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COASTAL COMMISSION
CENTRAL COAST AREA



April 4, 2014

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

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

Agenda Item: 10B, Wednesday April 9, 2014

Dear Chair Kinsey and Commissioners,

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

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

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

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

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

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

Sincerely,

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

From: David Neish
Date: March 26, 2014 at 9:49:18 AM PDT
To: "Kinsey, Steven"
Subject: Colmer application - City of Morro Bay . **Application No. A-3-MRB-06-064 (Colmer, Morro Bay)**

Steve, per our discussion, here is a sampling of the CCC Staff mistakes or misrepresentations regarding the Staff Report for the Colmer application in the City of Morro Bay. 1.) Failure to accurately describe the surrounding development. 2) Failure to adequately describe the existing on-site development. 3) Failure to discuss the LCP designation for the property. 4.) Failure to accurately or fully discuss the Court Decision. 5.) Failure to adequately address the ESHA Setbacks. 6.) Failure to accurately discuss the Unnamed drainage. 6.) Failure to mention or discuss the Restoration plan. 7.) Failure to accurately address the Alleged violation. 8.) Fails to recognize determinations made in the Certified mitigated Negative Declaration, and finally 9.) fails to mention the benefits to the environment as a result of the proposed project.

Steve, these are the broad headings, there are numerous points under each of the broad headings that I can provide you if need be. Also, as I mentioned there is no expedited time frame for a need for a hearing in April. We ask that we be given time to complete the enhancements for our plan and are more than willing to be agendized at the next Central California meeting (July in Ventura).

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~~Agenda Item No. T131b~~

A-3- MRB-06-064

SAVE THE PARK

In Opposition

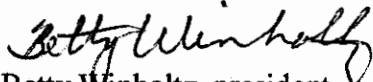
February 5, 2014

Dear Commissioners:

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

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

Sincerely,


Betty Winholtz, president

cc: Daniel Robinson, Santa Cruz CCC

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

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

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

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

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

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W106

Blue Heron Terrace Mobile Home Park
HOA

475 So. Bay Blvd.
Morro Bay, California

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CALIFORNIA
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CENTRAL COAST AREA

April 7, 2014, 2014

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

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

Attn. Daniel Robinson
Coastal Planner

Dear Commissioners and Mr. Robinson:

The Homeowner's Association of Blue Heron Terrace Mobile Home Park gathered approximately 90 signatures on a petition supporting the Staff Recommendation to *Deny* Application #A-3-MRB-06-064 from the residents in the park. Also we gathered approximately 100 signatures on petitions (supporting the Staff Recommendation to Deny) from the community at large.

I put all these petitions into a 9 x 12 envelope and sent it out Certified Return Receipt on March 25th. Unfortunately, the envelope of petitions has taken a strange route and at last tracking report, the envelope is in Goleta, California. Whenever I receive the envelope of petitions, I will forward them to the Coastal Commission to be put into the file.

I have enclosed a copy of my cover letter that was sent along with the petitions, and a copy of the tracking on the envelope.

I am deeply sorry for the inconvenience this mishap has caused everyone.

Thank you,

Sincerely,



Dixie R. Patterson
President, HOA

Encls.

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copy

Blue Heron Terrace Mobile Home Park

HOA

475 So. Bay Blvd.
Morro Bay, California

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APR 07 2014

CALIFORNIA
COASTAL COMMISSION
CENTRAL COAST AREA

March 25, 2014

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

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

Attn. Daniel Robinson
Coastal Planner

Dear Commissioners and Mr. Robinson:

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

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

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

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

Thank you for taking our concerns into consideration.

Sincerely,

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

Encls.

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Expected Delivery Day: Friday, March 28, 2014

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Postal Product:
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DATE & TIME

STATUS OF ITEM

LOCATION

Email Updates

April 5, 2014, 1:53 am

Processed at
USPS Origin Sort
Facility

GOLETA, CA 93199

April 5, 2014

Depart USPS Sort
Facility

GOLETA, CA 93199

April 4, 2014, 8:52 pm

Processed at USPS
Origin Sort Facility

GOLETA, CA 93199

April 3, 2014, 8:05 pm

Processed through
USPS Sort Facility

SAN JOSE, CA 95101

April 3, 2014

Depart USPS Sort
Facility

SAN JOSE, CA 95101

March 31, 2014

Depart USPS Sort
FacilityWEST
SACRAMENTO, CA 95799

March 31, 2014, 4:40 am

Processed through
USPS Sort FacilityWEST
SACRAMENTO, CA 95799

March 25, 2014, 3:31 pm

Dispatched to Sort
Facility

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March 25, 2014, 2:09 pm

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CALIFORNIA COASTAL COMMISSION

CENTRAL COAST DISTRICT OFFICE
725 FRONT STREET, SUITE 300
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W10b

Filed: 12/1/2006
Action Deadline: None
Staff: D. Robinson - SC
Staff Report: 3/21/2014
Hearing Date: 4/09/2014

STAFF REPORT: DE NOVO HEARING

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

Applicant: Wayne Colmer

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 and 29 trees; grading and site preparation for new residential sites and new access roads; construction of roads, utility infrastructure, and construction of 17 residential units.

Staff Recommendation: Denial

SUMMARY OF STAFF RECOMMENDATION

The Applicant proposes to subdivide two existing parcels into 18 lots: 17 residential lots and one common area parcel. The Applicant further proposes to develop each residential lot with a residential unit: fifteen detached two-story single family residences (with two car garages) and

two townhouse units; necessitating construction of road access and the removal of approximately 29 on-site trees. The project site is located at the corner of South Bay Boulevard and Quintana Road, in the City of Morro Bay.

The proposed project was originally approved by the City of Morro Bay in November 2006, and the City's approval was subsequently appealed to the Coastal Commission. In November 2007, the Commission found a substantial issue was raised with respect to the proposed project's consistency with the City of Morro Bay Local Coastal Program (LCP) and took jurisdiction over the coastal development permit (CDP) application. In March 2008, the Coastal Commission approved, with conditions, a CDP for the project described above. The Commission was sued over its CDP decision, and the San Luis Obispo County Superior Court ultimately remanded the matter back to the Commission to re-hear the item consistent with the Court's decision, which required the Applicant to more clearly identify all biological resources, including explicitly all environmentally sensitive habitat areas (ESHA) and their precise boundaries/limits, and to consult with the California Department of Fish and Wildlife (CDFW) regarding the potential for reduced ESHA setbacks, as required by the LCP. The Applicant provided updated biological and related information as required by the Court in late 2013. Thus, this staff report and hearing are the culmination of that Court remand, and represent the Commission's CDP application review of the proposed project. Other than requiring more precise biological determinations, the Court's decision does not direct anything other than a review of the project against the applicable LCP policies, and does not direct the Commission to any particular CDP decision outcome.

The project site contains several types of ESHA, as defined by the LCP. First, there is an intermittent stream (a tributary to Chorro Creek) and riparian corridor that extends from the northern flank of the Black Hill Natural Area to Chorro Flats, providing an important link and wildlife corridor between the Black Hill Natural Area and the Morro Bay Estuary. Second, there is an area of wetlands, characterized by salt-tolerant vegetation, adjacent to the stream, which is also considered ESHA. Finally, the site includes a stand of trees (cypress, eucalyptus, pine) that provides nesting habitat for raptors, and which is considered ESHA pursuant to the LCP. The LCP requires a minimum 100 foot development setback from ESHA. This setback can be reduced in some cases to 50 feet, except for wetland habitats, including with respect to the area of wetlands on this site.

The additional information that the Applicant provided, as required by the Court's decision, more clearly describes the habitat on and adjacent to the site, and given the updated information, there are several significant changes to Staff's evaluation of the project site and recommendations regarding LCP-required ESHA setbacks. Most importantly, the wetlands that are adjacent to the stream corridor were not clearly identified in the Commission's 2008 analysis, and the Commission ultimately allowed a reduced setback of 50 feet from the stream corridor to allow the access road to be constructed. However, given the location of the wetlands, and the LCP's requirement for a strict 100 foot buffer from all wetlands, this setback reduction is inconsistent with the LCP and cannot be allowed. Similarly, the proposed road would be constructed within and immediately adjacent to the raptor habitat ESHA, and this is also inconsistent with the LCP and cannot be allowed. As such, the access road cannot be allowed in the proposed location. Given that the access road cannot be feasibly relocated to another accessible portion of the property, due to the location of ESHA and ESHA buffers on the site, the proposed project cannot be approved consistent with the LCP and must be denied.

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

The motion to effect this recommendation is found on page 4 below.

