

**CALIFORNIA COASTAL COMMISSION**

CENTRAL COAST DISTRICT OFFICE  
725 FRONT STREET, SUITE 300  
SANTA CRUZ, CA 95060  
PHONE: (831) 427-4863  
FAX: (831) 427-4877  
WEB: WWW.COASTAL.CA.GOV



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original staff report

# W13a

**Prepared February 10, 2015 for February 11, 2015 Hearing**

**To:** Commissioners and Interested Persons  
**From:** Dan Carl, Central Coast District Director  
Daniel Robinson, Central Coast District Coastal Planner  
**Subject:** **STAFF REPORT ADDENDUM for W13a**  
**Application A-3-MRB-06-064 (Black Hill Villas)**

The purpose of this addendum is to respond to comments received, to clarify certain aspects of the staff recommendation related to offsite improvements and development within the Raptor Habitat Preservation Area, and to make two minor changes in the staff report (text in underline format indicates text to be added, and text in ~~strike through~~ format indicates text to be deleted).

1. **Response to comments.** The Applicant (Black Hill Villas LP) through its representative (Steve Kaufmann) has raised a singular issue related to staff's recommended raptor habitat protection area (see letter dated received February 9, 2015 in the Central Coast District Deputy Director's Report, Item 10 on the Commission's February 11, 2015 agenda). Staff has worked with the Applicant and its representatives to ensure protection of the entire raptor stand in a way that requires only minimal changes to the Applicant's proposed subdivision layout, leading to elimination of one of the 17 lots proposed. Staff and the Applicant are now in agreement on this issue. See the attached letter from the Applicant's representative. Also see the attached exhibit, *Exhibit 5a*, to be added to the staff report to show the western portion of the Raptor Habitat Preservation Area (RHPA) and highlighting a portion of the Applicant's modified subdivision arrangement. Staff report Exhibits 3, 4, and 5 will continue to show the eastern portion (primarily the cypress trees along the entrance roadway) of the RHPA. To ensure protection of the raptor habitat, whose boundary is the canopy dripline, staff is amending Special Condition 1(a)(2), Special Condition 5, and raptor habitat findings beginning on page 32 of the staff report.

Beginning on page 32 of the staff report, staff is amending the following paragraphs:

*Thus, special conditions are recommended to retain this tree stand and incorporate it into the Applicant's proposed RHPA, and to protect this area through a Raptor Habitat Preservation Plan (RHPP), ~~and a conservation easement.~~*

*Accordingly, **Special Condition 1** requires the Applicant's proposed RHPA to be expanded to incorporate the area extending to the driplines of all trees in the raptor stand (identified as E2, E3, E4, E5, C1, C2, and C3) (see **Exhibit 4**, and as generally depicted on **Exhibit 5a**).*

**Special Conditions 1 and 5** also restrict development, as defined by LCP Section 17.12.199 and Public Resources Code 30106, within the RHPA to raptor habitat preservation consistent with a RHPP (including allowing for landscaping, retaining walls, and fences that are sited and designed in a manner that is consistent with an approved RHPP, as well as raptor habitat preservation related development consistent with an approved RHPP) (see **Special Condition 5**). The goal of the RHPP is to preserve and protect raptor habitat in as good or better state than exists currently, and the plan is meant to ~~be designed to~~ protect and provide for the health of the trees in perpetuity, including providing for native replacement trees suitable for raptor habitat in the event the trees in the RHPA senesce or require removal for health or safety reasons. In addition, **Special Condition 7** allows the Applicant to combine the RHPA parcel (i.e. those portions of the RHPA outside of lots 2 and 3) (see Exhibit 5a), with the OSREA into a single lot, if such combination would benefit habitat management.

Beginning on page 7 of the staff report, staff is amending the following special condition:

**1(a)(2). Raptor Habitat Preservation Area (RHPA).** The RHPA shall be ~~expanded~~ modified to incorporate the area extending to the driplines of trees identified as E2, E3, E4, E5, C1, C2, and C3 (see Exhibit 3). Final plans shall show the RHPA as within a single parcel, except for two portions that extend into parcels 2 and 3 (see Exhibit 5a). No development, as defined by LCP Section 17.12.199 and Public Resources Code 30106, shall occur within the RHPA except for: (1) subdivision necessary to create the RHPA parcel; (2) the portion of the road in the driplines of trees C1-C3; ~~and~~ (3) landscaping, retaining wall and fence structures that are sited and designed in a manner that is raptor habitat preservation consistent with the approved Raptor Habitat Preservation Plan (RHPP); and (4) raptor habitat preservation related development consistent with the approved RHPP (see Special Condition 5). The ~~RHPP~~ single parcel containing most of the RHPA (i.e. those portions of the RHPA outside of lots 2 and 3) can be combined with OSREA parcel into one single legal lot (not including the driveway or any of the Development Area, see below) if establishing these areas as a single legal lot allows for them to be better managed to protect and enhance coastal resources therein (see also Special Condition 5 for related RHPA requirements).

Beginning on page 14 of the staff report, staff is amending the following Special Condition:

**5. Raptor Habitat Protection.** PRIOR TO ISSUANCE OF THE CDP, the Permittee shall submit for Executive Director review and approval two copies of a Raptor Habitat Preservation Plan (RHPP). The RHPP shall provide for raptor habitat preservation within the Raptor Habitat Preservation Area (RHPA), where the goal of the RHPP shall be to preserve and protect raptor habitat in as good or better state than exists currently. In addition, the Plan shall be designed to protect and provide for the health of the trees in perpetuity, including providing for native replacement trees suitable for raptor habitat in the event the trees in the RHPA senesce ~~or~~ require removal for health or safety reasons. The RHPP shall be prepared by a qualified environmental resources specialist with experience conducting raptor surveys, monitoring raptor behavior, and protecting raptor habitat. The RHPP shall provide that no development, as defined by LCP Section 17.12.199 and Public Resources Code 30106, shall occur within the RHPA except for: (1) subdivision necessary to create the RHPA parcel; (2) the portion of the road under the driplines of trees C1-C3; ~~and~~

*(3) landscaping, retaining wall and fence structures that are sited and designed in a manner that is ~~raptor habitat preservation~~ consistent with the RHPP; and (4) ~~raptor habitat preservation related development consistent with the approved RHPP.~~ Nothing in this Special Condition or in Special Condition 7 is intended to restrict the ability of the Permittee (and/or the entity ultimately accepting any conveyances for the Open Space Riparian Enhancement Area (OSREA)) from managing the RHPA and the OSREA as a single unit, if such management approach is warranted.*

## 2. Offsite Improvements

Secondly, Commission staff would also like to clarify the offsite improvement section of the staff report, with changes to findings beginning on page 34. The changes are in order to clarify that the City's offsite requirements are indeed LCP consistent, pursuant to LUP Policy 11.06 and IP Section 17.40.040(C)(4).

### *Offsite Improvements*

*In its approval in 2006, the City of Morro Bay required a number of offsite improvements that are now proposed as part of this project. These include a traffic signal at Quintana Road and South Bay Boulevard (requiring four light posts at each corner), a dedicated left turn lane (from South Bay Boulevard onto Quintana Road), two new bus turn-outs (one located on the south side of Quintana Road, and one located on the west side of South Bay Boulevard), and a decomposed granite trail along Quintana Road and South Bay Boulevard extending to and onto the site (see Exhibit 6). The offsite public pedestrian trail (or "community path") is allowed within the required ESHA setbacks for the same reasons that the onsite trails and public amenities are allowed, pursuant to LUP Policy 11.06, and is thus consistent with the LCP. and the proposed left turn lane appears to be located roughly within the existing disturbed road and shoulder area. These improvements and the traffic signal do not otherwise result in coastal resource issues. However, on the of the two proposed bus turn outs poses an inconsistency with the LCPs setback requirements: The remaining offsite improvements are part of the road system complex and are necessarily located where they are proposed for safety and design reasons. ‡The bus turn-out on Quintana Road, on the Applicant's property, is located just off the existing road prism and within the 50-foot stream/riparian setback requirement buffer, and is thus not allowed in its proposed location unless no alternative location is feasible. Similarly, two of the traffic signal posts are located within ESHA setbacks. However, the location of the bus turnout on Quintana Road has been designed to provide for safe off-loading and on-loading of school buses away from the intersection, and there is no other feasible location for the bus turn out on Quintana Road, or the traffic signal posts. In addition, both types of improvements are part of the road system complex and are thus consistent with LCP Policy 14.40.040(C)(4), given that there is no other feasible location for these improvements. These improvements and the traffic signal do not otherwise result in adverse impacts to coastal resources issues. Thus, **Special Condition 1** requires removal of this component of the project but allows all other offsite improvements. The Commission recommends the Applicant pursue resolution with the City for an alternate location.*

*Further, While consistent with the LCP, it is not clear at this time whether the City still intends to require all of these offsite improvements, as many years have passed since the*

*City's approval. As a result of this uncertainty, **Special Condition 1** ~~also~~ eliminates any of the offsite improvements from this approval if the City of Morro Bay subsequently eliminates them from the project.*

**Special Condition 1j** is amended to reflect the above findings as follows, on page 10 of the staff report:

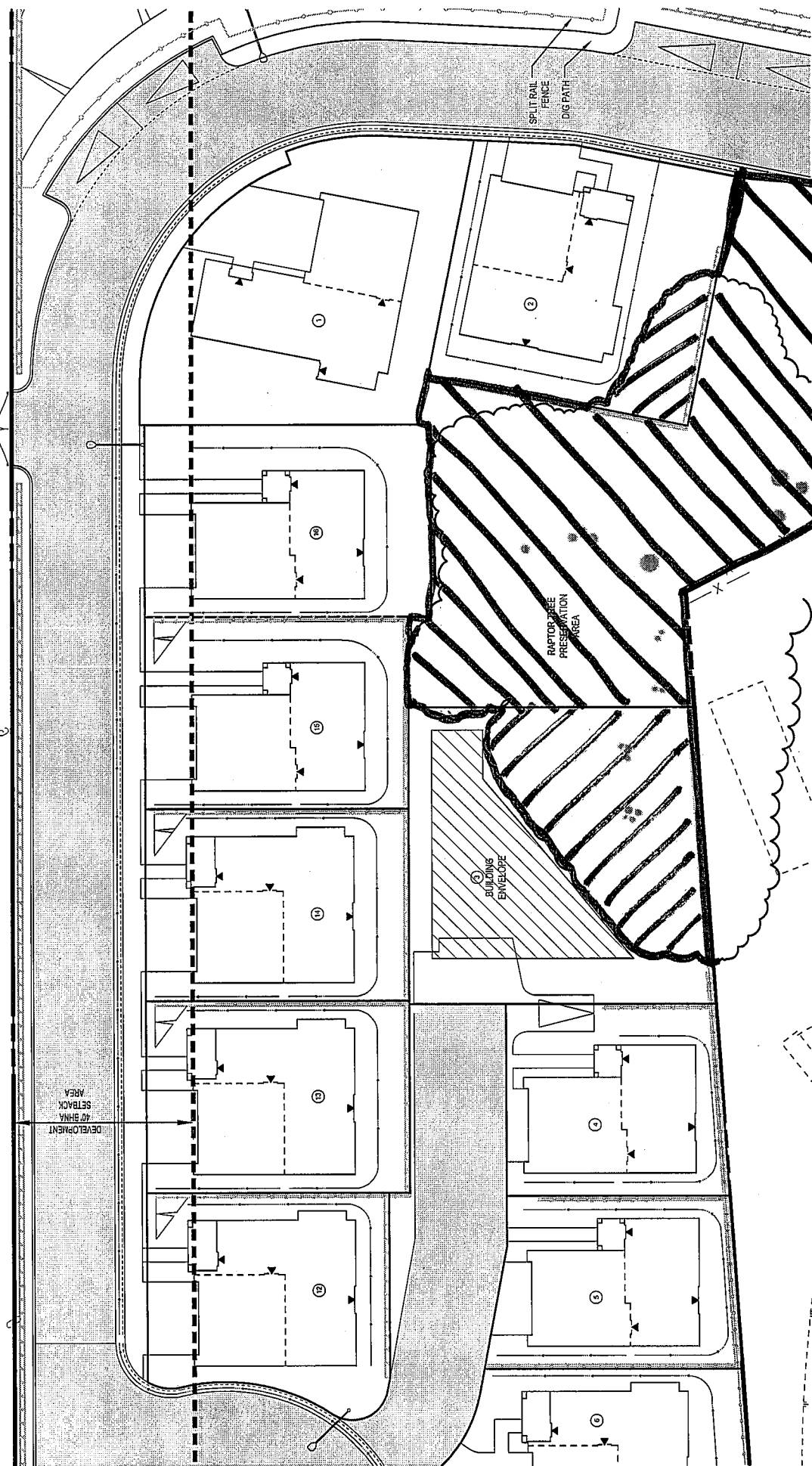
*(j) **Offsite Improvements.** This CDP authorizes the project's offsite improvements, ~~except for the bus turn out along Quintana Road that shall be eliminated from the project, and~~ provided that if the City of Morro Bay subsequently eliminates any of the other offsite improvements from the project, then those other offsite improvements shall similarly be considered eliminated from this approval.*

**3. Minor Changes.** Lastly, staff makes two minor changes, one to address the timing requirements for **Special Condition 7**, and one regarding the location of the Black Hill ESHA portion of Morro Bay State Park as it relates to the project site.

- a. Special Condition 7 (on staff report page 14).** Special Condition 7 requires that "PRIOR TO ISSUANCE OF THE CDP, the Applicant shall execute and record a document, in a form and content acceptable to the Executive Director, either granting in fee simple or irrevocably offering to dedicate to a public agency, or other entity acceptable to the Executive Director, a conservation easement over the Open Space Riparian Enhancement Area (OSREA)." The timing identified, however, results in a condition compliance timing issue. In order to create a parcel as required to be shown in the revised final plans (Special Condition 1), the CDP must be issued first. Thus, staff is amending the time requirement of this condition to "PRIOR TO COMMENCEMENT OF CONSTRUCTION."
- b. Black Hill ESHA.** Page 33 of the staff report inadvertently indicates that, "the proposed development is located adjacent to the Black Hill ESHA." The proposed development, however, is not adjacent to the upper portions of Black Hill, which are considered ESHA. While stated correctly in the introduction section on staff report page 24 and elsewhere, this sentence is hereby amended accordingly to state that, "the proposed development is located adjacent to ~~the Black Hill ESHA~~, State Park Lands, and raptor habitats..."



# ENLARGED SITE PLAN



SCALE: 1"=20'

- Area of RHPA excluded from RHPA parcel
- RHPA
- RHPA parcel
- Exhibit 5a

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# W13a

Staff: D. Robinson  
Staff Report: 01/30/2015  
Hearing Date: 02/11/2015

## STAFF REPORT: DE NOVO HEARING

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

**Applicant:** Black Hill Villas, LP

**Project Location:** 485 and 495 South Bay Boulevard, located east of Morro Bay State Park and west of the Blue Heron Mobile Home Park about 1.5 miles inland from the shoreline of Morro Bay, San Luis Obispo County (APN 066-371-003).

**Project Description:** Subdivision of two parcels (totaling 3.17 acres) into 17 residential parcels and one common/open space parcel, demolition of 2 existing residences and related structures, removal of 43 trees, construction of a new access road and related utility infrastructure, construction of 17 single-family dwellings (including two affordable units), offsite road and traffic improvements, restoration and enhancement of a stream/riparian open space area, and related grading and other development.

**Staff Recommendation:** Approval with Conditions

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## SUMMARY OF STAFF RECOMMENDATION

The Applicant proposes to subdivide two existing parcels into 17 residential parcels and one common area/open space parcel, and to construct 17 single-family residences with two-car garages, two of which would be built to City of Morro Bay standards for affordable units. The proposed project includes demolition of two existing residences and two small associated structures, removal of some 43 onsite trees, and construction of a new paved road (providing access to the residences and accommodating utility infrastructure) and a public pedestrian trail.

The Applicant also proposes to restore and enhance an onsite stream and riparian area that is within the proposed common area/open space parcel, as well as to include storm water retention and filtration measures designed to retain runoff and reduce sediment input into the stream channel and adjacent riparian area. The proposed project also includes offsite road and traffic improvements. The project site is located at the corner of South Bay Boulevard and Quintana Road in the eastern extent of the City of Morro Bay.

The proposed project has a long CDP history. A similar project was originally approved by the City in November 2006, and the City's approval was subsequently appealed to the Coastal Commission. In November 2007, the Commission found a substantial issue was raised with respect to the proposed project's consistency with the City's Local Coastal Program (LCP) and took jurisdiction over the coastal development permit (CDP) application. In March 2008, the Coastal Commission approved, with conditions, a CDP for that project.<sup>1</sup> The Commission was sued over its CDP decision, and the San Luis Obispo County Superior Court ultimately remanded the matter back to the Commission to re-hear the item consistent with the Court's decision, which required the Applicant to more clearly identify all biological resources, including explicitly all environmentally sensitive habitat areas (ESHAs) and their precise boundaries/limits, and to consult with the California Department of Fish and Wildlife (CDFW) in regards to setbacks from the stream/riparian corridor.<sup>2</sup>

In the time since the Court's decision, the Applicant provided a host of updated biological and related information, and consulted with the CDFW regarding the proposed project. The Applicant has also modified the proposed project (including by moving the entrance driveway and several homes farther away from the on-site stream/riparian corridor, reducing the width of the entrance driveway to 20 feet, and by proposing a split-rail fence and permeable public pedestrian trail between the entrance road and the riparian enhancement area). The modified proposed project is evaluated here, and this staff report and hearing are the culmination of the Court remand process, and represent the Commission's CDP application review of the currently proposed project.

The project site contains several types of ESHAs, as defined by the LCP. First, there is an intermittent stream (a tributary to Chorro Creek) and riparian corridor ESHA that provides a link and wildlife connection between the Black Hill area of Morro Bay State Park and Morro Bay via the Chorro Creek watershed. Second, there is an area of wetlands located adjacent to the stream that is also considered ESHA by the LCP. Third, there is an off-site stream/riparian area directly across from the proposed project's entrance accessway that is also ESHA. Finally, the site also includes a large stand of mature trees (including native Monterey cypress and non-native eucalyptus) that provides important nesting and roosting habitat for raptors, including the red-shouldered hawk.<sup>3</sup> While not considered ESHA, this raptor habitat area is still provided some protection under the LCP, and the Commission's Ecologist, Dr. Jonna Engel, recommends its

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<sup>1</sup> The Commission ultimately adopted findings supporting the March decision following a revised findings hearing in April 2008.

<sup>2</sup> Besides these two requirements, the Court found that substantial evidence supported other aspects of the Commission's approval, including the setbacks from the Black Hill area of Morro Bay State Park and protection of public views.

<sup>3</sup> Past tree removal that has occurred on the property appears to potentially be a violation of the Coastal Act. Proposed and conditioned tree replanting should be able to ensure appropriate tree replacement on the site to resolve this violation.

preservation because it provides raptor habitat.

LCP ESHA provisions require 100-foot setbacks from ESHA, and do not allow for setback reductions for new subdivisions, as is the case for this proposed project. Here, the stream/riparian areas and the wetlands constitute ESHA, to which the 100-foot setback applies. For the stream/riparian areas, however, the LCP also prescribes a more specific setback of 50 feet in urban areas (the project site is defined as urban in the LCP), and the 50-foot setback also cannot be reduced for new subdivisions.<sup>4</sup> Although much of the project is located outside of the required setback areas, several areas are not (i.e., small portions of the entrance road, pedestrian trails, and split-rail fence, road widening of South Bay Boulevard, and one offsite bus turn-out).<sup>5</sup> The decomposed granite public pedestrian trails and the split-rail fences can be found consistent with the LCP inasmuch as the LCP explicitly allows for minor structures like pedestrian trails and fences within such ESHA setbacks. The entrance road's minor incursion into the setback area is also allowed as the LCP allows for roads within stream corridors where no alternate route or location is feasible, as is the case here. Moreover, CDFW has determined that the project's encroachments within the setbacks would likely not present impacts to riparian and wetland habitat located on and adjacent to the project site. The proposed riparian area enhancement will help to improve habitat values. All told, and subject to minor changes to best protect and enhance this stream/riparian area, the project can be found consistent with the LCP's ESHA policies.

In terms of the aforementioned raptor habitat area, the Applicant proposes to retain much of this area as a preservation area, but also proposes to remove the western third of this habitat (including an area that includes at least one active raptor nest). The raptor habitat grove is a natural feature that the LCP requires "be preserved to the maximum extent feasible," and Dr. Engel recommends that it be retained in full to continue to function as raptor habitat. While there is little indication that other trees on the site along the western boundary provide significant habitat function (and in fact have been significantly 'topped' over the years to avoid power lines in that area), the raptor habitat grove has significantly higher resource value. In a subdivision proposal such as this where the property presents a 'blank slate' of sorts, such retention is indeed feasible, and thus required by the LCP. Thus, special conditions are recommended to retain these trees and incorporate them into the Applicant's proposed Raptor Habitat Preservation Area (RHPA) and to protect this area through a Raptor Habitat Preservation Plan.

Lastly, provided it is appropriately screened, the proposed development should have a minimal impact on public views, including the important Highway 1 view. Special conditions limit residential heights, and require landscape screening to ensure that this is the case.

Thus, staff is recommending approval subject to conditions designed to refine and implement the

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<sup>4</sup> This more specific 50-foot setback policy for stream/riparian areas is controlling because when a more specific policy and a general policy conflict, as is the case with the ESHA 100-foot setback versus the stream/riparian ESHA 50-foot setback, the more specific policy applies. Thus, the LCP requires a 50-foot minimum setback for the stream/riparian area, and a 100-foot minimum setback for the wetland area.

<sup>5</sup> Specifically, a small section of the public pedestrian trail and split-rail fence is located about five feet within the minimum 100-foot wetland setback (approximately 125 square-feet), and a separate nearby section of the public pedestrian trail (approximately 25 square feet) and split-rail fence and a portion of the new access road and public trail and fence at the entrance to the site (approximately 185 square feet) are located within the minimum 50-foot stream/riparian setback. One proposed bus turn-out located on Quintana Road is located within the 50-foot stream/riparian setback and is inconsistent with the LCP and is conditioned to be removed from the project.

Applicant's proposal and to protect coastal resources as directed by the LCP, including conditions to protect and enhance habitat, and to protect public views. With these conditions, staff recommends that the Commission approve a CDP for the proposed project. The motion to act on this recommendation is found on page 6 below.

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## EXHIBITS

- Exhibit 1: Location Maps
- Exhibit 2: Aerial and Site Photos
- Exhibit 3: Existing Layout and Proposed Project Plans and Elevations
- Exhibit 4: Habitat Maps and OSREA Planting Plan
- Exhibit 5: Project Site Zones
- Exhibit 6: Applicant’s Proposed Offsite Improvements
- Exhibit 7: Applicable Morro Bay LCP Maps and Figures
- Exhibit 8: Commission Staff Ecologist’s Memos
- Exhibit 9: CDFW Streambed Alteration Agreement
- Exhibit 10: Time Series Images of Site
- Exhibit 11: Applicant’s Visual Simulations, including from Highway 1
- Exhibit 12: Superior Court Decision
- Exhibit 13: Correspondence Received
- Exhibit 14: Ex Parte Communication Received

## APPENDICES

- Appendix A – Substantive File Documents

## I. MOTION AND RESOLUTION

Staff recommends that the Commission, after public hearing, **approve** a CDP for the proposed development. To implement this recommendation, staff recommends a **YES** vote on the following motion. Passage of this motion will result in approval of the CDP as conditioned 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 Number A-3-MRB-06-064 pursuant to the staff recommendation, and I recommend a yes vote.*

***Resolution to Approve CDP:*** *The Commission hereby approves Coastal Development Permit Number A-3-MRB-06-064 and adopts the findings set forth below on grounds that the development as conditioned will be in conformity with the policies of the City of Morro Bay Local Coastal Program. Approval of the permit complies with the California Environmental Quality Act because either 1) feasible mitigation measures and/or alternatives have been incorporated to substantially lessen any significant adverse effects of the development on the environment, or 2) there are no further feasible mitigation measures or alternatives that would substantially lessen any significant adverse impacts of the development on the environment.*

## II. STANDARD CONDITIONS

This permit is granted subject to the following standard conditions:

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

### III. SPECIAL CONDITIONS

This permit is granted subject to the following special conditions:

1. **Revised Final Plans.** PRIOR TO ISSUANCE OF THE CDP, the Applicant shall submit two copies of Revised Final Plans for Executive Director review and approval showing all development authorized by this CDP. The Revised Final Plans shall at a minimum show site plans and elevations for all residential structures, site plans and cross sections for all other development (e.g., road/driveways, trails, utilities, perimeter wall, etc.), and site plans for: (1) the Open Space Riparian Enhancement Area (OSREA); (2) the Raptor Habitat Preservation Area (RHPA); (3) the State Park Buffer Area (SPBA); and (4) the Development Area (see below). The Revised Final Plans shall be in substantial conformance with the submitted project plans (entitled “Development, ESHA, Other Habitats, BHNA Buffer”) and as shown otherwise in Exhibit 3, except that it shall be revised as follows to be in conformance with the following development limitations and requirements:

(a) **Development and Other Areas Defined.** The Revised Final Plans shall show the property separated into four different zones as follows:

1. **Open Space Riparian Enhancement Area (OSREA).** The OSREA shall be expanded to include all areas within the 100-foot wetland buffer and/or the 50-foot stream/riparian buffer (see Exhibit 4). Final plans shall show the OSREA as a single parcel. No development, as defined by LCP Section 17.12.199, shall occur within the OSREA except for: (1) subdivision necessary to create the OSREA parcel; (2) habitat restoration (including initial grading), enhancement, maintenance, and management consistent with the approved Final Riparian Enhancement Plan (see Special Condition 4); (3) public access and recreational amenities (e.g., the public pedestrian trails, benches, signage relating to the trail and the OSREA, etc.); and (4) split-rail protective fencing along the boundary of the OSREA and the public pedestrian trails. The OSREA parcel can be combined with the Raptor Habitat Preservation Area (RHPA) parcel (see below) into one single legal lot (not including the driveway or any of the Development Area, see below) if establishing these areas as a single legal lot allows for them to be better managed to protect and enhance coastal resources therein (see also Special Condition 7 for OSREA offer-to-dedicate requirements).
2. **Raptor Habitat Preservation Area (RHPA).** The RHPA shall be expanded to incorporate the area extending to the driplines of trees identified as E2, E3, E4, E5, C1, C2, and C3 (see Exhibit 3). Final plans shall show the RHPA as a single parcel. No development, as defined by LCP Section 17.12.199 and Public Resources Code 30106, shall occur within the RHPA except for: (1) subdivision necessary to create the RHPA parcel; (2) the portion of the road in the driplines of trees C1-C3; and (3) raptor habitat preservation consistent with the approved Raptor Habitat Preservation Plan (RHPP) (see Special Condition 5). The RHPA parcel can be combined with OSREA parcel into one single legal lot (not including the driveway or any of the Development Area, see below) if establishing these areas as a single legal lot allows for them to be better managed to protect and enhance coastal resources therein (see also Special Condition 5 for related RHPA requirements).



- 3. State Park Buffer Area (SPBA).** The SPBA shall consist of the area within 40 feet of the property's western boundary with Morro Bay State Park (and not including the OSREA). Development within the SPBA shall be limited solely to driveway and sidewalks, trails, native landscaping/vegetation, and fences and walls and other related development that does not itself require a defensible fire safety buffer. Development that requires defensible space for fire safety, such as residences and garages, shall be prohibited within the SPBA. All tree removal and replacement landscaping (see also Landscape Screening Plan requirements below) shall be accomplished in such a manner as to ensure protection of adjacent State Park habitat areas.
- 4. Development Area.** All areas outside of the OSREA and the RHPA are located within the Development Area (i.e., note that the Development Area includes the SPBA). All residential and related development (including residential lots, residences, roads and driveways, sidewalks, utilities, and associated landscaping) shall be confined to the Development Area.

PRIOR TO RECORDATION OF THE DEED RESTRICTION REQUIRED BY SPECIAL CONDITION 10, the Permittee shall submit for review and approval of the Executive Director, and upon such approval, shall attach as Exhibits 1-4 to these Special Conditions, a formal legal description and corresponding graphic depiction, prepared by a licensed surveyor, of the OSREA, the RHPA, the SPBA, and the Development Area. The Special Conditions with these exhibits shall be recorded as Exhibit B to the deed restriction required by Special Condition 10.

- (b) Maximum Residential Height.** All residential structures shall be limited to no more than 25 feet in height as measured from existing grade.
- (c) Residential Design.** All residential exterior treatments (i.e., paints, surface treatments, etc.) shall be neutral earthtone colors designed to ensure that the residences blend into the surrounding environment as seen in public views.
- (d) Landscape Screening Plan.** The Revised Final Plans shall include a Landscape Screening Plan that is designed to ensure that all residential structures and related development are screened from Highway 1 public views through planting at least two trees for each residence located along the eastern property boundary, where such trees and any other screening landscaping in this area are sited in such a way as to help screen the residences from Highway 1 view at maturity. In addition, at least one tree per residence (e.g., as street trees or the like), shall be planted in the area between each residence fronting Morro Bay State Park and the Park itself in such a way as to help screen the residences from Park view at maturity. All such screening vegetation shall be kept in good growing condition and shall be replaced as necessary to maintain the approved vegetation and its screening capacity over the life of the project. Regular monitoring and provisions for remedial action (such as replanting as necessary) shall be identified to ensure screening success. The Landscape Screening Plan shall include landscape and irrigation parameters that shall identify all plant materials (size, species, quantity, etc.), all irrigation systems, and all proposed maintenance measures. All plant

materials shall be native and non-invasive species that are chosen and planted in such a manner as to provide Highway 1 and State Park screening, as well as support and complement the approved Final Riparian Enhancement Plan and the Raptor Habitat Preservation Plan (see Special Conditions 4 and 5), as well as to be complementary to the mix of native habitats in the project vicinity, to prevent the spread of exotic invasive plant species, to avoid contamination of the local native plant community gene pool, and to appropriately address fire risk. All landscaped areas on the project site shall be maintained in a litter-free, weed-free, and healthy growing condition. No plant species listed as problematic and/or invasive by the California Native Plant Society, the California Invasive Plant Council, or as may be so identified from time to time by the State of California, and no plant species listed as a 'noxious weed' by the State of California or the U.S. Federal Government, shall be planted or allowed to naturalize or persist on the site.

