## CONCURRENCE

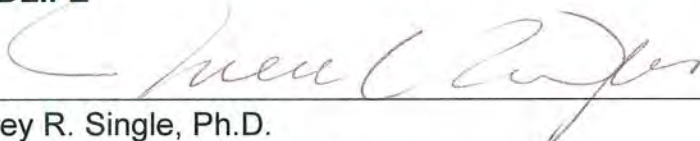
The undersigned accepts and agrees to comply with all the terms of this Agreement.

### FOR BLACK HILL VILLAS L.P.

  
\_\_\_\_\_  
Wayne Colmer

8/13/2013  
Date

### FOR CALIFORNIA DEPARTMENT OF FISH AND WILDLIFE

  
\_\_\_\_\_  
Jeffrey R. Single, Ph.D.  
Regional Manager—Central Region


8/29/13  
Date

Prepared by: Robb Tibstra  
Environmental Scientist

# Figure 1


## Exhibit A

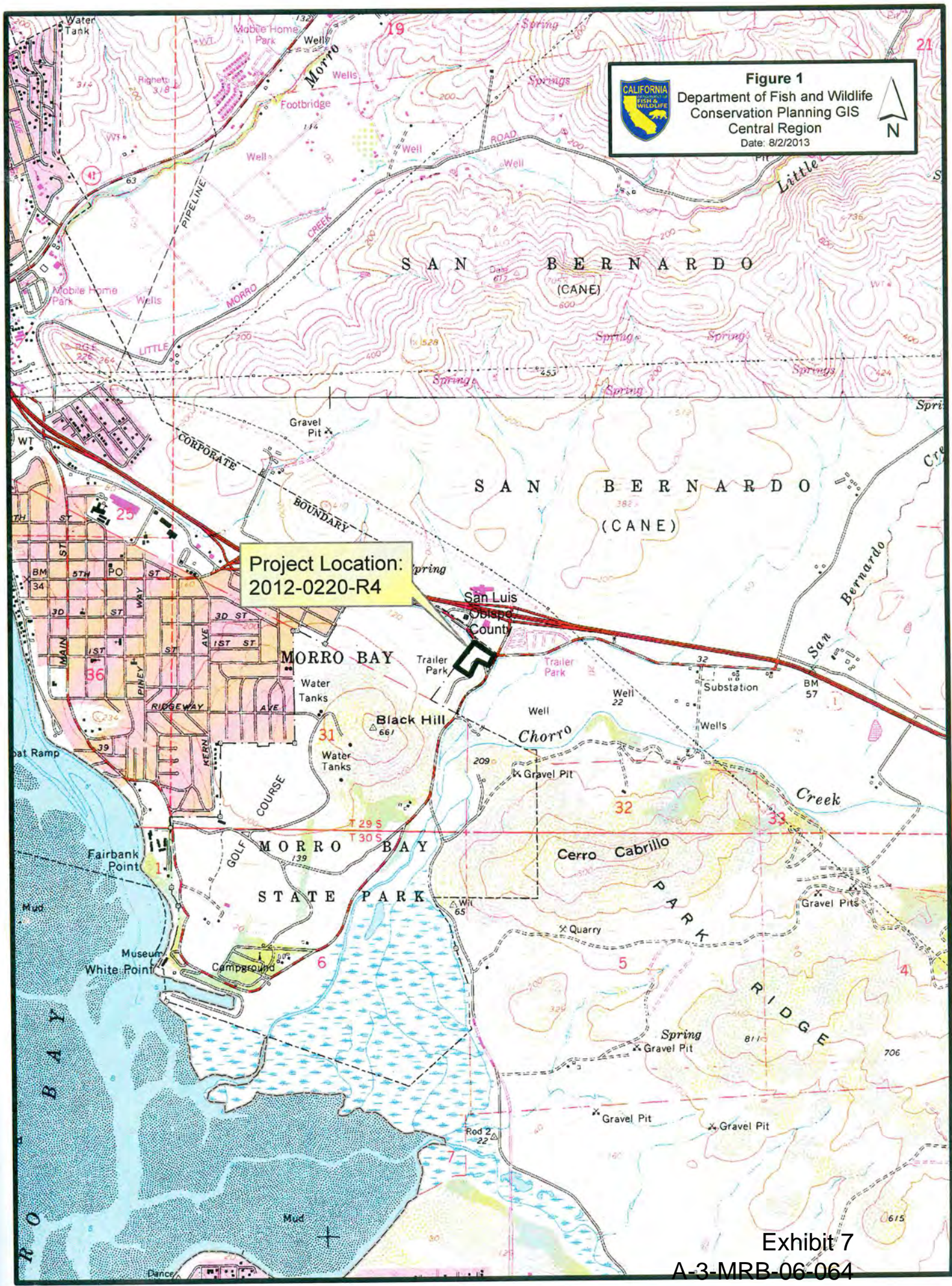




**Figure 1**

Department of Fish and Wildlife  
Conservation Planning GIS  
Central Region  
Date: 8/2/2013







# Figure 2

## Exhibit B





**Project area**



**Stream bed perimeter**

0 12.5 25 50 75 100 125 150 Feet

0 10 20 40

N





# Figure 3

## Exhibit C










Exhibit 7

A-3-MRB-06-064

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LEGEND:

-  LIMIT OF TOP-OF BANK
-  LIMIT OF WETLAND
-  BUILDING / DEVELOPMENT SETBACK
-  IN-CHANNEL / NON-WETLAND
-  ARROYO WILLOW RIPARIAN
-  SALT MARSH BACCHARIS
-  SALTGRASS
-  RAPTOR HABITAT
-  WETLAND







May 27, 1994

Exhibit 8  
A-3-MRB-06-064  
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June 3, 2003

Exhibit 8  
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Page 2 of 3





July 1, 2004

Exhibit 8  
A-3-MRB-06-064  
Page 3 of 3



# TRACT 2739

## BLACK HILL VILLAS

SOUTH BAY BOULEVARD & QUINTANA ROAD MORRO BAY, CA 93442



VIEW 1



LOCATION

©2007 Thomas Bros. Maps



EXISTING



PROPOSED

LOOKING SOUTHWEST FROM NB HIGHWAY 1

ACCURACY OF PHOTO SIMULATION BASED UPON INFORMATION PROVIDED BY PROJECT APPLICANT.



# TRACT 2739

## BLACK HILL VILLAS

SOUTH BAY BOULEVARD & QUINTANA ROAD MORRO BAY, CA 93442



VIEW 2



LOCATION

©2007 Thomas Bros. Maps



EXISTING



PROPOSED

LOOKING WEST FROM SOUTH BAY BOULEVARD

ACCURACY OF PHOTO SIMULATION BASED UPON INFORMATION PROVIDED BY PROJECT APPLICANT.





# City of Morro Bay

Morro Bay, CA 93442

(805) 772-6200

[www.morro-bay.ca.us](http://www.morro-bay.ca.us)

October 30, 2014

California Coastal Commission  
Attn: Daniel Robinson  
725 Front Street, Suite 300  
Santa Cruz, CA 95060

RE: Black Hill Villas, 485 and 495 South Bay Blvd - APN 066-371-003  
Coastal Application Number (A-3-MRB-06-064)  
City Application Number (S00-038/UP0-070)

Dear Mr. Robinson,

Thank you for keeping the City of Morro Bay informed on the pending de novo hearing for the review of the proposed coastal development permit for the Black Hill Villas (VTTM # 2739/S00-038/UP0-070). The City understands the San Luis Obispo County Superior Court has remanded the project back to Coastal Commission to re-hear the item consistent with the Court's decision and the project is now agenzized for the November Coastal Commission meeting.

As you are aware, since the lawsuit was filed, the City's Planning Commission reviewed and approved the project's precise plan approval for the Conditional Use Permit (UP0-070) on February 19, 2010 pursuant to our Zoning Ordinance sections 17.40.030 and 17.60.

Please note that should the Coastal Commission take action to approve the coastal development permit with modifications that are inconsistent with City approvals, the City will require a modification to City approvals and/or a re-review of the project to ensure consistency with Coastal Commission approvals.

From a Public Works standpoint the City would be looking at reviewing the modified project and its impact to Sewer and Water availability along with its traffic impact. Additionally the City would be looking from an environmental stand point whether or not there are existing deficiencies in the infrastructure that would require mitigation prior to allowing any further development. For example, if the existing traffic level of service at the intersection of South Bay Blvd. and Quintana Rd. was such that it would not handle any more traffic the development would need to perform mitigation prior to occupying the homes in the subdivision. This may or may not be the case, the traffic study for the subdivision is well past its useful life and a new study is required.

**FINANCE**  
595 Harbor Street

**ADMINISTRATION**  
595 Harbor Street

**FIRE DEPT.**  
715 Harbor Street

**PUBLIC SERVICES**  
955 Shasta Avenue

**HARBOR DEPT.**  
1275 Embarcadero Road

**CITY ATTORNEY**  
595 Harbor Street

**POLICE DEPT.**  
870 Morro Bay Boulevard

**RECREATION & PARKS**  
1001 Kennedy Way

Exhibit 10  
A-3-MRB-06-064  
Page 1 of 46



October 30, 2014  
Page 2

Should you have any further questions, please feel free to call or email (805-772-6569/[rlivick@morro-bay.ca.us](mailto:rlivick@morro-bay.ca.us))

Sincerely,



Rob Livick  
Public Services Director / City Engineer

c: Scot Graham, Planning Manager



MORRO BAY  
NATIONAL  
ESTUARY  
PROGRAM

March 17, 2014

Dan Carl  
California Coastal Commission  
Central Coast District Office  
725 Front Street, Suite 300  
Santa Cruz, CA 95060-4508

RE: Project A-3-MRB-06-064 (APN 066-371-003)

Dear Mr. Carl:

As one of 28 estuaries around the country designated as "nationally significant" by the Environmental Protection Agency, Morro Bay is truly a national treasure worth protecting. The Morro Bay National Estuary Program works to protect and restore the Morro Bay watershed and estuary. Part of our mission is to address threats to water quality and sensitive habits. This case before the Coastal Commission involves a site near wetlands, Chorro Creek, and the Morro Bay estuary.