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APPENDICES

Appendix A – Substantive File Documents

EXHIBITS

Exhibit 1 – Location Map

Exhibit 2 – Photographs of Site

Exhibit 3 – Current Habitat Maps and Site Plan

Exhibit 4 – Morro Bay Coastal Land Use Plan Figure 28 – ESHA Map

Exhibit 5 – Commission Staff Biologist’s Memo

Exhibit 6 – Correspondence

MOTION AND RESOLUTION

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

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

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

I. FINDINGS AND DECLARATIONS

The Commission finds and declares as follows:

A. PROJECT LOCATION, DESCRIPTION AND BACKGROUND

Location and Existing Site Conditions

The proposed project is located on two contiguous lots totaling 3.17 acres 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 is located approximately 500 feet to the north of the project site. The project site is located on the northern flank of Black Hill and is bordered along the entire west property line by the 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 located 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. See **Exhibit 1** for location maps.

The subject site is located near the base of Black Hill and is fairly sloped from north to south (approximately 60 feet in elevation gain moving toward Black Hill). The site includes a seasonal stream that crosses the northern (lower elevation) section of the property, more or less parallel to Quintana Road. This stream is an unnamed tributary to Chorro Creek. The stream corridor slopes down from its origins in the Black Hill Natural Area downstream and across the site to a box-culvert that is located beneath the driveway entrance and South Bay Boulevard. This corridor conveys water in an eastward direction across the property from Black Hill towards Chorro Flats and ultimately into Chorro Creek. Numerous mature trees occupy the site, including Monterey

cypress, Monterey pine and blue gum eucalyptus. A row of elm trees is located along the western property line adjacent to State Park property. Open areas on the upper portion of the site support a mix of annual grasses, herbaceous weeds, and ornamental plants. See **Exhibit 2** for photos of the subject site.

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

Proposed Project Description

The proposed project involves the removal of the existing structures, and 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 each consisting of three bedrooms, two baths, and 1,150 square feet (the proposed townhouses meet the County's standards for affordable units). The project would involve significant grubbing and grading of approximately 70 percent of the site, and would include re-contouring of the upper slopes of the intermittent stream (of the right bank when looking downstream) that traverses the northern portion of the property, for riparian habitat enhancement purposes. The project includes developing an approximately 20 to 30 foot wide paved access road with sidewalk (and parallel parking spaces along a portion) into and through the property providing access to each of the residential lots. Approximately 29 trees are also slated for removal on the site. The project includes streetscape improvements along Quintana Road and South Bay Boulevard, landscaping, pedestrian pathways, and temporary and permanent water quality and erosion control measures.

Since the time of the Commission's approval of the project in March 2008, the Applicant has proposed changes to several project components (e.g., the proposed residential unit configuration, roadways, parking areas, etc.). In addition, as required through the Court remand (see below), the Applicant has provided updated biological information, including to allow identification of all ESHAs on the project site, and their precise boundaries. The updated plans show a realigned main access roadway, which would be set back approximately 50 feet from the edge of the stream and riparian area, and residential units set back 40 feet from the Black Hill Natural Area (along the project's western border). See **Exhibit 3** for the Applicant's habitat maps and site plan.

Background and Court Remand

The proposed project was originally approved by the City of Morro Bay on November 13, 2006, and the City's approval was subsequently appealed to the Coastal Commission. On November 16, 2007, the Commission found that a substantial issue was raised with respect to the proposed project's consistency with the City of Morro Bay LCP and took jurisdiction over the CDP application. On March 6, 2008, the Coastal Commission approved, with conditions, a coastal development permit for a project roughly as described above. On April 11, 2008, the

Commission approved revised findings that were based on the Commission's action at the March 6, 2008 hearing. On August 19, 2008, the Commission was asked by a local group named "Save the Park" to revoke the CDP. After a public hearing in December 2008, the Commission declined to revoke the CDP.

Save the Park sued the Commission on its 2008 approval, alleging that the development, even with protective measures, would disrupt and disturb the ESHA located on the property, most notably wetlands and riparian areas. On June 21, 2010, the San Luis Obispo County Superior Court decided in favor of Save the Park in part, and remanded the matter to the Commission to re-hear the item consistent with the Court's decision. The remand required the Applicant to provide additional biological information, including as needed to identify all environmentally sensitive habitat areas (ESHA) and their precise boundaries/limits, and to consult with the California Department of Fish and Wildlife (CDFW) regarding the potential to allow reduced ESHA setbacks consistent with the LCP. The Applicant provided the required information in terms of biological information, and ESHA identification and boundaries, and has consulted with the CDFW. CDFW recommended a number of protective measures to protect fish and wildlife resources for all construction work located within an approximately 50-foot setback from the top of the bank and/or the extent of riparian vegetation. The Applicant has submitted a number of updated biotic reports, including a biological resource assessment report (dated September 24, 2012), a raptor survey report (dated November 14, 2012), a habitat assessment update for the California red-legged frog (dated September 14, 2012), a protocol-level Morro shoulderband snail survey (dated August 20, 2012), an ESHA mapping survey (including for wetlands and riparian vegetation) (dated September 21, 2012), and an evaluation of the site as habitat for monarch butterflies (dated February 28, 2012). In addition, the Applicant has submitted a United States Fish and Wildlife Service (USFWS) concurrence determination regarding the Morro shoulderband snail and a CDFW Stream Alteration Agreement (dated August 29, 2013).

Importantly, other than requiring more precise biological determinations, the Court's decision does not direct anything other than a review of the project against the applicable LCP policies, and does not direct the Commission to any particular CDP decision outcome. The Commission is free here to review the proposed project de novo, and to render a decision on a CDP against the LCP based on current data and understandings.

B. BIOLOGICAL RESOURCES

Applicable Policies

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

***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).*

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

...

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

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

...

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

...

(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.*

Analysis

Resource Setting

The subject site is located near the base of Black Hill and includes a small seasonal stream that crosses the northern quarter of the property, more or less parallel to Quintana Road. 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 the 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 present along the western property line adjacent to the State Park property, which is a 300-acre undeveloped open space park land. A few native species, such as coyote bush and Californian poppy, are also found in the upland area.

The stream channel crossing the northern quarter of the property is an unnamed tributary of Chorro Creek, and provides an aquatic and habitat link between the Black Hill Natural Area and Chorro Flats and the Chorro Creek watershed. The stream corridor on the property has been disturbed via alteration and manipulation of the stream course and drainage channel and ongoing weed abatement practices over time. Several large Monterey pine and eucalyptus trees were removed in the past, along with some that have apparently been felled by weather since 2007.¹ Bark and leaf litter from the eucalyptus 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.

Black Hill Natural Area

Due to the presence of a variety of sensitive plants and animals, and the cohesiveness of the undisturbed wild land, the upper portion of the adjacent Black Hill Natural Area (BHNA) is categorically identified and mapped as ESHA on Figure 28 of the City's LCP (see **Exhibit 4**). As identified in the certified LCP, the BHNA plant community consists mainly of native coastal sage scrub, but also contains species characteristic of maritime chaparral. 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

¹ On February 2, 2007, Commission staff observed evidence of recent tree removal within the stream and riparian corridor during a site visit, and this tree removal was corroborated by the Applicant's Riparian Enhancement Plan (received in the Commission's Central Coast District office on April 6, 2007). The Commission has been unable to uncover any evidence that a CDP has been approved for the tree removal. Other documents, such as the City's staff report and a tree inventory from Michael Tutt (dated June 23, 2004), likewise indicate that as many as 16 trees have been felled. Additionally, the Applicant has provided information showing that 3 additional trees have been removed by weather since 2007. The Commission's Enforcement Division has an active case on purported unpermitted removal of certain trees. (See also Section E. *Violation* below.)

and woody tree species). Native species such as coyote bush and sage brush are present but only in small numbers and distribution.

Chorro Flats

The Chorro Flats and Chorro Creek watershed lie immediately adjacent to – east and south – of the subject site. Known as the “Chorro Flats Sediment Capture and Wetland Restoration Project”, this area was the site of a major enhancement project beginning in the 1990s. The purpose of this project was to improve water quality entering Morro Bay by reducing sediment flow into Morro Bay from Chorro Creek, and it resulted in restored and enhanced wetland and wildlife habitat in the area. A portion of the Chorro Flats area (to the east of South Bay Boulevard) is categorically identified and mapped as ESHA on Figure 28 of the City’s LCP, and the approximately 83 acres of wetland and wildlife habitat that was restored is likewise considered ESHA pursuant to the LCP.