- (e) **Masonry Wall.** The six-foot high masonry wall along the western property line shall be modified so that it does not extend into the OSREA (and to instead stop where the Development Area meets the OSREA along the western property line); shall be finished with rough-hewn, unpainted concrete on its western (State Park) side; and shall be capable of ensuring that noise from the site that can be heard on the State Park side of the wall does not exceed 60dBA CNEL (where "dBA CNEL" means a 24-hour energy equivalent level derived from a variety of single noise events with weighing factors of 5 and 10 dBA applied to the evening (7pm to 10pm) and nighttime (10pm to 7am) periods, respectively, to allow for the greater sensitivity to noise during these hours). An access gate for emergency fire department or electric utility access is allowed, subject to substantial consistency with all of the above parameters.
- (f) **Lighting.** All lighting shall be sited and designed to limit illumination into the OSREA, the RHPA, Morro Bay State Park, and the Highway 1 view. Lighting along the development entry road shall provide lighting coverage of the roadway (including ground-level directive lights or standards less than four feet in height) that is the minimum necessary for pedestrian and vehicular safety. All exterior residential lighting shall be low-wattage, non-reflective, and shielded to minimize illumination beyond the property boundaries of each home. Pole lighting and spotlights shall be prohibited.
- (g) **Fencing.** The split-rail wooden fence located along the northern, southern, and eastern perimeter of the OSREA, and any other fencing along the development entry road and/or the RHPA, shall be rough-hewn and shall not exceed 3½ feet in height.
- (h) **Public Pedestrian Trail.** An ADA-compliant public pedestrian trail shall be constructed on the north side of the project's entry road within the project site boundaries and offsite including to Quintana Road and South Bay Boulevard (for the offsite portion of the trail, see figure titled "Proposed Off-Site Traffic Exhibit" received in the Commission's Central Coast District Office on January 29, 2014). The pedestrian trail shall be five feet in width and consist of decomposed granite, and shall accommodate benches and signage (including at least one bench and interpretive sign at the onsite trail's terminus near the western edge of the OSREA) indicating that the trail is free and open to the public and

identifying/explaining the riparian enhancement effort within the OSREA, including as it relates to the larger adjacent watershed.

- (i) **Drainage and Runoff Control.** The Final Revised Plans shall include a post-construction drainage and erosion control system, in substantial conformance with the submitted drainage system plans, that is sited and designed: to collect, filter, treat, and direct all site drainage and runoff in a manner designed to protect and enhance coastal resources, including resources located within the OSREA and the RHPA; to prevent pollutants, including increased sediments, from entering coastal waters or wetlands to the maximum extent feasible; to retain runoff from roofs, driveways, decks, and other impervious surfaces onsite to the greatest degree feasible; to use low impact development BMPs; to be sized and designed to accommodate drainage and runoff for storm events up to and including at least the 85th percentile 24-hour runoff event (allowing for runoff above that level to be likewise retained and/or conveyed in as non-erosive a manner as feasible); to promote the objectives of the approved Final Riparian Enhancement Plan and the approved Raptor Habitat Preservation Plan; and to include maintenance and management procedures applicable for the life of the project (including with respect to any Homeowners Association agreements as appropriate).
- (j) **Offsite Improvements.** This CDP authorizes the project's offsite improvements, except for the bus turn-out along Quintana Road that shall be eliminated from the project, and provided that if the City of Morro Bay subsequently eliminates any of the other offsite improvements from the project, then those other offsite improvements shall similarly be considered eliminated from this approval.

All requirements of the approved Revised Final Plans shall be enforceable components of this CDP. The Permittee shall undertake all development in accordance with this condition and the approved Revised Final Plans.

- 2. **Construction Plan.** PRIOR TO ISSUANCE OF THE CDP, the Applicant shall submit two sets of a Construction Plan to the Executive Director for review and approval. The Construction Plan shall, at a minimum, include the following:
  - (a) **Construction Areas.** The Construction Plan shall identify the specific location of all construction areas, all staging areas, all storage areas, and all construction access corridors (to the construction site and staging areas). All such areas within which construction activities are to take place shall be sited and designed in order to have the least impact on the OSREA, the RHPA, and the State Park, and to have the least impact on Highway 1 users (including in terms of impacts on public views).
  - (b) **Construction Methods and Timing.** The Construction Plan shall specify the construction methods to be used, including all methods to be used to keep the construction areas separated from protected areas (including using unobtrusive fencing or equivalent measures to delineate construction areas), and including all methods to be used to protect the OSREA, the RHPA, and the State Park, and Highway 1 users (including in terms of impacts on public views). All erosion control/water quality best management practices (BMPs) to be implemented during construction and their location

shall be noted. These measures shall be designed to prevent erosion, sedimentation, and the discharge of pollutants during construction to the maximum degree feasible, and shall be selected and designed in accordance with the California Storm Water Best Management Practices Handbook.

- (c) **Construction Requirements.** The Construction Plan shall include the following construction requirements specified by written notes on the Construction Plan. Minor adjustments to the following construction requirements may be allowed by the Executive Director if such adjustments: (1) are deemed reasonable and necessary; and (2) do not adversely impact coastal resources.
1. **Daylight Work Only.** All work shall take place during daylight hours (i.e., from one hour before sunrise to one hour after sunset). Nighttime work and lighting of the work area are prohibited.
  2. **Construction Areas.** Construction (including but not limited to construction activities, and materials and/or equipment storage) is prohibited outside of the defined construction, staging, and storage areas.
  3. **Equipment Requirements.** Equipment washing, servicing, and refueling shall only be allowed at a designated location as noted on the Construction Plan. Appropriate BMPs shall be used to ensure that no spills of petroleum products or chemicals take place during these activities.
  4. **Good Housekeeping.** The construction site shall maintain good construction site housekeeping controls and procedures (e.g., clean up all leaks, drips, and other spills immediately; keep materials covered and out of the rain, including covering exposed piles of soil and wastes; dispose of all wastes properly, place trash receptacles on site for that purpose, and cover open trash receptacles during wet weather; remove all construction debris from the site; etc.).
  5. **BMPs.** All erosion control/water quality BMPs shall be in place prior to the commencement of construction as well as at the end of each workday. At a minimum, silt fences, straw wattles and/or equivalent apparatus, shall be installed at the perimeter of the construction site to prevent construction-related runoff and/or sediment from entering into the stream corridor.
  6. **Notification.** The Permittee shall notify planning staff of the Coastal Commission's Central Coast District Office at least three working days in advance of commencement of construction activities, and immediately upon completion of construction activities.
- (d) **Sensitive Bird Species.** The Construction Plans shall provide for an environmental resources specialist with experience conducting bird/raptor surveys to conduct a pre-construction survey of onsite trees, and thereafter to conduct an inspection every two weeks, as well as an inspection immediately prior to all significant construction activities (those with potential noise impacts) for as long as construction continues. If an active nest of a federally or state-listed threatened or endangered species, bird species of special

concern, or any species of raptor is identified during preconstruction surveys, or is otherwise identified during construction, the Permittee shall take the following actions:

- 1. Notification.** The Permittee shall notify all appropriate State and Federal agencies within 24 hours, and shall develop an appropriate action specific to each incident. The Permittee shall notify the Executive Director in writing by facsimile or e-mail within 24 hours and consult with the Executive Director regarding determinations of State and Federal agencies.
- 2. Action.** In addition to any actions required by the Executive Director, if the active nest is located within 250 feet of construction activities (within 500 feet for raptors), construction activities shall be modified to ensure that nesting birds are not disturbed by construction-related noise.

All requirements above and all requirements of the approved Construction Plan shall be enforceable components of this CDP. The Permittee shall undertake development in accordance with this condition and the approved Construction Plan. Minor adjustments to the above construction requirements may be allowed by the Executive Director if such adjustments: (1) are deemed reasonable and necessary; and (2) do not adversely impact coastal resources.

**3. Construction Site Documents and Construction Coordinator. DURING ALL CONSTRUCTION:**

- (a) Construction Site Documents.** Copies of the signed CDP and the approved Construction Plan shall be maintained in a conspicuous location at the construction job site at all times, and copies shall also be available for public review at the Commission's Central Coast District Office in Santa Cruz on request. All persons involved with the construction shall be briefed on the content and meaning of the CDP and the approved Construction Plan, and the public review requirements applicable to them, prior to commencement of construction.
- (b) Construction Coordinator.** A construction coordinator shall be designated to be contacted during construction should questions arise regarding the construction (in case of both regular inquiries and emergencies), and the coordinator's contact information (i.e., address, phone numbers, etc.) including, at a minimum, a telephone number that will be made available 24 hours a day for the duration of construction, shall be conspicuously posted at the job site where such contact information is readily visible from the driveway access point, along with an indication that the construction coordinator should be contacted in the case of questions regarding the construction (in case of both regular inquiries and emergencies). The construction coordinator shall record the name, phone number, and nature of all complaints received regarding the construction, and shall investigate complaints and take remedial action, if necessary, within 24 hours of receipt of the complaint or inquiry.

**4. Final Riparian Enhancement Plan (FREP). PRIOR TO ISSUANCE OF THE CDP, the Applicant shall submit for Executive Director review and approval two copies of a Final**

Riparian Enhancement Plan (FREP) The FREP shall provide for riparian enhancement within the Open Space Riparian Enhancement Area (OSREA), where the goal of the FREP shall be enhancing and restoring the area to a self-sustaining natural habitat state. The FREP shall be prepared by a qualified restoration ecologist, and shall take into account the specific condition of the site (including soil, exposure, water flows, temperature, moisture, wind, etc.), as well as restoration and enhancement goals. At a minimum, the plan shall provide for the following:

- (a) **Baseline.** A baseline assessment, including photographs, of the current physical and ecological condition of the OSREA.
- (b) **Success Criteria.** A description of the goals and measurable success criteria of the FREP, including, at a minimum, the requirement that success be determined after a period of at least three years wherein the OSREA has been subject to no remediation or maintenance activities other than weeding, and that this condition be maintained in perpetuity.
- (c) **Non-Native and Invasive Removal.** Removal of invasive and non-native plant species within the OSREA.
- (d) **Native Species.** Planting of native species of local stock appropriate to the riparian corridor in the OSREA. Non-native and/or invasive plant species shall be prohibited. No plant species listed as problematic and/or invasive by the California Native Plant Society, the California Invasive Plant Council, or as may be so identified from time to time by the State of California, and no plant species listed as a 'noxious weed' by the State of California or the U.S. Federal Government shall be planted or allowed to naturalize or persist in the OSREA.
- (e) **Landscape Screening.** The FREP shall be coordinated with the Landscape Screening Plan (see also Special Condition 1), including so that riparian area enhancement serves the dual purpose of also helping to provide the required residential screening if feasible and appropriate consistent with riparian enhancement objectives.
- (f) **Hydrologic Inputs.** The FREP shall be coordinated with the post-construction drainage and erosion control system (see also Special Condition 1), including so that any hydrologic inputs are consistent with riparian enhancement objectives.
- (g) **Monitoring and Maintenance.** Monitoring and maintenance provisions, including a schedule of the proposed monitoring and maintenance activities to ensure that success criteria are achieved.
- (h) **Reporting.** Provision for submission of annual reports of monitoring results to the Executive Director, beginning the first year after initial implementation of the FREP and concluding once success criteria have been achieved. Each report shall document the condition of the OSREA with photographs taken from the same fixed points in the same directions, shall describe the progress towards reaching the success criteria of the FREP, and shall make recommendations, if any, on changes necessary to achieve success.

- (i) **Provision for Possible Further Action.** If the final monitoring report indicates that the FREP has been unsuccessful, in part or in whole, based on the approved success criteria, the Permittee shall submit within 90 days a revised or supplemental plan to compensate for those portions of the original plan which did not meet the approved success criteria. The Permittee shall implement the revised or supplemental plan as directed by the Executive Director.

The approved FREP shall be implemented during construction as directed by a qualified restoration ecologist, and initial planting and non-native/invasive plant removal shall be completed prior to initial occupancy of the residential component of the project. All requirements above and all requirements of the approved FREP shall be enforceable components of this CDP. The Permittee shall undertake development in accordance with this condition and the approved FREP.

5. **Raptor Habitat Protection.** PRIOR TO ISSUANCE OF THE CDP, the Permittee shall submit for Executive Director review and approval two copies of a Raptor Habitat Preservation Plan (RHPP). The RHPP shall provide for raptor habitat preservation within the Raptor Habitat Preservation Area (RHPA), where the goal of the RHPP shall be to preserve and protect raptor habitat in as good or better state than exists currently. In addition, the Plan shall be designed to protect and provide for the health of the trees in perpetuity, including providing for native replacement trees suitable for raptor habitat in the event the trees in the RHPA senesce or require removal for health or safety reasons. The RHPP shall be prepared by a qualified environmental resources specialist with experience conducting raptor surveys, monitoring raptor behavior, and protecting raptor habitat. The RHPP shall provide that no development, as defined by LCP Section 17.12.199 and Public Resources Code 30106, shall occur within the RHPA except for: (1) subdivision necessary to create the RHPA parcel; (2) the portion of the road under the driplines of trees C1-C3; and (3) raptor habitat preservation consistent with the RHPP. Nothing in this Special Condition or in Special Condition 7 is intended to restrict the ability of the Permittee (and/or the entity ultimately accepting any conveyances for the Open Space Riparian Enhancement Area (OSREA)) from managing the RHPA and the OSREA as a single unit, if such management approach is warranted.

All requirements above and all requirements of the RHPP shall be enforceable components of this CDP. The Permittee shall undertake development in accordance with this condition and the RHPP.

6. **Utilities.** PRIOR TO ISSUANCE OF THE CDP, the Applicant shall submit, for the review and approval of the Executive Director, evidence that adequate water and sewer services are available to serve the proposal, and that the City of Morro Bay will serve the property with water and sewer services.
7. **OSREA Grant or Offer to Dedicate (OTD).** PRIOR TO ISSUANCE OF THE CDP, the Applicant shall execute and record a document, in a form and content acceptable to the Executive Director, either granting in fee simple or irrevocably offering to dedicate to a public agency, or other entity acceptable to the Executive Director, a conservation easement over the Open Space Riparian Enhancement Area (OSREA), as described in Special Condition 1 above and as generally depicted in Exhibit 4. The grant or Offer to Dedicate

(OTD) shall be recorded free of all prior liens and encumbrances that the Executive Director determines may affect the interest being conveyed. The instrument shall include a legal description and graphic depiction of the legal parcels subject to the CDP and a metes and bounds legal description and graphic depiction of the dedicated area prepared by a licensed surveyor based on an on-site inspection, drawn to scale, and approved by the Executive Director. No development, as defined by LCP Section 17.12.199 and Public Resources Code Section 30106, shall occur within the OSREA except for: (1) subdivision necessary to create the OSREA parcel; (2) habitat restoration (including initial grading), enhancement, maintenance, and management consistent with the approved Final Riparian Enhancement Plan (FREP); (3) public access and recreational amenities (e.g., the public pedestrian trails, benches, signage relating to the trail and the OSREA, etc.); and (4) split-rail protective fencing along the boundary of the OSREA and the public pedestrian trails. Prior to acceptance of the grant or OTD, restoration, enhancement, maintenance, and management consistent with the approved FREP shall be the obligation of the Permittee or its successor. Following acceptance of the grant or OTD, obligations for restoration, enhancement, maintenance, and management consistent with the approved FREP shall remain with the Permittee or successor unless the accepting entity notifies the Executive Director of the Commission in writing that it has elected to assume this obligation.

Nothing in this Special Condition and Special Condition 5 is intended to restrict the ability of the Permittee and/or the entity ultimately accepting any conveyances from managing the OSREA and the Raptor Habitat Preservation Area (RHPA) as a single unit, if such management approach is warranted.

8. **Fire Defensible Space.** All fire defensible space measures shall be accommodated on the Permittee's property, and shall not be allowed to be extended onto adjacent Morro Bay State Park property.
9. **Archaeological Resources.** In the event that any article of historical or cultural significance is encountered, all activity that could damage or destroy these resources must cease and the Executive Director and the Native American Heritage Commission must be notified so that the articles may be suitably protected or flagged for future research. A qualified archaeologist and/or the Native American Heritage Commission shall be consulted in order to examine the site and obtain recommendations for subsequent measures for the protection and disposition of significant artifacts. Mitigation measures shall be developed and submitted to the Executive Director for review and approval that address and proportionately offset the impacts of the project on archaeological resources.
10. **Deed Restriction.** PRIOR TO ISSUANCE OF THE CDP, the Applicant shall submit to the Executive Director for review and approval documentation demonstrating that the landowner has executed and recorded against the parcel(s) governed by this permit a deed restriction, in a form and content acceptable to the Executive Director: (1) indicating that, pursuant to this permit, the California Coastal Commission has authorized development on the subject property, subject to terms and conditions that restrict the use and enjoyment of that property; and (2) imposing the Special Conditions of this permit as covenants, conditions and restrictions on the use and enjoyment of the Property. The deed restriction shall include a legal description of the entire parcel or parcels governed by this permit. The deed restriction



shall also indicate that, in the event of an extinguishment or termination of the deed restriction for any reason, the terms and conditions of this permit shall continue to restrict the use and enjoyment of the subject property so long as either this permit or the development it authorizes, or any part, modification, or amendment thereof, remains in existence on or with respect to the subject property.

**11. Liability for Costs and Attorney's Fees.** The Permittee shall reimburse the Coastal Commission in full for all Coastal Commission costs and attorney's fees (including but not limited to such costs/fees that are: (1) charged by the Office of the Attorney General; and (2) required by a court) that the Coastal Commission incurs in connection with the defense of any action brought by a party other than the Permittee against the Coastal Commission, its officers, employees, agents, successors and assigns challenging the approval or issuance of this permit. The Permittee shall reimburse the Coastal Commission within 60 days of being informed by the Executive Director of the amount of such costs/fees. The Coastal Commission retains complete authority to conduct and direct the defense of any such action against the Coastal Commission

## **IV. FINDINGS AND DECLARATIONS**

### **A. PROJECT LOCATION**

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

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

The project site is located near the base of Black Hill and is fairly sloped from north to south (approximately 60 feet in elevation gain moving toward Black Hill). The site includes a seasonal stream that crosses the northern (lower elevation) section of the property, more or less parallel to Quintana Road. This stream is an unnamed tributary to Chorro Creek. The stream corridor slopes down from Morro Bay State Park downstream and across the site to a box-culvert that is located beneath both South Bay Court and South Bay Boulevard. This corridor conveys water in an eastward direction across the property from the State Park towards Chorro Flats and ultimately into Chorro Creek. Numerous mature trees occupy the site, including Monterey cypress, Monterey pine and blue gum eucalyptus. A row of elm trees, Monterey pines, and eucalyptus

trees, which have been impacted by regular topping by PG&E,<sup>6</sup> is located along the western property line adjacent to State Park property. Open areas on the upper portion of the site support a mix of annual grasses, herbaceous weeds, and ornamental plants.

Existing development on the site includes two single-family residences and two small accessory structures located on the upland portion of the property. The larger residence is a two-story residence that is approximately 2,100 square feet in size, and the smaller residence is approximately 1,250 square feet. A small one-room cabin (approximately 200 square feet) is located on the upland part of the property and another small electrical shed is located on the lower part of the property near the entrance to the site. A partially paved driveway approximately 12 feet wide provides access to the existing residences from South Bay Court. See **Exhibit 2** for aerial and site photographs and **Exhibit 3** for the existing layout.

## **B. PROJECT DESCRIPTION AND BACKGROUND**

The proposed project includes the removal of both of the existing residences and associated structures, along with 43 trees, and subdivision of the two existing parcels into 17 residential parcels and a single common area/open space parcel, which would include the entire site outside of the 17 residential parcels.<sup>7</sup> Each of the 17 parcels would be developed with a two-story single-family residence,<sup>8</sup> two of which are proposed to meet the City's affordable housing requirements. In addition, the project includes a 20-foot wide paved access road with a five-foot wide publicly accessible permeable pedestrian trail (and parallel parking spaces along a portion) extending from South Bay Court into and through the property providing access to each of the residential lots and viewing areas of the low lying stream and riparian area, as well as accommodating subsurface utility infrastructure.

The proposed project would require grubbing and grading of approximately 70 percent of the site, and would include re-contouring of the upper slopes of the intermittent stream (of the right bank when looking downstream) that traverses the northern portion of the property, for riparian habitat enhancement purposes. In addition, the project would include implementation of a Riparian Enhancement Plan (dated June 3, 2014) for the low lying stream/riparian area of the site (described as the Open Space Riparian Enhancement Area (OSREA) and covering an area of approximately 36,730 square feet) and a Raptor Tree Preservation Area (RTPA) south of the entrance driveway (covering approximately 17,900 square feet).<sup>9</sup> Further, the proposed project includes storm water retention and filtration measures designed to retain runoff and limit sediment input into the stream channel and adjacent riparian area. Finally, the project includes a suite of offsite streetscape improvements along South Bay Court, Quintana Road, and South Bay Boulevard, including widening of South Bay Boulevard for a left turn lane,<sup>10</sup> roadway improvements at the intersection of Quintana and South Bay Boulevard (e.g., four-way

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<sup>6</sup> The PG&E power lines in this case are located on the State Park side of the property line, but tree topping related to the lines has occurred on the subject site given the proximity involved.

<sup>7</sup> Each residential lot is proposed to range in size from 3,000 square feet to 6,124 square feet (0.07 to 0.14 acres).

<sup>8</sup> The proposed houses would range from 1,700 to 1,895 square feet and include two-car garages.

<sup>9</sup> Together these two areas of open space constitute roughly 40% of the project site.

<sup>10</sup> From South Bay Boulevard to Quintana Road (see Exhibit 6)

signalization, signalized pedestrian crosswalk, etc.), two bus turn-out areas, and a community pathway.<sup>11</sup> See **Exhibit 3** for the proposed layout and project plans and **Exhibit 4** for the Applicant's habitat maps and proposed planting plan for the riparian area. See **Exhibit 6** for the Applicant's graphic identifying the offsite improvements proposed.

The project was originally approved by the City of Morro Bay on November 13, 2006, and the City's approval was subsequently appealed to the Coastal Commission. On November 16, 2007, the Commission found that a substantial issue was raised with respect to the proposed project's consistency with the City of Morro Bay LCP and took jurisdiction over the CDP application. On March 6, 2008, the Coastal Commission approved, with conditions, a CDP for a project roughly as described above. On April 11, 2008, the Commission approved revised findings that were based on the Commission's action at the March 6, 2008 hearing. On August 19, 2008, the Commission was asked by a local group named "Save the Park" to revoke the 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 ESHA, 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.<sup>12</sup> See **Exhibit 12** for the Superior Court Decision.

The remand required the Applicant to: 1) provide additional biological information, including identifying all ESHA boundaries/limits, and 2) consult with the California Department of Fish and Wildlife (CDFW). The Court also upheld the remaining portion of the Commission's decision, including the Commission's approval of a 40-foot buffer from the Black Hill Natural Area (of Morro Bay State Park), and a 25-foot height limit on all residences provided they be constructed in a way as not to be visible from Highway 1. See below for a summary, by applicable issue area, of the relationship between the Commission's 2008 approval, the 2010 Court decision, the currently proposed project, and this report's conclusions:

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<sup>11</sup> Offsite improvements were required as part of the City's approval in 2006.

<sup>12</sup> Case Number CV080410.

<b>2008 Commission Approval</b>	<b>2010 Superior Court Decision</b>	<b>Current Proposed Project</b>	<b>This Report's Conclusion</b>
<b>ESHA mapping</b>			
Description of ESHA areas but lacked all ESHA boundaries	Required additional biological information regarding ESHA boundaries	Applicant has provided updated reports and maps (see Appendix A)	ESHA and other habitats appropriately mapped, and the Commission's staff ecologist concurs with the ESHA mapping
<b>ESHA setbacks</b>			
100 and 50-foot ESHA setbacks applied	Required consultation with CDFW regarding potential ESHA setback downward adjustments	Applicant has consulted with CDFW on encroachments into ESHA setbacks (see Exhibits 7 and 10)	The project meets LCP-required setbacks, including allowing some development within some ESHA setbacks
<b>Black Hill area (Morro Bay State Park) resource protection</b>			
40-foot buffer for residential structures, not including roads and sidewalks, from the Black Hill area of Morro Bay State Park	Upheld the Commission's approval of a 40-foot buffer, finding that it did not violate the LCP	40-foot buffer of residential structures, not including roads and sidewalks, from the Black Hill area of Morro Bay State Park	40-foot buffer is adequate to prevent impacts that would significantly degrade the Black Hill area of Morro Bay State Park
<b>Public viewshed protection</b>			
25-foot height limit, vegetative screening and earthtone hues for all residential structures so as not to be visible from Highway 1	Found that the scenic and visual qualities of the significant public viewshed will be protected under LCP Policies 12.01, 12.02 and 12.06.	25-foot height limit, vegetative screening and earthtone hues for all residential structures so as not to be visible from Highway 1	Landscape screening and earthtone hues so as to screen all residential structures from Highway 1 at maturity

In terms of the two court ordered requirements, the Applicant provided the required biological information, and ESHA identification and boundaries, and has consulted with the CDFW (See **Exhibit 13**). CDFW provided a Streambed Alteration Agreement (dated August 28, 2013; see **Exhibit 9**), recommending a number of protective measures to protect fish and wildlife resources for all construction work located within their jurisdictional area within the stream and top of the bank. CDFW also has commented on the project's development within required setbacks. The United States Fish and Wildlife Service (USFWS) also submitted a concurrence determination regarding the Morro shoulderband snail.

In addition, 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). See **Appendix A** for these and other substantive file documents.

### **C. STANDARD OF REVIEW AND LCP SUMMARY**

The proposed project is located within the Commission's appeal jurisdiction and thus the standard of review is the City of Morro Bay's Local Coastal Program (LCP). The City's Land Use Plan portion of the LCP was originally certified by the Coastal Commission in 1982 and its Implementation Plan was first certified in 1984. Recently, the City has begun to embark on a comprehensive update to its LCP with funds received from the Commission's LCP Local Assistance Grant Program.

### **D. BIOLOGICAL RESOURCES**

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 considered ESHA, but worthy of protection nonetheless. Applicable LCP policies include:

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

...

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

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

...

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

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

...

*(2) Coastal Streams/riparian habitat; (a) A stream or a river is a natural watercourse as designated by a solid line or dash and three dots symbol shown on the United States*

*Geological Survey map most recently published, or any well defined channel with distinguishable bed and bank that shows evidence of having contained flowing water as indicated by scour or deposit of rock, sand, gravel, soil, or debris. (b) A riparian habitat is an area of riparian vegetation. This vegetation is an association of plant species which grows adjacent to freshwater watercourses, including perennial and intermittent streams, lakes, and other bodies of fresh water.*

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

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

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

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

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

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

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

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

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

***LUP Policy 11.15.*** *No structures shall be located within the stream corridor except: public trails located within a buffer when no alternative location is feasible but outside of riparian habitat;... Bridges (when support structures are located outside the critical habitat areas) may be permitted when no alternative route/location is feasible. All development shall incorporate the most protective mitigations feasible.*

***LUP Policy 11.16.*** *All permitted development, including dredging, filling and grading within stream beds and setback buffer areas shall be limited to activities necessary for the construction of uses specifics in Policy 11.15.*

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

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

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

*...*

*d. Stream Corridors (Streams and Adjacent Riparian Habitats). A "stream" is a natural water course as designated on the most recently published United States Geological Survey map, or any well-defined channel with distinguishable bed and bank that shows evidence of having contained flowing water as indicated by scour or deposit of rock,*

sand, gravel, soil or debris. A "riparian habitat" is an area characterized by an association of plant species which grow adjacent to freshwater watercourses, including perennial and intermittent streams, lakes and other bodies of fresh water.

**IP Section 17.40.040 (A)(1).** *The purpose of the environmentally sensitive habitat overlay zone or "ESH" overlay zone is to protect and preserve areas in which plant or animal life or their habitats are either rare or especially valuable because of their special nature or role in an ecosystem and which could easily be disturbed or degraded by human activities and development. Environmentally sensitive habitat overlay zones shall extend not only over an ESH area itself but shall also include buffers necessary to ensure continued protection of the habitat areas. Only uses dependent on the sensitive resources and which do not result in significant disruption of habitat values shall be permitted in the ESH overlay zone. The ESH overlay zone may apply to areas not currently mapped as ESH designation.*

**IP Section 17.40.040(C)(4).** *Stream Corridors. The following are conditionally permitted uses: controlled public access, including public trails within the buffer; necessary pipelines and water supply projects where no alternative location exists; flood control projects where no other method for protecting existing structures in the floodplain is feasible and where such protection is necessary for public safety or to protect existing development; road and bridges where no alternative route/location is feasible and if support structures are not sited in the environmentally sensitive habitat.*

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

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

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

...

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

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

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

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



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

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

***LUP Policy 0.1** The City adopts the policies of the Coastal Act (PRC Sections 30210 through 30263) as the guiding policies of the Land Use Plan....*

### **Resource Setting and Analysis**

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

The subject property is located near the base of Black Hill (a 661-foot volcanic peak) and adjacent to the 2,700-acre Morro Bay State Park. Morro Bay State Park contains a variety of coastal habitats from freshwater riparian habitat and saltwater marshes, to grasslands and coastal sage scrub habitat. Morro Rock, a 23-million-year-old volcanic plug, is the most prominent landscape in Morro Bay State Park and is part of the region's "Nine Sisters," a chain of volcanic plugs stretching between Morro Bay and San Luis Obispo.<sup>13</sup> Black Hill, adjacent to the project site and also within Morro Bay State Park, is also part of the Nine Sisters, and it is a popular site for hiking and enjoying panoramic views of Morro Bay.