The Commission's staff report calls out concerns regarding water quality, among other items. Any project, such as this one, should be meeting the requirements laid out in the *Post-Construction Stormwater Management Requirements for Development Projects in the Central Coast*, Central Coast Regional Water Quality Control Board Resolution R3-2013-0032, adopted in July of 2013.

Communities like ours strive to protect the environment because it is so vital to our quality of life. A project that provides more housing and includes necessary protections for water quality, sensitive habitats, and stormwater water infiltration should be possible.

Sincerely,

Adrienne Harris  
Executive Director

cc: Daniel Robinson

Blue Heron Terrace Mobile Home Park  
HOA  
475 So. Bay Blvd.  
Morro Bay, California

March 25, 2014

California Coastal Commission  
725 Front St., Ste. 300  
Santa Cruz, CA 95060

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

Attn. Daniel Robinson  
Coastal Planner

Dear Commissioners and Mr. Robinson:

Please find enclosed two separate petitions regarding the Black Hill Villas application. The first petition of signatures was gathered by the residents of Blue Heron Terrace Mobile Home Park, which is adjacent to the Black Hill Villas project, in anticipation of the Coastal Commission hearing on February 13, 2014.

Once learning that the Black Hill Villas application was postponed the second petition of signatures was gathered from the community at large, which shows the concern of the residents of the greater community.

As the Black Hill Villas project stands currently, it is inconsistent with the Local Coastal Plan (LCP) of the City of Morro Bay. And our concern extends to the ESHA issues that would be disrupted if this project were allowed to go forward.

Therefore we (the signers of the two petitions) continue to have reservations that this project should not be permitted as proposed.

Thank you for taking our concerns into consideration.

Sincerely,



Dixie R. Patterson  
President, HOA Blue Heron Terrace Mobile Home Park

Encls.

**RECEIVED**

APR 18 2014

CALIFORNIA  
COASTAL COMMISSION  
CENTRAL COAST AREA

Exhibit 10  
A-3-MRB-06-064  
Page 4 of 46



# RECEIVED

APR 18 2014

CALIFORNIA  
COASTAL COMMISSION  
GENERAL COAST AREA

## Petition to Coastal Commission.

HERON TERRACE MOBILE HOME PARK

Petition summary and background

Wayne Colmer, Black Hills Villas application # A-3-MRB-06-064.

Action petitioned for

We, the undersigned, are concerned citizens, of Blue Heron Terrace. We support the Coastal Commission staff recommendation to deny the coastal permit application of Wayne Colmer. Project: Black Hills Villa.

Printed Name	Signature	Address	Comment	Date
PAULA DAVIES	<i>Paula Davies</i>	475 SO. BAY BLVD #113	✓	2/16/14
JUDITH J KIDD	<i>Judith Kidd</i>	475 So Bay Blvd #11	✓	2/19/14
JOHN G KIDD	<i>John G Kidd</i>	475 So. Bay Blvd 17	✓	2/20/14
HELEN EDWARDS	<i>Helen Edwards</i>	415 So. Bay Blvd #14	✓	2/24/14
RICK EDWARDS	<i>Rick Edwards</i>	475 So Bay Blvd #14	✓	2/26/14
<del>JOHN EDWARDS</del>	<del><i>John Edwards</i></del>	<del>475 So Bay Blvd #14</del>	✓	<del>2/3/14</del>
JACK ARNOLD	<i>Jack Arnold</i>	" "	✓	3/2/14
MICHAEL ARNOLD	<i>Michael Arnold</i>	" "	#52	3/2
LINDA WARP	<i>Linda Warp</i>	475 S. Bay Blvd. 475	✓	3/3/14
BOBIE TOLLE	<i>Bobie Tolle</i>	475 S Bay Blvd #45	✓	3/3/14
WILLIAM BATES	<i>William Bates</i>	475 BARCLAY #48	✓	3/3/14
RICH ARNOLD	<i>Rich Arnold</i>	475 So Bay Blvd #21	✓	3/3/14

MOBILE HOME PARK 93442

Exhibit 10

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Printed Name	Signature	Address	Comment	Date
MARK PETERSEN	Mr. Petersen	475 Sol Bay Blvd #52, Mendocino Bay CA 93442		3/3/14
Virginia DeMop	Virginia DeMop	475 S. Bay Blvd #53	Mendocino Bay 93442	
Scott DeMop	Scott DeMop	475 S. Bay Blvd #53	Mendocino Bay 93442	3-3-14
Jeffrey Cox	Jeffrey Cox	475 S. Bay Blvd #62		3/3/14
Lynola Newson	Lynola Newson	475 S. Bay Blvd #63	Mendocino Bay 93442	3/3/14
John Hausen	John Hausen	#20	M.B. 93442	3-3-14
Charles Clark	Charles Clark	475 S. Bay Blvd #55		3/5/14
James S. Spier	James S. Spier	475 S. Bay Blvd #23		3/8/14
Mike Clark	Mike Clark	475 S. Bay Blvd #25	M.B.	3/8/14
Alicia Court	Alicia Court	475 S Bay Blvd Apt 28	MENDOCINO BAY	3/8/14
Teddy Oliver	Teddy Oliver	475 S Bay Blvd #42		3/15/14
Janet Oliver	Janet Oliver	475 S Bay Blvd #42	Mendocino Bay	3/15/14

Exhibit 10

# Petition to Coastal Commission.

Petition summary and background	Wayne Colmer, Black Hills Villas application # A-3-MRB-06-064.		
Action petitioned for	We, the undersigned, are concerned citizens, of Blue Heron Terrace. We support the Coastal Commission staff recommendation to deny the coastal permit application of Wayne Colmer. Project: Black Hills Villa.		

Printed Name	Signature	Address	Comment	Date
Roberta Horne	<i>R. Horne</i>	475 S. Bay Blvd #26 <del>1320</del>	✓	2/21/14
Cheryl Stae	<i>Cheryl Stae</i>	475 S. Bay Blvd #25	✓	2/21/14
Dan Peery	<i>Dan Peery</i>	735 S. Bay Blvd #49		2/21/14
WARREN RAY	<i>Warren Ray</i>	475 S. Bay Blvd #12	✓	2-21-14
Joyce Earmine	<i>Joyce Earmine</i>	475 S. Bay Blvd #61	✓	2-21-14
DUSTEN PEERY	<i>Dusten Peery</i>	475 S. Bay Blvd #50	✓	2-21-14
MARY HUDSON	<i>M. Hudson</i>	475 S. Bay Blvd #16	✓	2-26-14
Chris Hudson	<i>Chris Hudson</i>	475 S. Bay Blvd #12	✓	2-26-14
RAY CLINE	<i>Ray Cline</i>	475 S. Bay Blvd #57	✓	2/26/14
Gene David	<i>Gene David</i>	475 S. Bay Blvd #39	✓	2/26/14
Debbi Brown	<i>Debbi Brown</i>	475 S. Bay Blvd #41	✓	2/26/14
William Bowman	<i>William Bowman</i>	475 S. Bay Blvd #41	✓	2/26/14







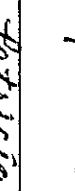



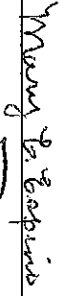


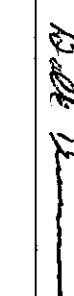
# Petition to Coastal Commission.

Petition summary and background	Wayne Colmer, Black Hills Villas application # A-3-MRB-06-064.
Action petitioned for	We, the undersigned, are concerned citizens, of Blue Heron Terrace. We support the Coastal Commission staff recommendation to deny the coastal permit application of Wayne Colmer. Project: Black Hills Villa.

Printed Name	Signature	Address	Comment	Date
SUSAN BAKER	<i>Susan Baker</i>	475 S. Bay Blvd #61	✓	2-16-14
THOMAS BAKER	<i>Thomas Baker</i>	475 S. Bay Blvd #66	✓	2-16-14
MAE JOHNSON	<i>Mae Johnson</i>	475 S. Bay Blvd #7	✓	2-16-14
JAMES THOMAS	<i>James Thomas</i>	475 S. Bay Blvd #7	✓	2-16-14
Veda Thomas	<i>Veda S. Thomas</i>	475 S. Bay Blvd #64	✓	2-16-14
JOHN WATSON	<i>John Watson</i>	475 S. Bay Blvd #61	✓	2-16-14
ELENE SILVER	<i>Elene Silver</i>	475 S. Bay Blvd #58	✓	2-16-14
JIM SILVER	<i>James Silver</i>	475 S. Bay Blvd #58	✓	2-16-14
SEAN LORRISSE	<i>Sean Lorrise</i>	475 S. Bay Blvd #51	✓	2-16-14
DAVE BENSON	<i>Dave Benson</i>	475 S. Bay Blvd #1	✓	2-16-14
SUSAN BENSON	<i>Susan Benson</i>	" " "	✓	2-16-14
KNUTLE ZWINGEN H. JON	<i>Knutle Zwingen H. Jon</i>	475 S Bay Blvd #51	✓	2-16-14

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Printed Name	Signature	Address	Comment	Date
KEITH Tracy		475 south Bay #34 ✓		2/10/14
Beth Raub		475 south Bay #31 ✓		2/16/14
Donald Mills		475 South Bay #70 ✓		2/17/14
Dorothy Mills		475 South Bay #70 ✓		2/17/14
<del>Patricia Moore</del> Patricia Moore				
Diane Moore		475 So. Bay Blvd #71 ✓		2/17/14
PAUL KESAY		475 So. Bay Blvd #71 ✓		2-17-14
DIVIE R. PATTERSON		475 So. Bay Blvd #33 ✓	CALIFORNIA IS IN A SEVERE DROUGHT. THERE SHOULD BE A MANDATORY ON BUILDING	2-17-14
Mary E. Espino		475 S. Bay Blvd #32 ✓		2-21-14
Daniel Runkle		475 S. Bay Blvd #43 ✓		2/21/14
Debbey Bowman		475 S. Bay Blvd #41	duplicate signature	2/21/14
Bill Bowman		475 S. Bay Blvd #41	" "	2/21/14

