

CALIFORNIA COASTAL COMMISSION

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F11b



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APPEAL STAFF REPORT

SUBSTANTIAL ISSUE DETERMINATION & DE NOVO HEARING

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

Applicant..... Wayne Colmer

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

Local government City of Morro Bay

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

Project location 485 and 495 South Bay Boulevard, between South Bay Boulevard and Quintana Road, the Black Hill Natural Area portion of Morro Bay State Park, and the Blue Heron Mobile Home Park, and adjacent to the Chorro Flats Restoration Area, just over a mile inland from the shoreline in Morro Bay, San Luis Obispo County (APN 066-371-003).

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

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

Staff recommendation . **Substantial Issue Exists; Approve with Conditions**

Summary of staff recommendation: The City of Morro Bay approved a coastal development permit authorizing the subdivision of two existing parcels into 17 residential lots ranging from 3,000 square feet to slightly more than 6,100 square feet in size, and one common area parcel approximately 51,000 square feet in size (to accommodate an access roadway, and also covering a portion of a non-developable area of the site). Each residential lot would be developed with a residential unit: fifteen detached two-story single family residences (with two car garages) of either 1,704 square feet or 1,895 square feet in size, and two townhouse units each consisting of three bedrooms, two baths, and 1,150 square feet (and that meet the County's standards for affordable units). As approved by the City, the



California Coastal Commission
November 16, 2007 Meeting in San Diego

Staff: Mike Watson Approved by:
F11b-11-2007

project involves grubbing and grading of the majority of the site, including re-contouring the upper slopes of an intermittent stream and drainage course that traverses the northern edge of the property. The submitted appeals raise concerns that the City-approved project does not conform to the resource protection, visual resources, and access and recreation policies of the certified LCP.

The LCP allows only resource dependent development in environmentally sensitive habitat areas (ESHAs), prohibits significant disruptions of ESHA, prohibits subdivision in ESHA, and requires new development to be appropriately sited and designed and adequately setback from such sensitive habitat areas in order to avoid impacts resulting from such development. The drainage channel/intermittent stream and associated riparian habitat on the site are ESHA per the LCP. The LCP requires a minimum 100-foot development setback from these ESHAs. The project as approved by the City includes subdivision in ESHA, development directly adjacent to the ESHA/stream (slope alteration, grading, and toe protection along the active channel) and residential development within 65 feet of this ESHA area. In addition, some trees have already been removed in this area within the past several years (and without coastal permits). As such, the approved project is inconsistent with the LCP.

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

The LCP requires new development adjacent to State Park and recreation lands be setback to preserve the continuity of the park and avoid degradation of said park lands. The site is immediately adjacent to the Black Hill Natural Area, a 300-acre natural preservation area that is part of Morro Bay State Park. Black Hill Natural Area is mostly comprised of coastal sage scrub and maritime chaparral communities, that are also ESHA per the LCP, and Black Hill itself (between subject site and the shoreline) is categorically ESHA per the LCP. The project as approved by the City includes residential structures within five feet of the Black Hill Natural Area. Given current (and potential future) fire safety standards, including those currently necessitating a 30-foot vegetation removal zone and a 70-foot reduced fuel zone (a total of 100 feet for active fuel management), placing structures within 5 feet of the natural area would be expected to lead to fuel modification within the State Park natural area that would degrade this area inconsistent with the LCP. This is the case even with the fire safety measures that are part of the project (sprinklers, fire resistant construction, fire hydrants, etc.). In other words, at least a 100-foot fire safety (for structures) buffer is warranted at this site given its location adjacent to a significant set-aside natural area. The limited buffer (down to 5 feet) approved by the City is inadequate in this respect, and as such, the approved project is inconsistent with the LCP.

The LCP requires that development be sited and designed to protect public views “as a resource of



public importance” and to be visually compatible and integrated with its surroundings. The LCP specifically designates the Black Hill area as visually significant. The City-approved project authorizes the construction of 17 two-story residential units in an LCP designated visually significant and scenic location that is visible from State Highway 1, South Bay Boulevard, and Morro Bay State Park. The proposed residential development is out of character with existing surrounding development, and will block and degrade Highway One views towards the Black Hill Natural Area and the Morro Bay Estuary. Specifically, the upper stories of the proposed residential development would extend above existing vegetation and existing structural development and into the view of Black Hill as seen from northbound Highway One (views of the development would be blocked by natural topography when headed southbound). As such, the approved project is inconsistent with the LCP.

Thus, the approved project is inconsistent with the LCP’s resource protection (including ESHA, other resource, and park land) and viewshed policies. **Staff therefore recommends that the Commission find that the appeal raises a substantial issue with respect to the project’s conformance with the certified LCP and take jurisdiction over the coastal development permit for the project.**

With respect to the ESHA and habitat issues, the Applicant has responded to the appeal contentions by submitting a Riparian Enhancement Plan (REP) that includes potential enhancement measures for the improvement of the habitat function and values of the existing intermittent stream and riparian corridor crossing the site. The main elements of the Plan include increasing the development setback from the stream bank to 75 feet, and the restoration of native riparian canopy and understory vegetation in the drainage channel ESHA area. Although the REP modifications proposed by the Applicant would be an improvement over what was approved by the City, even such a modified project still does not meet the LCP’s minimum ESHA protection requirements, and does not protect on-site raptor habitat (and does not address the Black Hill Natural Area adjacency issue, nor the public viewshed incompatibility issues). Moreover, even when considered as only a stream-area restoration plan, the proposed REP does not provide adequate protection or restoration of the natural functions of the stream and drainage course as required by the certified LCP, and the proposed plant palette includes many plant species that are unsuitable for general landscaping in the coastal zone, and certainly unsuitable for enhancement of a riparian area.

Staff believes that there are project modifications available that can result in an approvable and LCP consistent project that can respect and protect on site ESHA and raptor habitat, that can be adequately buffered from the adjacent State Park natural area, and that can respect the LCP designated significant viewshed. Specifically, the ESHA/stream area must be avoided and buffered by the LCP minimum 100 feet. Similarly, the trees forming the raptor nesting habitat must be adequately avoided and protected. The project must also site structures in such a way as to avoid any potential fire safety and fuel modification incursion into the State Park natural area, and this can be accomplished by ensuring that structures are sited at least 100 feet from the State Park boundary; development not requiring fire buffer could be sited within this 100-foot zone (such as road access, driveways, front yard streetscape, other paved areas, etc.). When these constraints are properly identified for the site, a developable area is established. Given the nature of the resources and access to the site, access to the developable area would still need to occur within the 100 foot ESHA/stream buffer (it would be landlocked otherwise).



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

Thus, Staff recommends that the Commission approve the project with conditions to ensure that the project protects coastal resources consistent with the requirements of the certified LCP. Staff believes that the site can be sensitively developed to meet LCP requirements; recommended conditions include:

- Require a minimum development setback of 100 feet from the top of the ESHA/stream bank;
- Require avoidance of the raptor grove out to the drip line of its associated trees;
- Require a 100-foot structural setback from the Black Hill Natural Area, within which development not requiring fire buffering could be sited (such as road access, driveways, front yard streetscape, other paved areas, etc.);
- Require restoration of the ESHA/stream and its buffer area as compensatory mitigation;
- Require all site drainage to be appropriately filtered and treated to remove typical runoff pollutants prior to its use for on-site irrigation and/or discharge on or off-site;
- Require construction BMPs designed to protect on-site resource areas, water quality, and sensitive coastal resources (including BMPs to address construction impacts; staging of equipment and materials; containing sediments and runoff; establishing grading parameters);
- Require the Applicant to assume all risks for development due to the location of the project adjacent to the Black Hill Natural Area and potential fires;
- Require recordation of a deed restriction that binds the Applicant and all successors in interest, including subsequent residential landowners, to the terms and conditions of this permit.

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

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Exhibit 7: Correspondence

1. Local Government Action

On November 13, 2006 the City of Morro Bay City Council approved a coastal development permit, conditional use permit, tentative tract map, and variance for subdivision of two existing lots of record into 17 residential lots and one open space lot. The City approval includes grubbing and grading over 70% of the property, removal of more than 50 trees, construction of roadways, curb, gutter and sidewalks, site preparation for 17 residential lots and construction of residential units at 485 and 495 South Bay Boulevard adjacent to the Black Hill Natural Area and Morro Bay State Park.

On November 15, 2006 notice of the City Council's action was received in the Commission's Central Coast District Office. The Commission's 10-working day appeal period for this action began on November 16, 2006 and concluded at 5pm on December 1, 2006. Two valid appeals (see below) were received during the appeal period.

See Exhibit 4 for the City's adopted staff report, findings and conditions associated with their approval.

2. Standard of Review for Appeals

Coastal Act Section 30603 provides for the appeal of approved coastal development permits in jurisdictions with certified local coastal programs for development that is: (1) between the sea and the first public road paralleling the sea or within 300 feet of the inland extent of any beach or of the mean high tide line of the sea where there is no beach, whichever is the greater distance; (2) on tidelands, submerged lands, public trust lands, within 100 feet of any wetland, estuary, or stream, or within 300 feet of the top of the seaward face of any coastal bluff; (3) in a sensitive coastal resource area; (4) for counties, not designated as the principal permitted use under the zoning ordinance or zoning district map; and (5) any action on a major public works project or energy facility. This project is appealable because it is within 100 feet of a stream.

The grounds for appeal under Section 30603 are limited to allegations that the development does not conform to the standards set forth in the certified local coastal program or the public access policies of the Coastal Act. Section 30625(b) of the Coastal Act requires the Commission to conduct a de novo coastal development permit hearing on an appealed project unless a majority of the Commission finds that "no substantial issue" is raised by such allegations. Under Section 30604(b), if the Commission conducts a de novo hearing, the Commission must find that the proposed development is in conformity with the certified local coastal program to approve the project. Section 30604(c) also requires an additional specific finding (if approved) that the development is in conformity with the public access and recreation policies of Chapter Three of the Coastal Act, if the project is located between the nearest public road and the sea or the shoreline of any body of water located within the coastal zone. This



project is not so located and thus this additional finding need not be made in a de novo review in this case.

The only persons qualified to testify before the Commission on the substantial issue question are the Applicant, persons who made their views known before the local government (or their representatives), and the local government. Testimony from other persons regarding substantial issue must be submitted in writing. Any person may testify during the de novo stage of an appeal.

3. Summary of Appellant's Contentions

Two appeals were filed on the City's action; one by Coastal Commissioner Appellants Meg Caldwell and Mary Shallenberger, and one by Roger Ewing and Ray McKelligott. The Appellants contend that the project approved by the City of Morro Bay is inconsistent with the ESHA protection, stream buffer, and visual resource policies of the certified LCP. Specifically, the Appellants assert that the City-approved project does not conform to certified Land Use Plan (LUP) Policies 11.01, 11.02, and 11.14 (ESHA Protection and Stream Buffer), which prohibit any significant disruption to environmentally sensitive areas and establishes a minimum stream buffer of 100 feet in rural areas. The Appellants contend that contrary to these requirements, the City-approved project involves grading and disturbance directly adjacent to a coastal stream, as well as structural development (i.e., residences, roads, and parking areas) within 65 feet of the stream, and that this will adversely impact the functional capacity of the stream and nearby habitats. The Appellants further contend that LUP Policy 11.18 further prohibits subdivisions adjacent to such areas unless the new building sites are located entirely outside the maximum applicable buffer, and that the city-approved project incorrectly applied an urban stream setback (50 feet) when in fact the development site is disconnected from urban areas by open space (i.e., Morro Bay State Park, including Black Hill Natural Area) and is rural in character. Additionally, the Appellants question the City-approved project's consistency with LUP Policies 12.01 and 12.02 that protect views to designated scenic areas, require new development to minimize landform alteration, be visually compatible with the character of surrounding areas, and where feasible, to restore and enhance visually degraded areas.

Please refer to Exhibit 5 for the full text of the appeals.

4. Staff Recommendation on Substantial Issue

Staff recommends that the Commission determine that a substantial issue exists with respect to the grounds on which the appeal was filed. A finding of substantial issue would bring the project under the jurisdiction of the Commission for hearing and action.