Urban/Rural Boundary Context

The Chorro Flats area is located outside of the urban services line and is contiguous with adjacent agricultural and undeveloped land to the east and southeast. As mentioned, the Black Hill Natural Area portion of Morro Bay State Park is inland of and outside of the eastern edge of Morro Bay’s urban center. The proposed development site 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 project site is located within the Morro Bay city limits and urban services line. However, the subject property and the stream/drainage channel that traverses it are rural in nature. The proposed project site is located outside of the urbanized area of the City of Morro Bay (which is located further to the north and west), and it is adjacent to the State Park, which includes the lower flanks of Black Hill itself.

Biological Reports

A number of biologic surveys and environmental assessments have been prepared for the project to assist in the environmental analysis of the proposed development. Earlier reports (i.e., before the approval by the City of Pismo Beach and the Commission’s own hearings in late 2006 and early 2007) were completed between 2004 and 2006. Based on the 2010 San Luis Obispo County Superior Court decision, and because approximately 5 years has passed since the original Commission hearings on this project (and almost 10 years since the above mentioned biotic reports were completed), the Applicant has submitted six updated biotic reports to aid in the environmental analysis of the project. These include a biological resource assessment report (dated September 24, 2012), a raptor survey report (dated November 14, 2012), a habitat assessment update for the California red-legged frog (dated September 14, 2012), a protocol-level Morro shoulderband snail survey (dated August 20, 2012), an ESHA mapping survey (including for wetlands and riparian vegetation) (dated September 21, 2012), and an evaluation of the site as habitat for monarch butterflies (dated February 28, 2012). In addition, the Applicant has submitted a United States Fish and Wildlife Service (USFWS) concurrence determination regarding the Morro shoulderband snail and a CDFW Stream Alteration Agreement (dated August 29, 2013).

Stream/Riparian ESHA and Wetland ESHA

As required by the Court's decision in 2010, the Applicant has provided additional information about the potential for ESHA on the site and to show the extent of required setbacks based on the ESHA. The Applicant's 2012 Wetland Delineation-ESHA Mapping Survey and the 2012 Biological Resource Assessment identified the limits of the wetland and riparian vegetation area on the northern part of the property and identified the raptor habitat area (including 100 meters outside of the site) for purposes of determining ESHA and wetland buffers.² These maps showed the limits of the wetland area and associated wetland vegetation (such as salt marsh *Baccharis* and saltgrass), the arroyo willow riparian areas, and the top of bank, among other things (such as raptor habitat to be discussed below).

The Biological Resource Assessment Report found that while no special-status wildlife species were observed during surveys in 2011-2012 (and in 2004-2006), two areas on the subject site appear to meet the ESHA criteria: the seasonal channel that crosses the northern part of the site and the large trees growing on the lower part of the site and along the entrance drive. Additionally, wetlands were identified on the site, adjacent to the seasonal channel. See **Exhibit 3** for the Applicant's habitat maps.

The Commission's biologist concurs that ESHA is found on the site in these areas. (See Commission biologist Dr. Jonna Engel's memo in **Exhibit 5**). In terms of the stream, the channel is approximately 315 feet in length and drains to the east through a box-culvert into Chorro Creek. The limits of the stream (top of bank and furthest edge of riparian vegetation) are identified as are the wetlands (identified as salt marsh *Baccharis* and saltgrass) in the Habitat and Site Plan (See **Exhibit 3**). The wetlands are characterized by salt-tolerant vegetation and are a separate habitat type, as compared to the freshwater stream/riparian habitat. LCP Chapter XII.C.2 identifies coastal streams and riparian habitat, as well as wetlands, as ESHA.

In addition, the stream serves as an important wildlife corridor and aquatic link, including for the California Red-Legged Frog (CRLF), between the Black Hill Natural Area and Chorro Flats/Chorro Creek. In 2012, the Applicant submitted a more focused survey-level report on the CRLF, which is listed as a federally threatened species and a California Species of Special Concern. The habitat assessment update for CRLF found slightly higher habitat values (expansion of the arroyo willow canopy and the increased abundance of hydrophytic vegetation in the channel) along the watercourse that traverses the subject property than in 2004 (when earlier surveys were undertaken). This habitat would be expected to provide increased sheltering and foraging habitat functions for CRLF. In addition, the 2012 report indicates that the increased vegetation and cover in the channel may provide suitable breeding habitat in wet years. Further, the stream channel on the site provides an important connection between two more significant CRLF habitat areas; the channel along the State Park land on the northern flank of Black Hill, which is directly upland of and feeds into the project site, and supports a dense riparian corridor dominated by arroyo willows. Then, the stream drains to the east through a box-culvert into Chorro Flats (described above), which is a preferred refuge for red-legged frogs. Thus, the stream corridor contains suitable habitat for CRLF, enhancing its overall habitat value even

² Further refinements to the Habitat and Site Plan, which was produced as a result of the Applicant's Biological Resource Assessment Report, occurred after Commission staff and the Commission's biologist noticed that the edge of riparian vegetation was not included for setback purposes, nor was the dripline of the raptor trees. Exhibit 3 shows the results of these refinements.

further.

In summary, the Morro Bay LUP Chapter XII.C.2 identifies coastal streams, wetlands, and riparian habitat as ESHA. While the intermittent stream and its adjacent habitat on site have been disturbed over the years, its hydrologic function has been maintained, and the stream channel serves as an important link, including providing potential habitat for California Red-Legged Frog, and a riparian connection between the BHNA and the Chorro Flats/Chorro Creek watershed area. Thus, the low-lying intermittent stream and associated wetland and riparian habitats on the site are ESHA.

Raptor Habitat Area ESHA

Several raptor surveys have been conducted on the site. Initial surveys occurred in March, April, and May 2004. Red-shouldered hawks (*Buteo lineatus*) were present on the property during all raptor surveys. Sightings of other raptor species including turkey vultures, American kestrels (*Falco sparverius*), and red-tailed hawks (*Buteo jamaicensis*) 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 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 during the above surveys 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, including the Black Hill Natural Area to the west and the Chorro Flats restoration area to the east. Reports from residents living in the adjacent mobile home park indicate that red-shouldered hawk nesting has occurred on the property over the years, supporting a conclusion that the identified raptor species return year after year to the same trees to nest (i.e., nest fidelity).

The results of the 2012 raptor survey continue to indicate considerable raptor activity on the site and show the importance of the subject stand of trees for raptor roosting and nesting. The biologists found one active nest and evidence of perching/roosting in nine of the thirteen surveyed trees by at least six raptor species including red-shouldered hawks, turkey vultures, American kestrels, red-tailed hawks, barn owl, and the great horned owl.

The Commission's staff biologist has evaluated the site and the biological reports and surveys and has determined that the raptor habitat area constitutes ESHA (again, see Dr. Engel's memo in **Exhibit 5**).

Other

The Applicant has also submitted updated surveys for Morro shoulderband snail and monarch butterfly habitat. In terms of the Morro shoulderband snail, protocol level surveys were conducted originally in the fall of 2004, since the project site is within the known range of this species.³ Three live shoulderband snails and four empty shells were found during surveys

³ The 2004 report indicated that vegetation on the project site did not offer a great deal of suitable habitat for the ESA protected variety of Morro shoulderband snail. The Morro shoulderband snail is predominantly associated with coastal scrub communities and only a few of the typical coastal scrub plant species are found on the project site. An estimated two-thirds of

undertaken at that time. However, at the time of the 2004 survey two forms of the shoulderband snail were recognized as a single species. Today, the species that was identified on the project site is classified as a separate species known as the Chorro shoulderband snail. The Chorro shoulderband snail is considered secure and not recognized as a state or federally listed species or afforded any other special status. In the updated survey in 2012, four species of snails were encountered on the site; however none were the ESA-protected Morro shoulderband snail.

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

ESHA Conclusion

The certified LCP identifies coastal streams, wetlands, and riparian habitat as ESHA (see LUP Section XII.C.2, previously cited). While the intermittent stream and its adjacent habitat on site have been disturbed over the years, including apparently without benefit of coastal permits, its hydrologic function has been maintained, and the stream channel serves as an important wildlife corridor and aquatic link between the Black Hill Natural Area and Chorro Flats/Chorro Creek. In addition, the stream provides potential habitat for California Red-Legged Frog, which is listed as a federally threatened species and a California Species of Special Concern. Finally, adjacent to the stream corridor and riparian habitat, there is a separate wetland area that is characterized by salt-tolerant vegetation. Thus, the low-lying intermittent stream and riparian habitats, as well as the adjacent wetland, are ESHA.

In addition, the stand of trees on the southeast portion of the property, which runs parallel to the stream and along the southeastern property line (paralleling the existing driveway), is ESHA. (see Dr. Engel's memo in **Exhibit 5**). Further, offsite and immediately adjacent to the project area, the Black Hill Natural Area is open space park land and an important natural preserve (which is mapped as ESHA in the LCP), and the Chorro Flats area located just east and south of the site is also an important biological resource area (which is also mapped as ESHA per the City's LCP).