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Printed Name	Signature	Address	Comment	Date
<del>John Oliveira</del>	<del>Robert Oliveira</del>	475 S Bay Blvd #57 ✓	More Bay - Ct 23445 ✓	2-26-14
PATRICIA ALVARO	Patricia Alvaro	475 S. Bay Blvd. #28 ✓	More Bay Ca. 93445 ✓	2-3-14
LUCHY EA	Lucy EA	475 S Bay Blvd #65 ✓	More Bay	3-15-14
Brian Langford	Brian Langford	475 S Bay Blvd #38 ✓	More Bay	3-15-14
Teresa Smith	Teresa Smith	475 S Bay Blvd #48 ✓	More Bay Ca 93442	3/15/14
Greg Smith	Greg Smith	475 S Bay Blvd. #48 ✓	More Bay Ca 93442	3/15/14



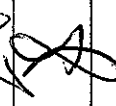

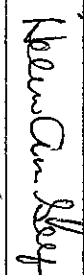

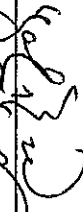




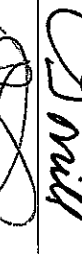

# RECEIVED

APR 18 2014

## Petition to Coastal Commission.

Petition summary and background  
 CALIFORNIA COASTAL COMMISSION  
 SAN LUIS OBISPO AREA  
 Wayne Colmer, Black Hills Villas application # A-3-MRB-06-064.

Action petitioned for We, the undersigned, are concerned citizens, of the city of Morro Bay, and San Luis Obispo County. We support the Coastal Commission staff recommendation to deny the coastal permit application of Black Hills Villas as proposed.

Printed Name	Signature	Address	Comment	Date
Chas GLEASON		Feb 922 Templeton 93461	NO NO NO	3-14-14
Stephen Lanning		691 Lilac Drive Los Osos, CA 93402 5743 RIDGEWAY CT 93423	No way	3/14/14
HILLEN RAYMOND SEIT		PO BOX 744 ATASCADERO	NOT IN OUR BEST INTERESTS	3/14/14
V. Condit		13406 Santa Lucia 93414	MORRO BAY -> L.A. -> TEMPELTON	3/14/14
Josh Wisniewski		PO Box 1332 Atascadero CA 93423	Coastal Preservation	3/14/14
Roxanne Ingram		6650 Monterey Rd. Paso Robles 93446	NO NEW NEEDED... rent/sale existing Bldgs.	3-14-14
Julie DAVIEL		P.O. Box 613, Paso Robles, CA 93423	NOT NEEDED - NOT IN OUR INTERESTS	3-14-14
Austin Gorrill		P.O. BOX 715 SANTA MARGARITA CA 93453	NOPE	3-14-14
Eligabeth Gorrill		22335 I ST Santa Margarita CA 93453	where's the water	3-14-14
CHUCK GOBERT		PO BOX 715 SANTA MARGARITA. CA 93453	NO	3-14-14
Andrea Rabaraz		705 De Anza at Atascadero 93423	NO	3-17-14




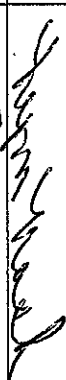
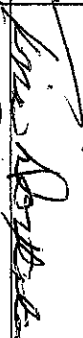

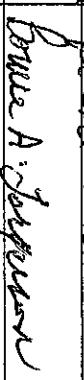

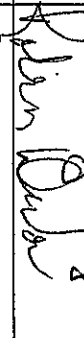
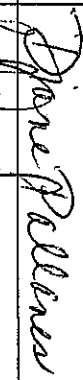
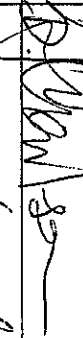

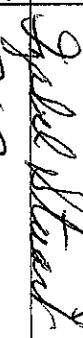

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Exhibit 10

A-3-MRB-06-064

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Printed Name	Signature	Address	Comment	Date
Lorrie Nash		248 SILVERDOME DR		3/5/14
Lynn Nash		SAME P.R.		3/5/14
Lynn Nash		18333 SAN MAR LUISA TRAIL		3/5/14
Vicki Wilson		1501 Seaview Rd,		3/12/14
Bruce A. Thompson		1895 WHITE PINE DR.		3/12/14
Beverly Tongeren		1555 White Pine Dr.		3/12/14
Rosie DeLoe		514 Aleppo Dr		3/12/14
Diane Pallares		512 Aleppo Dr		3/12/14
Diane Pallares		328 ALEPO DR.		3/12/14
Doug Strong		501 Pison Dr, MB		3/12/14
Tommy Street		501 Pison Dr, MB		3-12-14
Paul Beauregard		514 Pison Dr. MB.		3/12-14





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Printed Name	Signature	Address	Comment	Date
JENNIFER RENKE	Jennifer Renke	1595 Los Osos Valley Rd <sup>Los Osos</sup>	93402-2935	3-12-14
William Ranks	William Ranks	1595 Los Osos Valley Rd. <sup>Los Osos</sup>	valuable habitat for local birds of prey	3/12/14
Sara Bartlett	Sara Bartlett	1775 5th St, Los Osos		3/12/14
Duncan Babbler	Duncan Babbler	1775 5th St Los Osos		3/12/14
Susan York	Susan York	475 S. Bayview 44 MB		3/13/14
Eller Dutra	Eller Dutra	495 Ascadero Rd		3/13/14
Eric Larsen	Eric Larsen	943 Pecho St.	OUT OF WATER Don't need no releases	3/14
RC TSENBERT	RC Tsenbert	765 CENERCI M.B.		3/14
Cleve Nash	Cleve Nash	398 Weymouth Condris		3/14/14
ANGELINA ALAR	Angelina Alar	611 Brownswas Bldg	don't destroy this habitat	3/14
DIANE MASON	Diane Mason	443 Shirley St	save our kids	3/14/14
Gouri Coziman	Gouri Coziman	Ankenwy 6 13th Street	keep it this way!	3/14/14



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Printed Name	Signature	Address	Comment	Date
David Nelson	<i>David Nelson</i>	2550 Juniper Ave Morro Bay, CA 93442	THIS WAS NOT A GOOD RESPONSE	3/15/14
Mona Lee Nelson	<i>Mona Lee Nelson</i>	2580 Juniper Ave Morro Bay, CA 93442		3/14/14
Jack McEvedy	<i>Jack McEvedy</i>	901 Morro Bay Blvd. Speed 35 Morro Bay, CA 93442		3/14/14
Melody DeMeritt	<i>Melody DeMeritt</i>	500 Oceanview Morro Bay, CA 93442		3/14/14
S. Erik Andreas	<i>S. Erik Andreas</i>	560 1/2 Piney Bay Morro Bay, CA 93442		3/14/14
Beth Winholtz	<i>Beth Winholtz</i>	405 Racine, MB 93442		3/14/14
Debbie Higfill	<i>Debbie Higfill</i>	595 Kings Ave. M.B.		3/25/14
Jerard D Miller	<i>Jerard D Miller</i>	985 Pacific St. 93442		3/25/14
Erick Miller	<i>Erick Miller</i>	" "	No other changes to the draft. Original THAT WAS DENIED BEFORE FOR MANY REASONS, DAVE	" "
Nancy Best	<i>Nancy Best</i>	450 Fairview Ave Morro Bay, CA 93442		3/25/14
GARY BLOTTETT	<i>GARY BLOTTETT</i>	2349 SAC G-3 Morro Bay 500 ATASCADERO RD.		3/25/14
Grant Crowl	<i>Grant Crowl</i>	450 Fairview Ave Morro Bay, CA		3-25-14

Printed Name	Signature	Address	Comment	Date
Gloria McArthur	<i>Gloria McArthur</i>	1050 Harbor St. Norwalk, CT 06854		3/25/14
Paula Quigley		455 Acacia St. NB 03442	Paula M. Quigley	3/25/14
Scott H. Lunsford	<i>Scott H. Lunsford</i>	508 W. 2nd Ave. NB 03442		3/25/14
William Quigley	<i>William Quigley</i>	455 Acacia, Norwalk, CT 06854		3/25/14
Dorothy Cutler	<i>Dorothy Cutler</i>	290 Cypress Ave. NB 03442		3/25/14
Beth Ann Melton	<i>Beth Ann Melton</i>	400 Acacia St. NB 03442		3/25/14
Troy Melton	<i>Troy Melton</i>	400 Acacia St. NB 03442		3/25/14
Alex Beattie	<i>Alex Beattie</i>	564 Acacia St. NB 03442		3/25/14

Exhibit 10



October 21, 2014

Mr. Wayne Colmer  
Black Hill Villa LP  
3679 Calabasas Road, # 333  
Calabasas, CA 91301

Mr. Daniel Robinson, Coastal Planner  
California Coastal Commission  
Central Coast District Office  
725 Front Street, Suite 300  
Santa Cruz, CA 95060

Dear Mr. Colmer and Mr. Robinson,

At the request of Jonna Engel and Dan Robinson I recently conducted a cursory investigation of the offsite basin located between South Bay Boulevard and the shared entrance drive of the Black Hill Villas site and the Blue Heron Terrace Mobile Home Park. In Figure 4 of the 2012 Biological Resource Assessment (Tenera 2012), the offsite basin is shown in the legend as “Offsite Riparian” and “Offsite Stream-Wetland” habitat. This investigation is intended to provide additional details about the subject area and the associated plant communities.