Motion. I move that the Commission determine that Appeal Number A-3-MRB-06-064 raises **NO** substantial issue with respect to the grounds on which the appeal has been filed under Section 30603 of the Coastal Act.

Staff Recommendation Of Substantial Issue. Staff recommends a **NO** vote. Failure of this motion will result in a de novo hearing on the application, and adoption of the following resolution and findings. Passage of this motion will result in a finding of No Substantial Issue and the local action will become final and effective. The motion passes only by an affirmative vote of the majority of the appointed Commissioners present.

Resolution To Find Substantial Issue. The Commission hereby finds that Appeal Number A-3-MRB-06-064 presents a substantial issue with respect to the grounds on which the appeal has been filed under Section 30603 of the Coastal Act regarding consistency with the certified Local Coastal Plan.

5. Staff Recommendation on Coastal Development Permit

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

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

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

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

6. Conditions of Approval

A. Standard Conditions

- 1. Notice of Receipt and Acknowledgment.** The permit is not valid and development shall not commence until a copy of the permit, signed by the Permittee or authorized agent, acknowledging



receipt of the permit and acceptance of the terms and conditions, is returned to the Commission office.

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

B. Special Conditions

1. Development Limitations.

- (a) **ESHA/Stream Habitat Area and Buffer.** No development, as defined by LCP Section 17.12.199, shall occur within the ESHA/Stream Habitat Area and Buffer (see Exhibit 6) except for: (1) subdivision necessary to create a single parcel consisting of the ESHA/Stream Habitat Area and Buffer area; (2) habitat restoration, enhancement, and management consistent with this permit (see special condition 3); and (3) the minimum amount of road access development necessary to provide ingress/egress to the Development Area (see Exhibit 6) provided such road access is located as far south as possible, and is no wider than 24 feet if it includes a sidewalk and no wider than 20 feet if it does not.
- (b) **Raptor Habitat Area.** No development, as defined by LCP Section 17.12.199 shall occur within the Raptor Habitat Area (see Exhibit 6), except for: (1) subdivision necessary to create a single parcel consisting of the Raptor Habitat Area; and (2) raptor habitat restoration, enhancement, and management that has been approved as an amendment to this coastal development permit.
- (c) **Black Hill Natural Area Buffer.** Development within the Black Hill Natural Area Buffer (see Exhibit 6) shall be limited to roads, lawns, landscaping, fences, and residentially-related uses and development of a similar nature that do not themselves require a defensible fire safety zone. Development that requires a defensible fire safety zone, including but not limited to single family dwellings and garages, shall be prohibited within the Black Hill Natural Area Buffer.
- (d) **Development Area.** Within the Development Area (i.e., that area of the site outside of the ESHA/Stream Habitat Area and Buffer, and outside of the Raptor Habitat Area, and outside of the Black Hill Natural Area Buffer), development shall consist of subdivision and residential development that complies with all of these special conditions, and that complies with all



applicable setbacks, density standards, and other City of Morro Bay building code and other requirements.

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

2. **Final Plans.** PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the Permittee shall submit two sets of Final Plans (in full-size format with a graphic scale) to the Executive Director for review and approval. The final plans shall be consistent with the following requirements:
 - (a) **Development Limitations.** Final Plans shall be consistent with all development limitations of Special Condition 1.
 - (b) **Building Heights.** The maximum building height for all residential structures shall be 14 feet from existing natural grade.
 - (c) **Perimeter Wall.** A 6-foot tall masonry wall shall be constructed along the western edge of the Black Hill Natural Area Buffer (see Exhibit 6). Such wall shall be finished with rough hewn, unpainted concrete on its western side, and shall be capable of ensuring that noise from the site that can be heard on the Black Hill Natural Area side of the wall does not exceed 60 dBA CNEL (where “dBA CNEL” means a 24-hour energy equivalent level derived from a variety of single noise events, with weighting factors of 5 and 10 dBA applied to the evening (7pm to 10pm) and nighttime (10pm to 7am) periods, respectively, to allow for the greater sensitivity to noise during these hours).
 - (d) **Fire Safety Requirements.** All City-approved fire safety requirements (City File Number CP0-110) including but not limited to, installation of automatic fire sprinklers, fire hydrants, use of fire resistant exterior construction materials, construction of a perimeter fire wall, and conspicuous addressing of each residence shall be incorporated into the Final Plans.
 - (e) **Tree Protection.** All trees located within the Black Hill Natural Area Buffer along the western property line shall be retained. All other trees in the Development Area (see special condition 1 and Exhibit 6) shall be retained as feasible and as necessary to ensure adequate development screening. Any tree removal otherwise allowed shall be accomplished in such a manner as to ensure protection of retained trees and related habitats, including raptor habitat. Final Plans shall provide all tree protection parameters.
 - (f) **Landscaping and Irrigation Details.** Final Plans shall include landscape and irrigation parameters prepared by a licensed Landscape Architect that shall identify all plant materials (size, species, quantity), all irrigation systems, and all proposed maintenance. All plant materials shall be selected to be complimentary with the mix of native habitats in the project vicinity,



prevent the spread of exotic invasive plant species, and avoid contamination of the local native plant community gene pool. The landscape plans shall ensure that all structures are screened from public views as much as possible, including through the use of upper canopy trees. The landscape plans shall also be designed to protect and enhance native plant communities on and adjacent to the site, including required restoration and enhancement areas, and to provide a transitional buffer between native habitat areas and authorized development. Landscaping (at maturity) shall also be capable of screening and camouflaging all residential development as seen from off site. All landscaped areas and fences on the project site shall be continuously maintained by the permittee; all plant material shall be continuously maintained in a litter-free, weed-free, and healthy growing condition. The planting of non-native invasive species, such as those listed on the California Invasive Plant Council's Inventory of Invasive Plants, is prohibited.

- (g) **Lighting Details.** Final Plans shall include lighting details that indicate the location, type, and wattage of all light fixtures. All lighting shall be minimized (in terms of number of lights and brightness) and must be sited, designed, and located to prevent illumination of the ESHA/Stream Habitat Area and Buffer area, the Raptor Habitat Area, the Black Hill Natural Area Buffer, the adjacent Black Hill Natural Area) and to protect views of the night sky. All lighting shall be the lowest intensity levels necessary to provide safety and security. All pedestrian lighting shall be low-profile, low-wattage bollard style lights. Pole mounted lighting shall avoided if feasible, and any that cannot be avoided shall be limited in height so that it is not visible from Highway One and so it does not illuminate the above non-illumination areas.
- (h) **Grading Details.** Grading and grubbing of the site shall be limited to the pads for the residences, driveway, road, and sidewalk contours, and shall be limited as much as possible to retain the existing natural landform. All unnecessary changes in the natural grade shall be prohibited.
- (i) **Post Construction Drainage.** Final Plans shall provide for a post-construction drainage system designed to filter and treat (i.e., designed to remove typical urban runoff pollutants) the volume of runoff produced from irrigation and from each and every storm and/or precipitation event up to and including the 85th percentile 24-hour runoff event for volume-based BMPs and/or the 85th percentile, 1-hour runoff event (with an appropriate safety factor) for flow-based BMPs, prior to its use for on-site infiltration, landscape irrigation and/or discharge. All drainage system components shall be consistent with the following:
 - (1) All drainage system components shall be integrated with the ESHA/Stream Habitat Area and Buffer Restoration and Enhancement Plan (see special condition 3). Filtered and treated drainage shall be directed to the ESHA/Stream Habitat Area to the maximum extent feasible unless it would lead to habitat degradation and provided it is discharged in a non-erosive manner.
 - (2) The drainage system and its individual components (such as drop inlets and filtration mechanisms) shall be sized according to the specifications identified in the California Storm



Water Best Management Practice Municipal Handbook (California Storm Water Management Task Force, March 1993).

- (3) All development shall incorporate Low Impact Development (LID) BMP strategies and techniques (e.g., limiting impervious surfacing, maximizing infiltration in BMP design, reducing the hydraulic connectivity of impervious surfaces, etc.) as much as possible.
- (4) The drainage system shall include natural biologic filtration components, such as vegetated filter strips and grassy swales that are vegetated with native plant species capable of active filtration and treatment (e.g., rushes), as much as possible. If grades require, check-dams may be used in such biologic filters.
- (5) The drainage system shall include at least one engineered filtration unit to which all drainage shall be directed prior to use for on-site irrigation and prior to any discharge. The engineered filtration unit(s) shall be specifically designed to remove, at a minimum, potential vehicular contaminants, and shall include media designed to remove such contaminants.
- (6) All drainage system elements shall be permanently operated and maintained. At a minimum:
 - (i) All filtration/treatment components shall be inspected to determine if they need to be cleaned out or repaired at the following minimum frequencies: prior to October 15th each year; prior to April 15th each year; and during each month that it rains between November 1st and April 1st. Clean-out and repairs (if necessary) shall be done as part of these inspections. At a minimum, all filtration/treatment components must be cleaned prior to the onset of the storm season, no later than October 15th of each year; (ii) Debris and other water pollutants removed from filter device(s) during clean-out shall be contained and disposed of in a proper manner; and (iii) All inspection, maintenance and clean-out activities shall be documented in an annual report submitted to the City no later than June 30th of each year.

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

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



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



invasive non-native taxa.

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

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

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

(i) Provision for submission of a final monitoring report to Executive Director at the end of the final monitoring period. The final report must be prepared by a qualified restoration ecologist. The report must evaluate whether the site area conforms to the goals and success criteria set forth in the approved final resource plan.

(j) Provision for possible further action. If the final report indicates that the project has been unsuccessful, in part or in whole, based on the approved success criteria, then the Permittee shall



prepare a revised or supplemental resource plan to compensate for those portions of the original plan that did not meet the approved success criteria.

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

4. **Invasive Plant and Tree Removal Plan.** PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the Permittee shall submit four copies of an invasive plant and tree removal plan prepared by a qualified biologist to the Executive Director for review and approval. The Removal Plan shall identify methods for removing, controlling, and preventing the introduction of invasive exotic plants and trees on the subject site. The Removal Plan shall be consistent with the ESHA/Stream Habitat Area and Buffer Restoration and Enhancement Plan (see special condition 3) and the site development limitations (see special condition 1) and shall apply for the life of the project. The Permittee shall undertake development in accordance with the approved Removal Plan. Any proposed changes to the approved Removal Plan shall be reported to the Executive Director. No changes to the approved Removal Plan shall occur without a Commission amendment to this permit unless the Executive Director determines that no amendment is necessary.
5. **Construction Plan.** PRIOR TO CONSTRUCTION the Permittee shall submit two sets of a Construction Plan (in full-size format with a graphic scale) to the Executive Director for review and approval. The Construction Plan shall, at a minimum, include the following:
 - (a) **Construction Areas.** The Construction Plan shall identify the specific location of all construction areas, all staging areas, all storage areas, all construction access corridors (to the construction site and staging areas), and all areas where development is prohibited (see Special Condition 1). All such areas within which construction activities and/or staging are to take place shall be minimized to the maximum extent feasible in order to minimize construction impacts on and offsite preservation areas.
 - (b) **Construction Methods and Timing.** The Construction Plan shall specify the construction methods to be used, including all methods to be used to keep the construction areas separated from all areas where development is prohibited (including using unobtrusive fencing or equivalent measures to delineate construction areas). All erosion control/water quality best management practices to be implemented during construction and their location shall be noted.
 - (c) **Construction Requirements.** The Construction Plan shall include the following construction requirements specified by written notes on the Construction Plan. Minor adjustments to the following construction requirements may be allowed by the Executive Director if such adjustments: (1) are deemed reasonable and necessary; and (2) do not adversely impact coastal resources.