Due to the presence of a variety of sensitive plants and animals, and the cohesiveness of the undisturbed wild land, the upper portion of the adjacent Morro Bay State Park is categorically identified and mapped as ESHA on Figure 28 of the City's LCP (see **Exhibit 7**). As identified in the certified LCP, the plant community there consists mainly of native coastal sage scrub, but also contains species characteristic of maritime chaparral. The low lying areas immediately adjacent to the project site exhibit some of the same characteristics as these sensitive habitats, though this adjacent area is mainly occupied by non-native species (i.e., exotic grasses and woody tree species). Native species such as coyote bush and sage brush are present but only in small numbers and distribution. That is not to say that this immediately adjacent area is not a valuable coastal resource and preservation area (and part of a designated State Park Natural Area for these reasons), but rather to indicate that the strip adjacent to the subject site does not meet the ESHA threshold under the LCP.

#### *The Chorro Creek Watershed*

A portion of the Chorro Creek watershed, including Chorro Flats, lies immediately adjacent to the subject site to the east and south, and is one of the largest contributors to the Morro Bay Estuary. The portion of this watershed that is directly east of South Bay Boulevard is categorically identified and mapped as ESHA on Figure 28 of the City's LCP, and the approximately 83 acres of wetland and wildlife habitat that was restored is likewise considered ESHA pursuant to the LCP (see **Exhibit 7**). This low lying rural area was the site of a major restoration enhancement project beginning in the 1990s, and continues to receive funding and support from various stakeholders in aims of restoring and enhancing its wetland and wildlife habitat. That project was designed to reestablish riparian habitat and improve water quality entering Morro Bay by reducing upstream sediment flows. Partners converted approximately 100 acres of agricultural land to a floodplain by realigning the Chorro Creek channel (i.e., removing

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<sup>13</sup> The most famous of which is Morro Rock, located at the entrance to Morro Bay along the shoreline. The volcanic plugs were formed when magma swelled up and then solidified inside softer rock, which later eroded away.

levees and planting native riparian vegetation chosen for its ability to trap sediments).<sup>14</sup> The project restored approximately 67 acres of riparian and wetland habitat. Importantly, the triangular shaped riparian area that is located between South Bay Court and South Bay Boulevard was a part of this restoration project.<sup>15</sup>

### *On-Site Description*

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

The remaining three-quarters of the site is located on slopes above the stream channel. The site slopes upward from the stream elevation by approximately 60 feet to the southwestern corner of the site. The upland areas support a plant community consisting mainly of annual grasses, herbaceous weeds, and ornamental plants. However, a few native species, such as coyote bush and Californian poppy, are also found in the upland area. Bare soil, non-native grasses, and invasive herbaceous weeds dominate the low-lying area, though sagebrush, coyote brush, salt grass, morning glory, and California poppy are present in the area. Arroyo willow, Marsh Baccharis, and blackberry also exist along the stream banks.

Numerous trees also grow on the site, including large and mature Monterey cypress and blue gum eucalyptus. A row of elm, Monterey pine, and eucalyptus trees are also present along the western property line adjacent to Morro Bay State Park. In addition, several trees, including mature Monterey pine and eucalyptus trees, have been removed on this site in the past,<sup>16</sup> including some that have apparently been felled by weather since 2007.<sup>17</sup> These trees were located primarily in the low-lying area near the stream/riparian and wetland area and/or adjacent to the raptor habitat area. See **Exhibit 10** for a time series of photographs of the site, including

<sup>14</sup> Partners involved in protecting and enhancing the Chorro Creek watershed include the Natural Resources Conservation Service, Coastal San Luis Resource Conservation District, California Coastal Conservancy, Morro Bay National Estuary Program, Farm Bureau, Bay Foundation of Morro Bay, San Luis Obispo County, California Men's Colony Prison Water Treatment Plant, Camp San Luis Obispo, U.S. Environmental Protection Agency, Central Coast Regional Water Quality Control Board, California State Water Resources Control Board, and numerous private landowners.

<sup>15</sup> At one time, the entrance access road from Quintana Road to the Blue Heron Terrace Mobile Home Park ran across this section to connect with South Bay Boulevard, which is why the current address for the property is 485 and 495 South Bay Boulevard. During the restoration project, the access was realigned to connect along South Bay Court from Quintana Road, and culverts were installed to allow creek waters to flow from the subject property to the Chorro Flats area to the east.

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

<sup>17</sup> The Applicant has provided information showing that three trees have been felled by weather since 2007.

the tree canopy.

#### *ESHA*

Based on the 2010 San Luis Obispo County Superior Court decision, and because almost nine years had passed since the original Commission hearings on this project (and almost 11 years had passed since the original biotic reports were completed), the Applicant submitted six biotic reports between 2012 and 2013 to aid in the environmental analysis of the project (see **Appendix A**).

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

LCP Land Use Plan (LUP) Chapter XII.C.2 and Implementation Plan (IP) Section 17.40.040(d)(3) categorically identify coastal streams and riparian habitat and wetlands as ESHA. The Commission's ecologist, Dr. Jonna Engel, concurs that the stream/riparian corridor and wetland areas are ESHA. Dr. Engel does not believe that the stand of trees supporting raptors qualifies as ESHA, but recommends that this stand "be preserved and protected to the greatest extent possible" (see also discussion below and Dr. Engel's memorandum in **Exhibit 8**).

#### *Stream/Riparian and Wetland ESHA*

In terms of the stream and riparian habitat that exists on the northern portion of the subject property, the channel is approximately 325 feet in length and flows west to east between the Black Hill area of Morro Bay State Park and the Chorro Flats/Chorro Creek watershed to the east. This stream/riparian channel receives surface runoff from a drainage area of approximately 275 acres, primarily located to the north and south of the channel.<sup>18</sup> The State Park land on the northern flank of Black Hill, directly upland of and partly feeding into the project site, supports a dense riparian corridor dominated by arroyo willows. The stream channel empties into an adjacent riparian area via a box-culvert under South Bay Court, and from there into Chorro Flats and the larger Chorro Creek watershed on the east side of South Bay Boulevard.

In 2012, the Applicant prepared a focused survey-level report on the California red-legged frog (CRLF), which is listed as a federally threatened species and a California Species of Special Concern.<sup>19</sup> The report for CRLF found slightly higher habitat values (expansion of the arroyo willow canopy and the increased abundance of hydrophytic vegetation in the channel) along the

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<sup>18</sup> The Applicant's ecologist states that the channel receives the majority of runoff (approximately 70 percent) from rangeland located to the north of Highway 1, an urban area west of the site, and State Highway 1.

<sup>19</sup> The Applicant has also submitted updated 'no-take' concurrence letters from USFWS for the California red-legged frog.

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. Thus, the stream corridor contains suitable habitat for CRLF, enhancing its overall habitat value, and providing support for adjacent CRLF habitat.

While the stream and its related habitat on site have been disturbed over the years<sup>20</sup> (e.g., including through the removal of several trees, as discussed above), its hydrologic function has been maintained, and the stream/riparian channel serves as a link, providing potential habitat for CRLF, and a northern riparian connection between Morro Bay State Park and the Chorro Flats/Chorro Creek watershed area; two more significant CRLF habitat areas. Thus, the low-lying stream/riparian area is ESHA, per the LCP.

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

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

See also Dr. Engel's memos on these ESHA determinations in **Exhibit 8**.

#### *ESHA Setbacks*

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

*...if subdivision parcels would render the subdivided parcel unusable for its designated use, the setback area may be adjusted downward only to a point where the designated use is accommodated but in no case is the buffer to be less than 50 feet. ...*

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

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

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

<sup>20</sup> Including as recently as 2013, when staging occurred on the northern portion of the property along Quintana Road for construction of an adjacent pump station by the City of Morro Bay.

to these properties would render a parcel unusable for its designated use, then a reduction can be pursued consistent with the policies.<sup>21</sup> In this case, the Applicant is proposing a new subdivision. The new subdivision stage is when LCP setback and other policies need to be applied to ensure that new parcels can be developed consistent with LCP requirements. Thus, the LCP does not allow for ESHA setback reductions, including with respect to stream/riparian ESHA, for new subdivisions.

As detailed above, stream/riparian areas and the wetlands constitute ESHA to which the 100-foot setback applies. For the stream/riparian areas, however, the LCP also prescribes a more specific setback of 100 feet in rural areas and 50 feet in urban areas. Despite the rural nature of the area, including that the project site is located inland some 1.5 miles from the City core (near the Embarcadero and downtown Morro Bay), by LCP definition this site is located in an urban area (see the City's Land Use Map in **Exhibit 7**).<sup>22</sup> Thus, the stream/riparian setback policies that apply require a minimum 50-foot setback. This more specific 50-foot setback policy for stream/riparian areas is controlling because when a more specific policy and a general policy conflict, as is the case with the ESHA 100-foot setback versus the stream/riparian 50-foot setback, the more specific policy applies. Thus, the LCP requires a 50-foot minimum setback for the stream/riparian areas (both on and off site), and a 100-foot minimum setback for the onsite wetland area.

Although much of the project is located outside of the required setback areas, several areas are not (i.e., small portions of the entrance road, pedestrian trails, and split rail fence, road widening of South Bay Boulevard and one bus turn-out).<sup>23</sup> Specifically: 1) a small section of proposed public pedestrian trail and split rail fence is located about 5 feet within the minimum 100-foot wetland setback (occupying approximately 125 square-feet), 2) a small section of proposed public pedestrian trail and split rail fence is located about 5 feet within the minimum 50-foot stream/riparian setback area (occupying approximately 25 square feet), and 3) a portion of the new access road and trail (and same split rail fence) at the entrance to the site is located within the minimum 50-foot stream/riparian setback area (occupying approximately 185 square feet) (see **Exhibit 4**).<sup>24</sup>

The decomposed granite public pedestrian trails and the split rail fences can be found consistent with the LCP inasmuch as the LCP explicitly allows for minor structures like pedestrian trails and fences within such ESHA setbacks (see LUP Policy 11.06 and IP Section 17.40.040(C)(4)). The road, however, presents a different LCP issue as there isn't adequate space outside of the

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<sup>21</sup> In no case can a wetland setback be reduced, as the setback reduction provisions explicitly omit wetlands (see LUP Policy 11.06 and IP Section 17.40.040(d)(6)(a)).

<sup>22</sup> The LCP defines "urban" as those land areas within the urban-rural boundary as described in the LCP (Section 17.12.655). "Nonurban area" means those land areas that are within the City but are outside the urban-rural boundary as described in the LCP (Section 17.12.656). The site is located within the LCP-mapped rural-urban boundary, and thus is considered by the LCP to be urban for purposes of this policy.

<sup>23</sup> See the Offsite Improvements section below for a discussion of the proposed road widening for a left turn lane and proposed bus turn-outs, and other offsite improvements.

<sup>24</sup> The trail is proposed to be an ADA-compliant public pedestrian walkway trail, located both onsite and offsite. The trail is proposed to be located along the north side of the project entry road, the west side of the shared access road to the property (known as South Bay Court) from Quintana Road to the entrance to the project entry road, and the south side of Quintana Road from South Bay Court to South Bay Boulevard.

minimum setback to provide for improved road access onto the property, and there is no other feasible alternative means of access. The only two possible routes of access are along the general alignment of the existing accessway or through the Mobile Home Park (generally to the south), as the other property boundaries are flanked by State Park lands generally to the west and by the stream/riparian area generally to the north. The Applicant indicates that the Mobile Home Park will not allow access, which means that the only possible means of accessing the site is in the area where such access is proposed.

LCP IP Section 17.40.040(C)(4) allows “road and bridges where no alternative route/location is feasible and if support structures are not sited in the environmentally sensitive habitat.” Here, there is not another feasible route/location to allow access to the site outside the setbacks, and the road would not be within ESHA, and thus the small area of the proposed road located in the required setback (approximately 185 square feet) would be allowed to be improved as proposed. Further, the roadway area has been used and has been in existence for some time as an access road. While a minor widening of the road will cover more ground than the existing road, a new bridge and approach over the stream/riparian area, which could also be allowed under the LCP, would likely have equal or more impacts on coastal resources. Further, CDFW has determined that these minimal encroachments would “likely not present impacts to the riparian and wetland habitat located on and adjacent to the Project site.” See **Exhibit 13** for this determination from CDFW. Thus, the new driveway is allowed per IP Policy 17.40.040(C)(4) within the required 50-foot setback.

In addition, to significantly improve the current functions and values of the existing riparian and wetland habitat on the site, the Applicant has submitted a Riparian Enhancement Plan (REP) (dated June 3, 2014) for the Open Space Riparian Enhancement Area (OSREA) of the site (covering approximately 36,730 square feet, or roughly 27% of the site.<sup>25</sup> See **Exhibit 3** for the proposed boundaries of the OSREA. The REP includes the identification and retention of existing native riparian trees and plants, the removal and control of invasive, non-native plant species, the enhancement of degraded riparian areas through the planting of native trees and understory plant species, and the reduction of erosion and sediment input through soil stabilization with native plant species (see **Exhibit 4** for the Applicant’s proposed planting plan for the OSREA).

To ensure that the plan is accurate, up-to-date and revised to meet current requirements for such enhancement efforts, **Special Condition 4** requires the Applicant to submit a Final Riparian Enhancement Plan (FREP) that is designed to provide for the restoration and enhancement, maintenance, and management of the OPREA as a self-sustaining and fully functioning stream/riparian and wetland habitat. The FREP shall, among other things, be prepared by a qualified expert in restoration ecology, shall include measurable performance standards and success criteria, a planting palette limited to native species from local stock appropriate to the Black Hill and Morro Bay State Park area, provisions for ongoing maintenance and monitoring designed to meet performance standards and success, and a methodology to identify and then resolve potential habitat functionality issues or failures. The goal of the FREP is to implement a

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<sup>25</sup> The project also includes a Raptor Tree Preservation Area which covers approximately 17,900 square feet. Together both open space areas total 54,630 square feet or approximately 40% of the site, thus leaving 83,455 square feet for the development area.

program for the enhancement and management of the onsite riparian corridor and associated wetland area that will enhance its existing functions and values and provide sustainable habitat for native plant and animal species, with healthy connections to the adjacent offsite riparian, wetland and other habitat resources.

To ensure the OSREA is adequately protected in light of the residential development that would be constructed nearby, including the requirements of LCP Policy 17.40.040(D)(8) that such areas be separated off and subject to fee title easement grant (see also below), **Special Condition 1** requires this area to be accommodated within its own legal lot and **Special Condition 1** prohibits development within the OSREA except for: 1) subdivision necessary to create the OSREA parcel; 2) habitat restoration (including initial grading), enhancement, maintenance, and management consistent with the approved FREP (see **Special Condition 4**); (3) public access and recreational amenities (e.g., the public pedestrian trails, benches, signage relating to the trail and the OSREA, etc.); and (4) split rail protective fencing along the boundary of the OSREA and the public pedestrian trails.<sup>26</sup>

Finally, IP Section 17.40.040(D)(8) of the LCP prohibits subdivision of ESHA unless the sensitive habitat area is to be transferred in fee to a public agency for a wildlife refuge or for a wildlife management area. Thus, the ESHA being subdivided needs to address this policy requirement. To ensure that this habitat is appropriately set aside for such management as envisioned by the LCP, **Special Condition 7** requires the Applicant to grant in fee simple or irrevocably offer to dedicate to a public agency or other entity acceptable to the Executive Director a conservation easement subject to OSREA protection provisions over the OSREA. **Special Condition 7** additionally allows the Applicant to combine the OSREA parcel with the Raptor Habitat Preservation Area (RHPA) into a single lot if such combination would benefit habitat management (see also below).

In summary, with these added conditions to require submittal and review and approval of the FREP, and to require legal habitat protections for the OSREA, the project can be found consistent with the LCP's ESHA policies for wetlands and stream/riparian areas.

#### *On-Site Raptor Habitat*

In terms of raptor habitat and preservation of the onsite trees, several raptor surveys have been conducted on the site by the Applicant's consultants to inform the analysis herein. Initial raptor surveys occurred in March, April, and May of 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*) also occurred. Similarly, evidence of barn owl (*Tyto alba*) activity on the property was found and recorded. The surveyors reported that a mature stand of eucalyptus and Monterey cypress located along the entrance roadway and in the central portion of the site provides excellent raptor nesting and roosting opportunities (see **Exhibit 4** for this stand labeled C1, C2, E1, E2, etc.). The stand of trees is 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 provides adequate camouflage and protection to support nesting and foraging activities. Raptors prey on

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<sup>26</sup> **Special Condition 1** also allows for subdivision necessary to create a single OSREA parcel and allows the OSREA parcel to be combined with the Raptor Habitat Preservation Area (RHPA) into a single legal lot if that combination allows for better protection and management of these areas; see also raptor habitat protection area discussion that follows.

small rodents, fish, and reptiles, and are important to the overall ecological functioning of the stream/riparian habitat plant and animal community, including the Black Hill area of Morro Bay State Park to the west and the Chorro Flats restoration area to the east. Reports from residents living in the adjacent Mobile Home Park indicate that red-shouldered hawk nesting has occurred on the property over the years, supporting a conclusion that the identified raptor species return year after year to the same trees to nest (i.e., nest fidelity). These reports are verified by the Applicant's reports and Dr. Engel's memo (**Exhibit 8**).

The results of the more recent 2012 raptor survey continue to indicate that there is raptor activity on the site and show the importance of the subject stand of trees to support such activity. The biologists found one active nest and evidence of red-shouldered hawk perching/roosting in nine of the thirteen surveyed trees. While five other species were detected (i.e., turkey vultures, American kestrels, red-tailed hawks, barn owl, and the great horned owl) none were found to be actively roosting or nesting in the onsite trees during the time of the survey.

Although the raptor tree stand is a valuable natural resource, it does not rise to the level of ESHA. For tree stands to be ESHA due to being habitat for raptor species, the Commission has typically required that there be a well-documented history of use of these trees and adjacent foraging areas by a suite of raptor species or one or more listed raptor species spanning several years (supported by formal raptor surveys, field notes, and observations by qualified ornithologists). Dr. Engel has evaluated the site and the biological reports and surveys and has determined that the tree stand in question has been documented to support only one raptor species, the red-shouldered hawk, which is not a listed species. It therefore does not constitute ESHA under these criteria (again, see Dr. Engel's memo in **Exhibit 8**). However, while it might not rise to the level of ESHA, the onsite stand of trees does provide a habitat function for the red-shouldered hawk and other birds and animals, and the LCP requires natural features such as this to "be preserved to the maximum extent feasible."<sup>27</sup> Dr. Engel recommends that the stand of trees be preserved and protected to the greatest extent possible.

In this case, the project proposes the removal of 22 eucalyptus and ornamental trees (labeled E2, E3, E4, and E5 on **Exhibit 4**)<sup>28</sup> along the western third of the identified raptor habitat area (that area along the property line between the existing access driveway and the Mobile Home Park). Tree E2 has a history of raptor activity and has contained an active nest since at least 2004.<sup>29</sup> The proposed residential development is expected to increase stressors on these raptors, and it is likely that their habitat will be subject to greater impacts than it is today (e.g., due to increased noise and human activity adjacent to their habitat). In addition, as described above, 16 trees have been removed on the site in the vicinity of the ESHA areas, in the recent past. These trees were located primarily in the low-lying area near the stream/riparian and wetland area. These trees, if still in existence, would have provided additional habitat for the species listed above and other animals, as well as providing for more general benefits (e.g., shade, oxygen, etc.). Their removal would therefore be similarly inconsistent with the LCP (see also Section E, *Violation*, below).

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<sup>27</sup> LUP Policy 9.06 requires that "natural features, landforms, and native vegetation, such as trees, shall be preserved to the maximum extent feasible..."

<sup>28</sup> 22 individual trees are included in these four labeled trees.

<sup>29</sup> See the Applicant's raptor survey and habitat maps (**Exhibit 4**) which indicates an active nest in tree E2 in both 2004 and 2012.



LUP Policy 9.06 requires that natural features be protected and preserved to the maximum extent feasible. In this case, this raptor habitat, including a stand that has been shown to provide historical and current nesting, is a natural feature, and constitutes important habitat for raptors. In addition, the Applicant's biological reports indicate that some of these trees provide perching and roosting opportunities for raptors and other birds. The trees also provide a significant screening benefit from Highway 1 (see also visual section below). Further, given the size of the trees that might be removed, and their proximity to the raptor habitat that is proposed to be retained (and which provide perching and roosting habitat for raptors), there is a potential for the proposed tree removal (and residential development) to disrupt raptor activities which could lead to a slew of negative impacts to raptors, including potentially unsuccessful breeding and foraging.

In a subdivision proposal such as this where the property presents a 'blank slate' of sorts, the retention of the raptor habitat is indeed feasible, and thus is required for LCP consistency in this case. Such retention will necessitate a small redesign of the project, leading potentially to a fewer number of residential units. It appears, however, that a redesign that eliminates the first of the secondary access driveways (providing access to proposed lots 4 and 5), would provide space for a lot in its place (roughly between proposed lots 1 and 17), and would provide space for a lot at the end of the second of the secondary access driveways (i.e., next to lot 6). If proposed lots 2 and 3 were also reconfigured to avoid the Raptor Habitat Preservation Area (RHPA) and combined, then there would be space in the combined lot for one unit (and probably a larger unit at that). All told, a redesign such as this would result in elimination of one lot (i.e., there would be 16 as opposed to 17 residential lots), which is a relatively minor adjustment that respects the LCP's requirements. There may also be other adjustments that could allow for the Applicant to retain all 17 lots in a redesign that avoids the RHPA.

Thus, special conditions are recommended to retain this tree stand and incorporate it into the Applicant's proposed RHPA, and to protect this area through a Raptor Habitat Preservation Plan (RHPP) and a conservation easement.

Accordingly, **Special Condition 1** requires the Applicant's proposed RHPA to be expanded to incorporate the area extending to the driplines of all trees in the stand (identified as E2, E3, E4, E5, C1, C2, and C3) (see **Exhibit 4**, and as generally depicted on **Exhibit 5**). **Special Conditions 1 and 5** also restrict development, as defined by LCP Section 17.12.199 and Public Resources Code 30106, within the RHPA to raptor habitat preservation consistent with a RHPP (see **Special Condition 5**). The goal of the RHPP is to preserve and protect raptor habitat in as good or better state than exists currently, and the plan is meant to be designed to protect and provide for the health of the trees in perpetuity, including providing for native replacement trees suitable for raptor habitat in the event the trees in the RHPA senesce or require removal for health or safety reasons. In addition, **Special Condition 7** allows the Applicant to combine the RHPA parcel with the OSREA into a single lot if such combination would benefit habitat management.

#### *Other Trees Onsite.*

In addition, to enable the access roadway to service the upland residential area of the site and to install the access road generally in this area, the Applicant proposes to remove an additional 20 trees that are located along the western property boundary, and to remove one non-native olive

tree south of the existing larger residence (for a total of 43 trees to be removed onsite as part of the project) (see **Exhibit 3**, Existing Layout for general areas of tree removal). The row of trees along the western property boundary is important because of the trees location adjacent to the Black Hill area of Morro Bay State Park. LUP Policy 11.02 requires development in areas adjacent to ESHA and parks and recreation areas be sited and designed to prevent impacts which would significantly degrade such areas, and requires that habitat functional capacity be maintained. The LCP also requires new development adjacent to State Park and recreation lands to be adequately set back to preserve the continuity of the park and to avoid degradation of said park lands. Here, the proposed development is located adjacent to the Black Hill ESHA, State Park lands, and raptor habitats, and by its very nature would increase disturbances and stresses that could, in both the short and long term, disrupt and degrade these areas, inconsistent with the LCP.

However, these trees along the western property line have been significantly altered via limb pruning and topping over the years due to their proximity to the overhead power lines. 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. In addition, and more recently, the Applicant has submitted an arborist report, dated March 20, 2014 (Steve Franzmann, Greenvale Tree Company), which indicates that this western row of trees "are in a state of declining health," and, due to the "multiple topping cuts" from PG&E over a period of multiple years and "the dieback and the areas of disease, these trees should be removed."

The trees growing along the western property boundary (and growing mostly beneath existing utility lines) are not ESHA for similar reasons as to why the raptor tree stand is not ESHA. At the same time, these trees provide some barrier between the site and the State Park, and this function needs to be retained to protect Park resources and to meet associated LCP tests. In this case, and due to their relatively poor health, the natural feature function of these trees is best retained as required by the LCP by ensuring that replacement trees are planted to help provide a similar barrier once the new subdivision is in place. The intent in this regard is not to create a complete visual screen between the subdivision and the State Park so much as to help provide a barrier to help ensure that the new residential structures (and their associated noise, lights, and activities) do not significantly degrade the adjacent park resources. Thus, these trees can be removed to allow for the subdivision (e.g., to enable the access driveway to service the upland residences), and in order to rid the site of non-native and invasive species and other diseased and damaged trees, but their barrier function needs to be provided for through replacement trees, to ensure consistency with the LCP (see **Special Condition 1** under the required landscape screening plan).<sup>30</sup>

#### *Other Habitats*

The Applicant has also submitted updated surveys for Morro shoulderband snail and monarch butterfly habitat. In terms of the Morro shoulderband snail, protocol level surveys were conducted originally in the fall of 2004, since the project site is within the known range of this

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<sup>30</sup> The Applicant has proposed at least 92 trees to be replanted onsite, specifically within the OSREA and the Development Area.

species.<sup>31</sup> Three live shoulderband snails and four empty shells were found during surveys undertaken at that time. However, at the time of the 2004 survey the two forms of the shoulderband snail were recognized as a single species. Today, the species that was identified on the project site is classified as a separate species known as the Chorro shoulderband snail. The Chorro shoulderband snail is considered secure and not recognized as a state or federally listed species or afforded any other special status. In the updated survey in 2012, four species of snails were encountered on the site; however none were the ESA-protected Morro shoulderband snail.<sup>32</sup>

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

#### *Offsite Improvements*

In its approval in 2006, the City of Morro Bay required a number of offsite improvements that are now proposed as part of this project. These include a traffic signal at Quintana Road and South Bay Boulevard, a left turn lane (from South Bay Boulevard onto Quintana Road), two new bus turn-outs, and a decomposed granite trail along Quintana Road and South Bay Boulevard extending to and onto the site (see **Exhibit 6**). The offsite public pedestrian trail (or “community path”) is allowed within the required ESHA setbacks for the same reasons that the onsite trails and public amenities are allowed, pursuant to LUP Policy 11.06, and the proposed left turn lane appears to be located roughly within the existing disturbed road and shoulder area. These improvements and the traffic signal do not otherwise result in coastal resource issues. However, one of the two proposed bus turn-outs poses an inconsistency with the LCP’s setback requirements: the bus turn-out on Quintana Road on the Applicant’s property, is located just off the existing road prism and within the 50-foot stream/riparian setback requirement, and is thus not allowed in its proposed location. Thus, **Special Condition 1** requires removal of this component from the project but allows all other offsite improvements. The Commission recommends the Applicant pursue resolution with the City for an alternate location.

Further, it is not clear at this time whether the City still intends to require all of these offsite improvements, as many years have passed since the City’s approval. As a result of this uncertainty, **Special Condition 1** also eliminates any of the offsite improvements from this approval if the City of Morro Bay subsequently eliminates them from the project.

#### *Lighting*

As proposed, the project includes lighting, which can impact both onsite and offsite ESHA areas, including Morro Bay State Park, and can otherwise impact the nighttime public views from public viewing areas, most notably from Highway 1. The proposed plan sheets (see e.g. **Exhibit 3**) do not provide much detail on lighting, but it is clear that a residential subdivision such as this

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<sup>31</sup> The 2004 report indicated that vegetation on the project site did not offer a great deal of suitable habitat for the ESA protected variety of Morro shoulderband snail. The Morro shoulderband snail is predominantly associated with coastal scrub communities and only a few of the typical coastal scrub plant species are found on the project site. An estimated two-thirds of the site is located beneath the canopies of large Monterey cypress, Monterey pine, and blue gum eucalyptus, which appear to render potential habitat generally unsuitable for the snail.

<sup>32</sup> The Applicant has also submitted an updated ‘no-take’ concurrence letter from USFWS for the Morro shoulderband snail, dated December 3, 2012.

is expected to include typical lighting features associated with road access and the residences themselves. Provided such lighting is limited to ensure that lighting and glares are minimized into habitat areas and the Highway 1 view, such lighting should not prove problematic under the LCP. Thus, in order to protect against impacts of lights and glare extending into the stream/riparian ESHA (OSREA), Morro Bay State Park, the RHPA, and the Highway 1 view during the evening, **Special Condition 1** requires lighting to limit illumination into these areas, and to be the minimum necessary for pedestrian and vehicular safety, including to limit residential lighting to minimize illumination beyond the property boundaries of each home, and to prohibit pole lighting and spotlights.

#### *Water Quality*

Lastly, a project of this magnitude necessarily raises both construction and post-construction water quality issues. In terms of post-construction, the project will need to ensure that runoff from the residences, driveways, access roadway, sidewalks, parking areas, and other impervious surfaces does not result in erosion, sedimentation, or degradation of coastal water quality (see also water quality findings that follow). To protect the biological productivity of the stream/riparian ESHA, onsite wetland ESHA, and offsite receiving waters (including Chorro Creek and ultimately Morro Bay) and to prevent urban runoff and sedimentation from degrading the habitat values of these areas and the adjacent park land, **Special Condition 1** requires a post-construction drainage system consistent with the proposed stormwater pollution prevention plan (SWPPP). Among other things, the plans require implementation of construction best management practices (such as designation of staging areas for equipment and materials, installation of silt fences, temporary detention basins and other control measures to intercept, filter, and remove sediments contained in runoff from the construction, staging, and stockpiling areas). The post-construction drainage plan requires identification of all necessary infrastructure and best management practices necessary to ensure that post-construction drainage from the project including runoff from the residences, roadway, paths, parking areas, and other impervious surfaces does not result in erosion, sedimentation, or degradation of coastal water quality. The drainage system shall include construction of onsite water retention facilities designed to hold 100 percent of the water from an 85<sup>th</sup> percentile storm event in the area.