The subject area is a basin that appears to have been constructed in its present configuration during work completed by the City of Morro Bay in 1995. The work was a part of Phase I of the South Bay Boulevard Project, which entailed raising the roadbed approximately four feet along much of its length between Quintana Road and the “Twin Bridges.” In addition to raising the roadbed, the project included the relocation of the shared entrance road to the Blue Heron Mobile Home Park and the Black Hill Villas site from South Bay Boulevard to Quintana Road to remedy a dangerous sight distance situation. The relocation of the shared entrance entailed construction of the current service road and box culvert. The box culvert conveys flow and sediment from the seasonal drainage channel on the Black Hill Villas site into the subject basin. Another box culvert was constructed at the time beneath South Bay Boulevard to convey water flow from the subject basin into the area to the east of South Bay Boulevard that later became the Chorro Flats Sediment Capture and Wetland Restoration Project (Chorro Flats) site. At some point *circa* 2005-2006 an effort was undertaken to re-vegetate the basin with riparian-wetland plants.

The subject basin (top of bank) is approximately 82 m (270 ft) in length and 21 m (70 ft) across at its widest point. The bed of the basin is approximately 78 m (255 ft) in

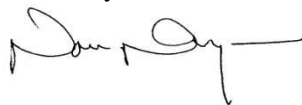
length and 14 m (45 ft) across at its widest point. The seasonal stream channel that crosses the Black Hill Villas site transits the northern part of the basin bed more or less diagonally from box culvert to box culvert for approximately 37 m (120 ft). The stream channel within the basin is shallow and entrenched no more than 0.3 m (1 ft) at any point. The channel likely overflows into other parts of the basin during periods of high flow.

The plant communities within the northern and southern parts of the basin are distinctly different. At the time of the site visit the northern portion of the basin supported a riparian-stream community similar to the riparian-stream habitat on the Black Hill Villas site. This community (basin bed) occupied approximately 65 percent of the basin and is dominated by an estimated 18 arroyo willows (*Salix lasiolepis*) that were likely planted during the re-vegetation effort. Understory vegetation was comprised of a mix of upland and wetland vegetation (native and non-native) including marsh baccharis (*Baccharis glutinosa*), salt grass (*Distichlis spicata*), common spikerush (*Eleocharis palustris*), bristly ox-tongue (*Picris echioides*), sowthistle (*Sonchus* sp.), and cinquefoil (*Argentina anserina*). These plant species are the same species occupying the streambed and banks of the channel crossing the Black hill Villas site. Other common plant species present in the northern part of the basin include spiny rush (*Juncu sacutus*) and a sedge (*Carex* sp.), which were likely planted during the re-vegetation effort. The remainder of the basin bed (~45 percent) is dominated by three plant species: coyote brush (*Baccharis pilularis*), goldenrod (*Solidago* sp.), and giant wild rye (*Leymus condensatus*). Fig marigold (*Carpobrotus edulis*) dominates the southernmost part of the basin.

The character of the plant community within the subject basin is similar to the plant community along the streambed and banks on the Black Hill Villas site. Both areas support an assemblage of hydrophytes and upland plant species, as would be expected for many ephemeral stream channels. Differences in the abundance or species composition of plants within the two communities may be the result of plantings in the basin during the previous re-vegetation effort. If the plantings of *Salix*, *Juncus*, and *Carex* had not occurred, the communities on-site and off-site could be remarkably similar (due to the limited water regime). The success of the re-vegetation effort in the subject offsite basin indicates the potential for significant beneficial effects to the functions and values of stream, riparian, and upland habitats on the Black Hill Villas open space lot as a result of implementation of the Riparian Enhancement Plan.

If you have any questions please feel free to contact me at 805.772.4080 or ddugan@tenera.com.

Sincerely,



Dan Dugan  
Senior Biologist  
Tenera Environmental Inc.

**From:** [Sanderson, Brandon@Wildlife](mailto:Sanderson.Brandon@Wildlife)  
**To:** [Robinson, Daniel@Coastal](mailto:Robinson.Daniel@Coastal)  
**Cc:** ["Dan Dugan"](#)  
**Subject:** Black Hill Villas  
**Date:** Friday, October 24, 2014 5:51:55 PM

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Mr. Robinson,

Regarding our consultation with the California Coastal Commission in review of downward adjustments to the wetlands and riparian buffers required under the Morro Bay Local Coastal Plan (LCP) for the Black Hill Villas Project (Project) the California Department of Fish and Wildlife (CDFW) provides the following comments. A Lake & Streambed Alteration (LSA) Agreement was issued by the CDFW for the Project on August 29, 2013. This agreement was issued for five years beginning on the issue date and can be extended for up to five more years if the permittee submits a request before the agreement expires. However, the action requested by the permittee to develop within the Environmentally Sensitive Habitat Areas (ESHA) buffers for wetland and riparian habitat falls outside of the CDFW's jurisdiction under the LSA Program.

However, as a Trustee Agency under CEQA and as part of consultation required under the LCP, CDFW staff have visited the site on multiple occasions to assess the wetland and riparian habitat located on site and to evaluate the potential impacts the project may have on these resources. To the best of our knowledge it appears that encroachment of the wetland buffer associated with the saltgrass patch toward the north end of the Project occurs along a short section of the proposed sidewalk, a few feet within the required 100 foot buffer. Additionally, the ESHA located between the Quintana Project access road and South Bay Boulevard to the east of the Project was observed to be dominated by arroyo willow which the CDFW would define as consistent with riparian habitat. With the restoration proposed as part of the Riparian Enhancement Plan, along with interpretive signage proposed, it is the CDFW's position that the Projects minimal encroachment within these buffers would likely not present impacts to the riparian and wetland habitat located on and adjacent to the Project site. If you have further questions please feel free to contact me.

Thank you,

Brandon Sanderson

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Brandon Sanderson

Environmental Scientist

Department of Fish & Wildlife

3196 S. Higuera St., Suite A

San Luis Obispo, CA 93401

805-594-6141

[Brandon.Sanderson@wildlife.ca.gov](mailto:Brandon.Sanderson@wildlife.ca.gov)

<http://www.wildlife.ca.gov/>

\*\*\*Please note that as of Jan 1, 2013 our new name is the California Department of Fish and Wildlife (CDFW) and new department web and email addresses took effect.\*\*\*



**From:** [Cynthia Hawley](#)  
**To:** [Robinson, Daniel@Coastal](#); [Lester, Charles@Coastal](#); [Carl, Dan@Coastal](#); [Craig, Susan@Coastal](#); [Hansch, Susan@Coastal](#)  
**Subject:** violations related to second staff report for continued hearing re A-3-MRB-06-064  
**Date:** Monday, October 27, 2014 9:34:34 AM

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Dear Daniel,

I would like to enlarge on Save The Park's request for rescheduling of the continued hearing on agenda item No. A-3-MRB-06-064. This project was first scheduled to be heard by the Commission on February 13, 2014, was postponed to the Commission April 2014 meeting, and continued by the Commission to the upcoming November meeting. The project is on remand from the Superior Court of San Luis Obispo County's ruling on the Commissions approval of the same project. It was originally brought to the Commission on appeal from the City of Morro Bay's approval.

Since, as to our knowledge, the project is still the same project found by the Court to be inconsistent with the Morro Bay LCP, Save The Park certainly supports the staff recommendation to deny project.

However, my clients and I are concerned about three issues that are discussed more fully below.

First, you informed me that **a second staff report has been produced for the continued hearing**. I have found no statutory authority for production of a second staff report for a continued hearing. The first staff report is still attached to this project on the Commission's web site under "previous meetings" and is part of the administrative record of this project.

Second, based on the information we have received, the **second staff report was developed based solely on communications with the developer**. Please see below regarding Coastal Act §30335. Save The Park was not privy to the development of the second staff report.

Third, the **second staff report contains a re-designation or recommendation to re-designate ESHA to non-ESHA** without statutory notice and opportunity to comment and appeal at the administrative level.

We would prefer to discuss and resolve these matters with you before the hearing rather than to have to take them directly to the Commission. To provide the time to do this, we request a rescheduling of the hearing to (preferably) the February meeting or to the January meeting.

The production of a second staff report for a continued hearing raises multiple questions. What statute authorizes the writing of a second staff report for a continued hearing? Which staff report is valid? Who decides which staff report is valid? Under what conditions may a second staff report be written? What regulation provides for this procedure? What is the procedure for requesting a second staff report? May the appellant or any other interested person request a second staff report? What are the procedural requirements for writing one? What procedure is required related to public participation in development of a second staff report for a continued hearing?

One effect of taking a second staff report to the Commission for its decision on a continued hearing is denial of public due process rights.

In the case of a regular CDP application or an appeal to the Commission, the interested public and/or the appellant knows that a staff report will be prepared. The public has the opportunity to study all documents submitted into the record, to submit additional documents into the administrative record, and to submit analyses for consideration by staff prior to development of the staff report. Both sides get to participate in development of the staff report. All of these submissions are included with the staff report for review by the Commission before the hearing. This is all part of the open public administrative decision making process to which the public has a right and upon which coastal protection rests.

As you know, according to Coastal Act section 30006, the public has the right to fully participate in the decisionmaking process. Full participation means participation in all phases of the decisionmaking process including participation in the development of information and recommendations that reach the Commission in the staff report. The effect of writing a second staff report based entirely on communications with the developer is, among other violations, to entirely deny public participation in this phase of the administrative decision making process.

Next, the second staff report was based solely on evidence provided by, and communications with the developer. Save The Park had requested to be notified of communications with the developer but received no notification that these communications were taking place.

Additionally, Save The Park was not notified that a second staff report was to be written and was not notified as to the issues raised in second staff report. Far from "full participation", the public and Save The Park was denied the opportunity to study the substantive issues raised in the second staff report and to submit material and analyses regarding those issues. Again, Save The Park and the public were denied their due process rights to participate in this phase of the administrative decision making process.

Questions arise as to how this occurred. Did Mr. Colmer submit a request for a second staff report? How was the decision made to write a second staff report? Will the public and the Commission be notified that what they receive prior to the hearing is a second staff report?