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

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

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

- (a) Construction Site Documents. Copies of the signed coastal development permit and the approved Construction Plan shall be maintained in a conspicuous location at the construction job site at all times, and such copies shall be available for public review on request. All persons involved with the construction shall be briefed on the content and meaning of the coastal development permit and the approved Construction Plan, and the public review requirements applicable to them, prior to commencement of construction.
- (b) Construction Coordinator. A construction coordinator shall be designated to be contacted during construction should questions arise regarding the construction (in case of both regular inquiries and emergencies), and their contact information (i.e., address, phone numbers, etc.) including, at a minimum, a telephone number that will be made available 24 hours a day for the duration of construction, shall be conspicuously posted at the job site where such contact information is readily visible from public viewing areas, along with indication that the construction coordinator should be contacted in the case of questions regarding the construction (in case of both regular



inquiries and emergencies). The construction coordinator shall record the name, phone number, and nature of all complaints received regarding the construction, and shall investigate complaints and take remedial action, if necessary, within 24 hours of receipt of the complaint or inquiry.

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

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

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

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

- 8. Assumption of Risk, Waiver of Liability and Indemnity Agreement.** The Permittee acknowledges and agrees, on behalf of itself and all successors and assigns: (i) that the site is subject to extreme fire hazards; (ii) to assume the risks to the Permittee and the property that is the subject of this permit of injury and damage from such hazards in connection with this permitted development; (iii) to unconditionally waive any claim of damage or liability against the Commission, its officers, agents, and employees for injury or damage from such hazards; (iv) to indemnify and hold harmless the Commission, its officers, agents, and employees with respect



to the Commission's approval of the project against any and all liability, claims, demands, damages, costs (including costs and fees incurred in defense of such claims), expenses, and amounts paid in settlement arising from any injury or damage due to such hazards; and (v) that any adverse effects to property caused by the permitted project shall be fully the responsibility of the landowner.

9. Compliance with Local Conditions of Approval. All conditions imposed by the City of Morro Bay (City File Number CP0-110) under a legal authority other than the California Coastal Act continue to apply.

10. Deed Restriction. PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the Applicants shall submit to the Executive Director for review and approval documentation demonstrating that the Applicants has executed and recorded against the parcel(s) governed by this permit a deed restriction, in a form and content acceptable to the Executive Director: (1) indicating that, pursuant to this permit, the California Coastal Commission has authorized development on the subject property, subject to terms and conditions that restrict the use and enjoyment of that property; and (2) imposing the special conditions of this permit as covenants, conditions and restrictions on the use and enjoyment of the Property. The deed restriction shall include a legal description of the entire parcel or parcels governed by this permit. The deed restriction shall also indicate that, in the event of an extinguishment or termination of the deed restriction for any reason, the terms and conditions of this permit shall continue to restrict the use and enjoyment of the subject property so long as either this permit or the development it authorizes, or any part, modification, or amendment thereof, remains in existence on or with respect to the subject property.

Recommended Findings and Declarations

The Commission finds and declares as follows:

7. Project Location, Description, and Background

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



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

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

Existing development on the site includes two single-family residential structures and one small accessory structure located on the upland portion of the property. The larger residence is a two-story structure approximately 2,100 square feet in size, and the smaller residence is approximately 1,250 square feet. The accessory structure is approximately 200 square feet in size and is currently used for storage. Again, see Exhibit 2 for site photographs.

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

See Exhibit 3 for project site plan details and see Exhibit 4 for the adopted City of Morro Bay staff report, findings, and conditions of approval for the project.



8. Substantial Issue Findings

A. ESHA

The certified LCP ESHA protection policies allow only resource dependent development in ESHA, prohibit any significant disruption of sensitive habitat or the habitat values, prohibit subdivision in ESHA, establish a minimum ESHA/stream buffer of 100 feet in rural areas, and require development adjacent to such resources to be sited and designed to prevent significant degradation of these areas and to maintain the habitat's functional capacity (including LUP Policies 11.01, 11.14, and 11.18, cited in the De Novo CDP findings that follow). LCP policies further only allow subdivisions adjacent to such areas when the new building sites are located entirely outside the 100-foot buffer, and require 100-foot ESHA buffers otherwise (including LUP Policies 11.06, 11.14, and 11.18, cited in the De Novo CDP findings that follow). The drainage channel/intermittent stream and associated riparian habitat on the site are ESHA per the LCP (LCP Policy XII. Environmentally Sensitive Habitat). The City-approved project involves grading and disturbance directly adjacent to the ESHA/stream (including slope alteration, grading, and toe protection along the active channel), as well as residential development (i.e., residences, roads, and parking areas) within 65 feet of the stream. In addition, some trees have already been removed in this area within the past several years (and apparently without coastal permits).¹ As such, the approved project is inconsistent with the LCP. Such reduced buffers do not meet the LCP's minimum standards, and are insufficient to protect the functional capacity of the stream and nearby habitats as required by the LCP. In addition, the approved project includes residential development within about five feet of State Park Land much of it comprised of coastal sage scrub and maritime chaparral. The city-approved project incorrectly applied an urban stream setback (50 feet) when in fact the development site is separated from urban areas of the City by open space (i.e., Black Hills Natural Area and Morro Bay Estuary) and is rural in character. Thus, the approved project, which would result in subdivision in ESHA, disturbance directly adjacent to the ESHA/stream, and residential development within 65 feet of the stream is inconsistent with the LCP's minimum 100-foot setback requirements. Accordingly, the appeal raises a substantial issue with respect to its conformance with the certified LCP's ESHA policies.

B. Other Habitats (Non-ESHA)

In addition to ESHA protection specifically, the LCP also protects other coastal resources and habitats that are not considered ESHA. LUP policy 9.06 states in relevant part that natural features, landforms, and native vegetation, such as trees, shall be preserved to the maximum extent feasible. Furthermore, Policy 0.1 of the general land use policies contained in Chapter II of the certified LUP incorporates by reference Coastal Act Sections 30210 through 30263, including section 30250 which requires new

¹ Commission enforcement staff are currently reviewing this aspect of the project and site.



development to be located so as not to have any significant adverse impacts on coastal resources. The site includes a grove of trees (cypress, eucalyptus, and pine) that provide habitat for nesting raptors. This raptor habitat does not meet the ESHA threshold in this case, but it is still protected by the LCP, including policies designed to maximize tree protection and protection of coastal resources (see LCP Policies 0.1 and 9.06). The project as approved by the City allows for removal of the raptor grove and elimination of this grove as raptor habitat. Accordingly, the appeal raises a substantial issue with respect to its conformance with the certified LCP's resource protection policies.

C. State Parks Natural Area

The LCP requires new development adjacent to State Park and recreation lands be sited and designed to preserve the continuity of the park and avoid degradation of said park lands (including LUP Policy 11.02). The site is immediately adjacent to the Black Hill Natural Area, a 300-acre natural preservation area that is part of Morro Bay State Park. Black Hill Natural Area is mostly comprised of coastal sage scrub and maritime chaparral communities, that are also ESHA per the LCP, and Black Hill itself (between subject site and the shoreline) is categorically ESHA per the LCP. The project as approved by the City includes residential structures within five feet of the Black Hill Natural Area. Given current (and potential future) fire safety standards, including those currently necessitating a 30-foot vegetation removal zone and a 70-foot reduced fuel zone (a total of 100 feet for active fuel management), placing structures within 5 feet of the natural area would be expected to lead to fuel modification within the State Park natural area that would degrade this area inconsistent with the LCP. This is the case even with the fire safety measures that are part of the project (flame resistant construction, sprinklers, fire hydrants, etc.). In other words, at least a 100-foot fire safety (for structures) buffer is warranted at this site given its location adjacent to a significant set-aside natural area and State Park. The limited buffer (down to 5 feet) approved by the City is inadequate in this respect, and would be expected to lead to degradation of this area over time. Accordingly, the appeal raises a substantial issue with respect to its conformance with the certified LCP's parks protection policies.

D. Public Viewshed

The LCP requires that development be sited and designed to protect views of designated scenic areas, and requires new development to minimize landform alteration, be visually compatible and integrated with the character of surrounding areas, and where feasible, to restore and enhance visually degraded areas (including LUP Policies 12.01 and 12.02; cited in the De Novo CDP findings that follow). In addition, LUP Policies 12.01 and 12.02 require that new development in highly scenic areas, such as those designated on Figure 31 of the LUP, be subordinate to the character of its setting; Black Hill Natural Area is shown on Figure 31.

The proposed project is located against the base of the Black Hill Natural Area component of Morro Bay State Park. Across South Bay Boulevard lies the Chorro Flats Sediment Capture and Wetland Restoration Project and the main stem of Chorro Creek. Although there is clearly some development in the immediate area, the subject site is located within a particularly scenic area at the base of the larger



Black Hill panorama, immediate adjacent to significant State Park Nature Areas and related open space. The proposed 17 two-story residences will be visible from Highway One, South Bay Boulevard, Quintana Road, and Morro Bay State Park. The project is inconsistent with LUP policies 12.01 and 12.02 (and 9.06, previously cited) because it includes the removal of more than 50 mature upper canopy trees, grading of over 70% of the site, and the introduction of a dense cluster of development of seventeen two-story residences in an otherwise scenic rural setting. The proposed residential development is out of character with the surrounding open space park and natural area, and will block and degrade Highway One public views across the property towards the Black Hill Natural Area and Morro Bay State Park. Specifically, the upper stories of the proposed residential development would extend above existing vegetation and above existing structural development and into the view of Black Hill as seen from northbound Highway One (views of the development would be blocked by natural topography when headed southbound). Thus, the approved project is inconsistent with the LCP's viewshed policies. As a result, the appeal raises a substantial issue with respect to its conformance with the certified LCP with respect to public viewshed protection.

E. Substantial Issue Conclusion

The LCP clearly protects ESHA, streams, and related habitat resources (such as the on-site raptor nesting), and also clearly protects public views and parklands from development that would detract from such resources. The City-approved project would allow development that would intrude on required minimum ESHA/stream buffer areas, would remove raptor habitat, would be sited adjacent to the Black Hill Natural Area where fire safety requirements could result in direct losses of resources there, and would include development that would result in new incursion within Highway One views of Black Hill and the surrounding natural area. In sum, the City-approved project has not been sited and designed in a manner that respects these resources as directed by the LCP, and would be expected to result in direct removal and indirect adjacency impacts that would significantly degrade them. Therefore, the Commission finds that the appeal raises a substantial issue with respect to the approved project's conformance with the certified City of Morro Bay LCP and takes jurisdiction over the coastal development permit for the project. In making this finding, all De Novo Coastal Development Permit findings that follow are incorporated into these Substantial Issue findings by reference.

9. De Novo Coastal Development Permit Findings

By finding a substantial issue in terms of the project's conformance with the certified LCP, the Commission takes jurisdiction over the CDP application for the proposed project. The standard of review for this application is the City of Morro Bay certified LCP. The Substantial Issue findings above are incorporated directly herein by reference.



A. ESHA and Other Habitats and Park Lands

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

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

***LUP Policy 11.01** Environmentally sensitive habitat areas shall be protected against any significant disruption of habitat values and only uses dependent on such resources shall be allowed within such areas...*

***LUP Policy 11.02** Development in areas adjacent to environmentally sensitive habitat areas and parks and recreation areas shall be sited and designed to prevent impacts which would significantly degrade such areas, and shall maintain the habitat's functional capacity.*

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

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

(1) a minimum buffer strip of 100 feet in rural areas;

(2) a minimum buffer strip of 50 feet in urban areas.

If the applicant can demonstrate that the implementation of the minimum buffers on previously subdivided parcels would render the subdivided parcel unusable for its designated use, the buffer may be adjusted downward only to a point where the designated use can be accommodated, but in no case shall the buffer be reduced to less than 50 feet for rural areas and 25 feet for urban areas. Only when all other means to project modifications are found inadequate to provide for both the use and the larger minimum buffer. The lesser setback shall



be established in consultation with U.S. Fish & Wildlife and the California Department of Fish & Game and shall be accompanied by adequate mitigations. The buffer area shall be measured landward from the landward edge of riparian vegetation or from the top of the bank (e.g., in channelized streams). Maps and supplemental information may be required to determine these boundaries.

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

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

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

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

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

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

...

- (3) specialized wildlife habitats which are vital to species survival;*
- (4) outstanding representative natural communities which have an unusual variety or diversity of plant and animal species;*

...