Project Inconsistent with the LCP

The LCP requires ESHA to be protected against any significant disruption of habitat values, and requires a minimum 100-foot buffer from ESHA. The LCP further requires that any development on this site be sited and designed to avoid impacts that would significantly degrade the adjacent ESHA, including the BHNA and Chorro Flats area. In addition, the LCP requires that natural features 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 onsite ESHA habitat area (wetland, stream/riparian and raptor habitat area) on the northern portion of the site. This includes subdivision and construction of some of the proposed single-family homes and associated driveways, sidewalks, fences, access road, drainage facilities,

the site is located beneath the canopies of large Monterey cypress, Monterey pine, and blue gum eucalyptus, which pervade the vegetation beneath their canopy and appear to render any potential habitat unsuitable for the snail.

parking areas, grading, and slope protection/enhancement within the ESHA area and the required 100-foot ESHA buffer. In addition, the proposed project involves removal of approximately 29 trees, including trees used for raptor nesting and perching/roosting on the site, which constitute ESHA, as described above. The proposed project further includes urban development and land disturbance directly adjacent to the Black Hill Natural Area park area to the west.

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, requires the re-establishment of riparian vegetation to its prior extent. Finally, LUP Policy 11.18 prohibits new subdivisions in areas designated as ESHA.

In addition, while the Applicant has proposed to retain several Monterey cypress trees and one eucalyptus tree within the identified raptor habitat area (those growing along the southern property line between the existing access driveway and the Blue Heron Terrace Mobile Home Park), the project proposes to remove a number of eucalyptus trees and associated overlapping canopies within this habitat area, and approximately 16 trees of various types along the western property boundary (for a total of 29 trees).

As mentioned above, the trees within the raptor habitat area are used by migratory birds and raptors for nesting, roosting, and foraging in the area of the stream and riparian corridor and in the BHNA. The Commission's staff biologist has evaluated the site and the biological reports and surveys and has determined that the raptor habitat area constitutes ESHA. Thus, development within 100 feet of the raptor habitat area is prohibited by the LCP's ESHA buffer requirements, and removal of the trees themselves for the proposed project is prohibited. Further, although the trees along the western property boundary (consisting of a row of elm, eucalyptus and Monterey pine growing mostly beneath existing utility lines) do not appear to be ESHA because they do not provide significant nesting and roosting/perching habitat, they are nevertheless important biological resources, given their size and location adjacent to the BHNA ESHA.⁴ The LCP requires that development adjacent to ESHA not significantly degrade ESHA, and removal of these trees has the potential to disrupt nesting and roosting activities, which could lead to unsuccessful breeding and foraging in the surrounding habitat areas.

Access

With respect to site access, access is proposed, and can currently only be gained, off of the property's South Bay Boulevard frontage (from Quintana Road). The northern portion of the site

⁴ According to the Applicant's raptor survey report (November 14, 2012) and biological resource assessment report (September 24, 2012), these trees do not provide significant nesting and perching opportunities for raptors.

is occupied by the ESHA area, the western property line abuts the State Park (BHNA), and the remainder is flanked by the Blue Heron Terrace Mobile Home Park (see **Exhibit 3** for the Applicant's site plan). An existing accessway 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 road would be constructed on top of the existing unimproved access road and, as a consequence, within three 100 foot ESHA buffers (stream/riparian, wetland, and raptor habitat area) inconsistent with LUP Policy 11.06.⁵

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 term, significantly disrupt and degrade these areas, including removal of a portion of the raptor ESHA, inconsistent with the LCP. These onsite and offsite resource areas and their functionality depend on both plants and animals, and on these areas being able to function as naturally as possible. The development proposed in and on the immediate periphery of these sensitive areas cannot be found consistent with the long term maintenance of these areas because proposed development would be located within required ESHA (raptor habitat area) and ESHA buffers (stream/riparian, and wetland).

ESHA Conclusion

In conclusion, the proposed project cannot be found consistent with the LCP. Contrary to the LCP, the proposed project includes subdivision and other development in ESHA, removal of identified raptor ESHA, and incompatible development directly adjacent to the on-site stream and wetlands and the adjacent BHNA. The proposed project would be expected to significantly disrupt ESHA habitat values (including by removal), significantly degrade the BHNA natural area, alter natural features, and adversely impact coastal resources. In addition, the proposed project does not meet the LCP's minimum 100-foot ESHA buffer requirements, and includes associated residential development within 100 feet of stream ESHA, wetland ESHA and raptor habitat ESHA. Also, an access road is not allowed in the 100-foot ESHA setback. Although the project could be conditioned by the Commission to relocate proposed development to address some of these inconsistencies, there is no place to locate the proposed access road that would not be either in ESHA or in a required ESHA buffer. Thus, the proposed project cannot be found consistent with the LCP and cannot be approved.

C. VISUAL RESOURCES

Applicable Policies

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

***LUP Policy 12.01** The scenic and visual qualities of coastal areas shall be considered*

⁵ LUP Policy 11.06 does not allow for a reduction of the 100 foot buffer when that buffer is associated with wetlands. Therefore even a potentially reduced width roadway (for example, with elimination of parking areas or sidewalks alongside the roadway) the accessway would still fall within these ESHA buffers and remain inconsistent.

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.*

Analysis

The project site is located in a significant public viewshed, partly because of its geographic setting between the volcanic upland areas of Black Hill and the upper reaches of the Morro Bay estuary, and partly because of its rural, central California setting, which is visible from Highway 1. See **Exhibit 2** for photographs of the project site and adjacent setting. The site of the proposed development is nestled on the northern flank of Black Hill directly adjacent to the Black Hill 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 (See **Exhibit 4**).

The proposed 17 two-story residences would be constructed directly adjacent to and sandwiched between the Blue Heron Mobile Home Park and the Black Hill Natural Area. The existing mobile homes are low-profile, single-story dwellings. Although they appear out of character with the open space and rural nature of the surroundings, their visual prominence is reduced due to their modest height and scale and intervening vegetation located between the mobile home park and Highway 1. That is not to say that the mobile home park is undetectable or concealed from Highway One, South Bay Boulevard, and Morro Bay State Park. These dwellings are visible from these public vantages; however, because of the low profiles of the mobile homes and the

existing vegetation, the mobile homes appear to be set somewhat into the lower flank of Black Hill, thus tempering their impact on the public viewshed.

In contrast, the proposed new 17 residential units would be two stories in height and would be constructed at a base elevation that is several feet higher than the mobile home park. Due to the orientation of the site, the lower levels of the proposed residences would appear to be mostly screened by the mobile home park, as seen from north (west) bound Highway One. However, because the proposed units would be two stories in height, much of these second story elements would extend above the roofline of the existing mobile home park units and into the public viewshed. Exacerbating the visual impact is the Applicant's proposal to remove approximately 29 trees from the project site. While a majority of trees are proposed to be retained, a few of the trees slated for removal currently provide some screening of the mobile home park units, and together with existing trees on the western property boundary and adjacent State Park property, help blur the line between urban development and open space land. The trees would be removed to allow for nearly 7,000 cubic yards of grading, and grubbing over more than 70% of the property to create cleared, level building sites.

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

Project inconsistent with the LCP

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 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 the incursion of the proposed project into this viewshed results in visual incompatibility, and is more than the LCP allows in that respect. Accordingly, the proposed project does not conform to the certified LCP policies regarding the

protection, and enhancement, of scenic and visual resource areas.⁶

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

Visual Resources Conclusion

The project as proposed does not adequately protect the publicly important and LCP designated significant viewshed of Black Hill as seen from north (west) bound Highway One, as required by the LCP. The subject site is located within a significant public viewshed, and the project would introduce additional structural development that would be incompatible with protection of this viewshed. Although special conditions, including conditions to add additional screening and reduce the height and overall scope of the development, could potentially bring the project into conformance with the LCP's visual resource protection policies, because the project cannot be approved at this time due to its inconsistencies with the LCP's biological resources protection provisions, special conditions to address the project's visual resource impacts are not appropriate at this time.