Finally, even more disturbing is that we were informed that the second staff report re-designates or recommends the re-designation of ESHA to non-ESHA status. **This is a substantive matter at the heart of the Coastal Act that requires application of mandated procedures for notice and opportunity to comment and to appeal at the administrative level.**

Going forward with the re-designation as proposed would result in evasion of the entire public administrative review and decisionmaking process by which public coastal resources are protected. The ultimate result would be exposure of ESHA to elimination by development in a vacuum of public participation.

More questions arise. How was the decision made to even consider re-designation of ESHA? By whom and on what grounds was it decided to consider the re-designation? How was the decision to re-designate made and by whom? On what evidence was this decision made? How will the confusion caused by two

contradictory staff reports - both published as the staff report for this agenda item on the Commission's web site, be addressed?

In conclusion, please note that the Coastal Act explicitly prohibits staff communications such as those you describe with Mr. Colmer and allows communications with interested parties only related to matters of procedure. Please see §30335.1.

Again, we would like to resolve these issues prior to the Coastal Commission hearing and ask that the hearing be rescheduled to February or, if not possible, to January to provide time for this resolution.

Sincerely, Cynthia Hawley

**From:** Robinson, Daniel@Coastal  
**To:** ["Cynthia Hawley"](#)  
**Cc:** [Lester, Charles@Coastal](#); [Carl, Dan@Coastal](#); [Craig, Susan@Coastal](#); [Hansch, Susan@Coastal](#)  
**Subject:** RE: violations related to second staff report for continued hearing re A-3-MRB-06-064  
**Date:** Monday, October 27, 2014 2:52:00 PM

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Hi Cynthia –

This matter was postponed by the Commission in April. While the staff report for the April hearing represented the staff recommendation to the Commission based on the information in the record at that time, the report was not adopted by the Commission, so it does not constitute Commission findings. Staff always prepares staff reports before the hearing on an item, whether it was an item that was continued or postponed or a new item. The updated staff reports typically respond to any new information that has been submitted to Commission staff, whether by project proponents or opponents or both. Members of the public may submit comments and materials to Commission staff at any time before the staff report is issued as well as after the report is issued and before the hearing. This process is no different for postponed or continued items than it is when applications are initially heard by the Commission. In this case, as in other cases, Save the Park was welcome to submit comments to Commission staff regarding the proposed project at any time after the April hearing, and it may still provide comments on the staff report once it is issued.

Since the April hearing, we have continued to work on refining our understanding of the habitat issues associated with this project. That process has involved working with the Applicant's biologist, which is not atypical. We are finalizing a staff report and recommendation to be distributed this Friday. You were told the hearing was tentatively scheduled for November, and you will be noticed by mail when we send the notices out for the hearing later this week; and you have received, as you requested, the Applicant's updated habitat maps and email correspondence between staff and the Applicant since the project was last postponed. The project and project site have been heavily studied, and thus the refining information is hardly brand new, rather it is additional information being added to a voluminous record – a record you are very familiar with given the litigation and the materials prepared and distributed for the hearing in April. Barring the receipt of significant new information, we intend to keep this matter scheduled for the November hearing in Half Moon Bay as that is the hearing we have been targeting since April, as you are aware, and all parties have been working towards that since then.

Please let me know if you have additional questions or concerns,  
Thanks,  
Daniel

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**From:** Cynthia Hawley [mailto:[cynthiahawley@att.net](mailto:cynthiahawley@att.net)]  
**Sent:** Monday, October 27, 2014 9:34 AM  
**To:** Robinson, Daniel@Coastal; Lester, Charles@Coastal; Carl, Dan@Coastal; Craig, Susan@Coastal; Hansch, Susan@Coastal  
**Subject:** violations related to second staff report for continued hearing re A-3-MRB-06-064

Dear Daniel,  
I would like to enlarge on Save The Park's request for rescheduling of the continued hearing



From: [Cynthia Hawley](#)  
To: [Robinson, Daniel@Coastal](#); [Lester, Charles@Coastal](#); [Carl, Dan@Coastal](#); [Craig, Susan@Coastal](#); [Hansch, Susan@Coastal](#); [Schmeltzer, Hope@Coastal](#)  
Subject: violations related to second staff report for continued hearing re A-3-MRB-06-064  
Date: Wednesday, October 29, 2014 12:53:15 PM

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Dear Daniel,

We are disturbed that Commission staff has denied our request to have the hearing in the matter of Black Hill Villas rescheduled.

**Denial to reschedule is based on statements that are not true that we would like to correct.** Staff states that:

1. “You were told the hearing was tentatively scheduled for November ...”
2. “Barring the receipt of significant new information, we intend to keep this matter scheduled for the November hearing in Half Moon Bay as that is the hearing we have been targeting since April, as you are aware, and all parties have been working towards that since then.”

First, neither Save The Park nor I were ever told that the hearing was tentatively scheduled for November. We were not notified of the November hearing until the staff October 21, 2014 email.

Second, the staff statement that the November meeting has been targeted for the hearing since April is directly contradicted by the August 21, 2014 letter to Mr. Colmer in which *his request to have the hearing rescheduled from the October 2014 meeting to the November meeting was granted by staff*. We were not noticed that the hearing had been scheduled for the October meeting.

Third, as to Staff's statement "... as you are aware...", again, we were aware of nothing until October 21, 2014 when I received the email asking if I still represented Save The Park.

Fourth, the statement that "...all parties have been working towards.." the November date since April, is simply not true. Appellant Save The Park was notified of nothing and was informed of nothing. By Staff's own account – the November hearing was a *developer-requested reschedule from October*.

Time was provided for production of the second staff report to be written based entirely on cooperative work with the developer.

After the April meeting, appellant Save The Park members and I expected that the hearing would be re-scheduled as soon as possible during the summer. Instead, the continuance or postponement provided time for staff to work through the summer with the developer to develop a second staff report and to eliminate ESHA designation for the raptor habitat in a vacuum of public awareness and public participation.

In addition, an August 21, 2014 letter from Staff to Mr. Colmer grants Mr. Colmer's request for the hearing to be moved from the October 2014 meeting to the November meeting. The statement is made that Staff looks "...forward to continuing to work with the Applicant on this project." We were never notified that Commission staff was working on an ongoing cooperative basis with the developer on this project and appellant and the public have been effectively denied the right to submit, over the same period of time, materials and comments to contribute to the production of the second staff report.

**Rescheduling the hearing to a time and location convenient to Save The Park is required under these circumstances pursuant to CCR§13074.**

Staff also states that “This matter was postponed by the Commission in April.” The November date is a *developer-requested reschedule* from a postponement of the April hearing to October, and CCR §13074 applies. This section states that the Executive Director “*shall*, to the extent feasible schedule further consideration of the application by the commission at a time and location convenient *to all persons interested in the application.*” Use of the word “shall” means mandatory such that the rescheduling is *required unless it is unfeasible*.

Please note that §13074 also mandates that “[N]otice of the rescheduled hearing *shall* be distributed to the persons and in the manner provided for in section 13063.” Save The Park was not notified when the October 2014 was rescheduled to November. Section 13074 is provided in full below for Staff’s convenience.

§ 13074. Rescheduling.

Where consideration of an application is postponed, the executive director shall, to the extent feasible, schedule further consideration of the application by the commission at a time and location convenient to all persons interested in the application. Notice of the rescheduled hearing shall be distributed to the persons and in the manner provided for in section 13063.

**As to the propriety of a second staff report prepared for an**

**already-agendized and postponed or continued hearing, Staff's statements are addressed individually below.**

Staff stated that “[W]hile the staff report for the April hearing represented the staff recommendation to the Commission based on the information in the record at that time, the report was not adopted by the Commission, so it does not constitute Commission findings.” We are not talking about or challenging post-hearing findings.

It was also stated that “[S]taff always prepares staff reports before the hearing on an item, whether it was an item that was continued or postponed or a new item.” What staff always does is not the issue. The issue is what staff is authorized to do by statute and required to do procedurally by the Commissions regulations to ensure protection of coastal public resources.

It is stated that “[S]ince the April hearing, we have continued to work on refining our understanding of the habitat issues associated with this project. That process has involved working with the Applicant’s biologist, which is not atypical.”

This process of working in isolation with the developers biologist to "refine" staff's understanding of what is and is not ESHA may not be "not atypical" but it happens to be explicitly prohibited by Coastal Act 30335.1.

Staff states that the process for preparation of a second staff report “... is no different for postponed or continued items than it is when applications are initially heard by the Commission.” The process *is* different. Between application or appeal and the hearing that follows,



the developer and interested members of the public have the same time during which they may submit information, data, and testimony into the record for inclusion into the staff analysis of whether the project is or is not consistent with the LCP and / or Coastal Act. That did not happen in this case. There was no procedure.

By the time we were notified, staff had worked with the developer over a period of months and the re-designation, or recommendation to re-designate ESHA was a done deal.

We will be submitting a PRA request for all communications and records related to this matter.

The crux of the matter is the lack of identified authority and procedure by which a new staff report may be produced for a continued, postponed, or rescheduled hearing – especially one that makes a substantive change by, for example, recommending the elimination of an ESHA designation. The effect of producing a second staff report in isolation without notice is to reduce or eliminate public participation in, and contribution to the preparation of the staff report. The effect of producing a second staff report in isolation with the developer is to produce a staff report for the benefit of the developer and the detriment of public coastal resources.

**The project must comply with the Ruling and Order as set forth in the June 21, 2010 writ of mandate in the case of Save The Park v. California Coastal Commission (CV 080410).**

The project re-submitted for Commission review must comply with the Ruling and Order as set forth in the June 21, 2010 writ of mandate in

the case of *Save The Park v. California Coastal Commission* (CV 080410).

The Court in this case required the Coastal Commission to revoke its approval of the Black Hill Villas project until “... appropriate studies are undertaken, adequate ESHA boundaries are determined, and adequate findings are articulated in the record” and “to undertake any further proceedings in a manner consistent with this Ruling and Order.”