Those resources that meet one or more of these criteria will be designated as an environmentally sensitive habitat area. The following discussion will review these coastal resources under the



appropriate habitat type. These are defined below and shown in Figure 29.

...

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

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

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

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

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

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

2. Resource Setting

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

The stream channel crossing the northern quarter of the property is an unnamed tributary of Chorro Creek, and is an aquatic and habitat link between Black Mountain Natural Area and Chorro Flats and



Chorro Creek. The stream corridor area on the property has been disturbed via alteration and manipulation of the stream course and drainage channel and ongoing weed abatement practices over time. Several large Monterey pine and eucalyptus trees have recently been removed.² Bark and leaf litter from the Blue Gum trees has affected the abundance and diversity of plant species growing along the stream channel. Bare soil, non-native grasses, and invasive herbaceous weeds dominate the low-lying area, though sagebrush, coyote brush, salt grass, morning glory, and California poppy are present in the area. Arroyo willow, marsh baccharis, and blackberry also exist along the stream banks. The stream corridor and drainage channel meets the certified LCP definition of a coastal stream and riparian habitat area.

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

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

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

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



habitat is not used by monarchs for wintering purposes.

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

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

The intermittent stream on the site was surveyed for the presence of California red-legged frog (CRLF). The channel is approximately 315 feet in length and drains to the east through a box-culvert into Chorro Creek, a preferred refuge for red-legged frogs. The channel was dry at the time of the surveys and no



pools or standing water were present anywhere on the property. Observations from the field surveys indicate that arroyo willows are present in two locations along the stream bank, but that the site otherwise lacks other well-developed riparian habitat. By contrast, the channel along the State Park land on the northern flank of Black Hill and directly upland of and feeding into the project site, supports a dense riparian corridor dominated by arroyo willows. It is reasonable to conclude that the aforementioned alteration and manipulation of the stream channel on the site has arrested the natural extension of this willow riparian community. California red-legged frog was not encountered during the survey nor were there many habitat features that would attract or provide protection for red-legged frogs. Nevertheless, the project environmental report concludes that CRLF are present in the main stem of Chorro Creek within one-half mile of the site, and that the terrain separating the creek and the project site does not pose a significant barrier to the dispersal of red-legged frogs. Thus, the possibility of CRLF to be periodically present on the site during wet period conditions and/or when migrating between appropriate hydration points up and down stream cannot be dismissed.

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

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



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

3. LCP Consistency Analysis

A. Proposed Project Inconsistent with LCP

The LCP requires that the ESHA/stream area be protected against any significant disruption of habitat values, and requires a minimum 100-foot buffer from this area.³ The LCP further requires that any development on this site be sited and designed to avoid impacts that would significantly degrade the BHNA. In addition, the LCP requires that the natural features, native vegetation such as trees (i.e., raptor habitat), and coastal resources be protected and preserved to the maximum extent feasible, and requires that new development avoid significant adverse effects on coastal resources more generally.

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

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

³ Note that the LCP explicitly calls for a 100-foot ESHA buffer (LUP Policy 11.06) and also specifies a 100-foot minimum stream buffer in rural areas, such as this. In urban areas, stream buffers can be reduced to 50 feet. As indicated, the subject site is in a rural portion of the City adjacent to Morro Bay State Park and BHNA, and the 100-foot minimum stream buffer matches the 100-foot minimum ESHA buffer at this site.



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

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

Avoidance of direct impacts and use of buffers to help avoid indirect impacts (to protect against human and animal disturbances, disruptions, and degradation, etc.) is required by the LCP. Direct removal of habitats, such as that proposed in terms of the raptor habitat, obviously has a direct detrimental effect. In addition, human and human-related activity immediately adjacent to habitats (in the form of noise pollution, light pollution, foot traffic, landscaping, irrigation, herbicides, etc.) disturbs the whole community, as described above. Buffers can capture and absorb these and other impacts associated with development. Buffers are also necessary to maintain the ability of both plants and animals to move about and disperse within the habitat. Development located at the edge of the habitat impinges upon the ability of seeds to establish (e.g., through increased shading, soil compaction, site coverage, and changes in localized wind patterns), and hinders the ability of animal species to travel in natural patterns. Stresses introduced by development affects the natural behaviors of organisms that use these sensitive habitats. Reproduction/mating, foraging and feeding, rearing and feeding young, predator/prey interactions are



some of the behavioral aspects that may be negatively influenced by the stress of adjacent development. Buffers protect against invasive plant and animal species that can arrive on car tires (both during and after construction), fill soils, and in myriad other ways throughout the life of the development. Buffers further allow for a healthy and thriving “edge environment” which supports extensive biodiversity (species richness), oftentimes higher than the biodiversity present in the two separate habitat types. Such biodiversity is known to facilitate resilience among species and communities, and buffers help maintain the dynamics between one habitat type and another. This is particularly important at the dynamic interface associated with the subject site where this property is immediately adjacent to Black Hill Natural Areas, and near to the Chorro Flat restoration area (and Chorro Creek), and where the on-site ESHA/stream area acts as a corridor between the two.

Equally important, buffers protect development from fire. At this site, such fire safety buffers are particularly important given the BHNA wildland interface to the west, a natural area that has been set aside and left alone as a means of allowing it to flourish in its natural state. A natural state that also can include fire – particularly given the prevalence of fuel in this area, including maritime chaparral throughout the larger BHNA, and particularly given the area hasn’t burned for some 75 years.⁴ The Department of Park and Recreation (DPR) has raised concerns regarding the potential fire danger associated with residential development in such close proximity to parks and open space lands. As noted, the site of the proposed development backs up to the Black Hill Natural Area, a 300-acre undeveloped open space park land. The Black Hill Natural Area is owned and maintained by the State of California. The Department of Parks and Recreation has indicated that fuel modification on State Park property may not be permitted, and recommends that all habitable structures maintain at least a minimum 40-foot setback from the property line in order to meet minimum park standards for defensible space.

Per the LCP, all development must be sited and designed to avoid hazards, and to minimize unavoidable hazards (see Fire Hazard findings that follow, and LUP Policy 9.01). Although the LCP does not explicitly identify minimum fire safety buffers for wildland interfaces such as this, the issue of fire safety and the need for such buffers has become more and more of a statewide issue and concern, particularly in light of recent fires that have left a trail of destruction in their wake. The State recently adopted a revised standard requiring a 100-foot defensible fire safety space requirement that applies for all properties along the wildland interface area (per State Public Resource Code Section 4291). In this case, the City did not require this mandatory setback, but instead approved the proposed project with specific fire safety mitigations (such as a requirement for sprinklers in all new structures, use of fire resistant construction (closed eaves, stucco exterior, etc.), construction of a masonry wall 2 to 6 feet in height along the shared boundary with State Park property, installation of fire hydrants, etc.). Though such mitigations are appropriate in a rural setting such as this, they are not an adequate substitute for a buffer distance when a property backs up on a natural area such as BHNA. In addition, over time,

⁴ It is also becoming more commonplace for resource management entities to practice preventative, controlled burns in order to facilitate the health of the plant community and diminish the likelihood of a catastrophic fire. In addition, from a habitat standpoint, maritime chaparral plants require very hot and fast fires (whether human-induced or natural) for seed release and regeneration. A buffer allows for such a fire without the level of danger to the development that would exist without it.



perhaps even in the very short term, the residences will likely need to clear for defensible space purposes. If they were to clear for the 100-foot defensible fire safety space, this would extend into the BHNA. Such a conflict is reasonably foreseeable and would lead to direct significant disruption and degradation of this resource, contrary to the LCP.

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

In sum, buffers can limit the development's impact on these affected natural habitats, thereby ensuring protection of ESHA, State Park natural wildland, and raptor habitat against human disturbances and stresses, and can create space to allow continued functionality of these habitats and natural communities.

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

B. Modifications Necessary to Approve Project Consistent with the LCP

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

ESHA/Stream Protection

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



Black Hill Natural Area Protection

With respect to the Black Hill Natural Area, there isn't a specific LCP-prescribed park and recreation lands buffer distance, however the LCP does require that development adjacent to parks and recreation land be sited and designed to prevent impacts that would significantly degrade such areas. In other words, the type of use and development proposed (in this case residential) and the type of park and recreation land involved together dictate what would be an appropriate buffer to protect against the types of impacts specified by the LCP. In some cases, a very narrow buffer might be sufficient (e.g., for a residential site adjacent to a developed park with play structures, etc.), and in others a very large buffer might be appropriate (e.g., for a residential site adjacent to a park designed to accommodate hang-gliders). In this case, the park and recreation lands involved are a State-designated Natural Area of high resource value and sensitivity that is predominately ESHA and that has been designed to be left alone to function as naturally as possible (without human use, activity, and interruption). This type of park land generally calls for a wider buffer to allow the natural functions described above to continue without adverse impacts from adjacent uses and development intruding on them. In this case, a 100-foot buffer should provide adequate separation to ensure protection for the adjacent park land as required by the LCP. This represents a reasonable setback to avoid the kind of problems identified above.

With regard to the fire safety issues and the necessary associated buffer from BHNA, although a separate fire buffer might typically be applied (i.e., in addition to the 100-foot park wildland buffer) so as to protect the function and utility of the park wildland buffer itself, in this case there are other complementary fire safety/buffer measures that can be applied in addition to (and in terms of) the 100-foot park wildland buffer that can have the same or similar utility and that will allow the site to be reasonably developed (e.g., a 200-foot buffer would effectively preclude any development of the site) while respecting the constraints present here. Specifically, the fire safety measures applied by the City are all still relevant (i.e., sprinklers, fire resistant construction, fire hydrants, wall along State park boundary). In addition, it is possible to develop the site in such a way that the utility of 100-foot wildland buffer is maximized, including for fire safety, and the site's potential development area is maximized as well (recognizing that the various resource areas and issues each remove a portion of the site from potential development, including the 100-foot ESHA/stream buffer mentioned above, and the raptor habitat and viewshed issues discussed further below). This can be accomplished by allowing at grade improvements (e.g., roadway, sidewalk, landscaping, etc.) and minor non-permanent structures (i.e., fences, park equipment, etc.) that do not require fuel modification or other measures for fire safety within the 100-foot wildland buffer, and ensuring that the masonry wall is tall and thick enough to filter out any noise, lights, and activities that might occur on the site and in the combined buffer area. In this way, any fire safety clearing would take place within the 100 feet on the Applicant's property and would not extend into the adjacent natural area (i.e., residences and structures requiring fire clearance would be no closer than 100 feet from BHNA). This fire safety zone could still be used for development (streets, lawns, play structures, etc.) that doesn't itself require fire clearance. Given the potential level of use within the 100 foot area, and to ensure the utility of the 100 foot park wildland buffer distance to protect BHNA function, the wall would need to be six feet tall and capable of sufficiently attenuating noise (the wall would essentially become an inert object as seen from the BHNA side of the development). In this way, the buffer utility is maximized at the same time as ensuring adequate development area for the



applicant.

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

Raptor Habitat Protection

With respect to the on-site raptor habitat area, the proposed development must avoid the raptor grove, including avoiding any direct removal of trees and avoiding any activities that might adversely impact the grove. This can be accomplished by ensuring that development is kept out of the driplines of the raptor grove. See exhibit 6 for a graphic depiction of the raptor grove and the associated dripline, and see special condition 1.

Road Access Issues

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

Existing access to the site is located approximately 40 feet from the south corner of the property, between the hedgerow of trees and the drainage culvert beneath South Bay Boulevard. The proposed/improved access driveway would be constructed on top of the existing unimproved access road and, as a consequence, within the 100-foot ESHA/stream buffer. LCP Policies 11.06 and 11.14 contain provisions that allow a reduction to the 100-foot buffer when necessary to accommodate a designated use of the site, but stipulates that the buffer not be reduced to less than 50 feet, and further requires that mitigation measures be developed to restore and re-establish riparian vegetation as mitigation for the buffer incursion as well as to offset any prior removal of vegetation in the buffer (such as apparently has been the case on this site, as described earlier).. The development that is the subject of this permit action would be so precluded by a strict application of the LCP's 100-foot minimum ESHA/stream habitat buffer and thus a minor downward adjustment to accommodate road access to the otherwise "landlocked" developable area is warranted in accordance with the LCP. This is particularly the case inasmuch as the proposed road access location from South Bay Boulevard is probably sited in the least environmentally damaging location with respect to the ESHA/stream and raptor habitat grove in that respect. Accordingly, a portion of the road access is allowed within the 100-foot buffer area, but no closer to the ESHA/stream than 50-feet. See exhibit 6 for a graphic depiction of the road exception area, and see special condition 1.