D. OTHER ISSUES

1. Hazards

Applicable Policies

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

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

Analysis

The majority of the adjacent State Parks' Black Hill Natural Area consists of dense scrub and chaparral vegetation. Much of this vegetation relies on fire for seed release, and the leaves and

⁶ The Applicant's recent potential modifications likewise would be inconsistent with the LCP for these same reasons because the residences would still be two-story and in a similar layout.

bark of scrub/chaparral plant species contain flammable resins that encourage combustion and burning. The longer the interval between fires, the greater the risk of a particularly intense and destructive fire because of the large amount of highly flammable dead vegetation that is present. In addition, there is a stand of eucalyptus and Monterey pine trees on the State Park adjacent to the subject site, which has deposited a significant amount of bark and leaf litter to the already abundant dead vegetation. Several Monterey pines appear to have succumbed to pine pitch canker. The dead lichen-covered trees and snags provide further evidence of the extreme fire hazard of the area. More recently, the California Department of Forest and Fire Protection's 2007 Draft *Fire Hazard Severity Zones for Local Responsibility Areas* identifies the Black Hill Natural Area and the subject parcels as a "very high fire severity" zone.⁷

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

The certified LCP, and in particular LUP Policy 9.01, requires a protective approach (i.e., risk minimization through avoidance of development in high fire hazard areas). Specifically, LUP Policy 9.01 states that all new development in areas which are subject to natural fire hazards shall be sited to minimize risk to life and property. In order to fully minimize the risk to life and property in this location, development directly adjacent to the high fire hazard area (i.e., Black Hill Natural Area) must be avoided, and an adequate buffer for defensible space provided. Although the LCP does not explicitly identify minimum fire safety buffers for wildland-urban interfaces such as this, the issue of fire safety and the need for such buffers has become more of a statewide issue and concern in recent years. The State has adopted a revised standard requiring a 100-foot defensible fire safety space requirement that applies to all properties along the wildland-urban interface area (per State Public Resource Code Section 4291) in State Responsibility Areas (SRAs). However, local jurisdictions with municipal fire departments, such as Morro Bay, may choose to adopt some or all of the fire safety regulations in the California Fire Code, but are not required to do so. Accordingly in this case, as the agency of first response, the City fire department can establish its own fire safety standards. The City fire department standards specify a minimum 30-foot setback for all new structures within the wildland-urban interface zone, although these rules are not part of the LCP. State Parks requires 40 feet of defensible space in order to protect State Park land from inappropriate fire buffer manipulation, although this standard is likewise not part of the LCP.

In sum, the LCP requires that the fire risk be avoided and, where unavoidable, minimized, but it does not specify a particular buffer distance. The State identifies a minimum 100-foot buffer, the City identifies a 30-foot buffer, and State Parks identifies a minimum 40-foot buffer from State Park land. With prior legislative changes and enhanced concern for ensuring adequate fire safety in new development, the trend over time with such buffering rules has been moving towards larger and larger buffers/defensible space requirements, and there is little to indicate that this trend will change in the future. The residential units as currently proposed would be located at least 40 feet away from the BHNA along the western property boundary, consistent with the City's required fire buffer and the State Park recommended buffer.

⁷ See http://www.calfire.ca.gov/fire_prevention/fire_prevention_wildland_zones.php.

Hazards Conclusion

The primary environmental hazard affecting this site is fire. The project as currently proposed would locate all residential units at least 40 feet from the BHNA. This buffer would protect the life and property on the site from the fire hazards associated with development at this site. Thus, if this project were otherwise consistent with the LCP, it could be found consistent with the hazards protection provisions of the LCP with the proposed 40-foot park wildland buffer. However, because the proposed project cannot be found consistent with the LCP for other reasons, the requisite fire hazard safety is immaterial to this CDP decision.

2. Water Quality

Applicable Policies

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

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

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

Analysis

As required by certified LUP provisions 11.17 and 11.19, the biological productivity of the environmentally sensitive habitat areas must be maintained and enhanced through the maintenance and enhancement of the quality of surface water flows. Additionally, new development adjacent to wetland areas must not result in adverse impacts due to sedimentation and /or polluted runoff. Development adjacent to 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).

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 approximately 29 trees individually and cumulatively have the potential to cause sedimentation and pollutant loading of the adjacent stream and drainage area and adjacent State Park Natural Area during construction. In addition, the construction of 17 residential 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.

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

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

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

Currently, the Applicant has indicated verbally that they propose to exceed these previous requirements through a proposal to filter and treat up to 100% of the volume of runoff produced on site. However, the Commission has not yet been provided with any plans or other details of this new proposal, and so it has not been evaluated for consistency with the certified LCP.

Water Quality Conclusion

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

3. Archaeological Resources

Applicable Policies

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

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

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

LUP Policy 4.05 *Where archaeological resources are discovered during construction of new development, or through other non-permit activities (such as repair and maintenance of public works projects) all activities shall cease until a qualified 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.*

Analysis

The site was last surveyed for archaeological resources in May 2006 (by Sean A. Lee, Central Coast Archaeology) to establish the presence or absence of cultural deposits and determine whether historic materials visible on the northern, low-lying portion of the property would be impacted by the 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 the find, archaeological measures to mitigate for development impacts are warranted because of the potential that intact prehistoric cultural materials may exist within CA-SLO-1183.

Archaeological Resources Conclusion

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

E. Violation

On February 2, 2007, Commission staff observed evidence of recent tree removal within the stream and riparian corridor during a site visit, and this tree removal was corroborated by the Applicant's Riparian Enhancement Plan (received in the Commission's Central Coast District office on April 6, 2007). Other documents, such as the City's staff report and a tree inventory from Michael Tutt (dated June 23, 2004) likewise indicate that as many as 16 trees have been felled. The Commission has been unable to uncover any evidence that a CDP was approved for the tree removal.

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

F. CDP Determination Conclusion

Proposed Project Not Approvable

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

of a different project that is the minimum necessary to avoid a taking of private property without just compensation.

In this case, the proposed project is fatally flawed because the proposed access route would pass directly through the ESHA and 100-foot ESHA buffers, which is not allowed under the LCP. In addition, the access route can't be moved to another location along this portion of the property due to the stream corridor, wetlands, and stand of trees that constitute raptor habitat area ESHA (see **Exhibit 3**). Although the remainder of the inconsistencies, including related to visual resources, water quality and archaeological resources, could potentially be addressed through project changes, even if the Commission were to suggest changes through conditions to try to bring the project into compliance with other aspects of the LCP, it is not possible to condition the currently proposed project to be consistent with the LCP's ESHA policies, absent an alternative route. And there do not appear to be any other options for site access at this time.

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

G. CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA)

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

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

***Public Resources Code (CEQA) Section 21080(b)(5). Division Application and Nonapplication.** ... (b) This division does not apply to any of the following activities: ... (5) Projects which a public agency rejects or disapproves.*

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

Section 13096 (14 CCR) requires that a specific finding be made in conjunction with coastal development permit applications about the consistency of the application with any applicable requirements of CEQA. This report has discussed the relevant coastal resource issues with the proposed project. All public comments received to date have been addressed in the findings above. All above findings are incorporated herein in their entirety by reference. As detailed in the findings above, the proposed project would have significant adverse effects on the

environment as that term is understood in a CEQA context.

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

APPENDIX A – SUBSTANTIVE FILE DOCUMENTS

City of Morro Bay CDP File Number CP0-110;

Supplemental materials submitted by the Applicant dated April 6, 2007, December 20, 2007, November 27, 2012, August 23, 2013 and November 15, 2013

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

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

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

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

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

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

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

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

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

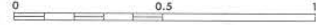
Tenera Environmental. January 14, 2005. Black Hill Villas Project Morro Shoulderband Snail Protocol Survey Report. Submitted to Mr. Wayne Colmer.

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

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

MORRO BAY AREA

SCALE IN MILES



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AUTOMOBILE CLUB OF SOUTHERN CALIFORNIA