**The Coastal Commission is not authorized to eliminate ESHA status of the raptor habitat at the site.**

Staff stated that ESHA raptor habitat will be re-designated as non-ESHA.

The Court ruling contains a lengthy discussion related to the identification of ESHA. The Court noted that the Commission “...has the authority and obligation to delineate and protect ESHA when it reviews the issuance of coastal development permits in Morro Bay under the Land Use policies 11.22 and 11.05.” These sections provide Commission authority to *delineate and protect ESHA that had not been previously delineated*. The Morro Bay LCP *does not provide authorization for the Commission to remove ESHA status from an area that is currently delineated as ESHA*.

This project was brought to the Commission on appeal and issuance of a permit rests on a finding that the project is consistent with the Morro Bay LCP.

Save The Park supports the staff recommendation to deny the Morro Bay Black Hill Villas project unconditionally.

**Serious concerns remain.**

Many questions remain unanswered including those regarding the statutory and regulatory procedures for preparation and use of a second staff report. We ask that we be given additional time to prepare for the hearing. We wish to avoid raising our concerns directly to the Commission and ask that staff act to "schedule further consideration of the application by the commission at a time and location convenient to all persons interested in the application" as required by CCR §13074. Otherwise it is hard to avoid the reality that the developer was allowed months to influence the second staff report, that Save The Park had no idea the report was being written and no opportunity to participate, and that the appellant dedicated to protecting coastal resources gets three weeks notice of the hearing, and 10 days after receipt of the staff report to produce and submit comments and prepare for the hearing.

As discussed above, unless rescheduling the hearing is "infeasible" the Commission is required under CCR 13074 to reschedule to a date that is convenient for appellant Save The Park which is, for location and timing, February. While the Coastal Act does not define "infeasible", at §30108 "Feasible" means "capable of being accomplished in a successful manner within a reasonable period of time, taking into account economic, environmental, social, and technological factors."

Sincerely,

Cynthia Hawley

Attorney for Save The Park



**From:** [Cynthia Hawley](#)  
**To:** [Robinson, Daniel@Coastal](#)  
**Cc:** [Lester, Charles@Coastal](#); [Carl, Dan@Coastal](#); [Craig, Susan@Coastal](#); [Hansch, Susan@Coastal](#); [Reed, Jessica@Coastal](#)  
**Subject:** Grounds to postpone / reschedule to February 2015\_Black Hill Villas A-3-MRB-06-064  
**Date:** Wednesday, November 12, 2014 3:39:31 PM

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Dear Daniel,

You mentioned in your email that postponing the hearing until December – a one month postponement equal to the one month postponement given to Mr. Colmer – would provided fairness. A closer look at the situation shows not only a pervading lack of fairness but multiple violations of law related to Save The Park's and the public's due process and statutory rights to participate in all phases of the land use planning process.

Please consider the following.

According to the records that I have reviewed, your office has been working with Mr. Colmer since at least July 2014 on matters from which we and the public were excluded. Your office notified Mr. Colmer in early October that the staff report (of which we knew nothing) was being finalized and that he would receive a copy "soon". Coastal staff has communicated with Mr. Colmer and his agents about the ESHA on the site, about buffers and set-backs.

In an statement intended to justify the writing of a second staff report in this matter, staff stated that "... the staff report for the April hearing represented the staff recommendation to the Commission based on the information in the record at that time..." indicating that the current staff report is based on information produced by Mr. Colmer since the April meeting.

In violation of due process and statutory rights to full participation in all phases of the land use planning process, the staff report and the collaborative work in preparation for it have taken place **privately** between staff and Mr. Colmer and his agents. Save The Park was not notified of communications by Mr. Colmer, was not notified that staff was working directly with Mr. Colmer and his agents, was not provided any of the documents produced by Mr. Colmer, and was not notified that a new staff report was being written. Private land use planning is in direct violation of the legislative finding and declaration of the public's "**right to fully participate** in decisions affecting coastal planning, conservation, and development ..." See §30006 below.

The regulation for the preparation of staff reports at CCR §13057 comports with §30006 and provides the procedure by which the statutory mandate for **full participation** is carried out. Section 13057 explicitly states that the staff report **shall** include, among other things, "[A] copy or summary of public comments on the application" and "[R]esponses to significant environmental points raised during the evaluation of the proposed development as required by the California Environmental Quality Act."

Therefore, full public participation means the right, prior to completion of the staff report, to submit comments related to the proposed project, to have those comments either summarized in the staff report or attached to the staff report, and to submit responses to environmental issues and to have those responses included as required by CEQA. Save The Park and other interested members of the public were denied these rights because the staff report was written in collaboration with the developer in private.

These requirements for public participation in land use planning permeate California planning law. They are strongly expressed in the California Government Code and case law where the importance of and requirement for public participation at **every level** of the land use planning process is emphasized. The well established legislative policy declaration, codified at Government Code §65033, states that “The Legislature recognizes the importance of public participation at **every level of the planning process.**”

In *Concerned Citizens of Murphys v. Jackson* (1977) 72 Cal.App.3d 1021, 1026, the Court confirmed the importance of public participation in land use planning at every level of the planning process as declared in Government Code §65033. It concluded that:

These sections express a **clear legislative intent that planning agencies insure participation by the public in the planning process.** They do not by any stretch of the imagination indicate a desire on the part of the Legislature that the right to participate in every phase of the planning process be restricted in any way.

Please note that the public’s statutory right to fully participate in the land use decision making process is linked to the strict statutory limitation to the communications Commission staff may have with applicants and interested parties. Under Coastal Act §30335.1, the assistance staff may provide to applicants and interested parties is **limited to matters of procedure** “... and **shall not** extend to advice on substantive issues arising out of the provision of ...” the Coastal Act. Note that under the Public Resources Code “shall” means mandatory, not discretionary.

In this case, staff worked directly, in excess of its limited authority and in violation of the prohibition, on substantive issues with the developer and the effect was denial of Save The Park’s and the public’s statutory due process rights to fully participate in the pre-staff report phase of the public planning process for this project.

Proceeding with the second unlawful staff report will cause confusion, additional unfairness, and further ripple-effect violations.

For example, as mentioned above, Mr. Colmer’s documents, consultant reports and conclusions submitted since the April meeting date **must** be either attached to the staff report provided to the Commissioners in the agenda packet or summarized in the report.

Save The Park intends, and has the remaining statutory right, to submit information, analyses and documentation to the Commission in enough time for it to also be attached to the staff report in the agenda packet.

However, rescheduling the hearing to December would effectively deny Save The Park's §30006 right to full participation to submit documents for attachment to the staff report because there simply would not be enough time.

Save The Park will not even receive all documents in the record related to Mr. Colmer's communications until November 17<sup>th</sup>. The request casts a broader net in terms of the time period – from the date of the court ruling to the present. With the staff report released at least 10 days before the hearing pursuant to CCR §13063, Save The Park would be left with more or less a week, depending on the deadline for submission, to analyze all materials provided in response to the PRA request and to write a report with time to get it included with the staff report. Looking at this situation strictly as a fairness issue, the time and communications that have been afforded the developer in this case are in stark contrast to the proposal to limit Save The Park's time to participate to less than two weeks. On fairness, please consider the following.

<!--[if !supportLists]-->” <!--[endif]-->We, Save The Park and I, have no idea what is in the staff report. Mr. Colmer has had a copy since sometime in early October according to an October email from your office saying it would be sent soon.

<!--[if !supportLists]-->” <!--[endif]-->We do not know whether the project has been changed. Mr. Colmer does.

<!--[if !supportLists]-->” <!--[endif]-->We do not know how the new staff report differs from the original staff report. Mr. Colmer does.

<!--[if !supportLists]-->” <!--[endif]-->We do not know the grounds on which staff supports changing or recommending the change of ESHA to non-ESHA. Mr. Colmer does.

<!--[if !supportLists]-->” <!--[endif]-->We do not know if or how the staff report has been changed to address, for example, setbacks and buffers. Mr. Colmer does.

<!--[if !supportLists]-->” <!--[endif]-->We do not know what is in the entire record of documents produced by Mr. Colmer and his agents. Mr. Colmer does.

<!--[if !supportLists]-->” <!--[endif]-->We do not know if the project brought forward by Mr. Colmer conforms to the Ruling and Judgment issued by the Court. Mr. Colmer does.

Given these disparities, allowing Save The Park a one month postponement to match Mr. Colmer's one month postponement from October to November hardly comes close to leveling the playing field.

Again, please note that the public's right to full participation pursuant to Coastal Act §30006

is carried out in the Commission's regulations at CCR §13074. That section states that "... where consideration of an application is postponed "... staff "**shall**... schedule further consideration of the application by the commission at a time and location convenient to **all persons** interested in the application." Pursuant to these laws, staff has a duty to postpone the hearing to the February meeting in Pismo Beach or to some other time and location convenient to Save The Park and Mr. Colmer.

Based on the above, Save The Park points out that the second staff report is unlawful, is void as in excess of staff's authority, and should be set aside. Save The Park requests that the matter be rescheduled /postponed to the February meeting in Pismo Beach or a future meeting convenient for all parties. We ask that the hearing should proceed based on the staff report that was already provided to the Commission at the February and April meetings, or that the process to amend the staff report should be subjected to the proper public procedure with public input to the staff report as a draft.

In addition, we want to note that on the April 2014 agenda, the project is listed as a "coastal permit application" instead of an appeal. This case was brought to the Coastal Commission on appeal by Save The Park in order to protect the bordering State Park land and the sensitive and protected habitat on and down stream from the site. While the appeal is processed as an application pursuant to the regulations, there is no previous "application" to the Commission by Mr. Colmer or any of his companies. In order to reflect reality, Save The Park requests that it be listed accurately as an appeal on remand from the Superior Court.

Applicable text of the laws cited is below.