#### **Biological Resources Conclusion**

The project, as conditioned, can be found consistent with the LCP's biological resource policies because it has been sited and designed to avoid direct impacts to ESHA and related resources, and to avoid degradation and disruption of ESHA and related resources on and off the site, including by providing for riparian area enhancement and raptor habitat preservation, avoiding ESHA and other habitats, appropriately buffering on and offsite ESHA resources, and ensuring that development impacts otherwise are addressed (including limiting and controlling lighting, filtering and treating drainage, etc.). For the reasons discussed above and as conditioned herein, the Commission finds that the proposed project is consistent with the biological resource policies of the Morro Bay LCP.

#### **E. VISUAL RESOURCES**

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

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

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

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

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

### **Analysis**

The 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. In addition, the LCP also requires new development to be subordinate to the character of the setting in designated scenic areas, such as adjacent to the Black Hill area of Morro Bay State Park. And finally, the LCP also requires that new development maintain specific height/bulk relationships with surrounding areas and neighborhoods, and requires the provision of view easements and corridors (see LUP Policy 12.06, and LUP Figure 31 in **Exhibit 7**). In sum, the LCP designates this viewshed as ‘publicly important’ and ‘significant’ and the incursion of the proposed project into this viewshed results in impacts to the public viewshed.

The project site is located in a significant public viewshed area, partly because of its geographic setting between the volcanic upland areas of Black Hill and the upper reaches of the Morro Bay estuary, and partly because of its relatively rural California setting, which is visible from Highway 1. See **Exhibit 2** for aerial photographs of the site and adjacent setting. The site of the proposed development is nestled below the northern flank of Black Hill directly adjacent to the Black Hill area of Morro Bay State Park. As described earlier, this State Park occupies some 2,200 acres adjacent to the project site, and the Park is a popular site for hiking and enjoying panoramic views of Morro Bay. Across South Bay Boulevard to the east lies the Chorro Flats wetland restoration area and the Chorro Creek watershed. The site is visible from several

vantages including from Highway 1 and Morro Bay State Park. The City's certified Land Use Plan (Figure 31) designates "Black Mountain" as a public viewpoint of significant importance (see **Exhibit 7**).

The proposed 17 two-story, 25-foot tall, residences would be constructed directly adjacent to and sandwiched between the Blue Heron Mobile Home Park and the State Park. The existing mobile homes are low-profile, single-story dwellings. Although they generally appear out of character with the surrounding open space and rural nature of the Highway 1 viewshed backdrop, their visual prominence is reduced somewhat due to their modest height and scale and intervening vegetation located between the site and Highway 1. That is not to say that the Mobile Home Park is undetectable or concealed from Highway 1 and Morro Bay State Park. On the contrary, 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.

The proposed 17 residential units would be two stories in height (and a maximum of 25 feet tall) 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 northbound (i.e., heading west towards the shoreline) Highway 1. 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. The potential for visual impact is increased due to the project's proposed tree removal, including in relation to tree removal in the previously described raptor tree grove that provides some site screening currently. The Applicant proposes to plant trees between the houses and Highway 1 (lots 4-11), but these trees would not completely conceal the houses (see **Exhibit 11** for the Applicant's visual simulations with screening from northbound Highway 1). Views of the development would be blocked by natural topography when headed southbound, and thus these Highway 1 views are not at issue in this case. Similarly, views of the site from South Bay Boulevard and Quintana Road are generally blocked by intervening topography, development (the Mobile Home Park) and vegetation, and with implementation of the FREP required by **Special Condition 4**, the site should be even less visible, and thus the project should not significantly adversely affect these views.

The proposed houses would not be invisible in the Highway 1 view, but they would also only add marginally to the development visible in that view (including because of the existing Mobile Home Park as well as a series of power lines and poles; again, see **Exhibit 11**). Provided the raptor tree stand is retained to continue to provide site screening, it would appear that fewer than five houses would be visible in this view. And if these houses were screened with at least two trees of a variety that provides a larger canopy suited to screening, then the view impact would be minimal given the nature of the existing development in that view. Thus, the Commission is imposing **Special Condition 1**, which requires that at least two trees be planted in the backyards of the proposed houses that would be visible from Highway One.

In terms of impacts of night lighting on the Highway 1 view, provided such lighting is appropriately minimized, then the additional lighting here (i.e., in addition to the existing lighting of the Mobile Home Park) should not significantly adversely affect nighttime views either. See **Special Condition 1** for landscape screening and lighting requirements.

In terms of view issues associated with Morro Bay State Park, houses would not be constructed within 40 feet of the Park, and this 40-foot buffer provides an appropriate starting point to ensure protection of the adjacent park land as required by the LCP.<sup>33</sup> The Applicant also proposes to construct a 6-foot masonry wall along the property line separating the site from the Park. To complement the wall and the buffer distance, and to address potential impacts on the Park (e.g., from development in the view as well as residential noise, lights, and activities), standards for lighting, residential screening, and the buffer area itself are also needed. Specifically, this buffer area is limited to at grade development, and each house fronting the Park needs to be screened by at least one tree with a canopy conducive to screening. Lighting needs to be minimized to avoid offsite illumination. The wall needs to be finished with rough-hewn, unpainted concrete on its western side, in order to blend visually with the surrounding parkland as much as feasible, and must be capable of ensuring that noise from the site that can be heard on the State Park side of the wall is limited.<sup>34</sup> See **Special Condition 1** which imposes these requirements.

### Visual Resources Conclusion

The subject site is located within significant public viewsheds. Provided the project includes appropriate buffering, screening, lighting, and related performance standards (including appropriate residential heights, hues, and site fencing) per the conditions of approval here, the development should be subordinate to this setting, and consistent with the LCP's visual resource protection policies.

### F. HAZARDS

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

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

### Analysis

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

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<sup>33</sup> As well as meet the minimum standards for defensible fire safety space as mandated by State Parks and the City's fire code (see Hazards section that follows).

<sup>34</sup> Not to exceed 60dBA CNEL (where "dBA CNEL" means a 24-hour energy equivalent level derived from a variety of single noise events with weighing factors of 5 and 10 dBA applied to the evening (7pm to 10pm) and nighttime (10pm to 7am) periods, respectively, to allow for the greater sensitivity to noise during these hours.

subject parcels as a “very high fire severity” zone.<sup>35</sup>

Certain aspects of the proposed development (e.g., the roadway and sidewalk, vehicle parking spaces, etc.) would be located immediately adjacent to the State Park property (see **Exhibit 3 and 4**) and 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 area of Morro Bay State Park) 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 Black Hill Natural Area along the western property boundary, consistent with the City’s required fire buffer and the State Park recommended buffer.

To maximize the utility of the 40-foot buffer to address potential impacts, this approval allows at-grade improvements (e.g., roadway, sidewalk, landscaping, etc.) and minor non-permanent structures (i.e., fences, walls, park equipment, etc.) that do not require fuel modification or other measures for fire safety within the 40-foot wildland buffer. In this way, the buffer can best provide for fire safety, including ensuring that any fire safety clearing would take place on the Applicant’s property and would not extend into the adjacent natural area. In addition, the proposed 6-foot high masonry wall which would be located just inside the site’s boundary with

<sup>35</sup> See [http://www.calfire.ca.gov/fire\\_prevention/fire\\_prevention\\_wildland\\_zones.php](http://www.calfire.ca.gov/fire_prevention/fire_prevention_wildland_zones.php).



the State Park (but not within the OSREA), provides a dual function as a fire safety tool and as a means of screening residential noise, lights, and activities from the State Park. All fire defensible space measures would be confined to the Applicant's property, and would not be allowed to extend onto the adjacent State Park property. See **Special Conditions 1 and 8**.

### **Hazards Conclusion**

The primary environmental hazard affecting this site is fire. The project as currently proposed would locate all residential units at least 40 feet from the border with the adjacent State Park. Provided it were accompanied by provisions to ensure that defensible space requirements were not allowed to be extended onto the adjacent State Park property, and all such measures needed to be accommodated on the Applicant's property, this buffer would protect the life and property on the site from the fire hazards associated with development at this site. **Special Conditions 1 and 8** ensure that these measures are required for this project. Thus, as conditioned, the project is consistent with the hazards protection provisions of the LCP.

### **G. WATER QUALITY**

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

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

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

### **Analysis**

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

The proposed project includes a wide range of activities that have the potential to increase runoff and adversely affect water quality. Demolition of the existing residences, grading of over 70% of the site, and removal of 43 trees individually and cumulatively have the potential to cause sedimentation and pollutant loading of the adjacent stream and drainage area and adjacent State Park Natural Area during construction. In addition, the construction of 17 residential home driveways, realignment, widening, and formal improvement/expansion of the existing access road, will increase the amount of site coverage from about 10% currently to more than 60% after construction is complete, and this, too, will alter runoff patterns. Because the primary use of the

new subdivided property is residential, one can also expect the additional runoff to contain typical urban runoff pollutants. Streets, driveways, and parking areas will be used for vehicle traffic and parking of cars, light trucks, motor homes, etc. Runoff from these sites is expected to include pollutants associated with motor vehicles (e.g., oils, brake dust, fluids, etc.), floatables (such as paper, cigarette butts, other trash, etc.), as well as other types of urban pollutants typically associated with residential uses (including pesticides, herbicides, rodenticides, pet waste, etc.). In sum, the development of the site will alter drainage patterns, and will introduce additional uses and development that have the potential to increase pollutant loading within runoff to the detriment of receiving water bodies; in this case the onsite stream/riparian ESHA and wetland ESHA, and ultimately Chorro Creek and Morro Bay.

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

The Applicant's Riparian Enhancement Plan includes requirements for a Storm Water Pollution Prevention Plan (SWPPP),<sup>36</sup> and the proposed project otherwise includes a series of water quality improvements (including filtering and treatment devices in the storm drain system). These measures form the starting point for addressing potential water quality concerns. In order to ensure that the project meets LCP water quality standards, however, the Commission imposes **Special Conditions 1, 2, and 3**, which require appropriate construction and post-construction water quality BMPs (including providing for appropriate filtering and treating of site runoff).

### **Water Quality Conclusion**

Special conditions to codify the Applicant's requirement to submit a post-construction drainage system designed to adequately filter and treat the site runoff, and conditions requiring construction best management practices, and low impact development measures, bring the project into conformance with the LCP's water quality protection requirements.

## **H. ARCHAEOLOGY**

### **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*

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<sup>36</sup> Which will provide for 100% of project storm water being retained on-site unless there is a severe storm event (greater than an 85th percentile storm event in the area).

*reconnaissance will be required for all projects requiring an Environmental Impact Report under CEQA.*

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

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

### **Analysis**

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

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

Through the City’s local review process, the proposed project includes recommended archaeological mitigation measures to avoid disruption of sensitive archaeological resources. The measures include archaeological monitoring during all grading and ground disturbing activities by a qualified archaeologist, avoidance of resources, recovery of materials, consulting with

Native American representatives on the appropriate treatment of human remains, evaluating resources consistent with CEQA when previously undiscovered archaeological resources are found, and providing a Native American monitor. In order to ensure that archaeological resources are protected to the maximum extent possible as required by LUP policies 4.01, 4.03, and 4.05, **Special Condition 9** incorporates these archaeological mitigations and further requires that a Native American representative be present during any ground disturbance activities to monitor for potential impacts to cultural resources. Thus, as conditioned, the project can be found consistent with the certified LCP policies for protecting archaeological resources.

### **Archaeological Resources Conclusion**

**Special Condition 9**, incorporating the City's required archaeological mitigations and requiring archaeological monitoring of all ground disturbance activities, brings the project into conformance with the LCP's archaeological resource policies.

## **I. WATER AND SEWER SERVICES**

The City's Public Works LUP policies described below provide for prioritizing water use, ensuring adequate water and sewer capacity is available to serve new development, and requiring that low impact water saving devices are used. LUP Policy 3.01 requires that new development only be approved if the City finds that water and sewer are available to serve the proposed use. LUP Policy 3.02 lists water allocation priorities in Morro Bay and LUP Policy 3.03 lists priorities for residential land uses. Finally, Policy 3.07 addresses water saving requirements.

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

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

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

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

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

***LUP Policy 3.07. Water-saving devices shall be required in new developments. ...***

**Analysis**

*Water Supply Background*

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

The City of Morro Bay has a storied water supply history that goes from primarily relying on Morro and Chorro Creek groundwater aquifer extractions to the point of overdraft during long-term drought periods or when alternative water sources experience shortages,<sup>37</sup> to building a desalinization plant in the early 1990s,<sup>38</sup> to finally relying heavily on State Water Project water for its municipal supply.<sup>39</sup> Currently the City contracts for 1,300 acre-feet per year (afy) of State Water, extracts some 1,700 afy from the Chorro and Morro groundwater basins, and produces an additional 645 afy in its desalinization plant. The City estimates that its current municipal demand is 1,250 afy, down from 1,625 – 1,800 afy historically due to successful conservation strategies.<sup>40</sup>

In light of resource issues associated with City draw-downs in the Chorro groundwater basin, the California State Water Resources Control Board (SWRCB) issued Decision 1633 in 1995. Decision 1633 includes a Water Management Plan for the City that established priorities for the City's long-term water supply. The Water Management Plan's number one priority is conservation, and the number two priority is reclamation and use of recycled water. To assure that over-pumping of wells in the Chorro well field does not deplete minimum stream flow requirements, SWRCB Decision 1633 required monitoring of stream flows with stream gauges.<sup>41</sup> However, to date, no permanent flow monitoring equipment has been installed in Chorro Creek, and although the City relies on biweekly monitoring of stream flows to justify pumping, continuous data is not available at the current time to ensure that such requirements are maintained at all times for purposes of water budgeting.<sup>42</sup> Lacking permanent flow monitoring gauges, there is no conclusive way to tell if the pumping of Morro and Chorro groundwater is fully in compliance with SWRCB Decision 1633 and that stream flows necessary to protect public resources, such as sensitive species habitat, are being maintained. Although the City's ad-

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<sup>37</sup> For example, during the 1995 drought and the 2009 State Water Project shutdown (2010 Morro Bay Urban Water Management Plan, page 10).

<sup>38</sup> The City's desalinization plant was originally approved in 1993 during a drought emergency through an expedited permit process. The City uses the plant to augment State Water deliveries during peak demand times and other types of shortages. The plant had to be shut down after a few months of operation because of excessive costs. In addition, the permit was a temporary CDP that expired 5 years after it was approved. As a result, the desalinization plant, and any use of it, is currently unpermitted. The City is aware of this issue, and is currently pursuing a CDP application to allow for plant operation.

<sup>39</sup> 2005 Morro Bay Urban Water Management Plan, page 33; City of Morro Bay Water Allocation History, page 1-3.

<sup>40</sup> Recycled Water Feasibility Study, page 11.

<sup>41</sup> State Water Resources Control Board Decision 1633, page 22

<sup>42</sup> 2010 Morro Bay Urban Water Management Plan, page 8.

hoc biweekly monitoring provides some data, it is not continuous data, and thus cannot be relied on ultimately to form conclusions about water usage. Further, the history and data appear to show that the reliability of the wells in these groundwater basins is unpredictable at best, including given the many instances of contamination and/or intrusion from various sources over time.

The City of Morro Bay also relies on a desalinization plant for some of its water supplies. This plant was originally constructed for the sole purpose of emergency drought preparation, and, the City does not yet have a valid CDP for the current use of this plant because its original CDP authorization was conditioned to allow operation of the plant for a limited time. The condition of approval limiting the term of the permit was largely based on concerns about impacts to marine resources from brine disposal. These issues are to be addressed through the currently pending CDP application to allow the City to use the desalination plant intermittently in the long term. Further, issues identified when the plant is in operation are related to its reliability and expense. In fact, the plant was shut down after its first several months of operation due to high operating costs, and again in 1995 because of water quality problems.<sup>43</sup> The plant, even now, offers only limited reliability due to pretreatment clogging from iron.<sup>44</sup> In short, desalinization is a relatively expensive and at times unreliable source of water for the City. In addition, the plant is currently unpermitted, and thus for the purposes of water supply analysis, water from the desalinization plant cannot be factored in, as it is speculative unless and until appropriately permitted.

Finally, the City relies heavily on State Water supplies. The California State Water Project has long been controversial, including because resource impacts are concentrated at the points of extraction, while the benefits of the water are realized by water users far away. State Water is not controlled by local communities, but rather its provision is controlled by the State, which can shut off supply unilaterally.<sup>45</sup> In addition, State Water Project water can also be unilaterally suspended, reduced, or otherwise impacted (e.g., increase in costs, etc.). In the past and going forward, given a drought or other uncontrollable environmental condition, “at the SWP points of diversion, projected deliveries have been as low as 5 percent of allocated water.”<sup>46</sup> For 2015, it is estimated that the projected delivery to Morro Bay will be 10% of allocated water.<sup>47</sup>

In short, the City’s water supply has many constraints, including availability and reliability of State Water; the use of a currently unpermitted and expensive desalinization plant; the overuse and contamination of the Morro and Chorro groundwater aquifers; and the threats to stream levels in the groundwater basin associated with the Morro and Chorro Creeks. Adding drought conditions, as currently exist, furthers uncertainty and increases the need for conservation. While the City of Morro Bay does not currently have a moratorium or Stage 3 Water Shortage Emergency, like the community of Cambria (in northern San Luis Obispo County) does, it is still

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<sup>43</sup> 2010 Morro Bay Urban Water Management Plan, page 4.

<sup>44</sup> 2010 Morro Bay Urban Water Management Plan, page 10.

<sup>45</sup> As nearly occurred in Morro Bay over the Labor Day weekend of 2011, when the City nearly had to turn to inactive and nitrate impacted Chorro wells due to a State Water delivery issue that was only rectified at the very last minute (Personal Communication, Rob Livick, Public Services Director, City of Morro Bay, June 22, 2012).

<sup>46</sup> 2010 Morro Bay Urban Water Management Plan, page 15.

<sup>47</sup> Personal communication, Rob Livick, Public Services Director, City of Morro Bay, January 16, 2015. Final allotment numbers were to be released at a City Council meeting in February 2015.

facing the impacts of a severe drought. On January 17, 2014, Governor Brown declared a drought emergency for the State of California and on January 22, 2014, the City of Morro Bay implemented *Mandatory Water Conservation Requirements for Severely Restricted Water Supply Conditions*. As a result, on May 13, 2014, the City adopted Resolution 32-14, which develops a 2:1 water retrofit program for new development (or payment of an in-lieu fee). While this requirement is only applicable to projects that did not have a complete application by May 13, 2014,<sup>48</sup> and although this ordinance is not currently a part of the LCP, it does indicate that the City is taking encouraging steps toward increased water conservation. In early February 2015, the City is expected to adopt a similar resolution as part of its adopted annual water equivalency program for the calendar year. The water equivalency program establishes the number of new water connections (based on water equivalency units) that can be made each year.

#### *Water Allocation Background*

Water allocations to new uses are clearly prioritized under the LCP. LUP Policy 3.02 provides a basis for which projects should be allowed water over others. Commercial Fishing/Agriculture, Coastal-Dependent Land Uses and Coastal-Related Land Uses are at the top of the list. Residential and other Commercial and Industrial Land Uses are at the bottom. In this case, the proposed residential project is the lowest priority for water allocations. LUP Policy 3.03 creates further criteria for prioritizing water use in residential development. In this case, the proposed project is very near to the bottom (3 out of 4) on the list of priorities for allocating water to residential land uses: *unsubdivided parcels contiguous to developed areas*.

However, communications with the City recently indicate that priorities for water allocation based on these LCP policies are analyzed when allotted water allocation numbers are low. In other words, only when there are concerns about water allotments and new connections do these LCP policies and priorities of uses factor into City decision-making. Most years, the City has had adequate water to serve new connections, and thus questions of priority between one use versus the other have not historically been an issue.<sup>49</sup>

#### *Project Analysis*

In 2006, the project was approved by the City of Morro Bay with a finding of water adequacy and pursuant to the certified Water Management Plan and General Plan LU-22.1.<sup>50</sup>

Conversations with the City as to the availability of water to serve the proposed Black Hill Villas development have recently taken place and the City has submitted a letter indicating that “if the water equivalency units have not been exceeded in a given year, water service will be extended to these parcels upon payment of development impact fees and installation charges” (see **Exhibit 13**). There is little indication at the current time that the City does not have the water to serve the proposed development, nor any indication that they do not intend to serve the development.

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<sup>48</sup> And thus does not apply to this proposed project.

<sup>49</sup> Personal communication with Cindy Jacinth, Rob Livick, and Scot Graham, City of Morro Bay, January 16, 2015. Fifty new water connections have been the normal allotment each year, and it is expected that the 2015 numbers will include the same.

<sup>50</sup> The finding stated that, “The City has available adequate water to serve the proposed subdivision based upon the water regulations and water equivalency table Exhibit A, enforced at the time of approval of the Vesting Tentative Parcel Map pursuant to the certified Water Management Plan and General Plan LU-22.1.”

Provided the City provides evidence that it will serve the proposed development, the project will have adequate water (see **Special Condition 6**).

In terms of sewer availability, again, LUP Policy 3.01 prohibits development unless the City finds that sewer services are available to serve the proposed use. Similar to water, there is little indication at the current time that the City does not have adequate sewer capacity to serve the project. Provided the City provides evidence that it will serve the proposed development, the project will have adequate sewer (see **Special Condition 6**).

## **J. VIOLATION**

On February 2, 2007, Commission staff observed evidence of then recent tree removal within the stream and riparian corridor during a site visit, and this tree removal was corroborated by the Applicant's Riparian Enhancement Plan (received in the Commission's Central Coast District office on April 6, 2007). Other documents, such as the City's staff report and a tree inventory from Michael Tutt (dated June 23, 2004) likewise indicate that as many as 16 trees have been felled without CDPs.

The Applicant indicates that the removal of the 16 trees was authorized and properly allowed by the City of Morro Bay, and has provided evidence that the City believed no CDP or other permit was necessary.<sup>51</sup> However, there is nothing in the LCP that would allow for these trees to be removed without a CDP, and the Commission has been unable to find any evidence that CDPs were issued. Thus the past tree removal that has occurred on the property appears to potentially be a violation of the Coastal Act. Proposed and conditioned tree replanting should be able to ensure appropriate tree replacement on the site moving forward (see **Special Condition 1**).<sup>52</sup>

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

## **K. LIABILITY FOR COSTS AND ATTORNEY'S FEES**

The Commission recognizes that the proposed project has been locally controversial, and indeed the Commission was sued over its 2008 CDP decision related to the proposed project on this site. Given this context, there remains a possibility that the Commission's approval of the project will be litigated. Toward that end, Coastal Act Section 30620(c)(1) authorizes the Commission to require applicants to reimburse the Commission for expenses incurred in processing CDP applications. Thus, the Commission is authorized to require reimbursement for expenses incurred in defending its action on the pending CDP application in the event that the Commission's action is challenged by a party other than the Applicant. Therefore, consistent with Section 30620(c), the Commission imposes **Special Condition 11** requiring reimbursement for any costs and

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<sup>51</sup> Email from Michael Prater (Planning Manager, Public Works Department) to Wayne Colmer, February 25, 2008, stating that, "at the time of removal the City operated under the authorization to remove 4 trees per year per lot" and that "it is the City's understanding removal of these 16 trees followed the guidelines and no permit was necessary."

<sup>52</sup> Applicant has proposed at least 92 trees within the Development Area and the OSREA. Conditions require trees to be planted within the back yards of the lots facing Highway 1, to help mottle development from public views.



attorneys' fees that the Commission incurs in connection with the defense of any action brought by a party other than the Applicant challenging the approval or issuance of this permit, the interpretation and/or enforcement of permit conditions, or any other matter related to this permit.

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

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

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

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

As such, there are no additional feasible alternatives or feasible mitigation measures available which would substantially lessen any significant adverse environmental effects which approval of the proposed project, as conditioned, would have on the environment within the meaning of CEQA. Thus, if so conditioned, the proposed project will not result in any significant environmental effects for which feasible mitigation measures have not been employed consistent with CEQA Section 21080.5(d)(2)(A).

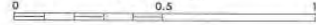
#### **APPENDIX A – SUBSTANTIVE FILE DOCUMENTS**

1. City of Morro Bay CDP File Number CP0-110.
2. Tenera Environmental.
  - a. Letter report, re: CCC November, 21, 2014 Staff Report, received December 31, 2014.
  - b. Development Area Exhibit, received December 3, 2014.
  - c. Letter reports, re: Raptor Survey Summary, dated November 11, 2014 and December 3, 2014.

- d. Letter report, re: Offsite basin investigation. Submitted to: Mr. Wayne Colmer, Black Hill Villa L.P. and Daniel Robinson, California Coastal Commission, received October 21, 2014.
  - e. Updated project site plan for the Black Hill Villas subdivision. Street, parking, and sidewalk setbacks and raptor habitat revisions, received September, 2014.
  - f. October 21, 2014. Letter report, re: Offsite basin investigation. Submitted to: Mr. Wayne Colmer, Black Hill Villa LP and Daniel Robinson, California Coastal Commission.
  - g. Riparian Enhancement Plan, June 3, 2014.
  - h. Updated habitat site plan for the Black Hill Villas subdivision, received November 15, 2013 and revised August 11, 2014.
  - i. Black Hill Villas Project Raptor Survey Report, November 14, 2012.
  - j. Black Hill Villas Project Biological Resource Assessment Report, September 24, 2012.
  - k. Black Hill Villas Project Wetland Delineation-ESHA Mapping Survey, September 21, 2012.
  - l. Habitat Assessment Update for the California Red-legged Frog, Black Hill Villas Project, San Luis Obispo County, September 14, 2012.
  - m. Black Hill Villas Project Morro Shoulderband Snail Protocol Survey Report, August 20, 2012.
  - n. Black Hill Villas Project Morro Shoulderband Snail Protocol Survey Report, January 14, 2005.
  - o. South Bay-Quintana Property Multi-Species Habitat Assessment Report, June 4, 2004.
3. Leong, Kingston, L.H. (Cal Poly State University). *Evaluation of Black Hill Villas Parcel, Morro Bay, California as a winter habitat for Monarch Butterflies, Danaus plexippus (L.)*, February 28, 2012.
  4. Frey, Dennis and Shawna Stevens. *Biological Survey: Monarch Butterfly and Raptor Report, Quintana and South Bay Boulevard Site, Morro Bay, California*, May 2004.
  5. Erosion Control Plan, received September 17, 2014.
  6. California Department of Fish and Wildlife. *Streambed Alteration Agreement (SAA)*, August 28, 2013.
  7. United States Fish and Wildlife Service. *No-take concurrence letter for the California Red-Legged Frog*, January 3, 2013.
  8. United States Fish and Wildlife Service. *No-take concurrence letter for the Morro Shoulderband snail*, December 3, 2012.

# MORRO BAY AREA

SCALE IN MILES



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AUTOMOBILE CLUB OF SOUTHERN CALIFORNIA

MICS DEPARTMENT MAIL STOP A375

3555 FAIRVIEW ROAD COSTA MESA, 92626

MAP 2506

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

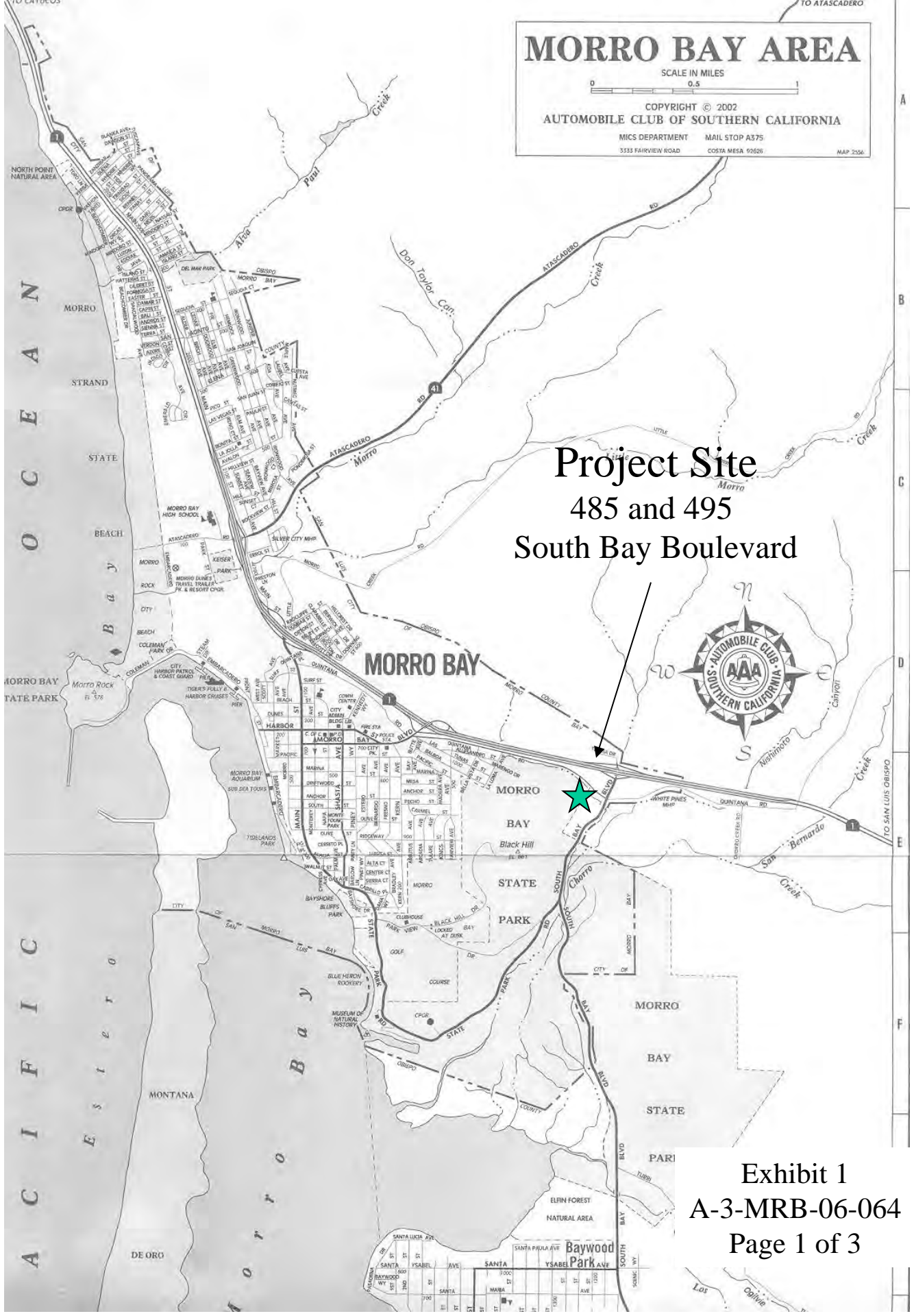


Exhibit 1  
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Figure 3. Aerial view of project location showing parcel boundaries (red outline) and surrounding land uses.