With respect to the configuration of the road within the buffer, it needs to be the minimum width



necessary so as to limit its intrusion into the LCP required buffer to the maximum extent feasible. In this respect, the road and any sidewalk (and any curb and gutter) together can be at most 24 feet wide, or 20 feet if there is no sidewalk. This will allow adequate space for ingress and egress, and for any emergency response (including through the use of rolled curbs as proposed), and will promote pedestrian access into and out of the residential subdivision. See special condition 1.

Other On-Site Tree Protection

The remaining trees growing on the site (outside of the ESHA/stream area and outside of the raptor grove) consist of some scattered trees in the upland portion of the site and a row of elm, eucalyptus and Monterey pine growing mostly beneath existing utility lines along the western property boundary. With respect to the western property boundary trees, they have been significantly altered via limb pruning and topping over the years in relation to the lines. These trees do not appear to provide significant nesting and perching opportunities for raptors, as distinguished from the raptor grove. They do, however, provide for some noise and light attenuation that can complement the masonry wall at the property boundary. In addition, given that they are located within the 100-foot park woodland buffer area, they can help provide for some transition and screening in this respect as well. Their removal is not necessary, and is not allowed by this permit.

With respect to the other scattered trees, including along the boundary with the Mobile Home Park, they do not need to be retained. However, given the size of the trees to be removed and the proximity to trees that do provide suitable nesting and roosting opportunities for raptors, there is a potential for the proposed tree removal to disrupt nesting and roosting activities which could lead to unsuccessful breeding and foraging. Accordingly, special condition 4 requires tree removal to be minimized, and for any necessary tree removal to be accounted for by the submittal of a tree removal plan that includes the timing, methods, and specific trees requested to be felled, as well as mitigation measures to be implemented to ensure that all trees to be retained are protected and raptors are not disturbed during nesting.

Lighting Requirements

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

Water Quality



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

Restoration Required

Finally, in order to allow for the road incursion into the required 100-foot ESHA/stream buffer (and to mitigate its impacts, and the impacts of prior vegetation removal, as directed by the LCP, including LCP Policy 11.14 (Buffers; Mitigation Required)), special condition 3 requires the applicant to submit a revised Riparian Habitat Restoration and Enhancement Plan to restore and revegetate the ESHA/stream area and its 100-foot buffer to a natural functioning condition with native plant species that are endemic to Morro Bay, and that are capable of providing for screening of the residential development otherwise. The plan shall provide for all non-native and invasive species to be removed and controlled within the restoration area. The Plan must also include provisions for ongoing maintenance, annual monitoring, and performance criteria to ensure successful restoration/remediation of the site. The objective of the plan and the associated restoration shall be to return the ESHA/stream channel to a functioning system, similar to the resource extending upstream on the Black Hill Natural Area. See special condition 3.

Exotic Vegetation and Tree Removal Required

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

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

The project, as conditioned, can be found consistent with the LCP policies cited in this finding above because it has been sited and designed to avoid direct impacts to ESHA and related resources, and to



avoid degradation and disruption of ESHA and related resources on and off the site, including by clustering development in the least environmentally sensitive area of the site, appropriately buffering on and offsite resources, and ensuring that development impacts otherwise are addressed (including limiting and controlling lighting, filtering and treating drainage, etc.). In sum, as conditioned, the project will ensure the protection and enhancement of the identified habitats and be consistent with the certified City of Morro Bay LCP.

B. Visual Resources

1. Applicable LCP Visual Resource Policies

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

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

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

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

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

2. Visual Resource Setting and LCP Consistency Analysis

Partly because of its geographic setting between the volcanic upland areas of Black Hill and the upper reaches of the Morro Bay estuary, and partly because of its rural, central California setting, the project



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

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

In contrast, the proposed new 17 residential units would be two stories in height and would be constructed at a base elevation that is several feet higher than the mobile home park. Due to the orientation of the site, the lower levels of the proposed residences would appear to be somewhat screened by the mobile home park, as seen from north (west) bound Highway One. However, because the proposed units would extend to a roofline that is 25 feet from finished grade, the second story elements would rise approximately 12' above the roofline of the existing mobile home park units. Exacerbating the visual impact is the Applicant's proposal to remove nearly all the mature trees from the project site. Many of the trees slated for removal currently provide screening of the mobile home park units, and together with existing trees on the adjacent State Park property, help the blur the line between urban development and open space land, providing a significant visual transition area. The trees would be removed as part of site grading of nearly 7,000 cubic yards of grading, and grubbing over more than 70% of the property to create cleared, level building sites.

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

The proposed development is inconsistent with the LCP's visual resource policies identified above. The



two-story design of the residences will degrade important views by placing additional urban development within the northbound Highway One viewshed. Specifically, the upper stories of the proposed residential development would extend above existing vegetation and existing structural development and into the view of Black Hill as seen from northbound Highway One (views of the development would be blocked by natural topography when headed southbound). Removal of significant trees and grading almost all of the entire project site to create cleared, level building pads would appear to maximize (as opposed to minimize, as required) natural landform alteration. The two-story design and tree removal is likewise out of character with both the existing built and natural environments. In addition, the proposed new two-story residences do not conform to the height/bulk relationships of the established surrounding development, which is that of modest, single-story dwellings. In sum, the LCP designates this viewshed as 'publicly important' and 'significant' and even the modest (12 foot) incursion into it results in visual incompatibility, and is more than the LCP allows in that respect. Accordingly, the city-approved project does not conform to the certified LCP policies regarding the protection, and enhancement, of scenic and visual resource areas.

The recommended modifications identified in the preceding findings above, including the establishment of a development area outside of the ESHA/stream area, outside of the raptor nesting grove, and outside the 100-foot ESHA/stream and park wildland buffers, and retention of a significant number of trees on the site, will result in fewer potential residences and greater screening of the remaining development than there would be otherwise. Even with these changes, though, the project still raises issues with respect to the above described LCP visual resource protection requirements. In other words, even with these changes, 2-story residential developments, particularly if more densely clustered to maximize the Applicant's return on investment within the allowed development envelope, will still extend above existing development and vegetation and introduce additional development into a significant viewshed. LCP Policies 12.01 and 12.02 require new development to be visually compatible and subordinate to the character of the setting, and where feasible, to restore and enhance visually degraded areas, and LUP Policy 12.06 (and LUP Figure 31) clearly contemplate that the Black Hill viewshed is visually significant and demanding of even greater development sensitivity.

In order to bring the project into conformance with the LCP provisions, the proposed new residences must not introduce any additional development above the ridgeline of the adjacent mobile home park units and existing vegetation, and the property line adjacent to the mobile home park must be landscaped with appropriate native plants and trees to blend the new residential development in with the existing natural aesthetic. In other words, the structures would need to be limited to 1-story and constructed in such a way as to not be visible from Highway One. The Applicant would be given flexibility to design residential units as proposed within the allowable building area, but such structures could not be visible from Highway One.

Accordingly, special condition 2 requires the submittal of revised final plan details including site plans and elevations for the new residential structures, roadways, and lot configurations. In order to preserve the open character of the site and surroundings, and to minimize landform alteration, development shall be contained within the allowable disturbance area established by special condition 1 and as generally shown in Exhibit 6. Lot size, building pad orientation, and roadway configuration should take into



consideration existing trees, required open space, and drainage patterns. To avoid introducing additional urban development into the public viewshed, all residences shall be limited to 14 feet in height, as measured from the finished floor elevation to the ridge height. Special condition 1 further requires all new development to conform to all applicable setbacks, density requirements, and other development standards of the Morro Bay certified LCP.

Tree removal shall be allowed only as described in the ESHA, other habitat, and park land findings above and as conditioned by special condition 4. Additionally, the applicant is required to submit a revised landscaping plan (special condition 2) that includes planting both upper and lower canopy tree and shrub species native or naturalized to the area (e.g., Monterey cypress, Monterey pine, coyote bush, etc.) along the eastern property boundary adjacent to the mobile home park to provide screening and visual relief of the proposed new residences.

Special condition 2 requires the submittal of final grading plans that prohibit all unnecessary changes in the natural grade of the site. Grading shall be limited to the building pads for the residences, driveway, and roadway contours.

3. Visual Resource Conclusion

The proposed project does not adequately protect the publicly important and LCP designated significant viewshed of Black Hill as seen from north (west) bound Highway One, as required by the LCP. The subject site is located within a significant public viewshed, and the project would introduce additional structural development that would be incompatible with it into that viewshed, inconsistent with the LCP. Modifications to reduce project viewshed impacts are feasible and necessary. As conditioned, the Commission finds that the proposed project can be found consistent with the certified LCP's visual resource policies (i.e., LUP Policies 12.01, 12.02, and 12.06).

C. Fire Hazards

1. Applicable LCP Fire Hazard Provisions

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

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

2. Fire Hazard Setting and LCP Consistency Analysis



The majority of the adjacent State Parks' Black Hill Natural Area consists of dense scrub and chaparral vegetation. Much of this vegetation relies on fire for seed release, and the leaves and bark of scrub/chaparral plant species contain flammable resins that encourage combustion and burning. The longer the interval between fires, the greater the risk of a particularly intense and destructive fire because of the large amount of highly flammable dead vegetation. In addition, there is a stand of eucalyptus and Monterey pine trees on the State Park adjacent to the subject site, which have deposited a significant amount of bark and leaf litter to the already abundant dead vegetation. Several Monterey pines appear to have succumbed to pine pitch canker. The dead lichen covered trees and snags provide further evidence of the extreme fire hazard of the area.

Certain aspects of the proposed development (siting and construction of single family residences, street ends, and vehicle parking spaces) would be located immediately adjacent to the State Park natural area (see Exhibit 3). In some cases, the proposed new residences and/or parking areas would be constructed to within five feet of this natural area. Even with the proposed construction of a block perimeter wall, the proposed structures would remain at risk of fire because of the close proximity of the residences and human activity to a natural area within which natural fire processes are at play. From discussions with the Department of Parks and Recreation staff, the Black Hill Natural Area has not had a major fire in decades.⁵

The City's approval did not adequately acknowledge the fire hazards at this site and did not require all structures to be setback adequately to avoid and minimize the threat from a fire, and to allow for a defensible space all on the subject property. 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 interfaces such as this, the issue of fire safety and the need for such buffers has become more and more of a statewide issues and concern, particularly in light of recent fires that have left a trail of destruction in their wake. The State recently adopted a revised standard requiring a 100-foot defensible fire safety space requirement that applies for all properties along the wildland interface area (per State Public Resource Code Section 4291). In this instance however, the City did not require this mandatory setback, but instead approved the development with specific fire safety mitigations (such as a requirement for sprinklers in all new structures, use of fire resistant construction (closed eaves, stucco exterior, etc.), construction of a masonry wall 2 to 6 feet in height along the shared boundary with State Park property, installation of fire hydrants, etc.). Though such mitigations are appropriate in a rural setting such as this, they are not an adequate substitute for a buffer distance that allows for establishing a defensible space for fire safety when a property backs up on a natural area such as BHNA.

⁵ Personal communication between Commission staff planner Mike Watson and DPR Senior Environmental Scientist, Vince Cisero on August 15, 2007.



Accordingly, the proposed residential development site plan that locates residential development immediately adjacent to a wildland natural area of the State Park with high fuel loads is inconsistent with the certified LCP because it places development in immediate risk of fire, and has not minimized this risk appropriately.