We appreciate your consideration of these matters.

Cynthia

[Division 20. California Coastal Act](#)

[Chapter 4. Creation, Membership, and Powers of Commission and Regional Commissions](#)

[Article 3. Powers and Duties](#)

§ 30335.1. Employees to give procedural assistance

The commission shall provide for appropriate employees on the staff of the commission to



assist applicants and other interested parties in connection with matters which are before the commission for action. The assistance rendered by those employees shall be limited to matters of procedure and shall not extend to advice on substantive issues arising out of the provisions of this division, such as advice on the manner in which a proposed development might be made consistent with the policies specified in Chapter 3 (commencing with [Section 30200](#)).

§ 30006. Legislative findings and declarations; public participation

The Legislature further finds and declares that the public has a right to fully participate in decisions affecting coastal planning, conservation, and development; that achievement of sound coastal conservation and development is dependent upon public understanding and support; and that the continuing planning and implementation of programs for coastal conservation and development should include the widest opportunity for public participation.

§ **13074**. Rescheduling.

Where consideration of an application is postponed, the executive director shall, to the extent feasible, schedule further consideration of the application by the commission at a time and location convenient to all persons interested in the application. Notice of the rescheduled hearing shall be distributed to the persons and in the manner provided for in section 13063.

§ **13057**. Preparation of Staff Reports.

(a) The executive director shall prepare a written staff report for each application filed pursuant to section 13056.... The staff report shall include the following:

.....

(4) A copy or summary of public comments on the application;

....

(c) The staff's recommendation required by subsection (a)(6) above shall contain:

....

(3) Responses to significant environmental points raised during the evaluation of the proposed development as required by the California Environmental Quality Act.

**From:** [Cynthia Hawley](#)  
**To:** [Robinson, Daniel@Coastal](#); [Lester, Charles@Coastal](#); [Carl, Dan@Coastal](#)  
**Subject:** request for rescheduling  
**Date:** Friday, October 24, 2014 4:59:09 PM

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Hi Daniel,

Save The Park is requesting that this hearing to be rescheduled.

This is a hearing that has **been continued**. Mr. Lester told us that this hearing would be continued. The hearing that was scheduled for April must be continued with the same staff report. This is a postponement of production of the staff report. The April hearing must be continued. If you disagree, I request time to address this legal issue.

Even it was a new hearing with a new staff report, we have been totally excluded from the process to our detriment since Mr. Colmer has had all the time in the world since April to submit documents and discuss with you an amended staff report and we have just been given notice of a continuance - not a whole new staff report.

This is a huge amount of material that we need to respond to and a very short time until the hearing. Madeline had agreed to notify us immediately of all contacts by and all materials submitted by Mr Colmer. I understand that there have been staff shifts but in any case we did not get this material until now.

This is a formal request for this continuance to be rescheduled so that we have time to respond these problems.

Thank you, Cynthia



April 4, 2014

Steve Kinsey, Chair  
Honorable Coastal Commissioners  
California Coastal Commission  
45 Freemont Street, Suite 2000  
San Francisco, CA 91405

Re: A-3-MRB-06-064 (Wayne Colmer)

Agenda Item: 10B, Wednesday April 9, 2014

Dear Chair Kinsey and Commissioners,

D.B. Neish, Inc. represents Wayne Colmer, the applicant for the Black Hill Villas residential project in Morro Bay. I write to request that the Commission grant a continuance of the hearing on Mr. Colmer's application, which is currently set for April 9, 2014.

This application has considerable history. The application was filed in December 2006 and the Commission approved it, with conditions, in March 2008. The Commission was sued and in June 2010, the Superior Court granted a writ of mandate and remanded the application to the Commission. The court required additional study and review and comment by the California Department of Fish and Wildlife (CDFW), a determination of ESHA boundaries, and more detailed findings.

Mr. Colmer received limited communication from Staff for some time until out of the blue he received a Staff Report for the February 2014 hearing recommending denial. He exercised automatic right of postponement to respond to the Court ruling and to provide Staff with additional studies, the consultation required with CDFW, a more detailed determination of ESHA boundaries, and other information bearing on his project. We also sought to meet with Staff to discuss the project, but Staff declined and indicated that we were free to submit additional information but that their recommendation for denial would not change. During a March 13 phone call with the Staff analyst for the project, we requested the project not be agendized for the April hearing so that we could complete our studies and finalize our project enhancements. Staff declined this request and said we would be on the April agenda even though there are no timeline demands for the project to be heard by.

This matter is not ready to be heard by the Commission. The Staff Report has numerous factual inaccuracies and omissions on issues raised by the application. The applicant also is in the process of responding to the Court's ruling and preparing updated reports and information which bear directly on our view that this application is consistent with the Coastal Act and LCP and should be approved, not denied, as Staff is recommending.



We respectfully submit that because this matter has been once to court, prudence dictates that the Commission get the right facts and make the right decisions on remand. A continuance is appropriate to enable the applicant to respond to the court's concerns and additionally because a continuance of the hearing would not be prejudicial to anyone.

Please give us the opportunity to fairly respond to the Staff Report and grant the continuance. We sincerely appreciate your consideration.

Sincerely,

David B. Neish  
D.B. Neish, Inc.  
President



**August 21, 2014**

Wayne Colmer  
Colmer Construction  
23679 Calabasas Road, Suite 333  
Calabasas, CA 91302

***Subject:*** Commission Hearing Dates for CDP Application No. A-3-MRB-06-064

Dear Mr. Colmer,

This letter is to confirm your request (via phone call on August 5, 2014) to have CDP application number A-3-MRB-06-064 (Black Hill Villas) heard at the November hearing, instead of the October hearing, as Commission staff had proposed. Per your request, Coastal Commission staff will tentatively target the November (12-14) hearing in Half Moon Bay.

Please do not hesitate to contact me at the address or phone number above. We look forward to continuing to work with the Applicant on this project.

Sincerely,

Daniel Robinson,  
Coastal Program Analyst  
Central Coast District

**June 6, 2014**

Wayne Colmer  
23679 Calabasas Rd #333  
Calabasas, California 91302

**Subject: A-3-MRB-06-064 (Black Hill Villas)**

Dear Mr. Colmer:

The purpose of this letter is to provide you with information on next steps regarding the Black Hill Villas coastal development permit (CDP) application (CDP application number A-3-MRB-06-064), and to clarify some of the history for which there appears to have been some recent confusion.

In terms of next steps, on April 10, 2014, the California Coastal Commission (Commission) continued CDP application number A-3-MRB-06-064 at your request. We are currently targeting the Commission's October meeting in the Los Angeles area for a hearing on this matter because it is as close to Morro Bay as the Commission will be meeting for some time, and we want to facilitate local participation as much as possible. We request that you provide any additional materials that you would like to submit for review no later than August 1, 2014 so that we can make this meeting calendar. If we can receive the materials by that time, then we will have ample time to review your materials and to meet with you and/or your representatives before staff reports are published in September for the October hearing.

In terms of the project history, we understand that you and your representative, Dave Neish, have expressed frustration to Commissioners regarding your interactions with staff, including alleging that we have refused to meet and/or discuss your proposed project with you, and the length of time that the process has taken. Those claims are puzzling to us as they do not seem to correspond to the process that we have been engaged in with you.

From our perspective, we have been working with you to get this to hearing ever since the matter was remanded to the Commission by the court in 2010, including summarizing for you at that time the steps necessary (including the information/materials required by the court) to agendaize the matter for a hearing. We had significant back and forth on the information/materials with you, and you ultimately submitted the last of the required information/materials in the fall of 2013. Shortly thereafter, we informed you in January 2014 that we had reviewed and evaluated the proposed project, including the court required information/materials, and that we were intending to recommend denial of the CDP for the project. We provided this information to you well in advance of any staff report so that you were clear on where we were headed and why. At that point, and at your request, the hearing in February was postponed.

We then scheduled the item for the April hearing in Santa Barbara because that was the next most local hearing and there is significant local interest in the matter. Your representative, Dave Neish, then requested a meeting to discuss the project and our recommendation. We met with Mr. Neish via phone on March 13, 2014. At that meeting we discussed our denial recommendation, and you indicated that you would be submitting information on reducing the width of the accessway/driveway and increasing the amount of stormwater runoff capture on the property. As indicated to you at that meeting, we welcomed any additional information and project changes to reduce coastal resource impacts, but that because the entire accessway/driveway was proposed to be located in the required ESHA buffer inconsistent with the LCP, such changes wouldn't alter that fundamental LCP inconsistency, and thus wouldn't change the staff recommendation. You indicated at that time that you understood, but that you still intended to submit the additional information and project changes for our review. To date, we have not received any such information or materials from you.

Thus, the item continued to be scheduled for the April hearing in Santa Barbara. Ultimately, the April hearing too was postponed at your request.

We now find ourselves in a position where you have known our recommendation and the reasons for it for at least six months. As has been the case over that entire time, we would be happy to consider any new information regarding your project that you would like to submit, and we would be happy to meet with you and/or your representatives to discuss the project and our recommendation. Because we are currently targeting the Commission's October meeting in the Los Angeles area, there is ample time for both. But, as indicated, we need to see any information by August 1, 2014 to make any exchange of information and/or meetings as fruitful as possible. Please let us know if you would like to meet or intend to submit information so we that we can make sure to allot time to have such back and forth well in advance of hearing prep for October. Given the approximate three month buffer here, we have ample time for that, but we encourage you not to wait until the last minute to engage with us.

If you have any questions or would like to discuss this matter further, please don't hesitate to contact me at (831) 427-4863, or by email at [daniel.robinson@coastal.ca.gov](mailto:daniel.robinson@coastal.ca.gov). We look forward to working with you to bring this matter to hearing.