MICS DEPARTMENT

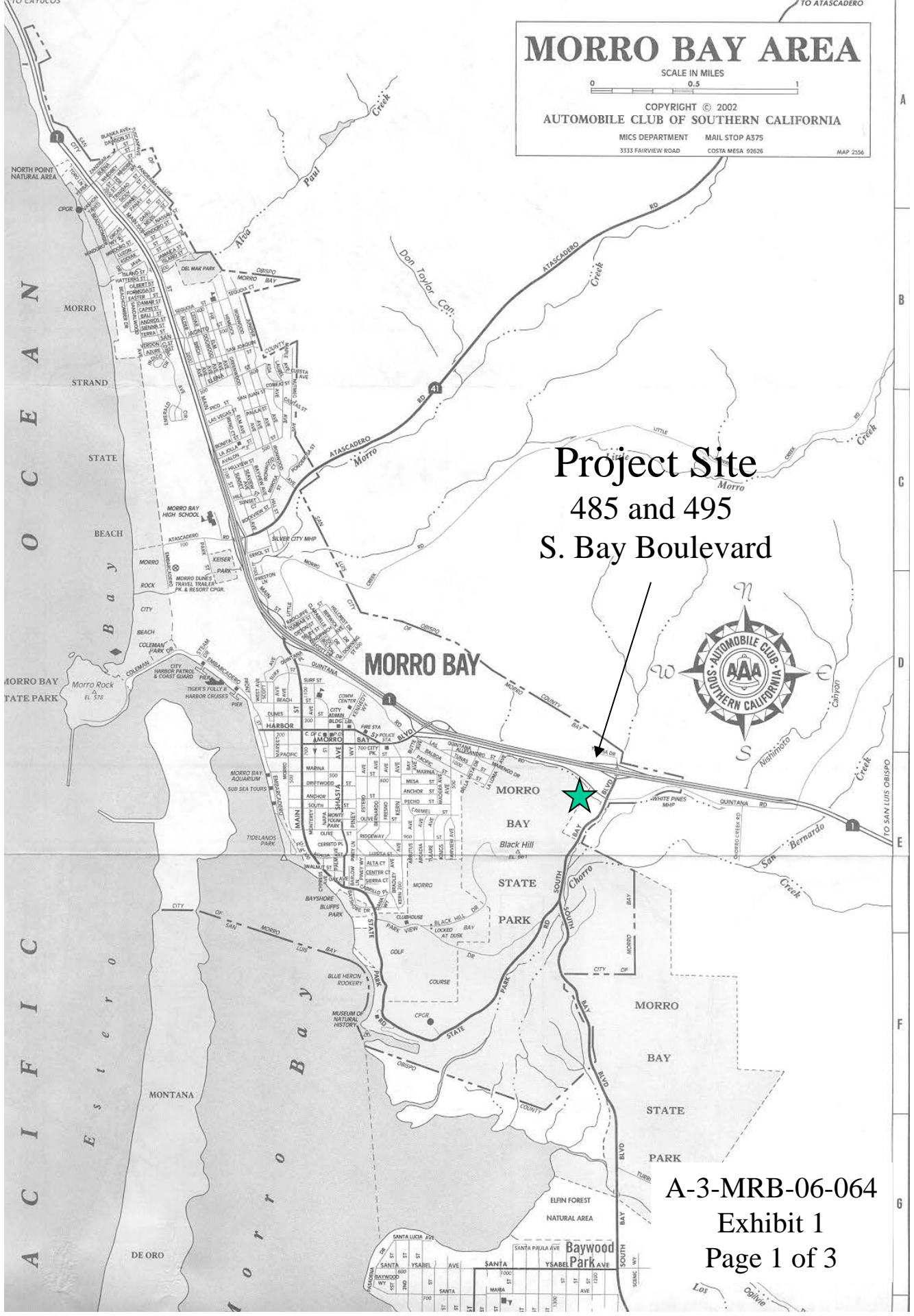
MAIL STOP A375

3333 FAIRVIEW ROAD

COSTA MESA 92626

MAP 2556

Project Site
485 and 495
S. Bay Boulevard

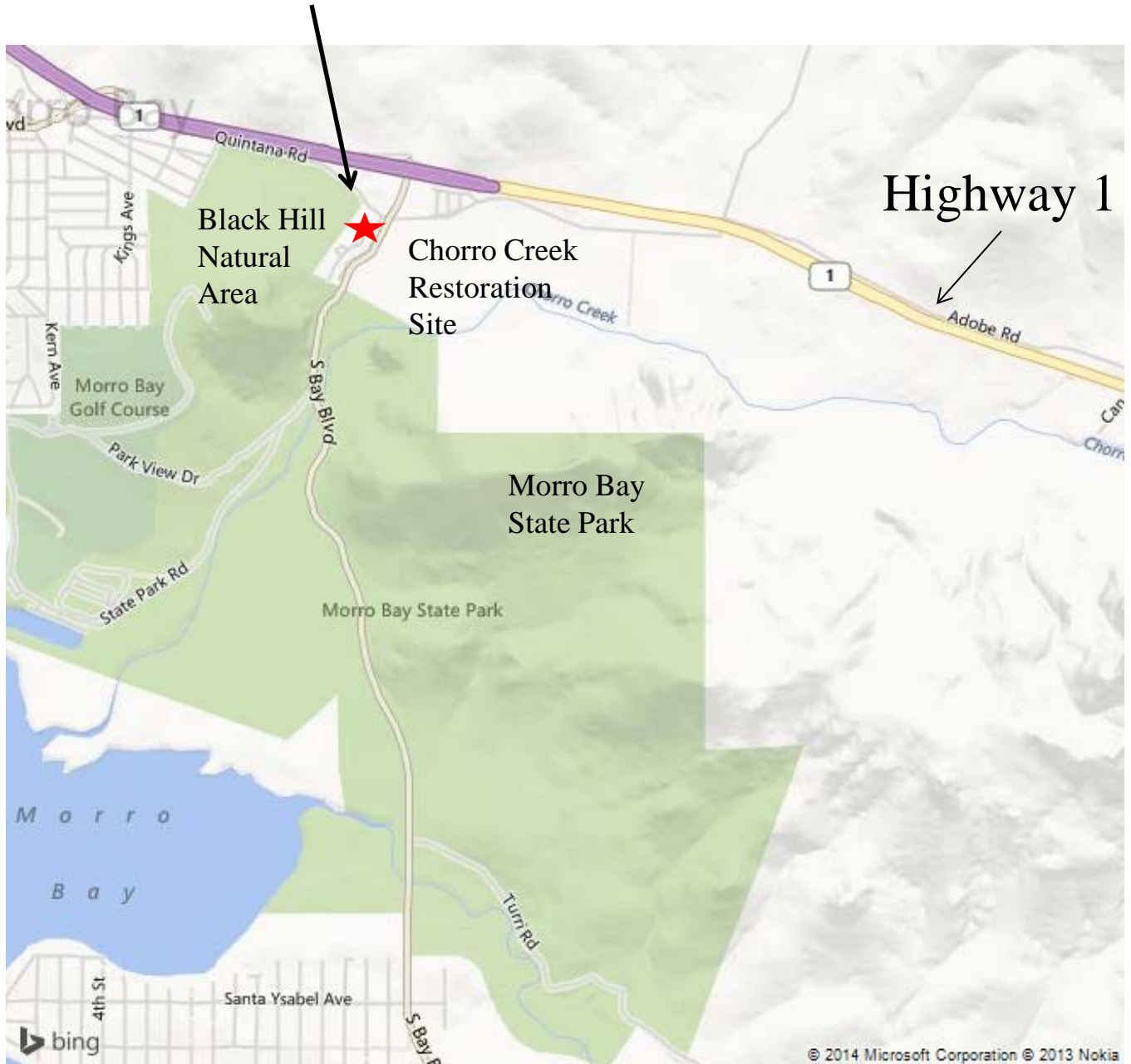


A-3-MRB-06-064

Exhibit 1

Page 1 of 3

Project Site



A-3-MRB-06-064

Exhibit 1

Page 2 of 3



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





**Box Culvert leading underneath
South Bay Boulevard to Chorro Flats Restoration Site**

Cypress and Eucalyptus Stand of Trees - Raptors

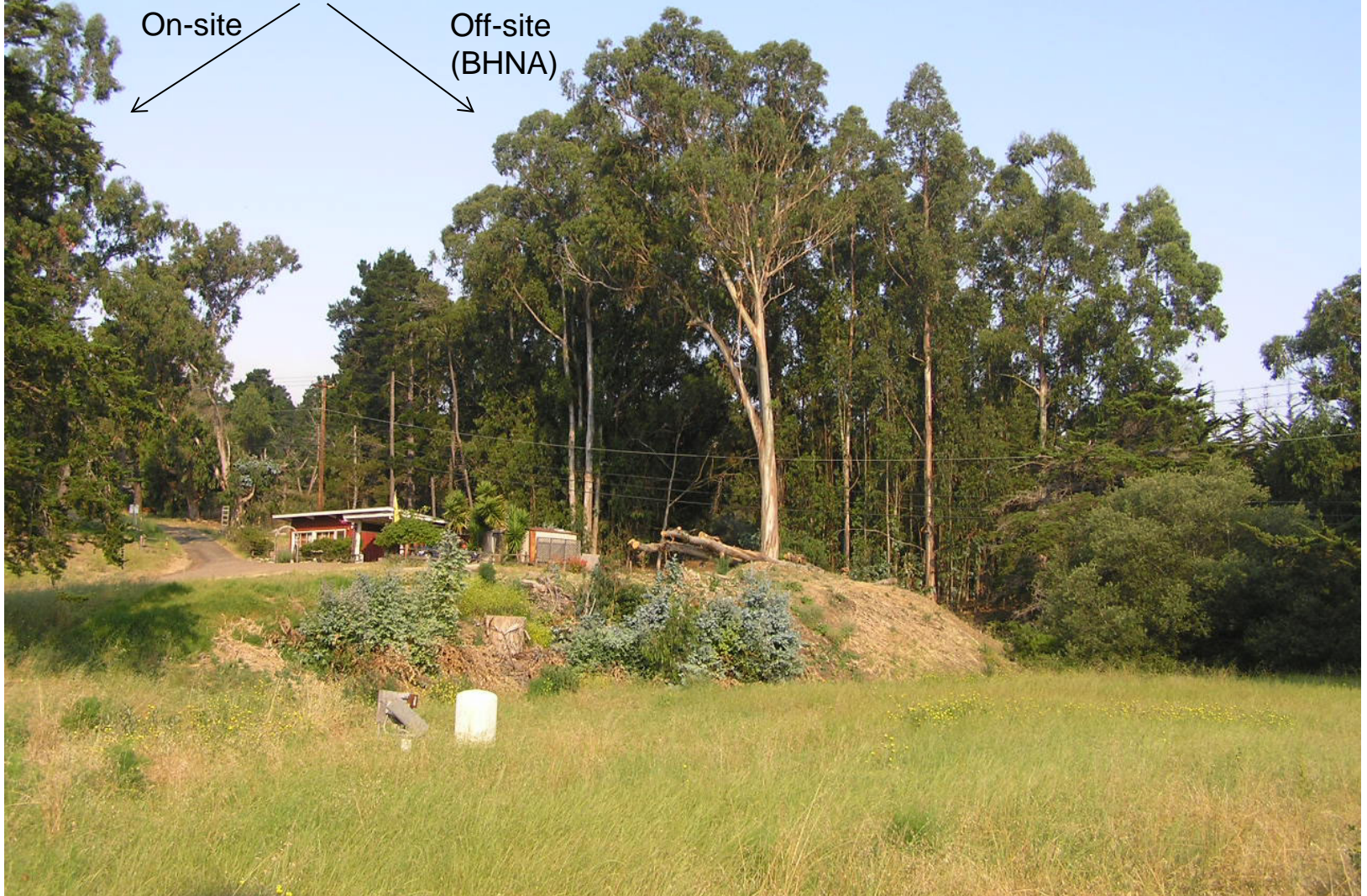


Existing Driveway

Cypress and Eucalyptus Stand of Trees - Raptors

On-site












Off-site
(BHNA)



Stand of Trees along Western Property Boundary














LEGEND:

-  LIMIT OF TOP-OF BANK
-  LIMIT OF WETLAND
-  BUILDING / DEVELOPMENT SETBACK
-  IN-CHANNEL / NON-WETLAND
-  ARROYO WILLOW RIPARIAN
-  SALT MARSH BACCHARIS
-  SALTGRASS
-  RAPTOR HABITAT TO REMAIN
-  RAPTOR HABITAT TO BE REMOVED
-  WETLAND