In order to minimize the risk from fire hazard and bring the project into conformance with the certified LCP, the proposed building sites must be adequately setback from the fire-dependent and highly flammable State Park wildland natural area in such a way as to allow adequate space for defensible space parameters. As discussed in the preceding findings of this report, the Applicant is required to relocate all primary structural development (i.e., residences, garages, auxiliary units, etc.) 100 feet from the western property line to ensure consistency with the ESHA, other habitat, and park land provisions of the LCP. Relocating the project in this way is also necessary for achieving consistency with the fire hazards policies of the LCP. As noted previously, although a separate fire buffer might typically be applied (i.e., in addition to the 100-foot park wildland buffer) so as to protect the function and utility of the park wildland buffer itself, in this case there are other complementary fire safety/buffer measures that can be applied in addition to (and in terms of) the 100-foot park wildland buffer that can have the same or similar utility and that will allow the site to be reasonably developed (e.g., a 200-foot buffer would effectively preclude any development of the site) while respecting the constraints present here. Specifically, the fire safety measures applied by the City are all still relevant (i.e., sprinklers, fire resistant construction, fire hydrants, 6-foot wall along State park boundary) and are required by this approval. Again as discussed in the preceding findings, non-permanent structures (i.e., fences) that do not require buffering or fuel modification as well as at-grade improvements (roads, landscaping, sidewalks, etc.) may be constructed within the 100-foot setback, but development necessitating defensible fire safety space (e.g., the residences) could not. The buffer area not only protects the adjacent State Park BHNA land from the impacts of development, but also protects the life and property on the site from the fire hazards associated with development adjacent to this natural area.

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

3. Fire Hazard Conclusion

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

D. Water Quality

1. Applicable LCP Water Quality Protection Policies



The LCP contains policies that provide for the protection of coastal waters and wetland habitat. In addition to the ESHA and other habitat policies cited earlier (incorporated herein by reference) that protect these resource areas, LCP Policies 11.17 and 11.19 state as follows:

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

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

2. Water Quality Setting and LCP Consistency Analysis

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

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



quickly and prevent erosion. In addition, as deep infiltration decreases, the water table drops, reducing groundwater for wetlands, riparian vegetation, wells, and other uses.

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

As noted above, there are potential construction impacts that could affect coastal waters. Site preparation will require the use of heavily machinery and vehicles (e.g., dump trucks, grader, pickups, etc.). There will be trees, utilities, asphalt, and debris to be removed. Site soils and drainage patterns will be disturbed. Construction of the residences and roads will introduce new potentially toxic materials to the adjacent water course (e.g., cement, oils, paints, etc.). The proposed project includes construction of typical curb, gutter, and storm water facilities. The City has required by special condition of its permit, that the Applicant install oil/water separators between all drainage water inlets and the street gutter. In addition the Applicant is required to submit an erosion control plan to prevent sediment and debris from entering the city right-of-way and adjacent sensitive waterways. Even with these protective measures, the volume of runoff will not be reduced and the efficacy of using oil-water separators to adequately filter and treat urban pollutants has been, in the Commission's experience, inadequate. Accordingly, the proposed development could significantly degrade ESHA/stream resources, coastal waters and aquatic habitats, and it is inconsistent with the LCP.

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



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

3. Water Quality Conclusion

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

D. Archaeological Resources

1. Applicable LCP Archaeological Policies

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

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

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

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

- a. Removal of artifacts;
- b. Dedication of impacted area as permanent open space;



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

2. Archaeological Setting, LCP Consistency Analysis, and Conclusion

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

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

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

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



E. Future Notice

The terms and conditions of this approval are meant to be perpetual. In order to inform future owners of the requirements of the permit, and add a level of legal implementation of this fact, this approval is conditioned for a deed restriction designed to record the project conditions against the affected property. See special condition 10.

F. California Environmental Quality Act (CEQA)

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

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

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

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



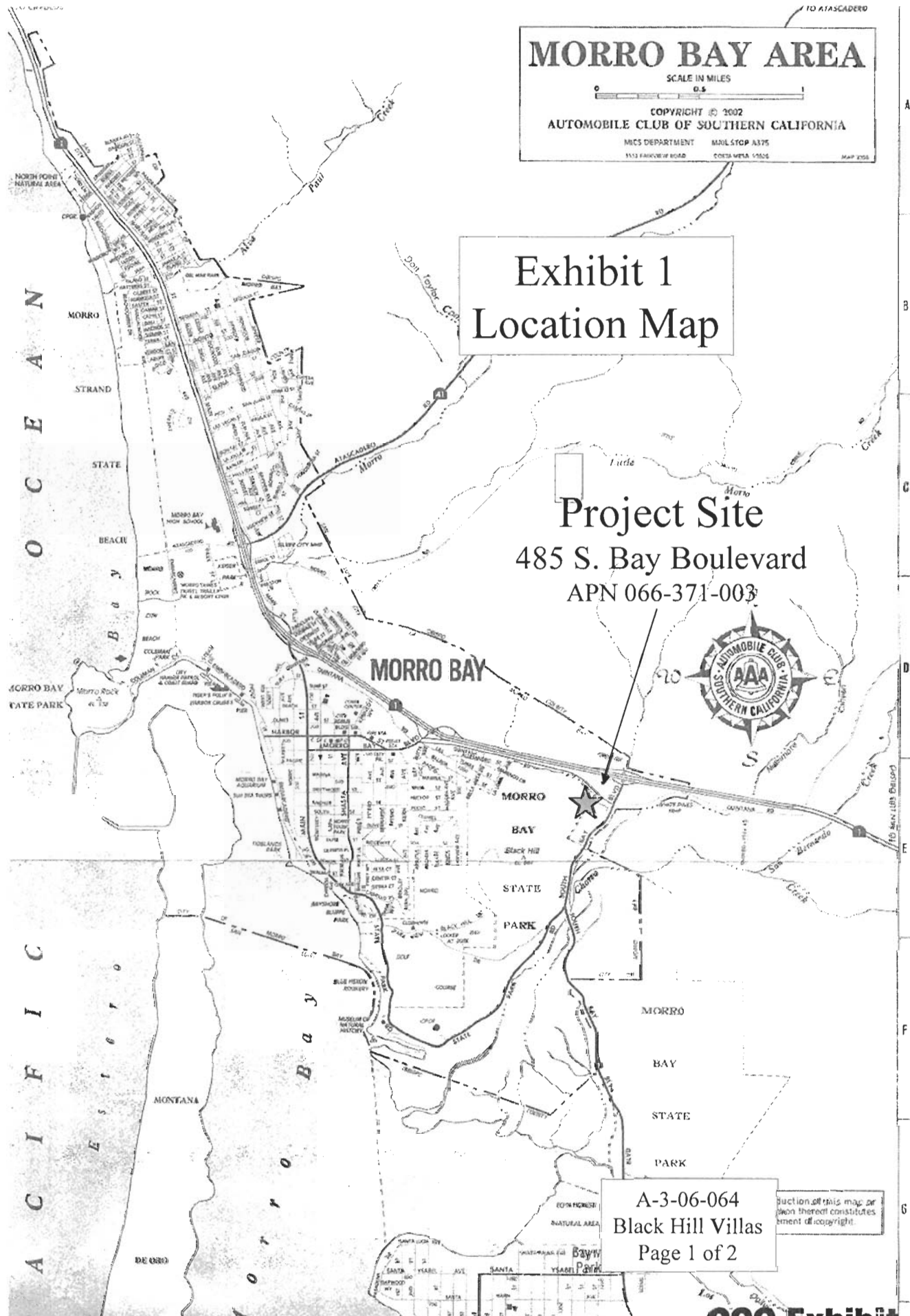
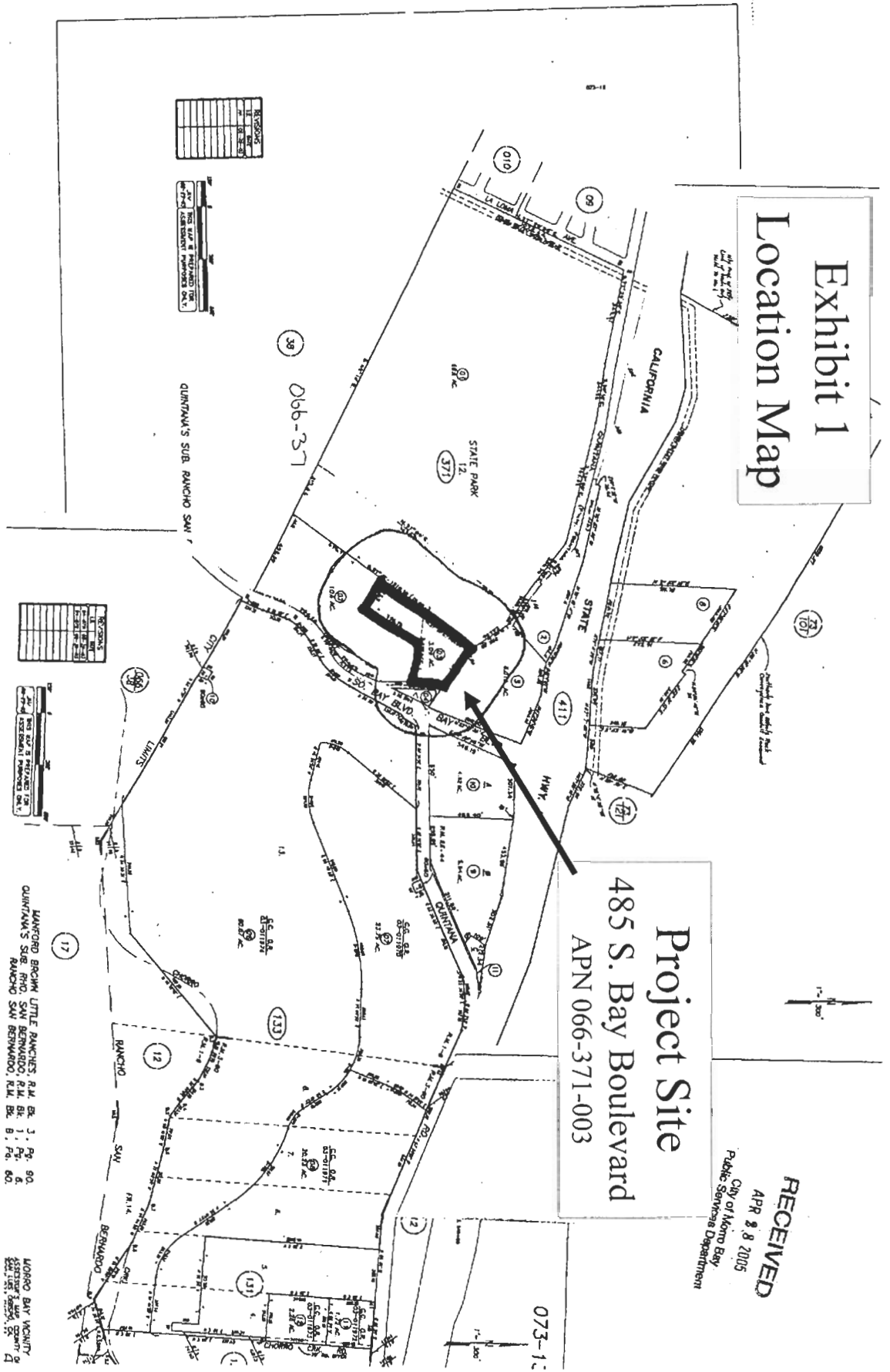


Exhibit 1 Location Map

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

RECEIVED
APR 28 2005
City of Morro Bay
Public Services Department



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

Exhibit 2

Site Photographs

Pacific Ocean

Morro Bay Estuary

Black Hill
Natural Area

Wetland Restoration
Area

S. Bay Boulevard

Project Site
Stream Corridor

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

© 2007 Europa Technologies
Image © 2007 DigitalGlobe
Image NASA

Streaming 100%

© 2007
Google™

Eye alt 330 m

Degraded Stream Channel

Exhibit 2
Site Photographs

Box Culvert leading underneath South Bay Boulevard

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Black Hill Villas
Page 2 of 3

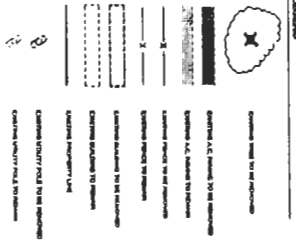
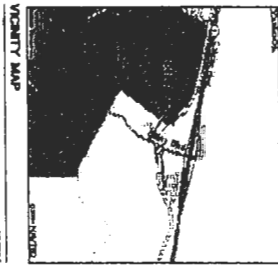
Eucalyptus and pines growing along western property line
on adjacent State Park lands.