Sincerely,

Daniel Robinson  
Coastal Planner  
Central Coast District

cc: Dave Neish, DB Neish, Inc. California Coastal Consultants  
Rob Livick, City of Morro Bay

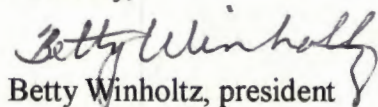
February 5, 2014

Dear Commissioners:

SAVE THE PARK heartily supports the CCC staff recommendation for denial. We appreciate the use of more recent studies to describe current environmental conditions (as stated in the court decision quoted below). The new data necessarily leads to the factually-supported conclusions in each environmental category. In addition, the report clearly lists a range of possible next steps for the developer.

As a result, we urge you to support staff's recommendation, backed by analysis, to deny.

Sincerely,



Betty Winholtz, president

cc: Daniel Robinson, Santa Cruz CCC

"In one fundamental area, however, the Commission's decision is inscrutable. Under the law, the Commission is obligated to know precisely what type of Environmentally Sensitive Habitat Areas are at issue and where they are located before giving its approval to any development nearby. The Commission's own findings with respect to Black Hill Villas proves that the biological surveys undertaken by the project proponent were inadequate to the task....Stated another way, without such knowledge, all development on the property will presumptively disrupt and disturb ESHAs."

(*SAVE THE PARK v. CCC*, page 3)

"In supplemental briefing and at the second oral argument, the Commission also urged that it had no jurisdiction to amend the Morro Bay LCP map to expand the range of protection of ESHA. This assertion is irrelevant in light of the Commission's admission that it indeed had the authority and obligation to delineate and protect ESHA when it reviews the issuance of coastal development permits in Morro Bay under land use policies 11.22 and 11.05. (See Attorney General's letter brief filed March 23, 2010 at p.2) The Commission did not adequately delineate or protect ESHA during its review process in this case.

"Moreover, when a Land Use Plan defines ESHA through the biological review process, the Commission has authority to delineate ESHA during a coastal development appeal (*LT-WR, LLC, v. California Coastal Com.* (2007) 152 Cal.App.4th 770,793.) The Morro Bay LCP contains just this sort of language in Policy 11.05, which the court of appeal discussed as follows: "Therefore, under the controlling LUP, the fact the subject property was not mapped as ESHA does not preclude it from being designated as an ESHA, provided it meets the appropriate criteria for such a designation. (*Id.*)"

(*SAVE THE PARK v. CCC*, page 15)

**RECEIVED**

FEB 06 2014

Exhibit 10  
CALIFORNIA  
ASSEMBLY  
COASTAL COMMISSION  
Page 46 of 46



FORM FOR DISCLOSURE  
OF EX PARTE  
COMMUNICATIONS

Date and time of communication: 11:00 - 11:12 AM / 11/6/14

Location of communication: VIA PHONE TO MARIN COUNTY CIVIC CENTER  
(If communication was sent by mail or  
facsimile, indicate the means of transmission.)

Identity of person(s) initiating communication: DAVID NEISH

Identity of person(s) receiving communication: STEVE KINSEY  
BLACK HILLS VILLA

Name or description of project: Colmer / 22A Th / Nov. 2014 / POSTPONED

Description of content of communication:

(If communication included written material, attach a copy of the complete text of  
the written material.)

MR. NEISH CALLED TO EXPRESS SOME CONCERN THAT THE  
MATTER HAD BEEN POSTPONED. HE ALSO OBSERVED THAT  
HIS CLIENT HAD NOT BEEN GIVEN A STAFF REPORT, YET AN  
ATTORNEY FOR THE APPELLANT HAD SUBMITTED A LETTER  
TO STAFF EXPRESSING APPRECIATION FOR THE STAFF  
RECOMMENDATION.

11/6/14  
Date

SK Kinsey  
Signature of Commissioner

# FORM FOR DISCLOSURE OF EX PARTE COMMUNICATIONS

Name or description of project, LPC, etc.: Colmer Project  
Date and time of receipt of communication: 10/20/14 10:00 am  
Location of communication: ~~San Diego~~ Morro Bay  
Type of communication (letter, facsimile, etc.): In Person  
Person(s) initiating communication: David Neish

Detailed substantive description of content of communication:  
(Attach a copy of the complete text of any written material received.)

on a site visit I discussed with  
Mr. Neish and Mr. Colmer the adjudicated  
history of the project. They articulated  
their concerns regarding the issue of  
whether the neighboring creek is "urban"  
or "rural." They maintain it is urban.  
They are therefore concerned about the  
setbacks required by staff's designation.

10/25/14  
Date

Pat Howell  
Signature of Commissioner

If the communication was provided at the same time to staff as it was provided to a Commissioner, the communication is not ex parte and this form does not need to be filled out.

If communication occurred seven or more days in advance of the Commission hearing on the item that was the subject of the communication, complete this form and transmit it to the Executive Director within seven days of the communication. If it is reasonable to believe that the completed form will not arrive by U.S. mail at the Commission's main office prior to the commencement of the meeting, other means of delivery should be used, such as facsimile, overnight mail, or personal delivery by the Commissioner to the Executive Director at the meeting prior to the time that the hearing on the matter commences.

If communication occurred within seven days of the hearing, complete this form, provide the information orally on the record of the proceeding and provide the Executive Director with a copy of any written material that was part of the communication.

Exhibit 11

A-3 MRB 06-064

Page 2 of 6

FORM FOR DISCLOSURE  
OF EX PARTE  
COMMUNICATIONS

Received at Commission  
Meeting

APR 11 2014

From: \_\_\_\_\_

Date and time of communication: April 6, 2014 at 6pm

Location of communication: Los Angeles

(If communication was sent by mail or  
facsimile, indicate the means of transmission.)

Identity of person(s) initiating communication: \_\_\_\_\_

Identity of person(s) receiving communication: Effie Turnbull Sanders

Name or description of project: Colmer Morro Bay

W 106 No A-3-MRB-06-064

Description of content of communication:  
(If communication included written material, attach a copy of the complete text of the written material.)

MR. Kaufman stated that the item may be  
on the consent calendar and did not require a  
great deal of conversation. He stated he was not  
agreement with the staff report and that it may  
be postponed.

Date

4/9/14

Signature of Commissioner

Effie Turnbull Sanders

If communication occurred seven (7) or more days in advance of the Commission hearing on the item that was the subject of the communication, complete this form and transmit it to the Executive Director **within** seven (7) days of the communication. If it is reasonable to believe that the completed form will not arrive by U.S. mail at the Commission's main office prior to the commencement of the meeting, other means of delivery should be used, such as facsimile, overnight mail, or personal delivery by the Commissioner to the Executive Director at the meeting prior to the time that the hearing on the matter commences.

If communication occurred within seven (7) days of the hearing, **complete** this form, provide the information **orally** on the record of the proceeding **and** provide the Executive Director with a copy of any written material that was part of the communication.

## DISCLOSURE OF EX PARTE COMMUNICATIONS

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**Date and time of receipt of communication:**

April 4, 2014 at 11:00 am

**Location of communication:**

Phone

**Type of communication:**

Teleconference

**Person(s) in attendance at time of communication:**

Dave Neish

**Person(s) receiving communication:**

Carole Groom

**Name or description of project:**

Item W10b – CDP Application No. A-3-MRB-06-064 (Colmer, Morro Bay)

**Detailed substantive description of the content of communication:**

Mr. Neish, representing the applicant, requested a continuance of this item because they are still compiling materials for the Coastal Commission. He indicated that the applicant is adding two components to the proposal that are not currently included – water quality enhancements to control runoff from the road and habitat restoration plan for the creek. Mr. Neish indicated that the applicant requested a postponement from staff in order to include the elements but it was denied.

Mr. Neish also indicated that there is a fundamental disagreement between the two parties in the interpretation of the site use and location of the road in proximity to the creek. He indicated that the LCP requires the road have a 50 foot setback from the creek in an urban area, which he indicated this site is. However, staff interprets the site to be wetlands, which requires a 100 foot setback.

**Date:** Apr 7 2014

**Signature of Commissioner:** \_\_\_\_\_

Carole Groom



Received at Commission Meeting

APR 11 2014

# FORM FOR DISCLOSURE OF EX PARTE COMMUNICATIONS

Rec'd @ Mtg  
4/10/14

Name or description of project, LPC, etc.:

W106-Colmer

Date and time of receipt of communication:

4/4 - 3:15

Location of communication:

Type of communication (letter, facsimile, etc.):

Telephone

Person(s) initiating communication:

David Keist

Detailed substantive description of content of communication:

(Attach a copy of the complete text of any written material received.)

Requesting a continuance. Usually, not a problem, but staff does not want to.

12/13 - Dan Robinson calls applicant in late Jan 30. "Staff report out 2/1 & will be on Pismo B agenda". Surprised by denial. Agreed for

4/4/14

Date

J. Boches

Signature of Commissioner

If the communication was provided at the same time to staff as it was provided to a Commissioner, the communication is not ex parte and this form does not need to be filled out.

If communication occurred seven or more days in advance of the Commission hearing on the item that was the subject of the communication, complete this form and transmit it to the Executive Director within seven days of the communication. If it is reasonable to believe that the completed form will not arrive by U.S. mail at the Commission's main office prior to the commencement of the meeting, other means of delivery should be used, such as facsimile, overnight mail, or personal delivery by the Commissioner to the Executive Director at the meeting prior to the time that the hearing on the matter commences.

If communication occurred within seven days of the hearing, complete this form and provide the information orally on the record of the proceeding and provide the Executive Director with a copy of any written material that was part of the communication.

following week so get auto-  
matic ~~postment~~ <sup>postment</sup>

Applicant revised plan.  
At issue is a drainage ditch  
that ponds during rains. Road-dirt-  
(70+ yrs old) want to improve.  
Road is in 100' buffer area - Road serves 2 properties  
In March, Dave calls & pays <sup>↓ only way to access</sup>  
Wants time to finalize enhance-  
ments & come & meet. Staff (Marilyn  
Cavaleri) refused to meet & said had  
no intention to change "dual"  
recomm'd. Asked not to be  
on April agenda so could finalize  
plans.