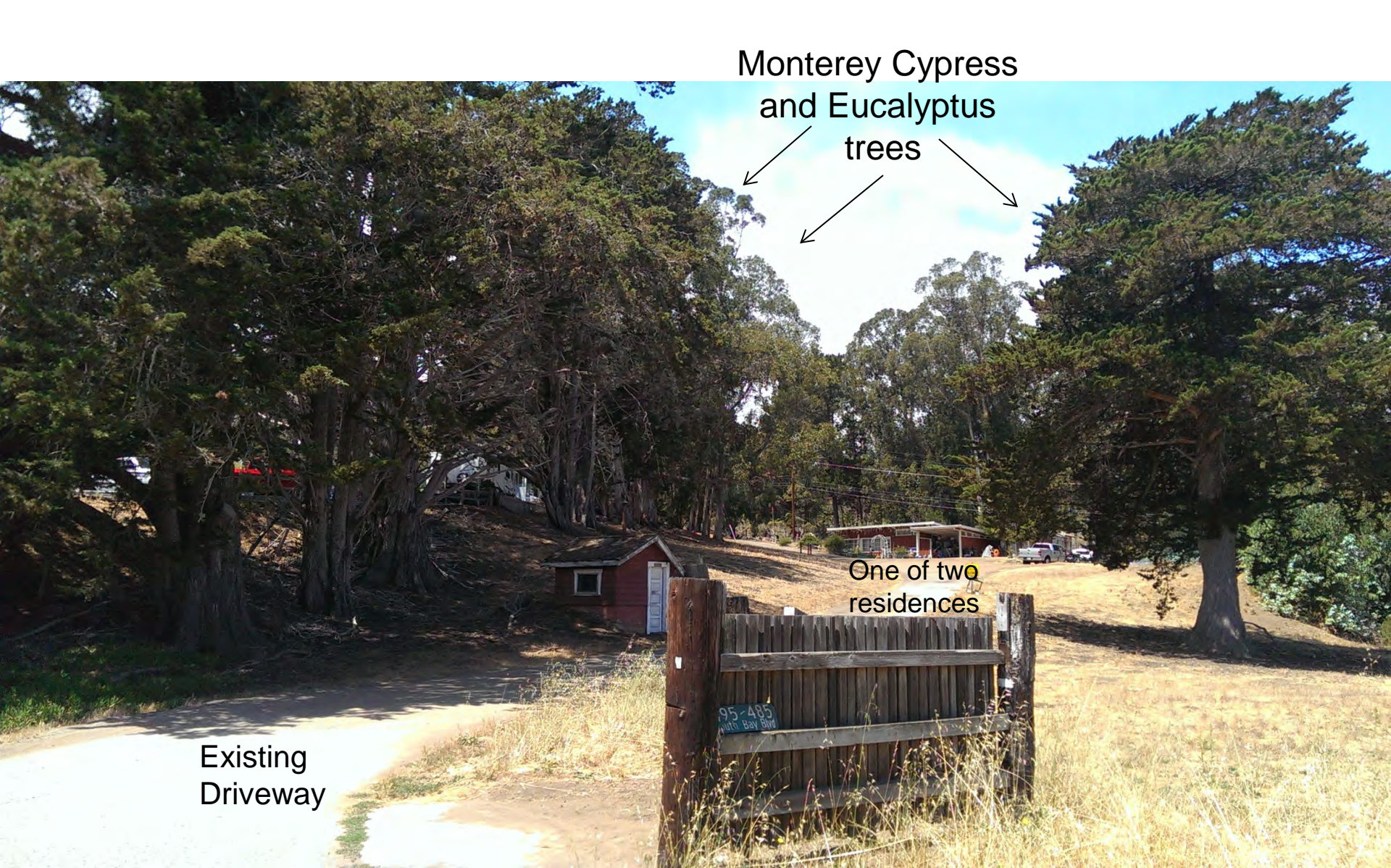












Monterey Cypress  
and Eucalyptus  
trees

Existing  
Driveway

One of two  
residences

← Access Road →







Monterey  
Cypress  
and  
Eucalyptus  
trees

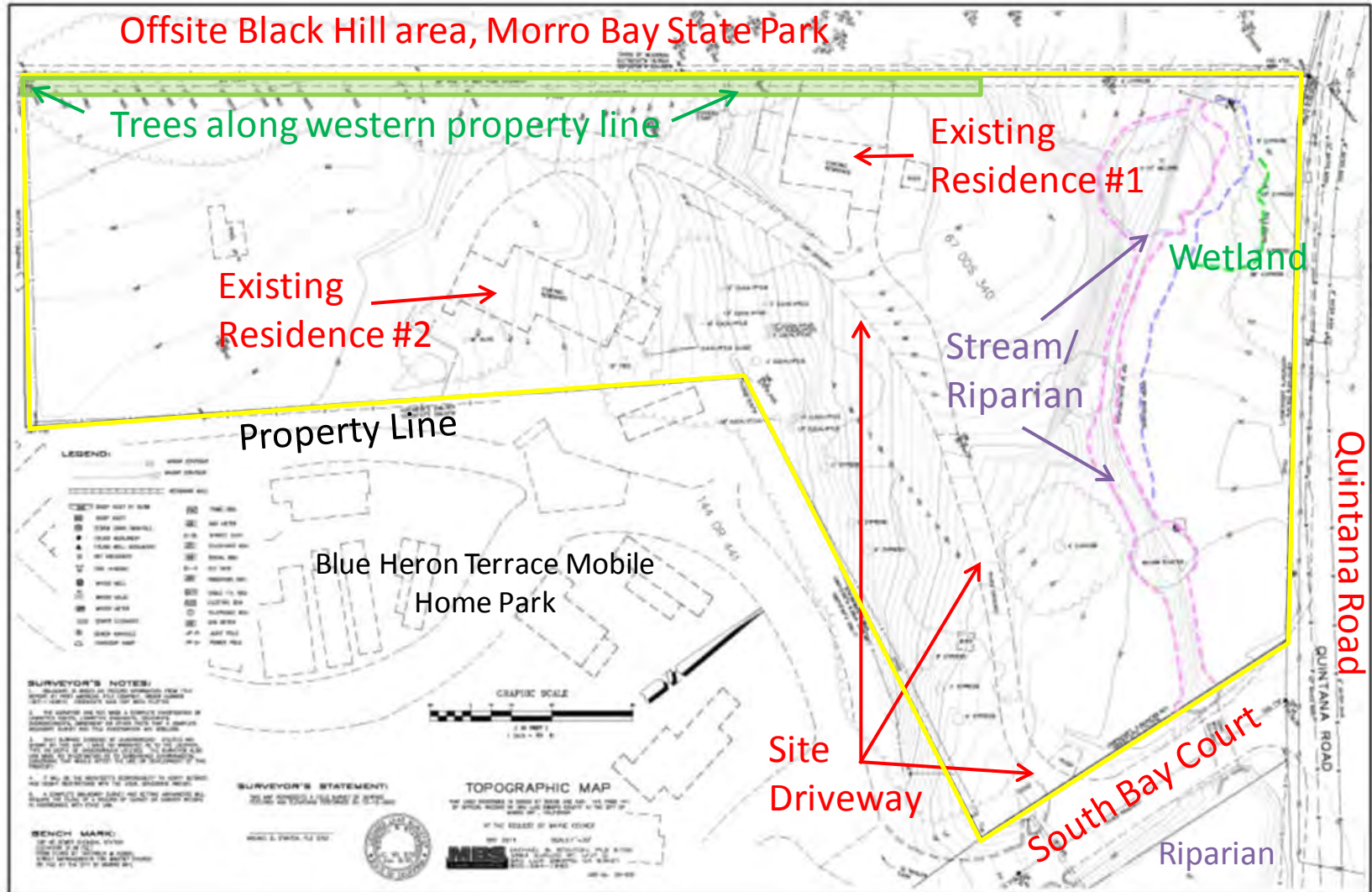




Stand of trees along  
western property boundary with Black  
Hill/Morro Bay State Park



# Existing Layout





# Proposed Layout

DEVELOPMENT, ESHA, OTHER HABITATS, BHNA BUFFER

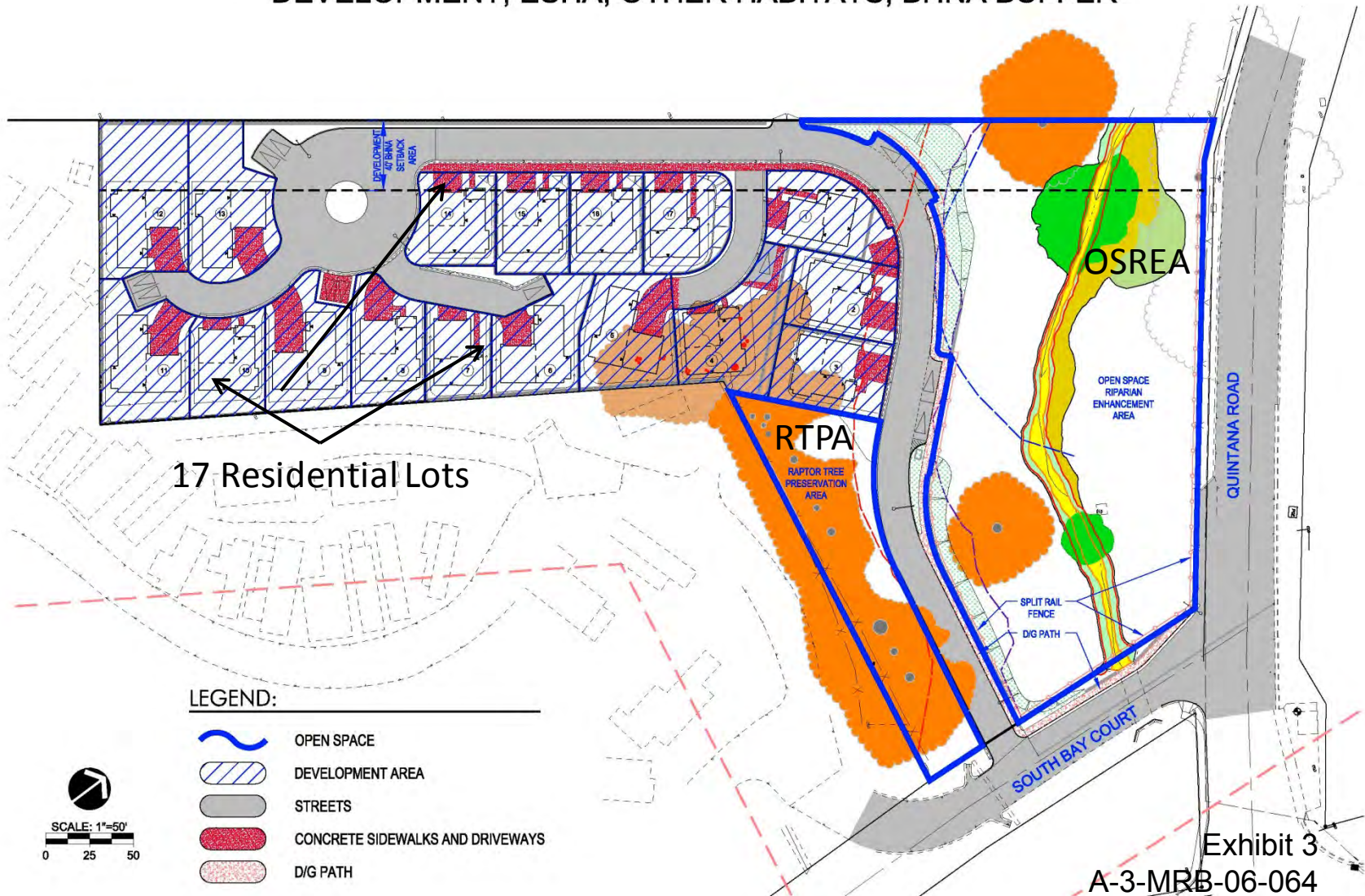


Exhibit 3

A-3-MRB-06-064

Page 2 of 9





FRONT

"3-A"



FRONT

"2-A"



FRONT

"2-B"

PLANS 2 AND 3  
FRONT ELEVATIONS

■ BLACK HILLS VILLAS ■

City of Morro Bay, California

Black Hill Villas, Inc





FRONT

"1-A"



FRONT

"1-B"



FRONT

"1-C"

PLAN 1  
FRONT ELEVATIONS

■ BLACK HILLS VILLAS ■

City of Morro Bay, California

Black Hill Villas, Inc





■ BLACK HILLS VILLAS ■  
City of Morro Bay, California

Black Hill Villas, Inc



01-13-09

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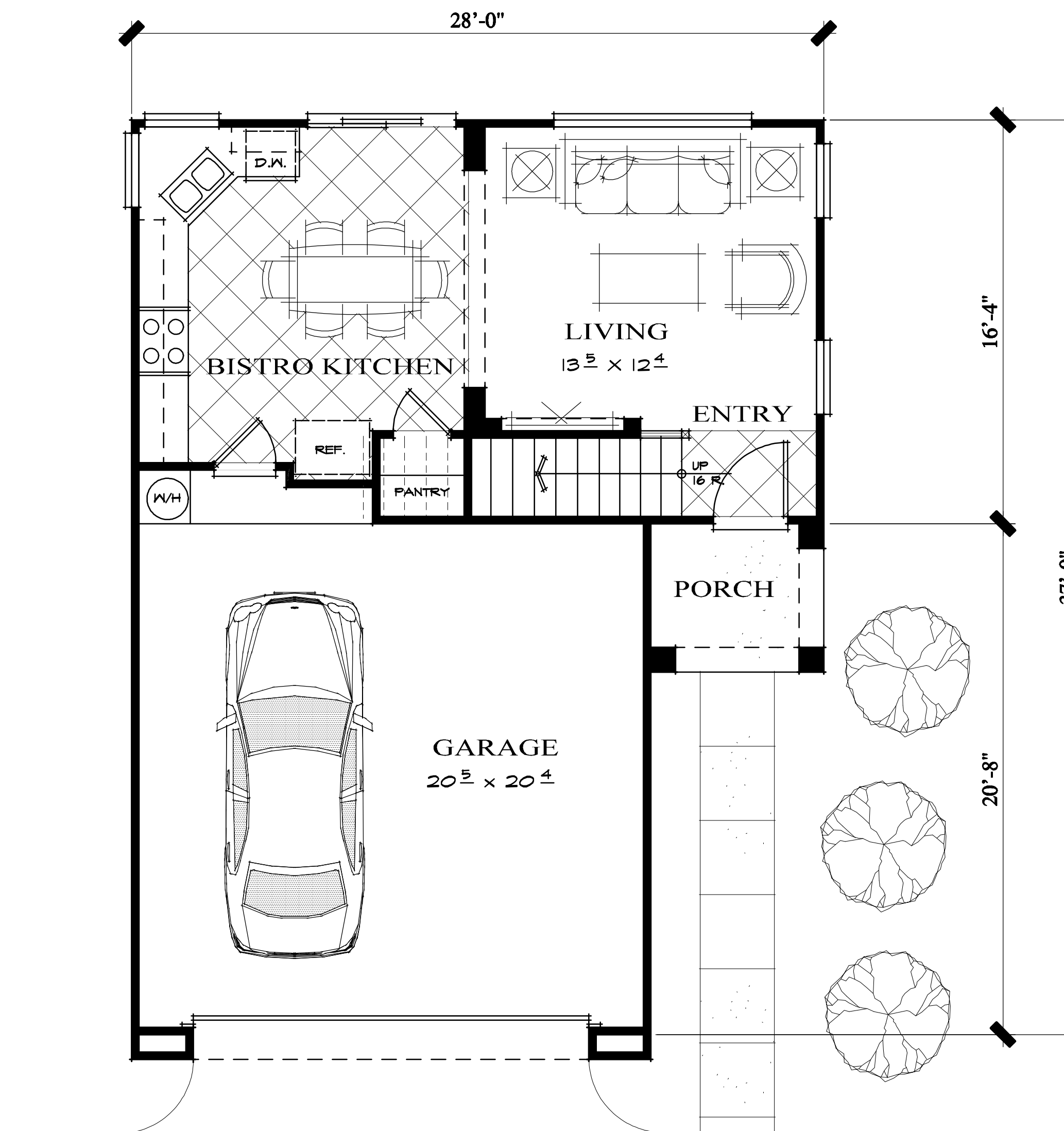
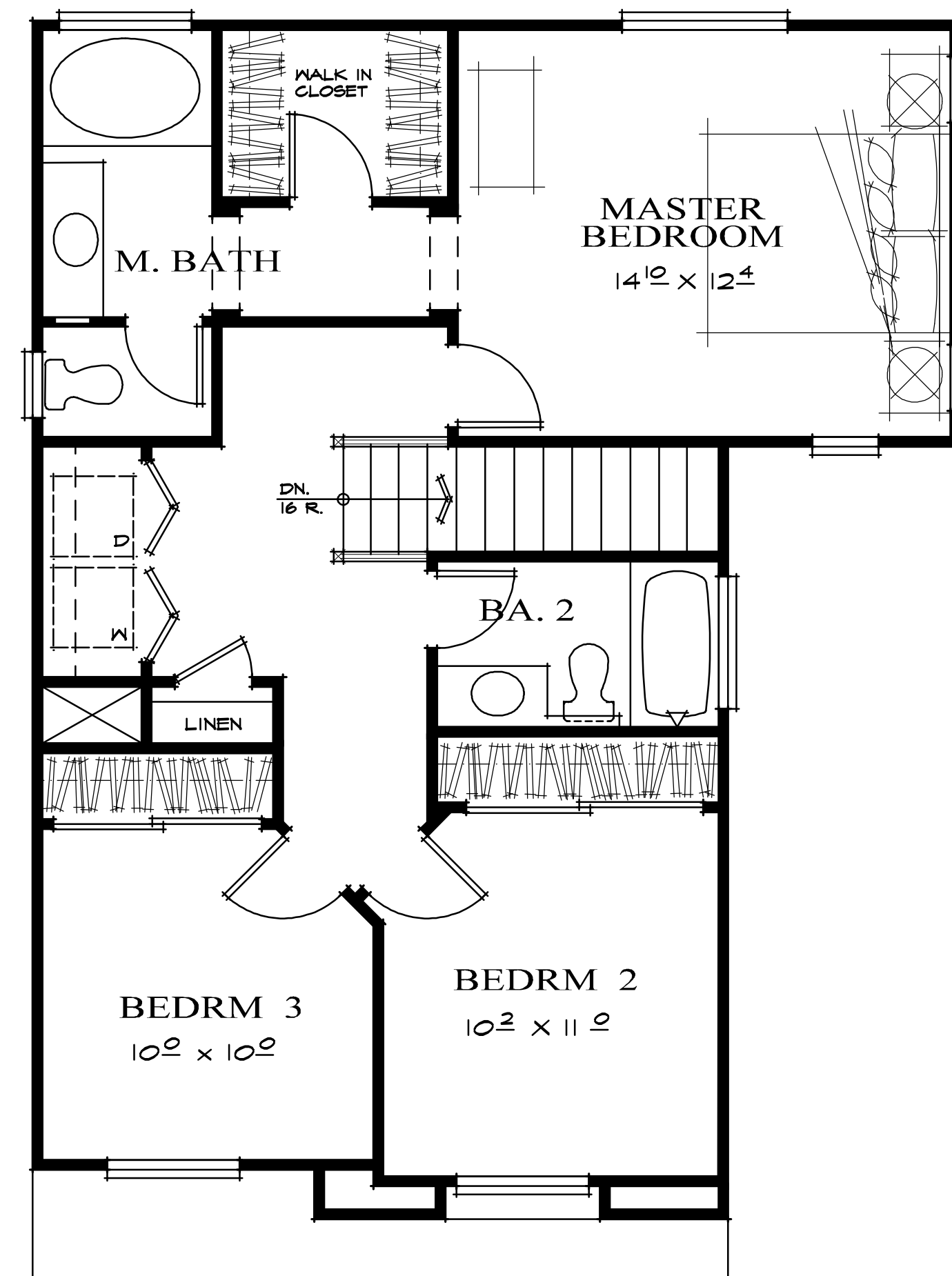
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Exhibit 3

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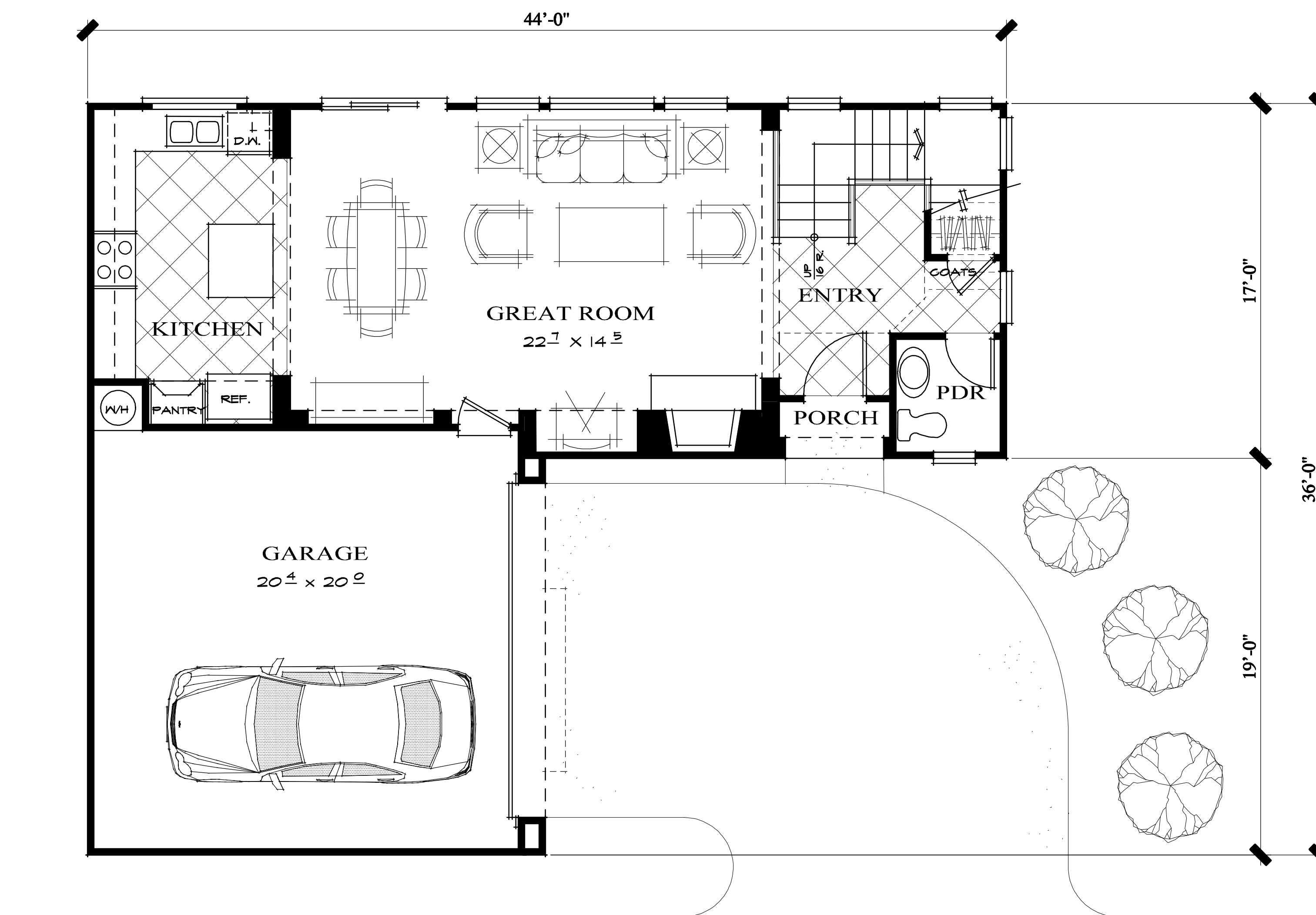
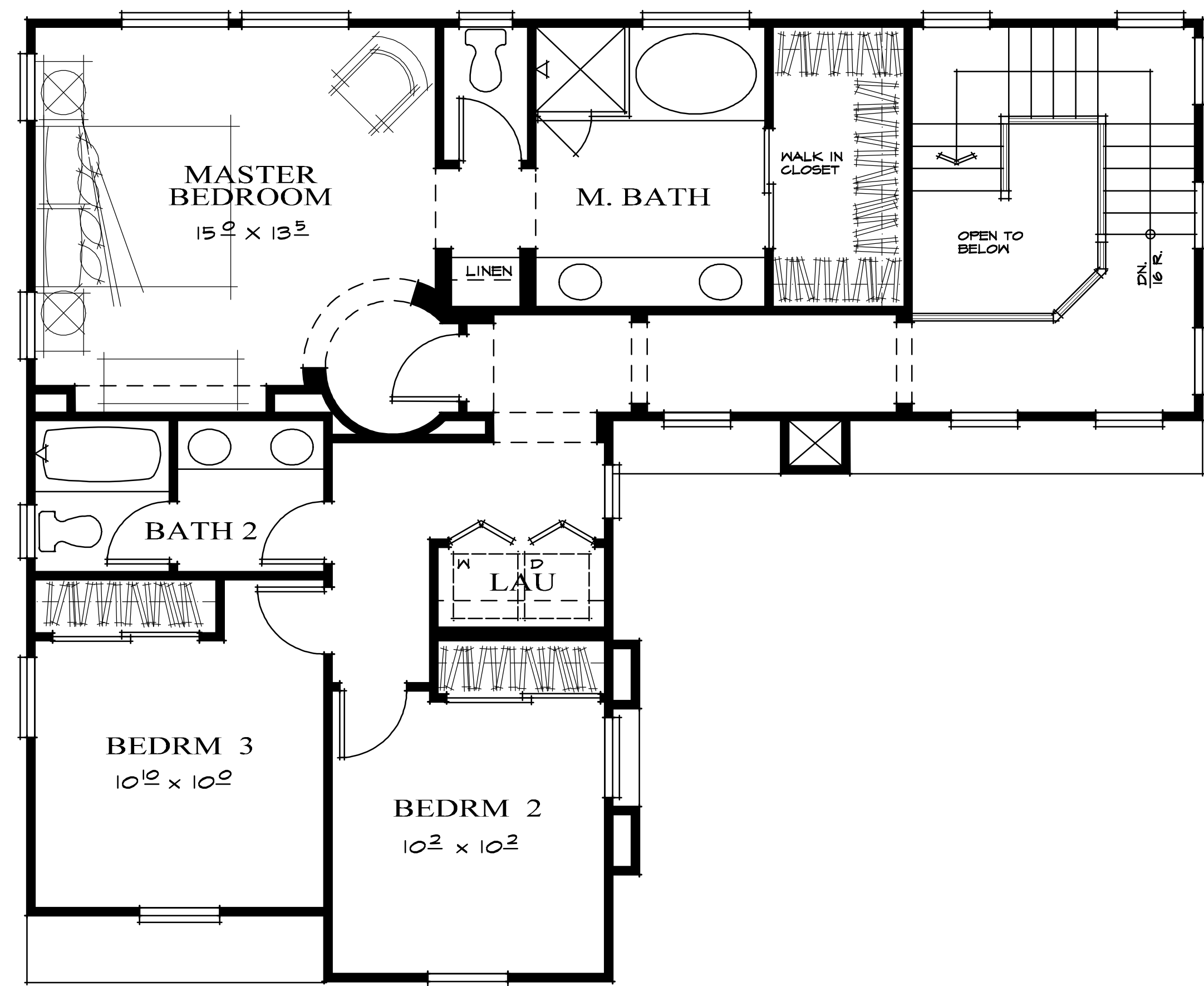


PLAN 3  
1,227 SQ. FT.