Exhibit 2 Site Photographs

Stream and drainage channel

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Black Hill Villas
Page 3 of 3

BLACK HILL VILLAS TRACT 2739



- EXPLANATION NOTES**
- ☐ Survey Boundary
 - ☐ Easement
 - ☐ Right of Way
 - ☐ Other

SHEET INDEX

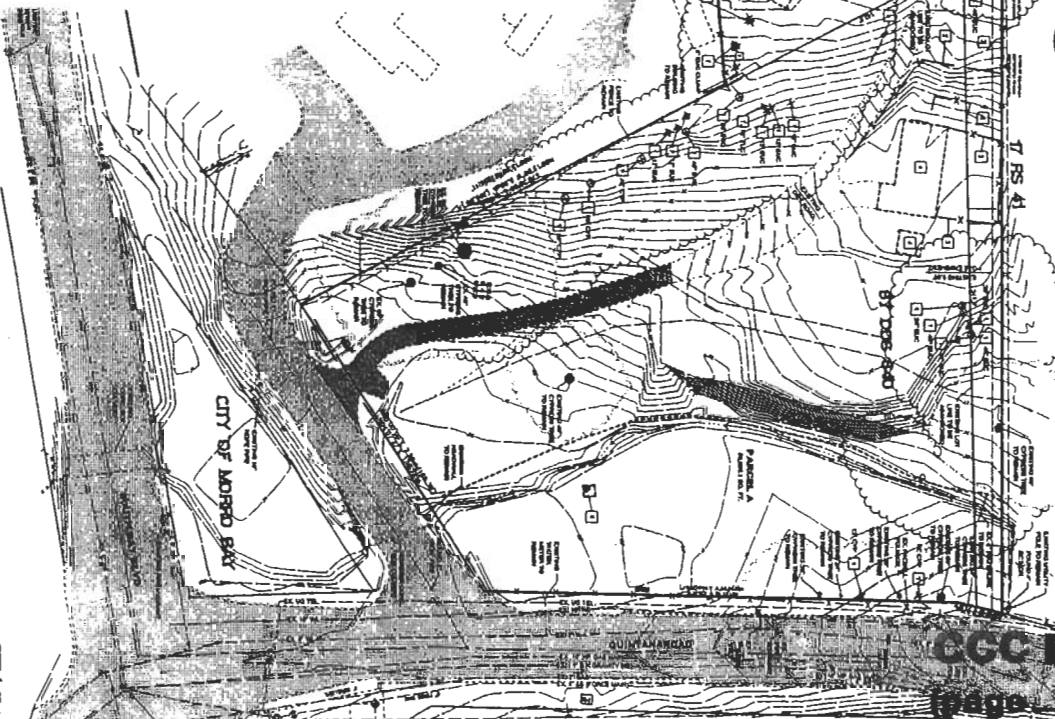
1. Survey Boundary and Easement Plan
2. Topographic Survey and Denotation Plan
3. Final Plat Map

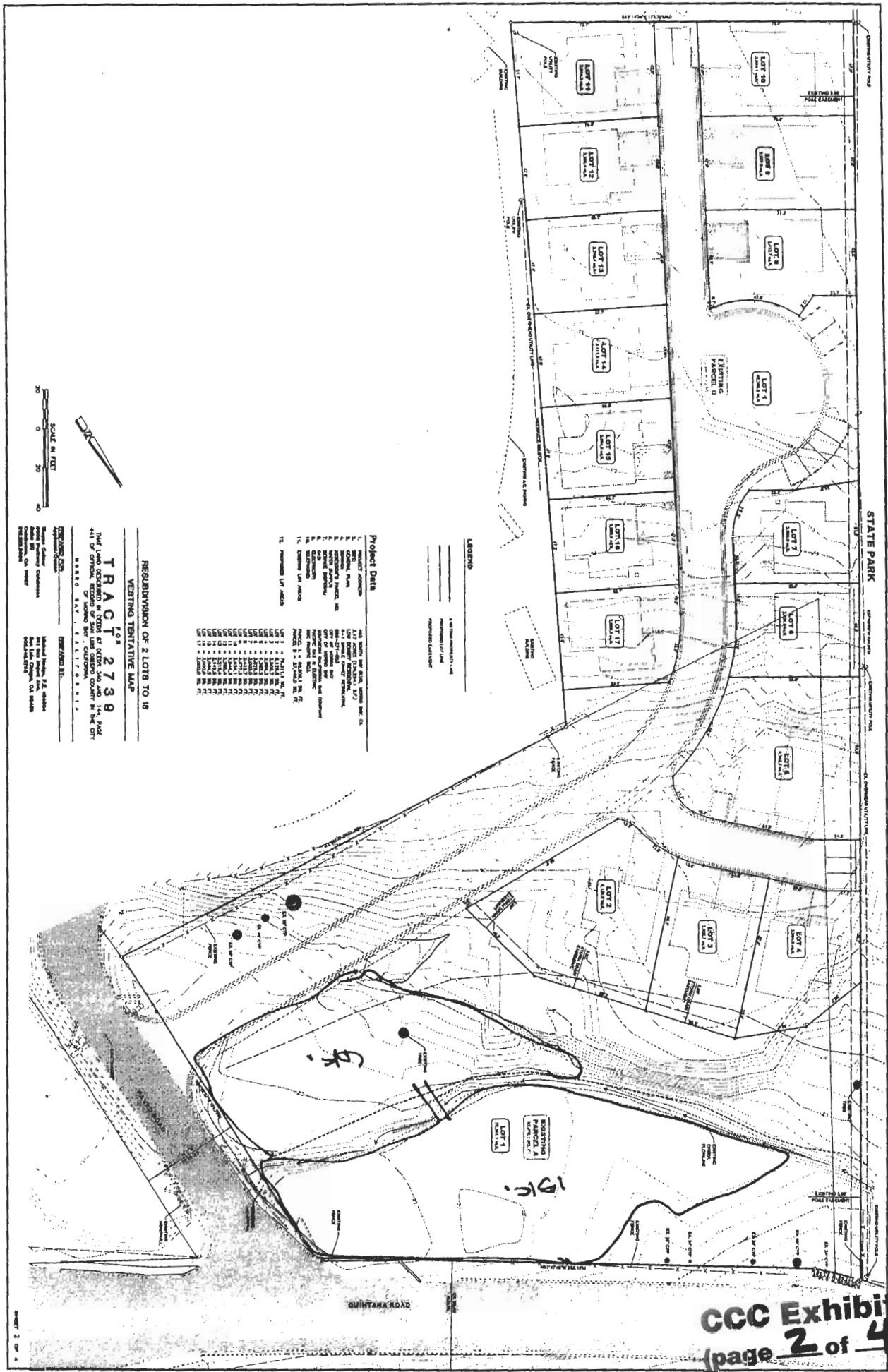
TRACT 2739

REVISION OF 2 LOTS TO 18

TRACT 2739

Topographic Survey and Denotation Plan
City of Mojave, California
Surveyed by: [Name]
Date: [Date]





Project Data

TRACT 2739, 18 LOTS, 1.00 AC. (APPROX.)
 1. LOT 1, 1.00 AC. (APPROX.)
 2. LOT 2, 1.00 AC. (APPROX.)
 3. LOT 3, 1.00 AC. (APPROX.)
 4. LOT 4, 1.00 AC. (APPROX.)
 5. LOT 5, 1.00 AC. (APPROX.)
 6. LOT 6, 1.00 AC. (APPROX.)
 7. LOT 7, 1.00 AC. (APPROX.)
 8. LOT 8, 1.00 AC. (APPROX.)
 9. LOT 9, 1.00 AC. (APPROX.)
 10. LOT 10, 1.00 AC. (APPROX.)
 11. LOT 11, 1.00 AC. (APPROX.)
 12. LOT 12, 1.00 AC. (APPROX.)
 13. LOT 13, 1.00 AC. (APPROX.)
 14. LOT 14, 1.00 AC. (APPROX.)
 15. LOT 15, 1.00 AC. (APPROX.)
 16. LOT 16, 1.00 AC. (APPROX.)
 17. LOT 17, 1.00 AC. (APPROX.)
 18. LOT 18, 1.00 AC. (APPROX.)

LEGEND

— LOT PROPERTY LINE
 — PROPERTY OF LOT
 — PROJECT BOUNDARY

RESDIVISION OF 2 LOTS TO 18
 VESTING TENTATIVE MAP
TRACT 2739
 18 LOTS, 1.00 AC. (APPROX.)
 441' OF OFFICIAL RECORD IN DEEDS OF OUTGO, 340 AND 144, PAGE
 441 OF OFFICIAL RECORD IN DEEDS OF OUTGO, COUNTY OF SAN DIEGO,
 CALIFORNIA
 PREPARED BY: [Name]
 DRAWN BY: [Name]
 CHECKED BY: [Name]
 DATE: [Date]



AGENDA NO: _____
Meeting Date: _____
Action: _____

Staff Report

TO: HONORABLE MAYOR AND CITY COUNCIL **DATE:** NOVEMBER 13, 2006

FROM: MIKE PRATER, SENIOR PLANNER

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

APPLICANT: WAYNE COLMER

APPELLANT: WAYNE COLMER

PLEASE BRING YOUR OCTOBER 9, 2006 COUNCIL REPORTS

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

RECOMMENDATION:

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

FISCAL IMPACT:

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

SUMMARY:

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

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

Prepared by: _____ Dept. Review: _____
City Manager Review: _____

CCC Exhibit 4
(page 1 of 16 pages)

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

BACKGROUND:

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

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

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

APPEAL:

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

DISCUSSION:

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

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

CLUSTER SUBDIVISIONS:

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

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

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

CONCLUSION:

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

ATTACHMENTS:

Attachment A – City Council report of October 9, 2006, under separate cover previously forwarded
Attachment B – Applicant/Appellant appeal letter

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



City of Morro Bay

Morro Bay, CA 93442 • 805-772-6200

www.morro-bay.ca.us

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

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

THIS PERMIT IS HEREBY APPROVED AND ISSUED FOR:

SITE ADDRESS: 485 S. Bay Blvd

APPLICANT: Wayne Colmer

APN: 066-371-003

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

DATE APPROVED: August 8, 2005

APPROVED BY: CITY COUNCIL

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

CEQA DETERMINATION: NEGATIVE DECLARATION

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

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

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



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



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

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

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

ATTEST:

DATE: November 14, 2006

Mike Prater, Senior Planner

FOR: Bruce Ambo, Public Services Director

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

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

FINANCE
595 Harbor Street

ADMINISTRATION
595 Harbor Street

FIRE DEPARTMENT
715 Harbor Street

HARBOR DEPARTMENT
1275 Embarcadero Road

CITY ATTORNEY
955 Shasta Avenue

POLICE DEPARTMENT
850 Morro Bay Boulevard

RECREATION AND PARKS
1001 Kennedy Way

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

California Environmental Quality Act (CEQA)

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

Subdivision Map Act Findings

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

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

Conditional Use & Coastal Development Permit Findings

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

Variance Findings

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

Architectural Consideration

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

EXHIBIT B

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

STANDARD CONDITIONS

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

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

PUBLIC WORKS CONDITIONS

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

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

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

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

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

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

A FEMA approved Conditional Letter of Map Amendment.