-  TREE AND CANOPY TO BE REMOVED

TREE	NESTING	PERCHING / ROOSTING
(C1)		RSHA-III
(C2)		RSHA-I
(C3)		RSHA-I
(C4)	OLD NEST 2004	RSHA-III
(C6)		RSHA-I
(C8)		
(C7)		RSHA-III
(C8)		
(E1)		RSHA-III
(E2)	ACTIVE NEST (1) 2004, 2012	RSHA-III
(E3)		RSHA-II
(E4)		
(E5)		



LEGEND:

-  LIMIT OF TOP-OF BANK
-  LIMIT OF WETLAND
-  BUILDING / DEVELOPMENT SETBACK
-  IN-CHANNEL / NON-WETLAND
-  ARROYO WILLOW RIPARIAN
-  SALT MARSH BACCHARIS
-  SALTGRASS
-  RAPTOR HABITAT TO REMAIN
-  RAPTOR HABITAT TO BE REMOVED
-  WETLAND
-  TREE AND CANOPY TO BE REMOVED

TREE	NESTING	PERCHING / ROOSTING
(C1)		RSHA-III
(C2)		RSHA-I
(C3)		RSHA-I
(C4)	OLD NEST 2004	RSHA-III
(C5)		RSHA-I
(C6)		
(C7)		RSHA-III
(C8)		
(E1)		RSHA-III
(E2)	ACTIVE NEST (1) 2004, 2012	RSHA-III
(E3)		RSHA-II
(E4)		
(E5)		

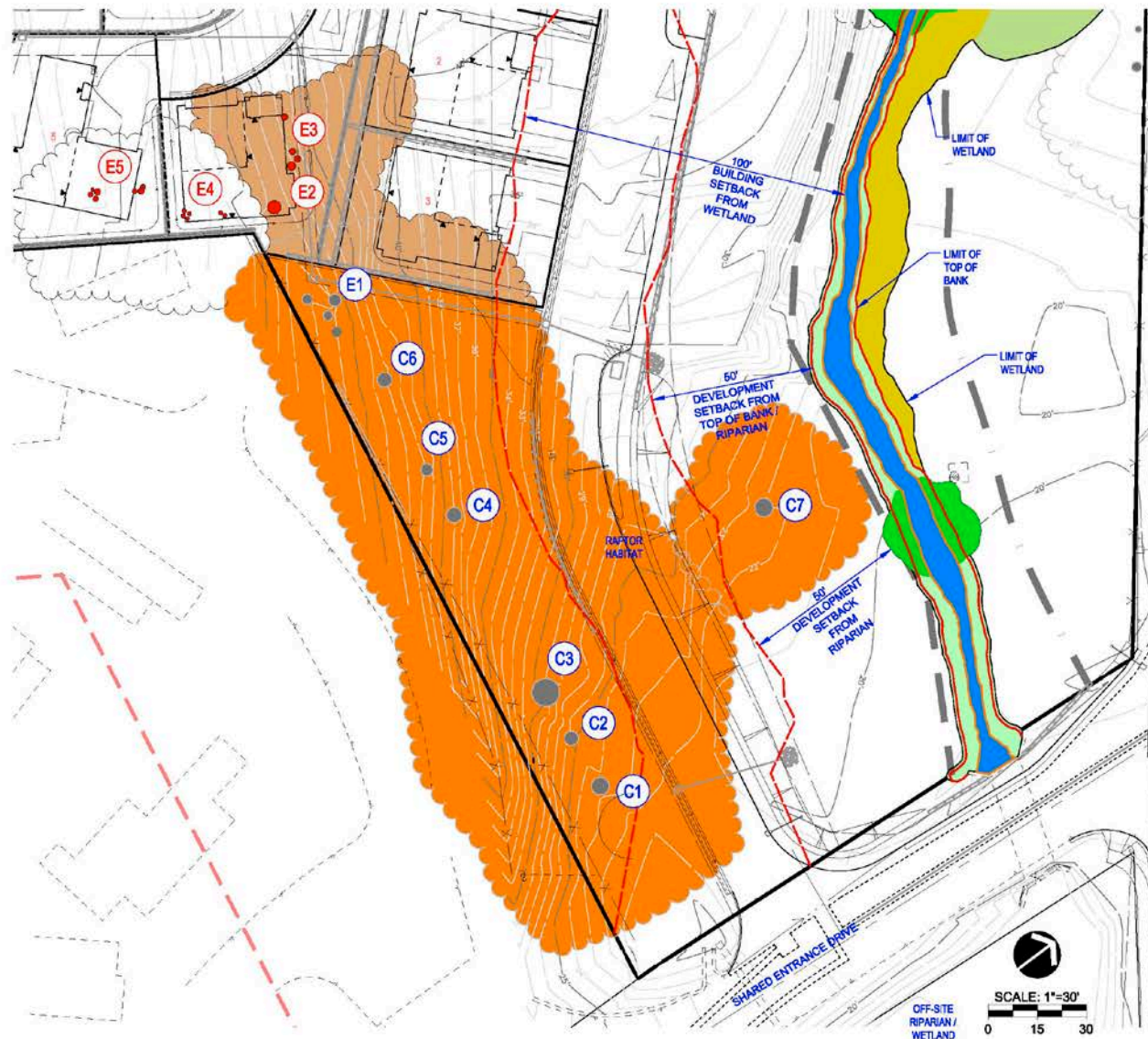




Figure 3. View showing the location of potential raptor nesting trees on the Black Hill Villas site. (E = eucalyptus; C = Monterey cypress)