# ■ BLACK HILLS VILLAS ■

City of Morro Bay, California

Colmer Development

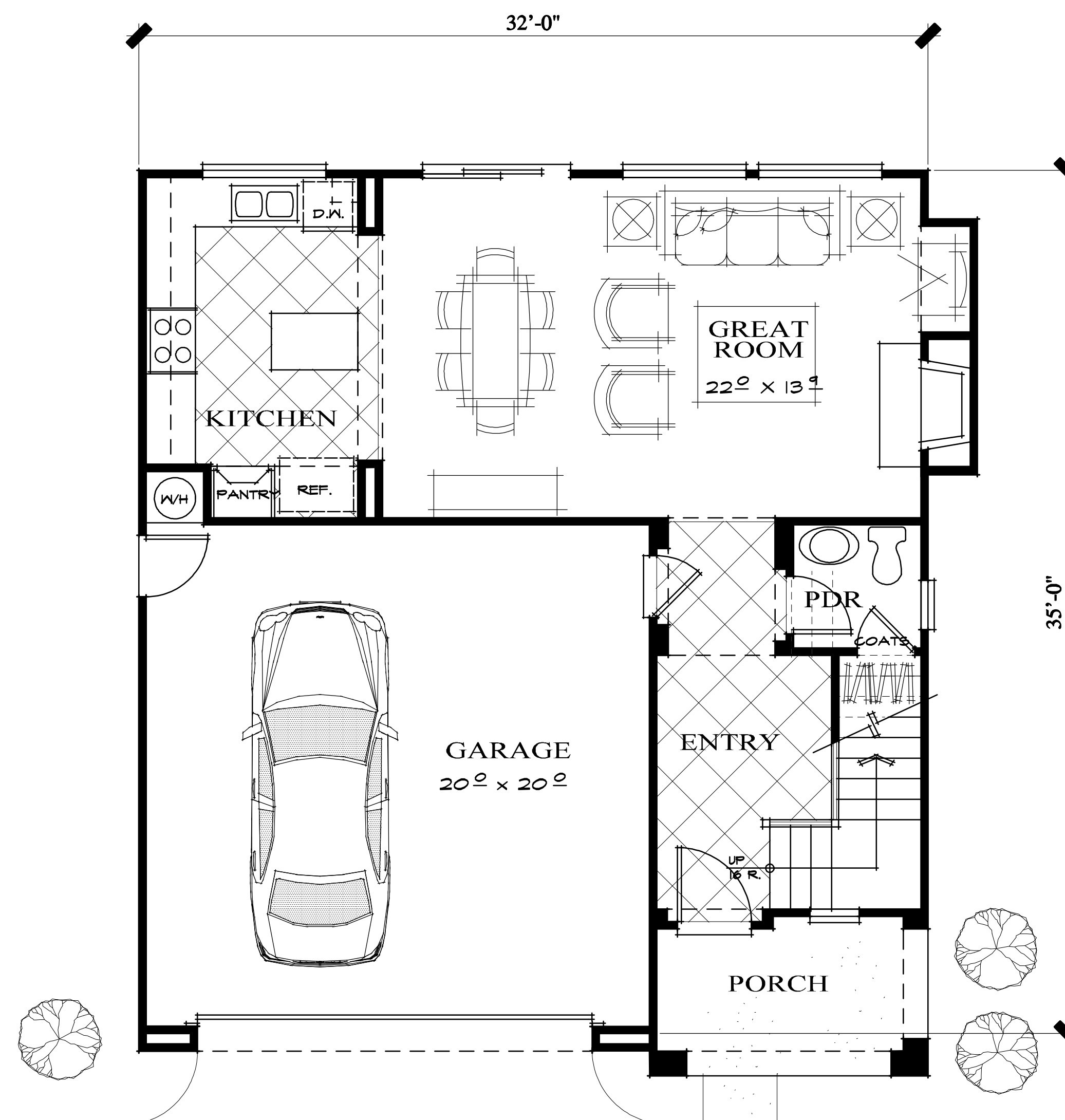
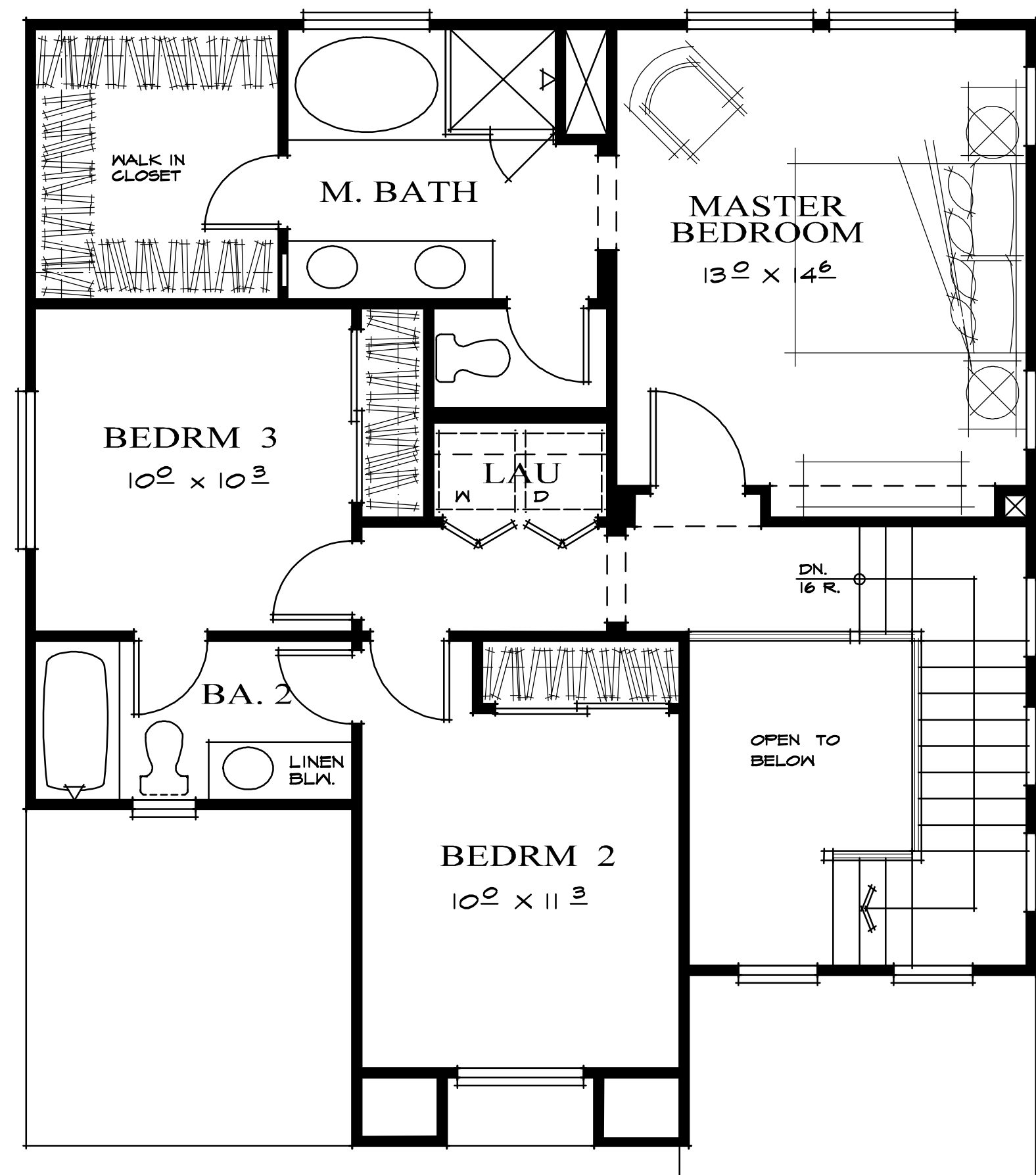


PLAN 2  
1,661 SQ. FT.

# ■ BLACK HILLS VILLAS ■

City of Morro Bay, California

Colmer Development



PLAN 1  
1,446 SQ.FT.

■ BLACK HILLS VILLAS ■

City of Morro Bay, California

Colmer Development

BASSENIAN  
*architects*  
LAGONI

Architecture and Land Planning  
2031 Orchard Dr. Suite 100  
Newport Beach CA 92660-0753  
Telephone 949-553-9100

# Erosion Control Plan

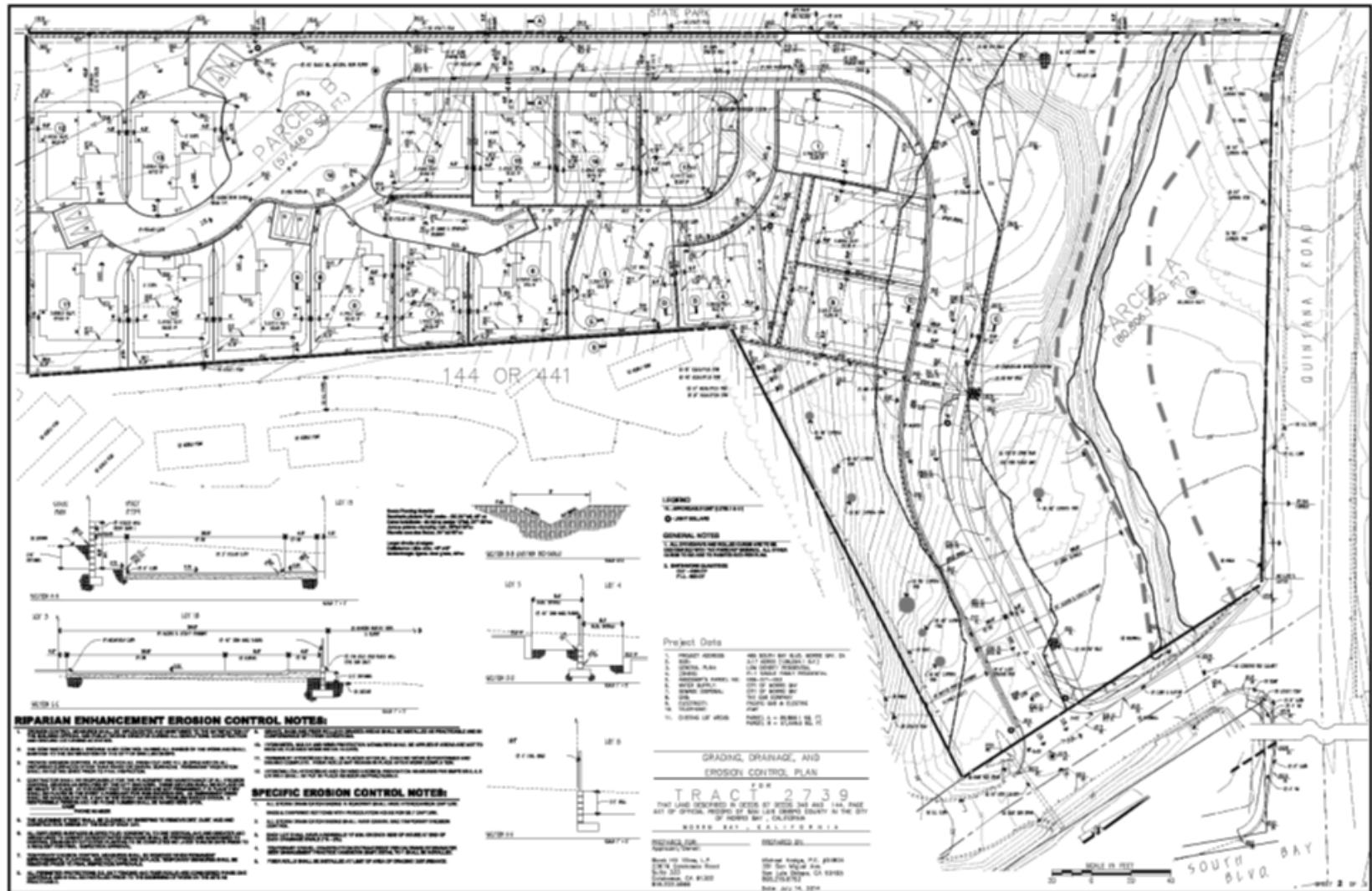


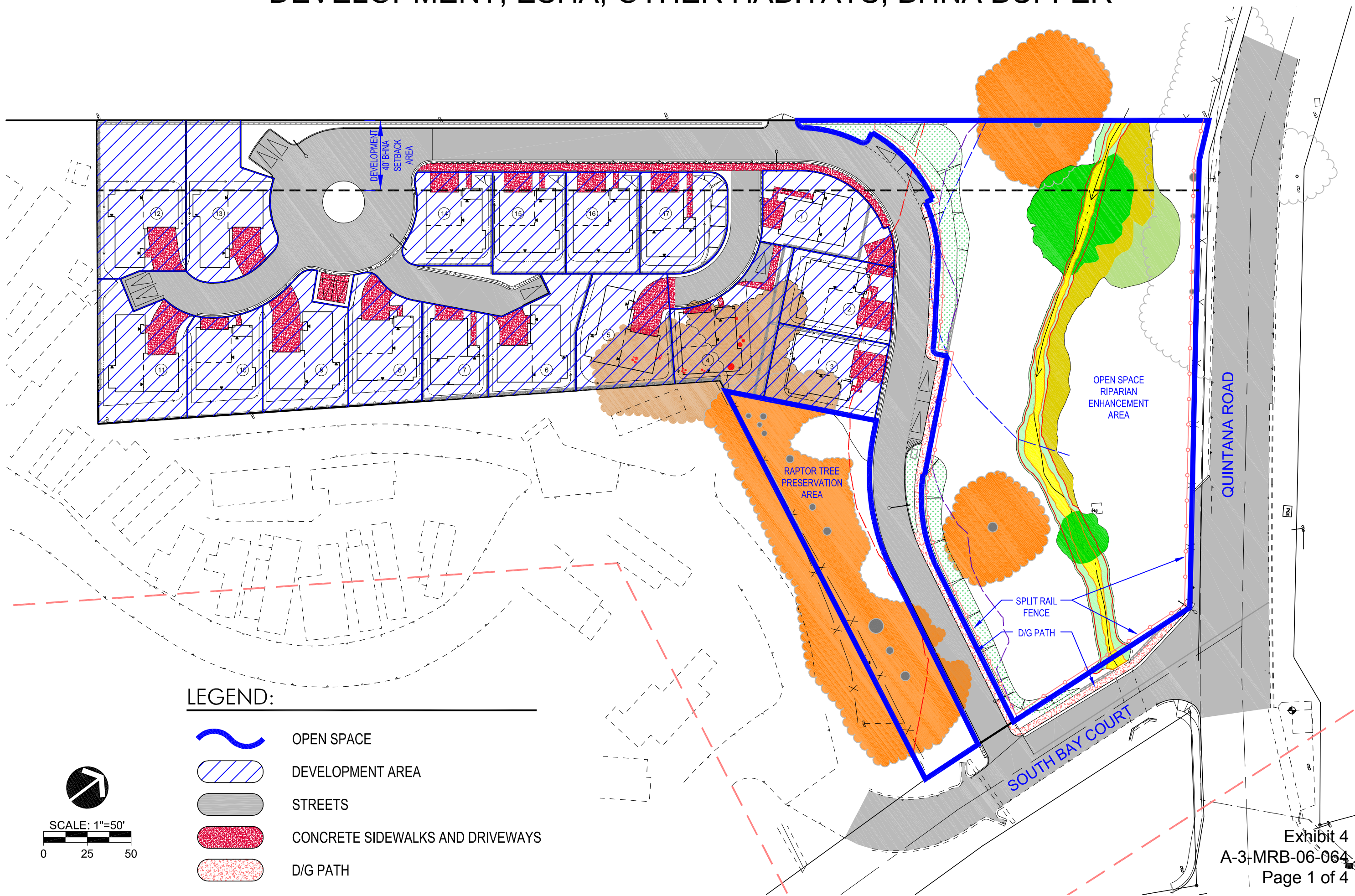
Exhibit 3

A-3-MRB-06-064

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# DEVELOPMENT, ESHA, OTHER HABITATS, BHNA BUFFER



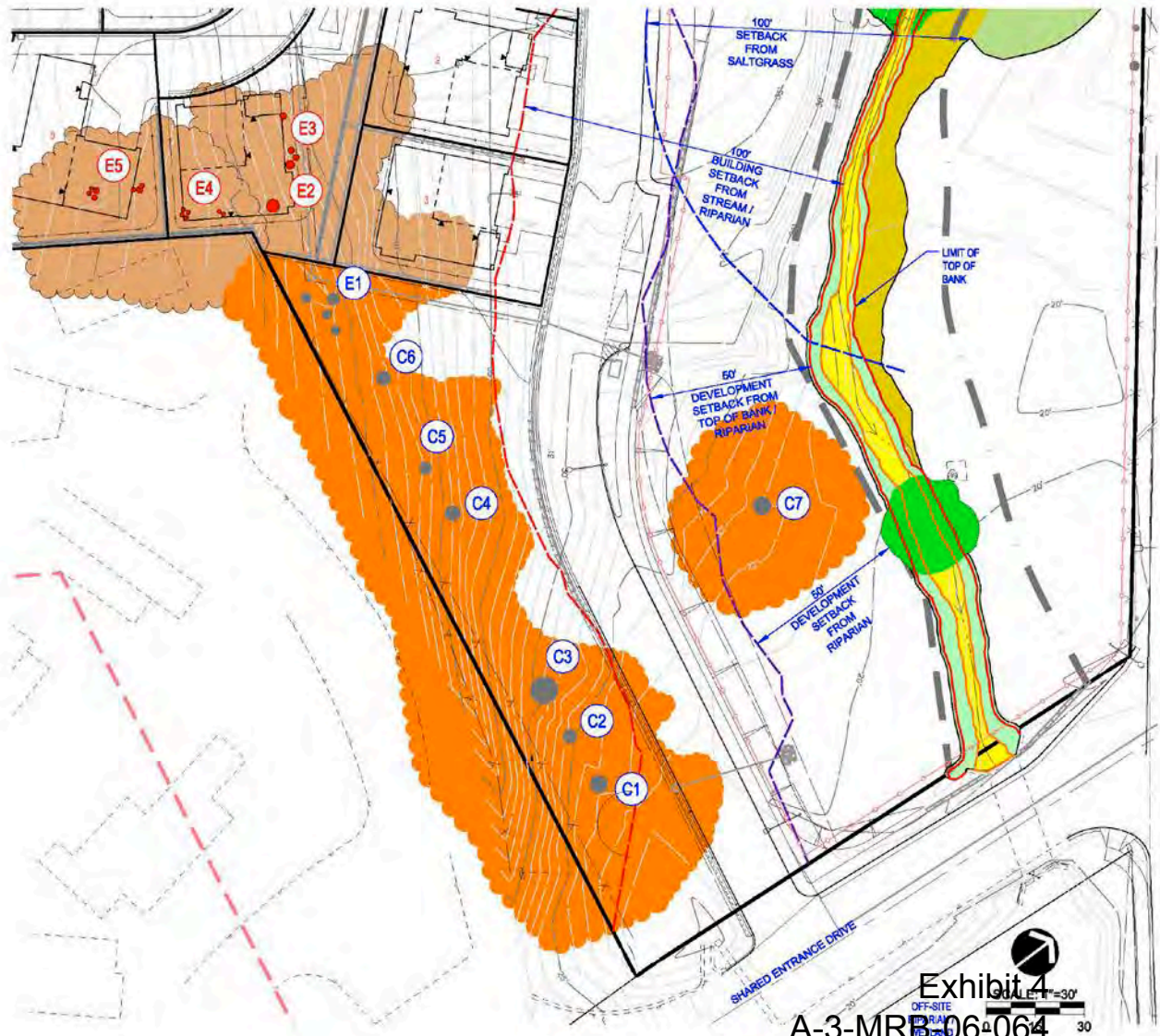


# Raptor Habitat Preservation Area

## LEGEND:



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)		







Approximate property line



# OSREA Planting Plan

Black Hill Villas, L.P.

Riparian Enhancement Plan

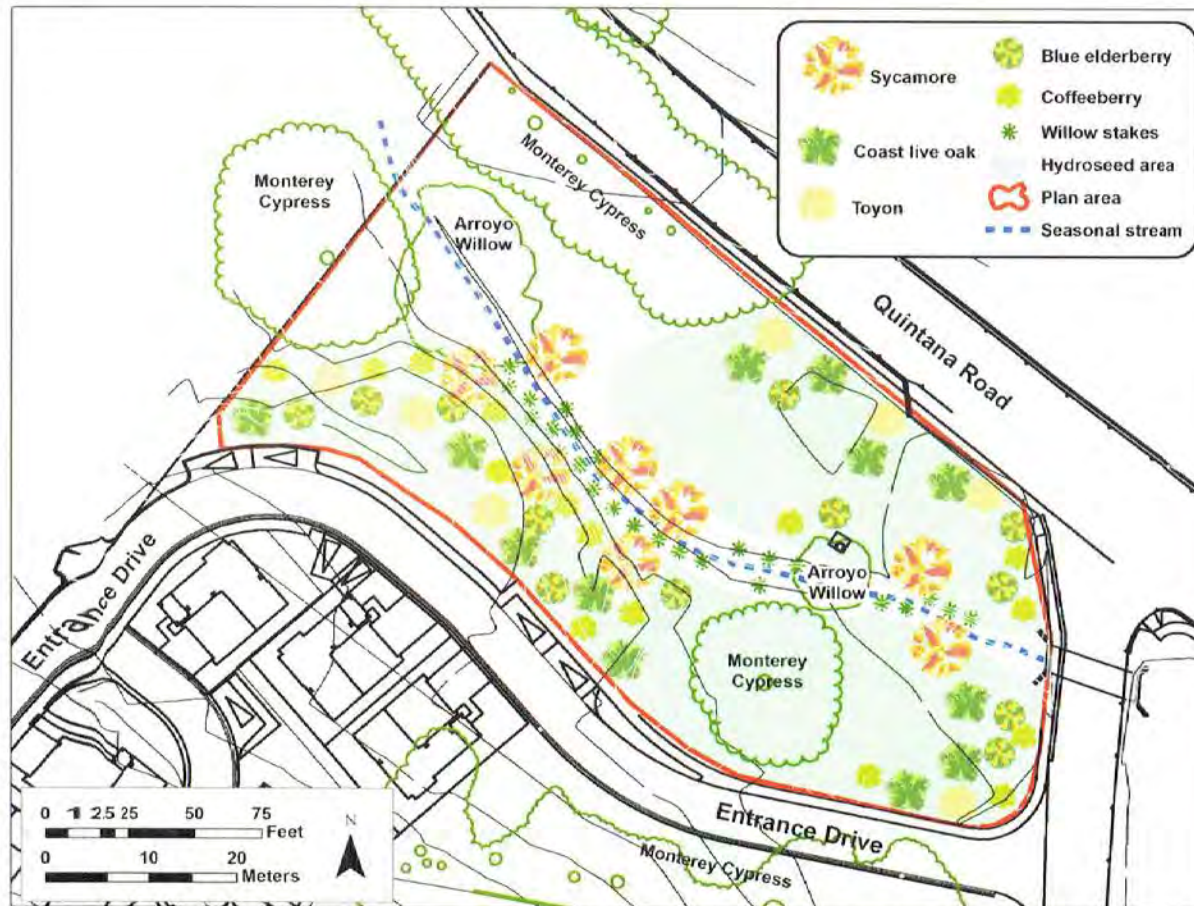
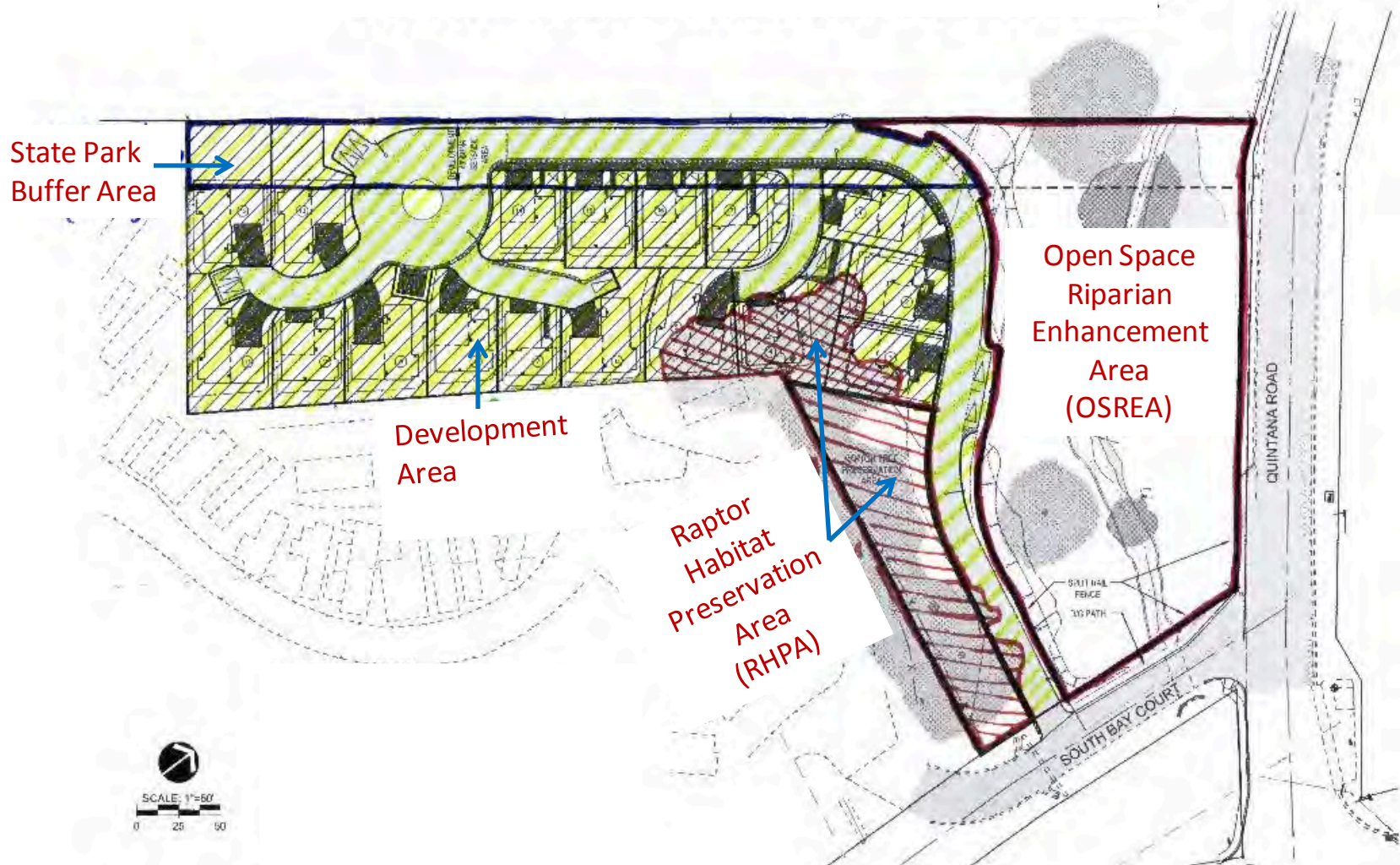


Figure 6. Planting Plan showing locations of trees, shrubs, and hydroseed areas within the Riparian Enhancement Area.