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

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

PLANNING CONDITIONS

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

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

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

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

ENVIRONMENTAL CONDITIONS

40. **BIOLOGICAL:**

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

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

41. **CULTURAL RESOURCES:**

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

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

42. **GEOLOGY/SOILS:**

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

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

43. **HAZARDS/ HAZARDOUS MATERIALS:**

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

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

44. **HYDROLOGY/WATER QUALITY:**

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

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

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

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

45. **NOISE:**

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

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

46. **TRANSPORTATION/CIRCULATION:**

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

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

FIRE CONDITIONS

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

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

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

PLANNING COMMISSION/CITY COUNCIL CONDITIONS:

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

CALIFORNIA COASTAL COMMISSION

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

**COMMISSION NOTIFICATION OF APPEAL**

DATE: December 4, 2006

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

FROM: Steve Monowitz, District Manager

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

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

Local Permit #: CPO-110

Applicant(s): Wayne Colmer

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

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

Local Decision: Approved w/ Conditions

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

Date Appeal Filed: 12/1/2006

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

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

cc: Wayne Colmer
Mike Prather, Senior Planner

CCC Exhibit 5
(page 1 of 13 pages)

CALIFORNIA COASTAL COMMISSION

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



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

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

SECTION I. Appellant(s):

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

Meg Caldwell, Chairperson

California Coastal Commission

45 Fremont Street, Suite 2000

San Francisco, CA 94105

(415) 904-5200

Mary Schallenberger

California Coastal Commission

45 Fremont Street, Suite 2000

San Francisco, CA 94105

(415) 904-5200

SECTION II. Decision Being Appealed

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

2. Brief description of development being appealed:

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

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

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

APN 066-371-003

4. Description of decision being appealed:

a. Approval; no special conditions: _____

b. Approval with special conditions: XX

c. Denial: _____

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

TO BE COMPLETED BY COMMISSION:

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

DATE FILED: 12/1/06

DISTRICT: Central Coast

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

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

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

a. ☐ Planning Director/Zoning
Administrator

c. ☐ Planning Commission

b. ☒ City Council/Board of
Supervisors

d. ☐ Other: _____

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

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

SECTION III Identification of Other Interested Persons

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

a. Name and mailing address of permit applicant:

Wayne Colmer

5000 Parkway Calabasas, Suite 110

Calabasas. CA 91302

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

(1) _____

(2) _____

(3) _____

(4) _____

SECTION IV. Reasons Supporting This Appeal

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

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

APPEAL FROM COASTAL PERMIT DECISION OF LOCAL GOVERNMENT

Page 3

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

See Attached.

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

SECTION V. Certification

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

Signed: Meg Caldwell
Appellant or Agent

Date: 12/1/06

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

Signed: _____

Date: _____

(Document2)

CCC Exhibit 5
(page 4 of 13 pages)

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

See Attached.

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

SECTION V. Certification

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

Signed: Mary K. Shallenburg
Appellant or Agent

Date: 12/1/06

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

Signed: _____

Date: _____

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

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

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

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

CALIFORNIA COASTAL COMMISSION

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

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

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

SECTION I. Appellant(s)

Name: Roger Ewing and Ray McKelligott

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

City: Morro Bay

Zip Code: 93442

Phone: 805.772.1652

805.772.8128

SECTION II. Decision Being Appealed

1. Name of local/port government:

City of Morro Bay

2. Brief description of development being appealed:

Cluster development plan (with CDP) abutting State Park hillside

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

485 S. Bay Blvd

APN - 066-371-003

South Bay Blvd and Quintana St.

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

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

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CALIFORNIA
COASTAL COMMISSION
CENTRAL COAST AREA

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

TO BE COMPLETED BY COMMISSION:

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

DATE FILED: 12/1/06

DISTRICT: Central Coast

CCC Exhibit 5
(page 18 of 13 pages)

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

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

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

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

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

SECTION III. Identification of Other Interested Persons

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

a. Name and mailing address of permit applicant:

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

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

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

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

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

Doug Stuart
501 Pinon
Morro Bay, CA 93442

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

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

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

Los Angeles, CA 90071
(letter enclosed)

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

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

SECTION IV. Reasons Supporting This Appeal

PLEASE NOTE:

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

1. from the Coastal Act

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

(b) Development in areas adjacent to environmentally sensitive habitat areas and parks and recreation areas shall be sited and designed to prevent impacts which would significantly degrade those areas, and shall be compatible with the continuance of those habitat and recreation areas.

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

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

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

Policy 11.02 Development in areas adjacent to environmentally sensitive habitat areas and parks and recreation areas shall be sited and designed to prevent impacts which would significantly degrade such areas, and shall maintain the habitat's functional capacity.

Our Response

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

CCC Exhibit
(page 10 of 13 pages)

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

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

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

2. from the Coastal ACT

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

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

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

Our Response:

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

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

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

1. Grading should be kept to a minimum

....

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

Our response:

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

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

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

SECTION V. Certification

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

Roger L. Ewing

Raymond F. McEllegat

Signature of Appellant(s) or Authorized Agent

Date: 11/28/06

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

Section VI. Agent Authorization

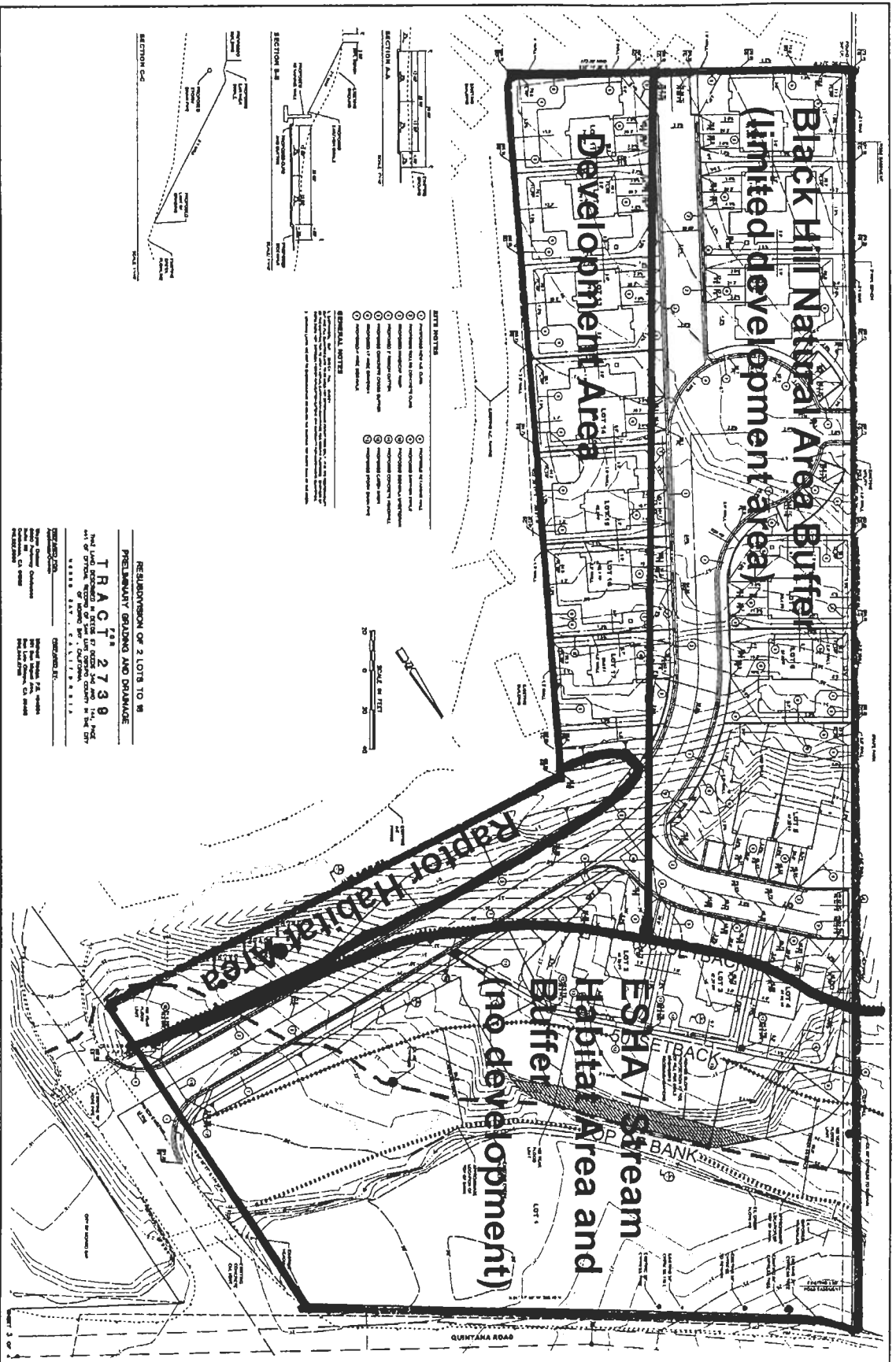
I/We hereby
authorize

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

Signature of Appellant(s)

Date: _____

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



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

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AUG 06 2007

August 1, 2007

CALIFORNIA
COASTAL COMMISSION
CENTRAL COAST AREA

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

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

Gentlepersons:

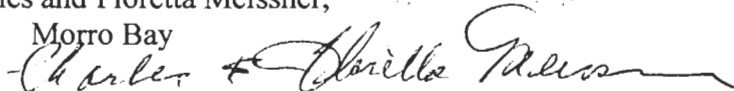
"It was the people of California who voted to maximize coastal access and control shoreline development when they overwhelmingly approved proposition 20 in 1972, creating the Coastal Commission."* If one divides the population of California by the miles of state coastline I think the answer is over 33,000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

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

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

Charles and Floretta Meissner,

Morro Bay



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

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AUG 06 2007

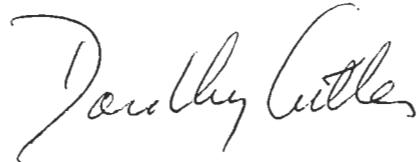
CALIFORNIA
COASTAL COMMISSION
CENTRAL COAST AREA

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

Dear Sir:

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

Thank you,



Dorothy Cutter

8-1-07

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

MRB-06-064

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

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

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

Why must the homes be
so large? (over)

- 2 -

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

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

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

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

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

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

Sincerely,
Cheryl Stice & ~~Ann Stice~~
475 S Bay Blvd, #23 Montecito Bay



Ms. Cheryl Stice
Spec 23
475 S Bay Blvd.
Montecito Bay, CA 93442

SAN
02 A

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CALIFORNIA
COASTAL COMMISSION
CENTRAL COAST AREA

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

Gentlemen,

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

Mr & Mrs Raymond R. Oliveira



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

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CCC Exhibit 7
(page 5 of 9 pages)

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August 1, 2007

CALIFORNIA
COASTAL COMMISSION
CENTRAL COAST AREA

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

Re: Subject: Commission Approval
4-3-1118-06-064

I am writing in opposition to
the development noted above.

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

The proposed development would
be at our Park.

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

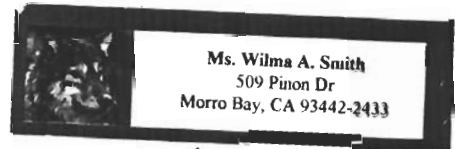
It would change the character
of our beautiful, peaceful area,
and might well lead to other
construction that would
continue the deterioration of
a lovely area from ambience.

Please DO NOT approve this
project.

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

Jacqueline L. Wilton
Page 43

Blue Heron Terrace
Mobile Home



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

Wed. Aug. 1, 2007

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

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

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

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

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

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

As designed:

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

(2)

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

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

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

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

There, also is a creek running in the lower area — with a culvert to allow it to go under another main & heavily travelled road (So. Bay Blvd.) This creek is dry in the off-rain season, BUT I've seen 3' x 4' of water in that intersection of So. B. Blvd. & So. Bay Blvd. 4/00 (1989, I believe)

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

A well in this creek area also
presents a concern.

With 57 condos and increased
traffic will certainly endanger even more
the intersection & "in & out" roads
to the homes. Our City usually plans
2 cars per home. Mr. Colmer's
"Traffic expert" says there will be
only 37 more cars added to already
a dangerous situation. The City has
made the stipulation that he has to
put in a 4-WAY STOP sign at
the intersection of S.B. Blvd. & Quintana
(It is NOT in Cal. Trans jurisdiction.)

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

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COASTAL COMMISSION
CENTRAL COAST AREA

Thank you.

Sincerely,

William A. Smith

(805 772-2141) AS