FIGURE 28
ENVIRONMENTALLY
SENSITIVE HABITAT AREAS

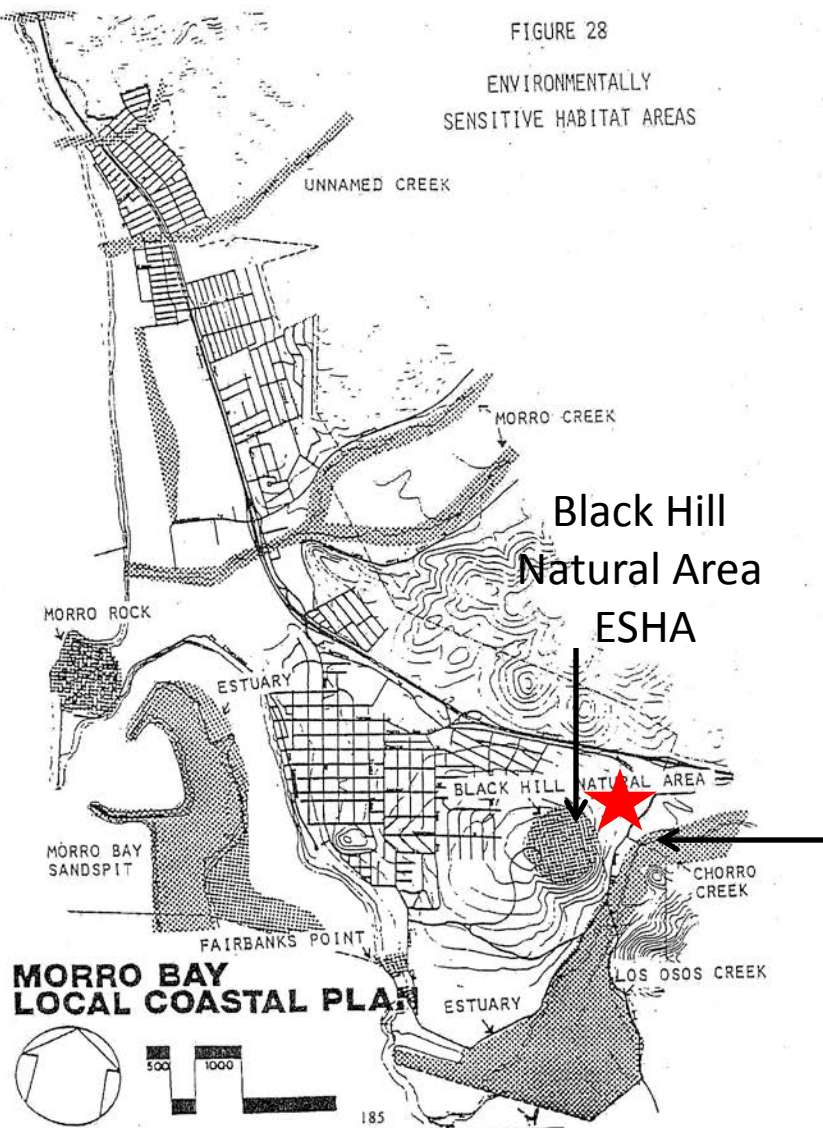
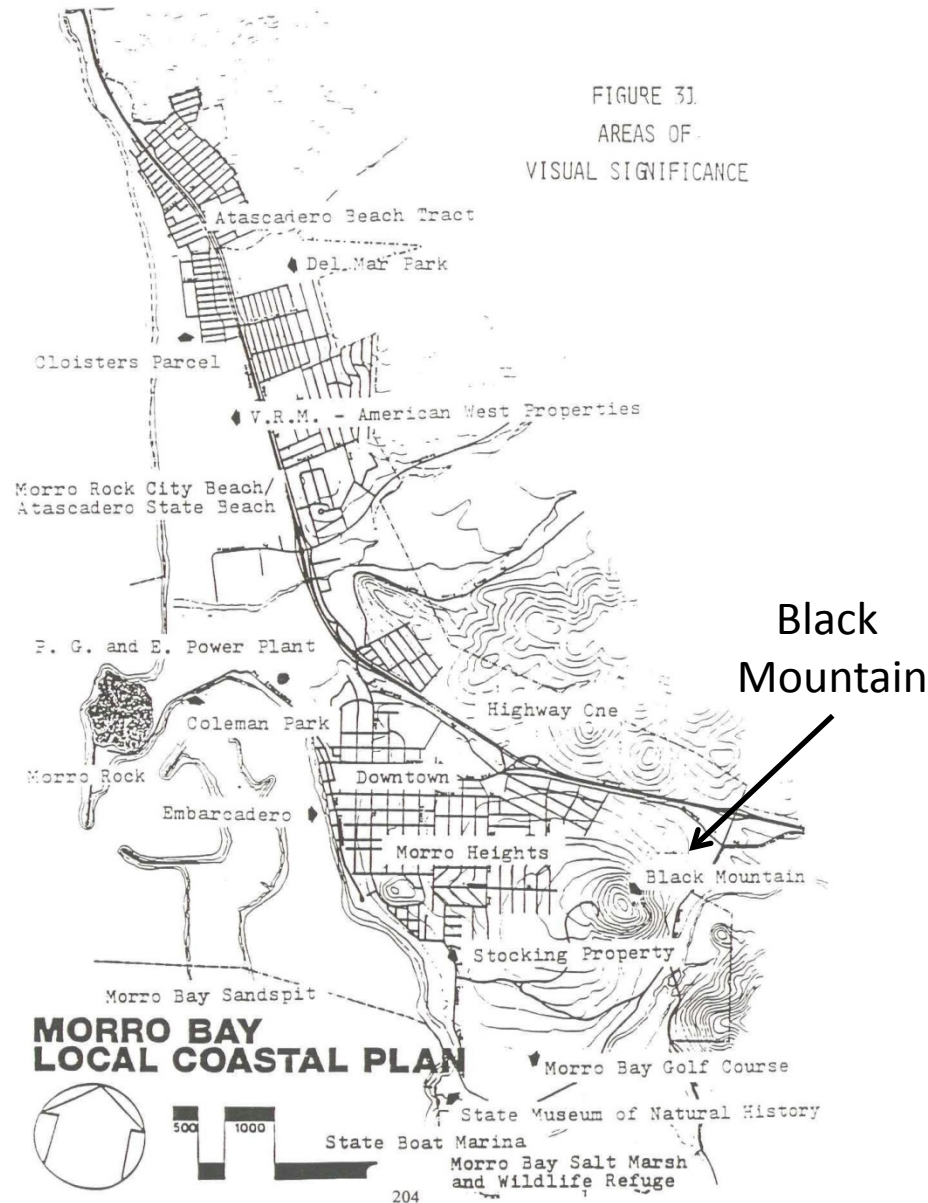


FIGURE 31.
AREAS OF
VISUAL SIGNIFICANCE



MEMORANDUM

FROM: Jonna D. Engel, Ph.D., Ecologist
TO: Daniel Robinson, Coastal Analyst
SUBJECT: Black Hill Villas Project, Morro Bay, California
DATE: January 31, 2013

Documents reviewed:

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

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

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

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

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

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

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

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

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

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

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

The unnamed tributary of Chorro Creek that crosses the site is an important creek and riparian habitat area. The riparian habitat adjacent to the creeks is dominated by arroyo willow (*Salix lasiolepis*) but also includes California blackberry (*Rubus ursinus*), poison oak (*Toxicodendron diversilobum*), sneezeweed (*Helenium puberulum*), water parsley (*Oenanthe sarmentosa*), common spikerush (*Eleocharis palustris*), common threesquare (*Scirpus pungens*), and iris-leaved rush (*Juncus xiphioides*). While the creek and its adjacent riparian habitat have been disturbed over the years, they continue to serve as a wildlife corridor and aquatic link between Black Mountain Natural Area and Chorro Flats Sediment Capture and Wetland Restoration Project. Watercourses are known to serve as important corridors for wildlife migration and dispersal¹. Both large and small mammals use the zones along streams to move in search of new territory, food sources, and mates. Waterways are also important dispersal corridors for plant propagules and aquatic animals as well as for delivering sediments and nutrients². Although biological surveys have not found California red-legged frogs in this tributary of Chorro Creek, they likely cross and spend time on the property because they are known to inhabit nearby sections of Chorro Creek³.

Maintaining and restoring riparian habitat along creeks, streams, and rivers is critical to preserving biodiversity in California, as in all parts of our country and world. While less than 10% of California's historic riparian areas remain, those that do are biodiversity hotspots⁴. And although riparian ecosystems generally occupy small areas on the landscape, they are usually more diverse and have more plants and animals than adjacent upland areas. In the western United States, riparian areas comprise less than 1% of the land area, but are among the most diverse, productive, and valuable natural resources⁵.

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

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

² Mount (1995) op. cit.

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

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

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

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

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

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

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

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

⁶ Natural Resources Agency State of California. June 2010. State of the State’s Wetlands; 10 Years of Challenges and Progress.

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

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

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

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



MORRO BAY
NATIONAL
ESTUARY
PROGRAM

March 17, 2014

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

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

Dear Mr. Carl:

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

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

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

Sincerely,

Adrienne Harris
Executive Director

cc: Daniel Robinson