# Project Site Zones

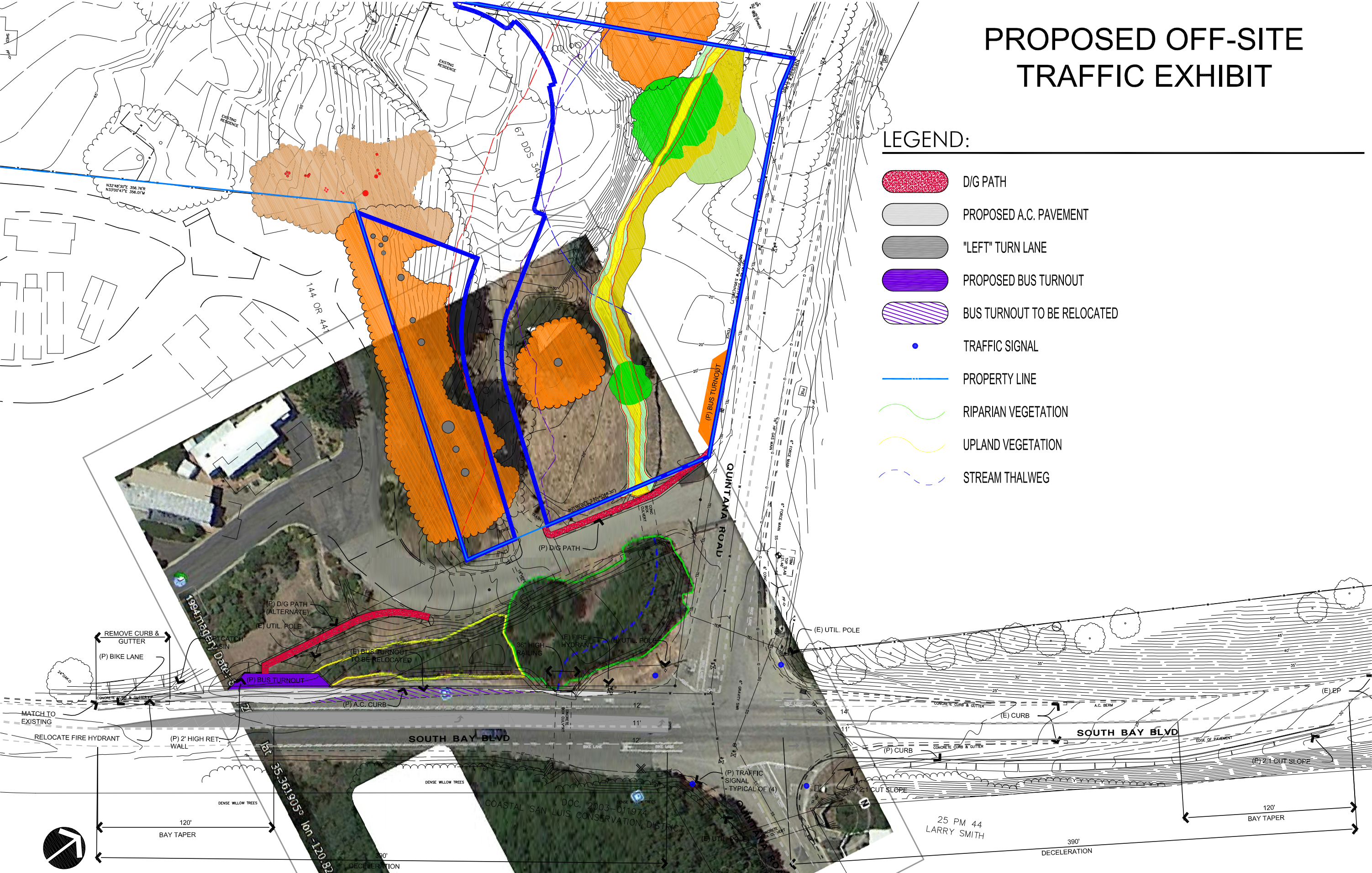




# PROPOSED OFF-SITE TRAFFIC EXHIBIT

## LEGEND:

- D/G PATH
- PROPOSED A.C. PAVEMENT
- "LEFT" TURN LANE
- PROPOSED BUS TURNOUT
- BUS TURNOUT TO BE RELOCATED
- TRAFFIC SIGNAL
- PROPERTY LINE
- RIPARIAN VEGETATION
- UPLAND VEGETATION
- STREAM THALWEG



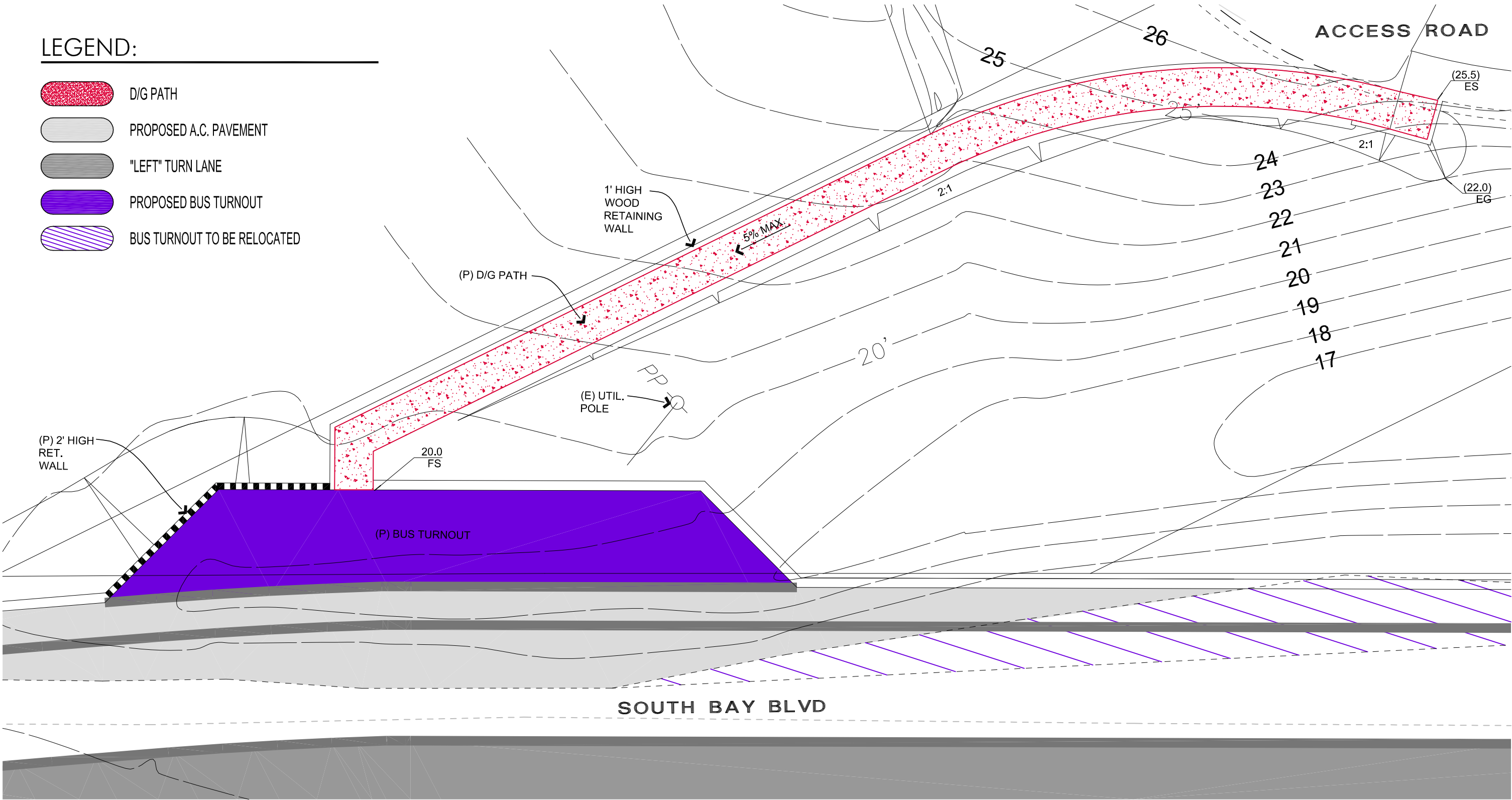
SCALE: 1"=60'



ENLARGED PLAN AT  
D/G PATH

LEGEND:

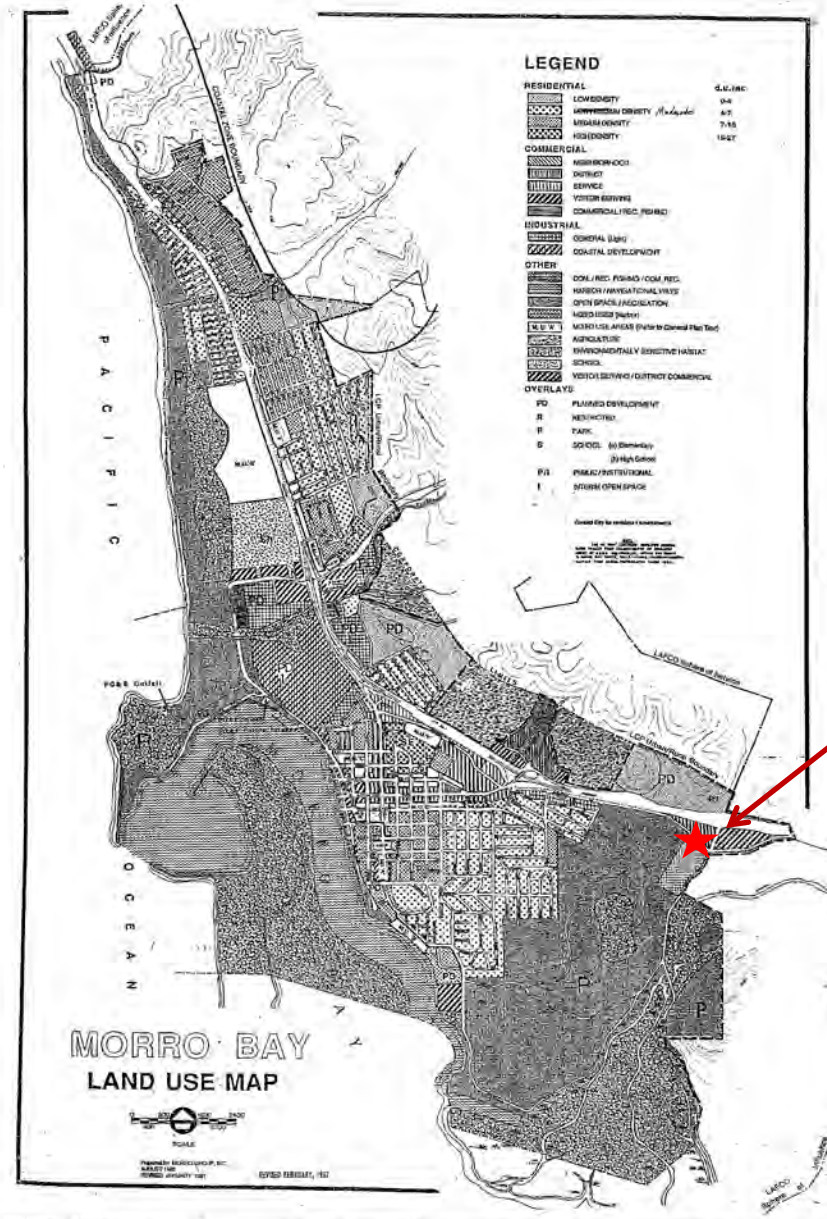
- D/G PATH
- PROPOSED A.C. PAVEMENT
- "LEFT" TURN LANE
- PROPOSED BUS TURNOUT
- BUS TURNOUT TO BE RELOCATED



SCALE: 1"=10'

0 5 10

# Morro Bay Land Use Map



Project Site

Figure 28 – Environmentally Sensitive  
Habitat Areas (ESHA)

City of Morro Bay  
Coastal Land Use Plan  
Chapter XII

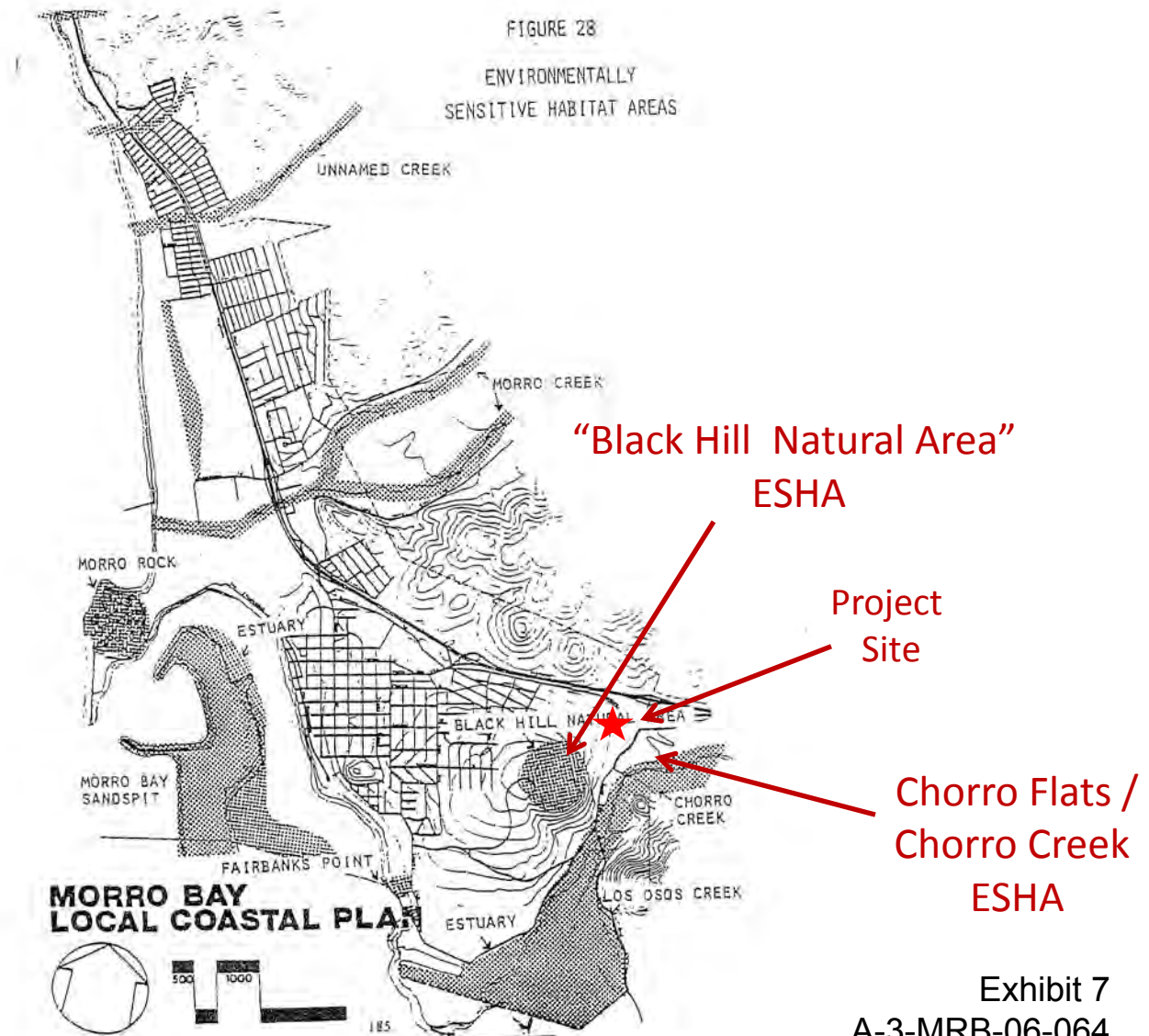
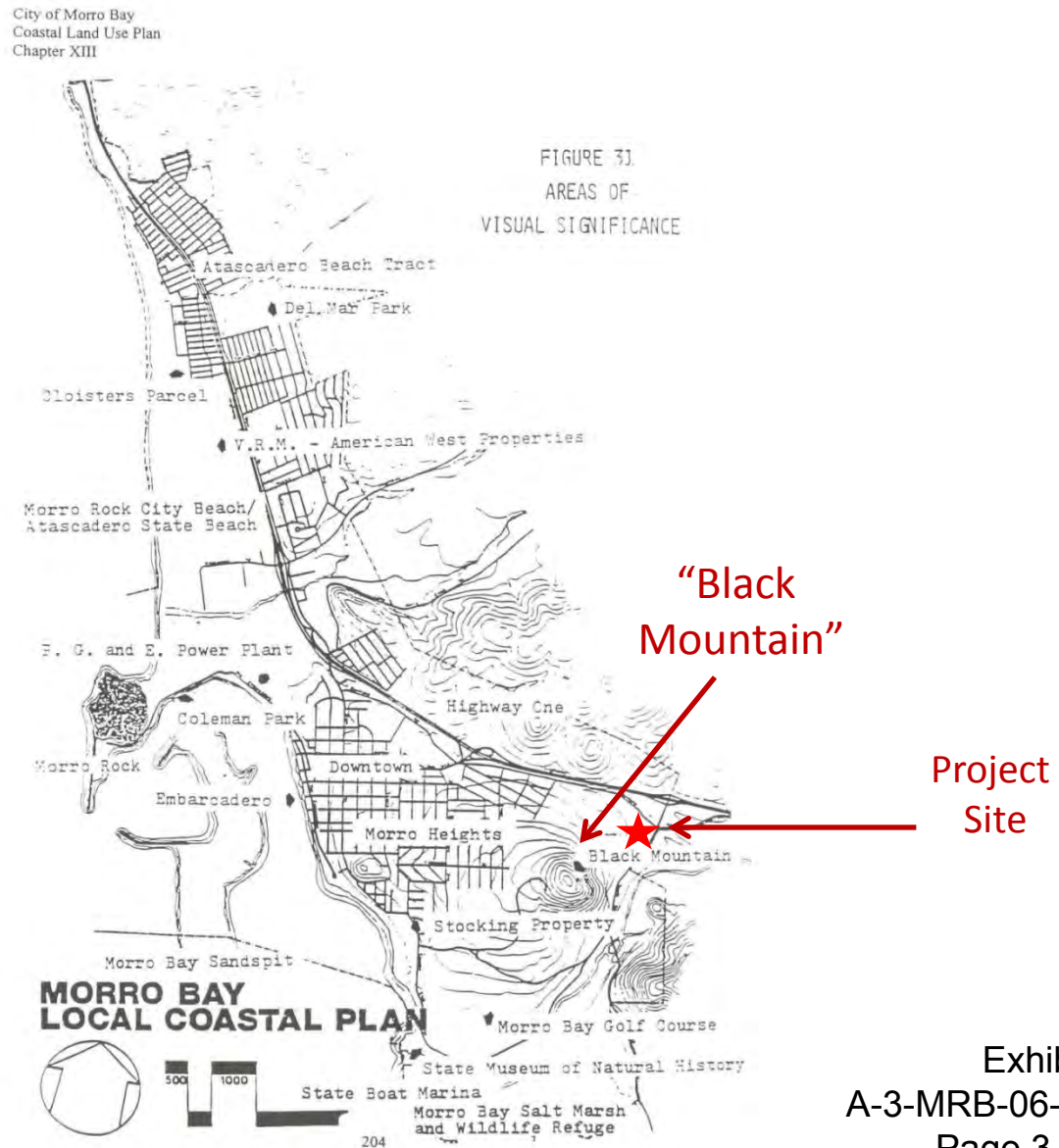


Figure 31 – Areas of Visual Significance



## MEMORANDUM

FROM: Jonna D. Engel, PhD, Ecologist

TO: Daniel Robinson, Coastal Analyst

SUBJECT: Biological Update, Black Hill Villas Project, Morro Bay, California

DATE: January 21, 2015

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### Documents reviewed:

Tenera Environmental. December 31, 2014. Letter report, re: CCC November, 21, 2014 Staff Report. Submitted to: Mr. Wayne Colmer, Colmer Construction Inc.

Tenera Environmental. December 3, 2014. Development, ESHA, Other Habitats, BHNA Buffer Site Plan. Submitted to: Daniel Robinson, California Coastal Commission.

Tenera Environmental. November 11, 2014 and December 3, 2014. Letter reports, re: Raptor Area Summary. Submitted to: Mr. Wayne Colmer, Colmer Construction Inc.

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

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

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

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

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



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

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

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

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

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

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

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

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

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In a memorandum dated January 31, 2014, I reviewed over a decade of biological information listed above under “documents reviewed”, for the proposed Black Hill Villas project, as well as site photographs and google earth aerials, and determined that the site supports wetland, riparian, and raptor environmentally sensitive habitat areas (ESHA). In a memorandum dated October 29, 2014 I made an ESHA determination for the natural resources in an offsite basin area and retracted my initial raptor habitat ESHA determination based on further review of the existing and recently submitted biological information, several discussions of the biological resources on and off-site with Tenera biologist, Dan Dugan, review of past Commission actions, and consultation of the raptor habitat with CCC senior ecologist, Dr. John Dixon. Here I reiterate my finding that while I determined that the tree stand (made up of Monterey cypress trees



identified in the project materials as trees C1-C7, and eucalyptus trees identified in the project materials as trees E1-E4) does not rise to the level of ESHA, it has been shown to be an important stand of trees for supporting red-shouldered hawk nesting, roosting, and perching and this function should be preserved and protected to the maximum extent feasible. In addition, in a letter dated November 11, 2014, from Dan Dugan (Mr. Colmer's biological consultant) to Mr. Colmer, Mr Dugan states:

*A subsequent review of the Frey-Stevens report showed that a second raptor species, the barn owl (Tyto alba), was identified as utilizing the stand. Barn owl use was indicated by reports from residents and the presence of owl pellets and whitewash (excrement) below two trees in the stand." All other raptor observations/detections reported during both the 2004 and 2012 studies were from 1) fly-over events, 2) off-site observations/vocalizations, 3) great horned owl pellets found off-site along the western property boundary, and 4) anecdotal reports (from residents) of great horned owl vocalizations in the area.*

We also know that eucalyptus tree E2 supported active red-shouldered hawk nests in 2004 and 2012 and that an old red-shouldered hawk nest was observed in Monterey cypress C4 in 2004. Furthermore we know that red-shouldered hawk perching and roosting was observed in Monterey cypress trees C1, C2, C3, C4, and C5 and eucalyptus trees E2 and E3. I concluded my October 29, 2014 memorandum by stating that "...the tree stand delineated as raptor habitat that I identified as ESHA in my January 31, 2014 memorandum, upon further review and consideration as described above, does not rise to the level of ESHA, but should be preserved and protected to the greatest extent possible." To accomplish this I recommend that the tree stand consisting of Monterey Cypress C1-C7 and Eucalyptus E1-E4 be preserved as a Raptor Habitat Protection Area (RHPA), including to meet the requirements associated with LUP Policy 9.06 which states that "...Natural features, landforms, and native vegetation, such as trees, shall be preserved to the maximum extent feasible...."

I recommend that the RHPA tree stand be protected as follows:

1. A Raptor Habitat Preservation Plan shall be required to be prepared, where such Plan shall provide the measures necessary to maintain the RHPA in as good or better a condition as today. Such Plan must include at a minimum a baseline assessment, success criteria, monitoring and maintenance provisions, and reporting provisions.
2. The Plan shall be designed to protect and provide for the health of the trees in perpetuity, including providing for native replacement trees suitable for raptor habitat in the event the trees in the RHPA senesce or require removal for health or safety reasons.
3. Development, other than development associated with the Plan, shall be prohibited within the dripline of the RHPA trees.

## MEMORANDUM

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

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### Documents reviewed:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

## MEMORANDUM

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

---

### Documents reviewed:

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

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

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

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

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

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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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



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

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



August 28, 2013

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

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

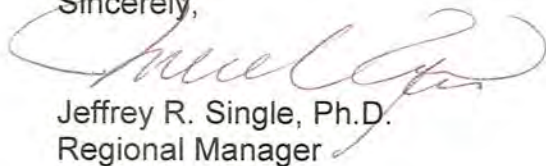
Dear Mr. Dugan:

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

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

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

Sincerely,



Jeffrey R. Single, Ph.D.  
Regional Manager

cc: Robb Tibstra, Environmental Scientist



# NOTICE OF DETERMINATION

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

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

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

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

**STATE CLEARINGHOUSE NUMBER:** 2006061099

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

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

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

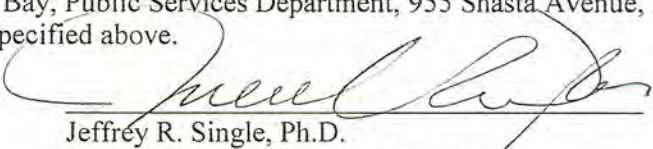
**PROJECT DESCRIPTION:** The California Department of Fish and Wildlife is executing a Streambed Alteration Agreement pursuant to Section 1602 of the Fish and Game Code. As part of a subdivision development, the Project consists of removing and re-compacting a portion of the unconsolidated fill directly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

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

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

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

Date: 8/29/13

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

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

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A-3-MRB-06-064  
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**CALIFORNIA DEPARTMENT OF FISH AND WILDLIFE**  
REGION 4—CENTRAL REGION  
1234 EAST SHAW AVENUE  
FRESNO, CALIFORNIA 93710



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

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

### **BLACK HILL VILLAS PROJECT**

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

### **RECITALS**

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

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

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

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

### **PROJECT LOCATION**

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

## PROJECT DESCRIPTION

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

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

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

## PROJECT IMPACTS

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

## PROTECTIVE MEASURES TO PROTECT FISH AND WILDLIFE RESOURCES

### 1. Administrative Measures

Permittee shall meet each administrative requirement described below.



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

## 2. Avoidance and Minimization Measures

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

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

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

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

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

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

#### 2.4 Wildlife.

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

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

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

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

## 2.5 Vegetation.

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

## 2.6 Vehicles.

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

## 2.7 Fill/Spoil.

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



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

## 2.8 Erosion.

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

## 2.9 Pollution.

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

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

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

### **3. Compensatory Measures**

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

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

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

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

Permittee shall meet each reporting requirement described below.

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

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

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

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



## CONTACT INFORMATION

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

### To Permittee:

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

### To CDFW:

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

## LIABILITY

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

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

## SUSPENSION AND REVOCATION

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

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

## **ENFORCEMENT**

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

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

## **OTHER LEGAL OBLIGATIONS**

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

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

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

## **AMENDMENT**

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

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



## **TRANSFER AND ASSIGNMENT**

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

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

## **EXTENSIONS**

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

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

## **EFFECTIVE DATE**

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

## **TERM**

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

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

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

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

## **EXHIBITS**

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

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

## **AUTHORITY**

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

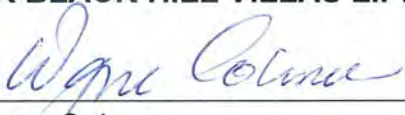
## AUTHORIZATION

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

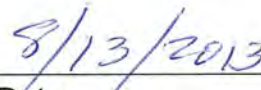
## CONCURRENCE

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

### FOR BLACK HILL VILLAS L.P.

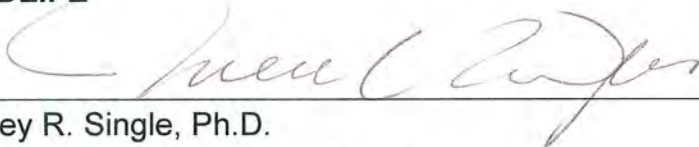


Wayne Colmer



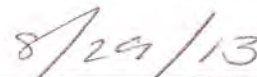
Date

### FOR CALIFORNIA DEPARTMENT OF FISH AND WILDLIFE



Jeffrey R. Single, Ph.D.

Regional Manager—Central Region




Date

Prepared by: Robb Tibstra  
Environmental Scientist

# Figure 1

## Exhibit A




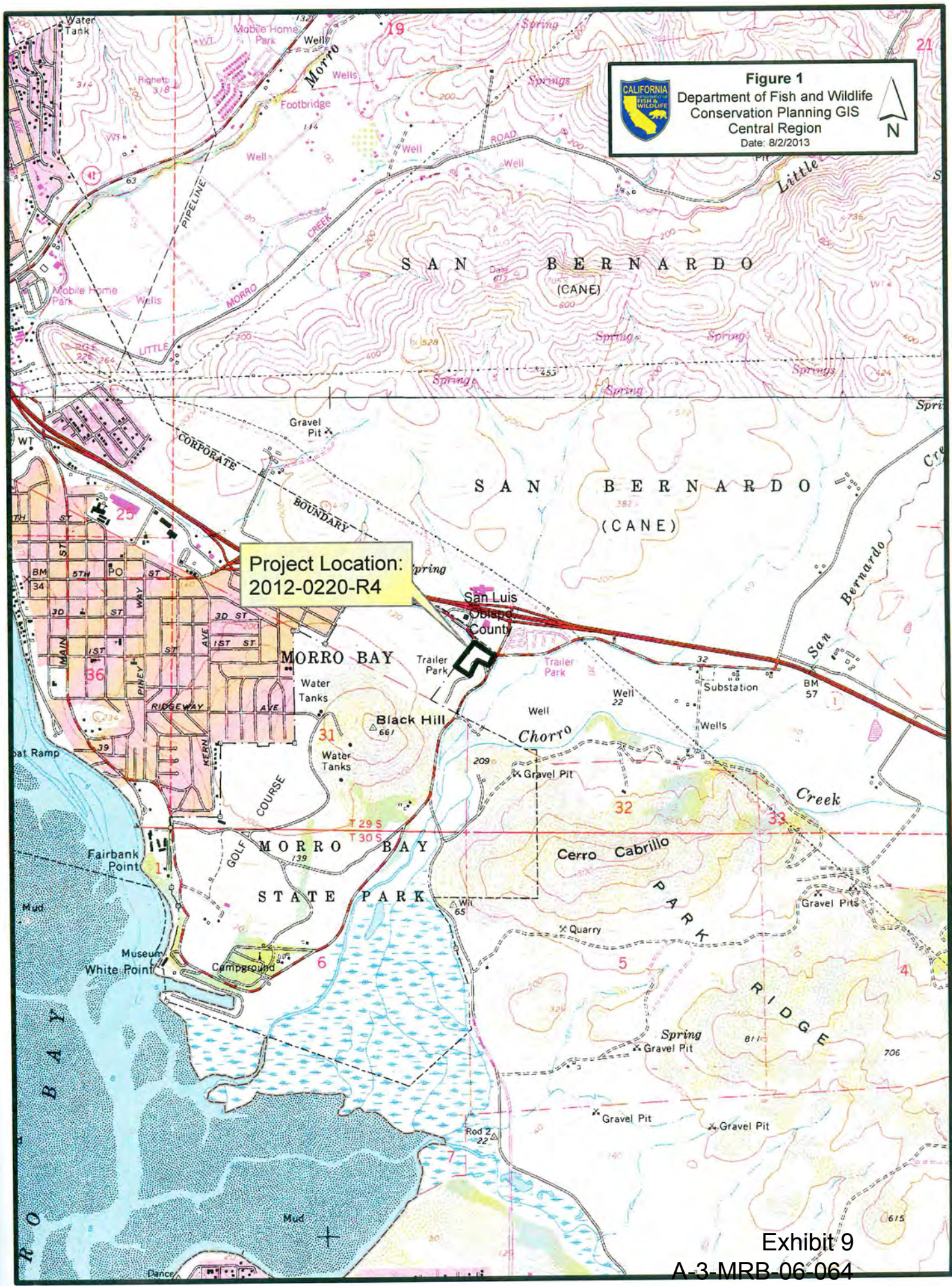


**Figure 1**

Department of Fish and Wildlife  
Conservation Planning GIS  
Central Region

Date: 8/2/2013







# Figure 2

## Exhibit B





**Project area**



**Stream bed perimeter**

0 12.5 25 50 75 100 125 150 Feet

0 10 20 40

Exhibit 9  
A-3-WRB-06-064

Page 20 of 22

N














# Figure 3

## Exhibit C

LEGEND:

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







May 27, 1994

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





June 3, 2003

Exhibit 10  
A-3-MRB-06-064  
Page 2 of 3



July 1, 2004

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



# TRACT 2739

## BLACK HILL VILLAS

SOUTH BAY BOULEVARD & QUINTANA ROAD MORRO BAY, CA 93442



LOCATION



EXISTING



PROPOSED

LOOKING SOUTHWEST FROM NB HIGHWAY 1

Exhibit 11  
A-3-MRB-06-064



# TRACT 2739

## BLACK HILL VILLAS

SOUTH BAY BOULEVARD & QUINTANA ROAD MORRO BAY, CA 93442



LOCATION

©2007 Thomas Bros. Maps



EXISTING



PROPOSED

LOOKING WEST FROM SOUTH BAY BOULEVARD

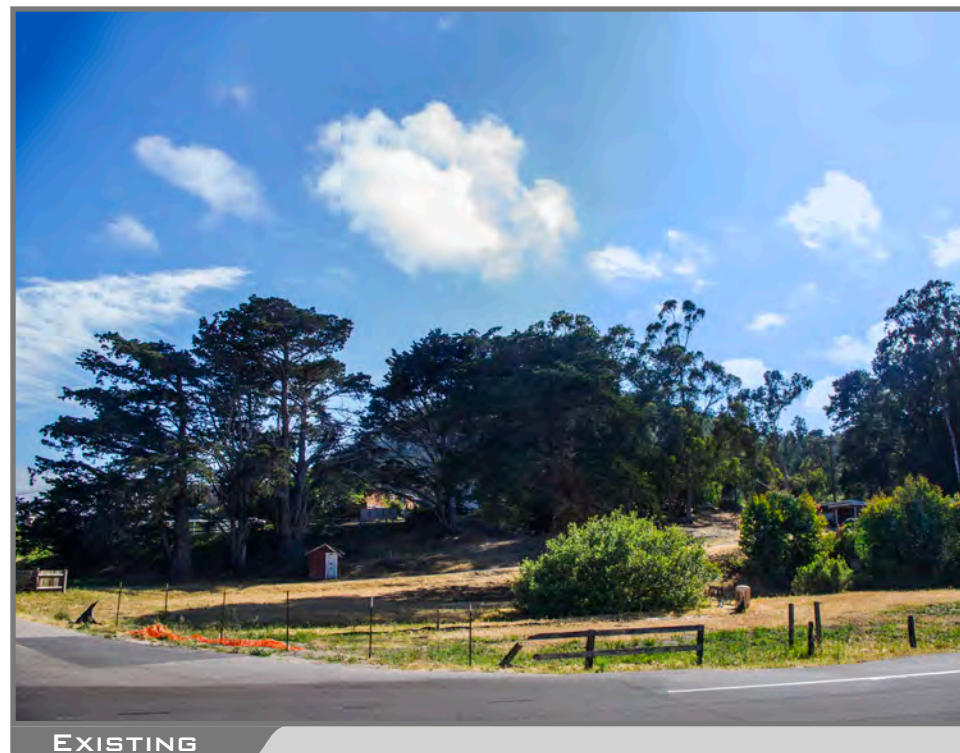
Exhibit 11  
A-3-MRB-06-064



# TRACT 2739

## BLACK HILL VILLAS

SOUTH BAY BOULEVARD & QUINTANA ROAD MORRO BAY, CA 93442





# TRACT 2739

## BLACK HILL VILLAS

SOUTH BAY BOULEVARD & QUINTANA ROAD MORRO BAY, CA 93442





# TRACT 2739

## BLACK HILL VILLAS

SOUTH BAY BOULEVARD & QUINTANA ROAD MORRO BAY, CA 93442



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

FILED

JUN 21 2010

SAN LUIS OBISPO SUPERIOR COURT  
BY Sally Schott, Deputy Clerk

SUPERIOR COURT OF CALIFORNIA  
COUNTY OF SAN LUIS OBISPO

SAVE THE PARK,

Petitioner,

v.

CALIFORNIA COASTAL  
COMMISSION and DOES 1-50,  
Inclusive,

Respondents;

Real Party in Interest Wayne Colmer.

BLACK HILL VILLAS, L.P.,

Intervenor,

v.

SAVE THE PARK,

Defendant.

Case No.: CV080410

RULING AND ORDER GRANTING  
PEREMPTORY WRIT OF MANDATE

I. INTRODUCTION AND SUMMARY

The City of Morro Bay is fortunate to have several biodiversity hotspots within its borders. Morro Bay State Park is a nationally recognized ecosystem. The Morro Bay estuary is considered the most important wetlands on the Central Coast of California,



1 containing coastal wetlands, tidal marshes, mud flats, freshwater marshes and related  
2 water bodies.

3 A sensitive and delicate balance exists between tidal flushing of Morro Bay and  
4 the nutrient-rich freshwater runoff, which can be easily disrupted. The California  
5 Coastal Act plays an important role in protecting against these and other disruptions.  
6 Any development occurring in the vicinity of Environmentally Sensitive Habitat Areas,  
7 frequently referred to as ESHAs, must be carefully reviewed and approved in a two-step  
8 process under the City of Morro Bay's Certified Local Coastal Plan.

9 One such proposed development is Black Hill Villas, a 17-unit residential  
10 project located on approximately 3 acres immediately adjacent to Morro Bay State Park.  
11 The site is especially problematic for development because it contains a variety of  
12 critical habitat including an important tributary of the estuary, a riparian corridor,  
13 suspected wetlands, and foraging territory for nesting raptors. Construction will entail  
14 significant disruption of on-site habitats, including stripping or grubbing more than 70%  
15 of the property and grading nearly 7,000 cubic yards of soil to create adequate sites for  
16 houses.

17 In 2007 the City of Morro Bay approved Black Hills Villas. In 2008, the  
18 California Coastal Commission ("Commission") likewise approved construction of the  
19 Villas, but only after attaching a series of protective measures designed to minimize the  
20 harm.

21 In 2008 a local environmental group known as Save the Park filed suit to set  
22 aside the Commission's decision, alleging that the development, even with protective  
23 measures, would disrupt and disturb the Environmentally Sensitive Habitat Areas  
24 located on the property, most notably wetlands and riparian areas.

25 A court's role in a suit like this one is limited. So long as there is evidence to  
26 support the Commission's decision, and so long as a court can logically follow the  
27 agency's decision path, it defers to the Commission's expertise in regulating  
28 development in the coastal zone. Some of the issues raised here can be resolved with



1 reference to this deference because the evidence and the Commission's decision making  
2 process are readily discerned.

3         In one fundamental area, however, the Commission's decision is inscrutable.  
4 Under the law, the Commission is obligated to know precisely what type of  
5 Environmentally Sensitive Habitat Areas are at issue and where they are located before  
6 giving its approval to any development nearby. The Commission's own findings with  
7 respect to Black Hills Villas prove that the biological surveys undertaken by the project  
8 proponent were inadequate to this task. Biological techniques that could have been  
9 utilized to precisely establish the type of ESHA and its boundaries were not utilized,  
10 and questions about the location of sensitive habitats that could have been definitively  
11 answered were not answered, but instead left for decision after approval was granted.  
12 This calls into question the validity of the entire process, which was, after all, to  
13 determine the minimum level of protection necessary (known as buffers) to preserve,  
14 protect, and enhance these specific types of valuable natural resources. Stated another  
15 way, without such knowledge, all development on the property will presumptively  
16 disrupt and disturb the ESHAs.

17         Given its own findings, the Commission should have required the project  
18 applicant to undertake necessary biological studies to precisely identify which  
19 categories of ESHA were affected and to delineate their boundaries *before* any  
20 development on the site was approved. And those boundaries should have been clearly  
21 described and graphically set forth in the record. So far as the Court can tell, none of  
22 this occurred.

23         Judicial review of the Commission's decision is not a hollow formality. Under  
24 the law, the agency's decision must be transparent, readily understood, and supported  
25 by the evidence. That is not the case here. Accordingly, a writ of mandate will be  
26 issued directing the Commission to revoke its project approval until appropriate studies  
27 are undertaken, adequate ESHA boundaries are determined, and adequate findings are  
28 articulated in the record.

## II. PROCEDURAL HISTORY

The California Coastal Act of 1976, Public Resources Code section 30000 *et seq.*, commonly known as the Coastal Act, is a comprehensive statute designed to govern land use planning for the entire coastal zone of California. The goals of the Act are to protect, maintain, and, where feasible, enhance and restore the overall quality of the coastal zone resources taking into account the social and economic needs of the state.

The Coastal Act requires affected local governments to prepare a Local Coastal Plan (LCP) for coastal zones within their jurisdictions. (Pub. Resources Code, § 30500, subd.(a).) The LCP can include land use plans, zoning ordinances, and other mechanisms to protect sensitive coastal resource areas. (*Id.* at § 30108.6.)

Once the Coastal Commission (a state agency created pursuant to the Coastal Act) has certified an LCP as being consistent with that statute, the local government is responsible for issuing coastal development permits in accordance with the LCP. (*Id.* at § 30519 subd.(a) and § 30600.)

In 2005, real-party-in-interest Wayne Colmer (“Colmer”) and intervenor Black Hill Villas, L.P. (“Black Hill”)(collectively “Developers”), filed an application with the City of Morro Bay (“City”) to develop a 3.17 acre parcel owned by Black Hill.

On November 13, 2006, the City approved the project, which involves the removal of two existing structures and the subdivision of two existing parcels into 16 two-story single-family residences, a 2-story duplex residential lot, and a common area (“Project”).

Certain local government approvals are subject to an appeal to the Commission. (Pub. Resources Code, § 30603.) When a project is appealed to the Commission, the hearing involves a two-step process. The Commission first determines whether the appeal presents a substantial issue for its review. (*Id.* at § 30625, subd. (b).) If it finds the project raises a substantial issue, the Commission conducts a de novo review of the

\\

1 project to determine whether the project conforms to the LCP standards and the public  
2 access policies of the Coastal Act. (*Id.* at § 30603, subd. (b.)

3 The City's approval of the Project was appealed to the Commission by  
4 Commissioners Caldwell and Schallenberger, and neighbors Roger Ewing and Ray  
5 McKelligott. These appellants asserted that the approval of the Project was inconsistent  
6 with various provisions of the City's LCP and the Coastal Act, including policies  
7 specifically designed to protect Environmentally Sensitive Habitat Areas.

8 On November 16, 2007, a hearing was held before the Commission to determine  
9 if a substantial issue existed that required a *de novo* hearing by the Commission. The  
10 Commission found a substantial issue, and decided to hold another hearing as to  
11 whether a permit for the Project should issue. (000910)

12 The staff report for the March 6, 2008 *de novo* hearing recommended that the  
13 Commission approve the Project with the following relevant conditions: (1) a minimum  
14 development setback of 100 feet for all components of the proposed development as  
15 measured from the top of the stream bank, except for the minimum area to allow site  
16 access; (2) avoidance of the raptor grove; (3) a 40-foot structural set back from the  
17 Black Hill Natural Area; (4) restoration of the stream and its buffer area as  
18 compensatory mitigation for removed vegetation and the roadway encroachment; and  
19 (5) a 14-foot height limit for residences (000914)

20 On April 11, 2008, the Commission adopted revised findings and conditions  
21 reflecting its March 6, 2008 approval. The Commission's approval of the Project was  
22 conditioned on a 50-foot stream setback, a 40-foot Black Hill Natural Area setback, a  
23 25-foot height limitation, protection of most of the raptor habitat and riparian  
24 enhancement/replanting. (001310)

25 Save the Park took issue with the Commission's decision, and filed a writ of  
26 mandate against that agency, as well as the Developers, under Public Resources Code  
27 section 30801 and Code of Civil Procedure section 1094.5. Save the Park asserts the  
28 Commission violated a series of policies designed to protect Environmentally Sensitive



1 Habitat Areas, that the Project does not protect against significant disruption of the  
2 habitat values, and that the Commission violated policies regarding scenic and visual  
3 qualities.

4 The Developers and the Commission oppose the petition on procedural and  
5 substantive grounds. They claim that Save the Park lacks standing and failed to exhaust  
6 its administrative remedies. They emphasize that the Commission's interpretation of  
7 the LCP is afforded broad deference, and that substantial evidence supports the  
8 Commission's determinations.

### 9 III. DISCUSSION

#### 10 A. Procedural Issues

11 The Developers first allege that Save the Park does not have standing as an  
12 "aggrieved party" to seek judicial review. Pursuant to Public Resource Code §30801,  
13 an "aggrieved party" is any person, or their representative, who appears at a public  
14 hearing in connection with a Commission's decision that was appealed.

15 An association's standing is dependent on whether: (1) its members would  
16 otherwise have standing to sue in their own right; (2) the interests or group it seeks to  
17 protect are germane to the organization's purpose; and (3) the claim asserted or the relief  
18 requested requires the participation of individual members in the lawsuit. (*Property*  
19 *Owners of Whispering Palm, Inc. v. Newport Pacific, Inc.* (2005) 132 Cal.App.4<sup>th</sup> 666,  
20 673) Save the Park and its members satisfy the associational standing test articulated in  
21 *Whispering Palm*.

22 The Developers next urge that Save the Park's failure to answer Black Hill's  
23 complaint-in-intervention resulted in a default. If a defendant fails to answer a  
24 complaint after a demurrer is overruled, a default may be entered. [CCP §472a,  
25 586(a)(2); *see* CRC 3.1320(g)]. However, Black Hill intervened *as a real party*  
26 *interest*. "If the intervenor has intervened solely as a defendant, joining the original  
27 defendant in resisting plaintiff's claims, the complaint in intervention is, in effect,  
28 considered to be an answer, and its allegations are considered controverted; the original

1 parties need not file any pleadings in response. (citations)” (CEB, *Civil Procedure*  
2 *Before Trial, Fourth Ed.*, §31.54) Save the Park cannot be defaulted in this situation.

3 The Commission asserts that Save the Park failed to exhaust administrative  
4 remedies as to several issues, including the contentions that: (1) the claimed wetland  
5 and riparian areas were not mapped; (2) the downward adjustment of the ESHA buffer  
6 was done without consultation with Fish & Game; and, (3) the Commission did not take  
7 into consideration the “junk fill” on the Project site.<sup>1</sup>

8 The Court of Appeal recently discussed exhaustion of administrative remedies in  
9 *Center for Biological Diversity v. County of San Bernardino* (2010) 184 Cal. App. 4th  
10 1342 (Fourth Dist., filed May 25, 2010). As discussed in that case, a petitioner bears  
11 the burden of demonstrating that the issues raised in the judicial proceeding were first  
12 raised at the administrative level. *Id. See Sierra Club v. City of Orange* (2008) 163  
13 Cal.App.4th 523, 536.

14 As required, Save the Park has cited portions of the administrative record showing  
15 that the boundaries of the wetland, stream and riparian habitat areas were squarely  
16 before the Commission during the proceedings. *See, e.g.*, appeal form by petitioners  
17 contending that the Project will not protect but instead significantly degrade  
18 Environmentally Sensitive Habitat Areas (000532); response letter by Colmer  
19 responding to petitioners’ appeal concerning protection of Environmentally Sensitive  
20 Habitat Areas, buffer areas and wetlands mapping (000753).

21 Further, the initial staff report acknowledges petitioners’ contentions that:

22 [t]he project approved by the City of Morro Bay is inconsistent with the  
23 ESHA protection, stream buffer, and visual resource policies of the  
24 certified LCP. Specifically, the Appellants assert that the City-approved  
25 project does not conform to certified Land Use Plan (LUP) Policies  
26 11.01, 11.02 and 11.14 (ESHA Protection and Stream Buffer), which  
27

28 <sup>1</sup> At the January 8, 2010 hearing, Save the Park conceded that it is not contesting the approval  
of the Project based upon any issues with “junk fill” or flood plain. This issue will not be further  
discussed.

1 prohibit any significant disruption to environmentally sensitive areas and  
2 establishes a minimum stream buffer of 100 ft. in rural areas.  
3 (000554)(emphasis added).

4 The record discloses that the location of Environmentally Sensitive Habitat  
5 Areas and the need to protect those areas by creating buffer zones in accordance with  
6 the LCP was a significant issue during the administrative process.<sup>2</sup>

7 Similarly to *Center for Biological Diversity v. County of San Bernardino, supra*,  
8 the Commission asserts that Save the Park did not adequately raise the issue regarding  
9 the precise location of wetland and riparian areas, or the failure to consult with Fish &  
10 Game. Yet, courts recognize that citizens who object during an administrative process  
11 should not be held to the same degree of specificity as in a judicial proceeding, because  
12 they are often not represented by counsel. *East Peninsula Ed. Council, Inc. v. Palos*  
13 *Verdes Peninsula Unified School Dist.* (1989) 210 Cal.App.3d 155, 176-177. And, it is  
14 not necessary for petitioners to identify the precise statute or regulations "so long as the  
15 agency is apprised of the relevant facts and issues." *Center for Biological Diversity v.*  
16 *County of San Bernardino, supra*; *McPherson v. City of Manhattan Beach* (2000) 78  
17 Cal.App.4th 1252, 1264.

18 Equally as important, Save the Park's contentions regarding wetlands mapping,  
19 and the failure to precisely delineate wetlands and riparian areas under LUP Policies  
20 11.05 and 11.22, are part of the group's overarching contention that Environmentally  
21 Sensitive Habitat Areas were "degraded" and not adequately "protected against any  
22 significant disruption of habitat values."

---

24  
25 2 For example, the Revised, Adopted Findings make multiple references to the importance of  
26 locating these environmentally sensitive habitats with precision, as well as the importance of protecting  
27 them. See, e.g., AR pages 001310 through 001311 (coastal staff summary), 001313 through 001314  
28 (development limitations and buffer zones), 001317 (stream habitat area and buffer restoration and  
enhancement plan), 001323 through 001325 (discussing applicable LUP policies, including precise  
location and designation of environmentally sensitive habitat areas), 001326 (discussing presence of  
wetland indicator species and inadequacy of current mapping), 001329 (discussing presence of  
ESHA/stream/wetland area along the stream channel), 001330 (discussing minimum one hundred-foot  
buffer for wetlands).



1 In order to adequately protect ESHA habitats under the LUP, the Commission  
2 must know the specific types of ESHA and their precise boundaries. These issues are  
3 inextricably intertwined, and they were sufficiently raised during the administrative  
4 process, along with the contention that the Commission failure to consult with the  
5 Department of Fish and Game.<sup>3</sup> To suggest that the Commission was unaware of, or  
6 not on notice of, the importance of conducting precise, accurate and lawful boundary  
7 determinations of wetland and riparian areas in conjunction with Department of Fish  
8 and Game consultation, is to overlook the totality of the record.

9 The Commission "was apprised of the relevant facts and issues, and the purpose of  
10 the exhaustion doctrine was satisfied without the citation of [additional regulatory]  
11 provisions during the administrative proceedings." *Center for Biological Diversity v.*  
12 *County of San Bernardino*, *supra*. See, e.g., *San Joaquin Raptor/Wildlife Rescue Center*  
13 *v. County of Stanislaus* (1994) 24 Cal.App.4<sup>th</sup> 713, 735 n. 10; *Save Our Residential*  
14 *Environment v. City of West Hollywood* (1992) 9 Cal.App.4<sup>th</sup> 1745; *Kings County Farm*  
15 *Bureau v. City of Hanford* (1990) 221 Cal.App.3<sup>rd</sup> 692, 734 n.13.

## 16 B. Substantive Issues

### 17 1. Standard of Review

18 Courts review Commission decisions under the deferential "substantial  
19 evidence" standard. *Alberstone v. California Coastal Com.* (2008) 169 Cal.App.4<sup>th</sup> 859,  
20 862. Under CCP §1094.5(b), the related question is whether the Commission  
21 proceeded in the manner required by law, and whether the final revised findings are  
22 adequate "to bridge the analytic gap between the raw evidence and ultimate decision"  
23 and to show the "analytic route the administrative agency traveled from evidence to  
24 action." *Topanga Assn. for a Scenic Community v. County of Los Angeles* (1974) 11  
25 Cal.3d 506, 515; *Environmental Protection & Information Center v. California Dept. of*  
26 *Forestry & Fire Protection* (2008) 44 Cal.4th 459, (EPIC); *Reddell v. California*

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27  
28 3 While Save the Park did not, in so many words, point out the failure to consult with the  
Department of Fish and Game, there were extended discussions at several public hearings regarding the  
proper set back buffer for the stream area, including requirements mandated by policy 11.06, which  
contains the consultation requirement.

1 *Commission* (2009) 180 Cal.App.4th 956, 970; *Great Oaks Water Co. v. Santa Clara*  
2 *Valley Water Dist.* (2009) 170 Cal.App.4th 956, 970-971.

3       **2. The Commission did not require the Developers to identify all ESHAs**  
4       **and to locate their precise boundaries prior to Project approval, and as**  
5       **a consequence failed to protect against significant disruption and**  
6       **degradation of those areas**

7       As set forth in its Coastal Land Use Plan regarding Environmentally Sensitive  
8       Habitat Areas:

9               The City of Morro Bay is fortunate to have many unique environmental  
10              habitat areas within and immediately adjacent to the community.

11             Besides providing a unique setting for the City, there are critical habitat  
12              areas for several rare and endangered plant and animal species.

13             The [Coastal Act] requires that the biological productivity and quality of  
14              coastal waters, streams, wetlands and estuaries be maintained, and where  
15              feasible, restored. (000709)

16             There are three specific types of ESHA that are defined and protected under  
17              Morro Bay's plan, including "wetlands" (000713), "streams" (000713), and "riparian  
18              habitat" (000714). The Commission staff provided an excellent summary regarding the  
19              importance of riparian habitat, which could be said of other ESHA as well:

20               Maintaining and restoring riparian habitat along creeks, streams and  
21               rivers is critical to reversing biodiversity in California . . . . While less  
22               than 10% of California's historic riparian areas remain, those that do are  
23               biodiversity hotspots. Although riparian ecosystems generally occupy  
24               small areas on the landscape, they are usually more diverse and have  
25               more plants and animals than adjacent upland areas.

26               In the western United States, riparian areas compromise less than 1% of  
27               the land area, but are among the most diverse, productive and valuable  
28               natural resource. Watercourses are known to service important quarters  
              for wildlife migration and dispersal. And waterways are also important

1 dispersal corridors for plant propagules, not to mention the important  
2 function of delivering sediments and nutrients. Climate change experts  
3 predict that maintaining wildlife corridors and avoiding habitat  
4 fragmentation will grow in importance along the California coast in  
5 coming years as species range limits extend her contract to global  
6 warming. (000844 - 000845)

7 Morro Bay's Coastal Land Use Plan has 23 specific policies devoted to the  
8 protection of these Environmentally Sensitive Habitat Areas. The policies most  
9 pertinent to the current dispute are as follows (with emphasis noted in italics):

10 **Policy 11.01** Environmentally sensitive habitat area shall be protected  
11 against significant disruption of habitat values, and only uses dependent  
12 on such resources shall be allowed within such areas.

13 **Policy 11.02** Development in areas adjacent to environmentally  
14 sensitive habitat areas . . . shall be sited and designed to prevent impacts  
15 which would significantly degrade such areas, and shall maintain the  
16 habitats' functional capacity.

17 **Policy 11.05** Prior to the issuance of a coastal development permit, all  
18 projects . . . having the potential to affect an environmentally sensitive  
19 habitat area must be found to be in conformity with the applicable habitat  
20 protection policies of the Land Use Plan. *All development plans, grading*  
21 *plans, etc. shall show the precise location of the habitat(s) potentially*  
22 *affected by a proposed project . . . . In areas of the City were sensitive*  
23 *habitats are suspected to exist but are not presently mapped or identified*  
24 *in the City's Land Use Plan, projects shall undergo an initial*  
25 *environmental impact assessment to determine whether or not these*  
26 *habitats exist. Where such habitats are found to exist, they shall be*  
27 *included in the City's environmentally sensitive habitat mapping included*  
28 *within the LUP.*



1           **Policy 11.06** Buffering setback areas a minimum of 100 feet from  
2 sensitive habitat area shall be required. *For other than wetland habitats,*  
3 *if subdivision parcels would render the subdivided partial unusable for its*  
4 *designated use, the setback area may be adjusted downward only to a*  
5 *point where the designated uses accommodated but in no case is the*  
6 *buffer to be less than 50 feet. The lesser setback shall be established in*  
7 *consultation with the Department of Fish and Game. If this setback area*  
8 *is adjusted downward, mitigation measures developed in consultation*  
9 *with the Department of Fish and Game shall be implemented.*

10           **Policy 11.14** A minimum buffer strip along all streams shall be  
11 required as follows: (1) a minimum buffer strip of 100 feet in rural areas;  
12 (2) a minimum buffer strip of 50 feet in urban areas. . . .

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

19           **Policy 11.22** *The precise location and thus boundary line of*  
20 *environmentally sensitive habitat areas shall be determined based upon a*  
21 *field study paid for by the applicants and performed by the City or City's*  
22 *consultants and approved by the City Council and/or their appointed*  
23 *designee prior to the approval of development on the site . . . . (000721-*  
24 *000725)*

25           Even a cursory review of these provisions shows that identifying the ESHAs and  
26 defining their precise boundaries are critical to the successful implementation of Morro  
27 Bay's Coastal Land Use Plan. Yet the Commission findings nowhere make reference to  
28 these boundary location requirements, nowhere define the specific boundaries of the

1 riparian areas, and nowhere explain the Commission's rationale for concluding that the  
2 Project site contains no wetlands.

3         These failures of explanation are troubling given that the staff made specific and  
4 repeated references to possible presence of wetlands and riparian ESHA on the site. For  
5 example, during the *de novo* hearing, Staff Specialist Watson testified that: "Wetland  
6 indicator species are also present in the stream corridor area." (001096) Later in the  
7 hearing, Senior Director Lester testified "on the question of the riparian/ESHA  
8 setbacks" and pointed out that "staff has analyzed that resource, and identified it both as  
9 a qualifying stream under the LCP, but also as ESHA, and that includes a review of the  
10 materials by Dr. Engel, and regardless of your conclusions about how the LCP would  
11 distinguish urban and rural areas, the LCP does require 100 foot setback for ESHA . . . .  
12 (001131). Still later, Director Lester pointed out the two rationales for the 100-foot  
13 buffer. One is a "rural riparian setback," but the second rationale is "ESHA, which is an  
14 independent requirement for a 100-foot setback." (001136 - 00137)

15         In support of the Project's approval after the hearing was completed, the  
16 Commission issued Revised and Approved Findings (Findings), which conclude that  
17 the proposed project includes development adjacent to the  
18 "ESHA/stream/wetland/riparian habitat on the northern portion of the site." (001329,  
19 emphasis added). These same Findings go on to point out that the property has  
20 significant indicia showing the presence of environmentally sensitive wetland habitat in  
21 unknown locations:

22                 *The biotic survey prepared for the project did not map the existing*  
23                 *vegetation and similarly did not give the location of soil samples taken*  
24                 *from this site. However, at least half of the soil samples taken resulted*  
25                 *in positive identification of hydric soils—a wetland indicator.*  
26                 *Furthermore, salt grass (Distichils spicata), a wetland species, was*  
27                 *identified in the area adjacent to the stream along with several other*  
28                 *non-native plants that have wetland plants status. In other words, and*

1                   *is often typical of stream and riparian areas, the on-site stream area*  
2                   *also displays wetland characteristics, though the precise boundary of*  
3                   *the wetland in this sense has not to date been mapped.*

4                   (001326)(emphasis added).

5                   Given these findings, the Court cannot comprehend why the project applicant  
6                   was not required by the Commission to undertake appropriate studies to precisely  
7                   delineate the types of ESHA and their boundaries as required by Land Use Policies  
8                   11.05 and 11.22. As stated, this requirement is not academic ---- it goes to the heart of  
9                   the process employed by the Commission to determine the minimum level of protection  
10                  necessary for different types of ESHA, as well as the minimum size of the buffer areas  
11                  that are necessary under the LCP.

12                  Throughout its analysis, the Commission staff discusses development buffers,  
13                  and levels of habitat protection, in terms of the minimum footage necessary to protect  
14                  ESHA. As to the so-called stream area, for example, the Commission found that a 50-  
15                  foot buffer was sufficient to protect against adverse impacts. (001333) Yet how the  
16                  Commission established the minimum required setback, without also knowing whether  
17                  the stream areas were merely "stream" habitats, or instead "wetland," and/or "riparian"  
18                  habitats (which require different sorts of protection), is missing from the record. As a  
19                  consequence, the Court cannot determine whether the Commission was justified in  
20                  downwardly adjusting ESHA protection in a manner not applicable to wetland habitats  
21                  and without the required review and comment by the Department of Fish and Game.  
22                  See Policy 11.06 at 000722.<sup>4</sup>

23                  The Commission claims that, when confronted with the LCP definitions for both  
24                  stream and wetland ESHA, the agency *explicitly* found a definition for stream ESHA to

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25  
26                  4 It appears that the primary driver for allowing development within 100 feet of the stream bed  
27                  was limited site access, which is claimed to be feasible only off of South Bay Boulevard where the  
28                  existing access point is located. The Commission approved construction within the 100 feet buffer zone  
                  because it concluded that the development would not otherwise be feasible. However, the buffer zone  
                  can be downwardly adjusted only if certain specific conditions are met and certain types of ESHA are  
                  present. As stated, there is an insufficient record upon which the Court can gauge the legality of the  
                  Commission's downward adjustment here.



1 be the policy applicable to the subject property (1325). However, the Commission's  
2 citation to the administrative record is unsupported. Indeed, there is no evidence that  
3 the Commission made any such explicit conclusion. Further, the Developer-  
4 consultant's request for a wetland regulatory determination letter, and the Army Corps  
5 of Engineers' response (00783 through 00786), merely discuss a proposed new entrance  
6 to the development and not the entire property. These snippets hardly show any sort of  
7 analytical route, and they are *explicitly contradicted by the Commission's own revised*  
8 *and adopted findings, which also point out the inadequacy of the biological surveys*  
9 *performed by the Developer's biological consultant.*<sup>5</sup>

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

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

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26  
27 5 At the second oral argument on April 1, 2010, the Commission's counsel suggested that the  
28 multiple references to wetlands and wetland characteristics in the adopted findings were a case of "sloppy  
draftsmanship." However, there is no evidence to support this contention. In any event, "sloppy  
draftsmanship" makes meaningful judicial review far more difficult.

1 In its recent *EPIC* decision, 44 Cal.4th at 459, the California Supreme Court  
2 observed that, although an agency's findings under Code of Civil Procedure section  
3 1094.5 need not be extensive or detailed, the administrative record must inform the  
4 reviewing courts of the theory upon which an agency arrived at its ultimate finding and  
5 decision. Mere conclusory findings, without reference to the record, are inadequate.  
6 Although an agency's findings sometimes pass muster when they generally refer to the  
7 administrative record, the court must have "no trouble under the circumstances  
8 discerning 'the analytic route the administrative agency traveled from evidence to  
9 action'. (*Id.* at 519.)

10 In its adopted findings the Commission concludes that "the low-lying  
11 intermittent stream and associated wetland/riparian habitat are ESHA" and that, "in  
12 sum, the subject site includes an ESHA/stream/wetland area along the stream channel  
13 along its northern boundary." (001329). Given the admitted presence of wetland and  
14 riparian habitat, the inadequacy of existing biological studies, the stated presence of  
15 wetland indicator species, as well as the Commission's failure to precisely delineate  
16 wetland and riparian boundaries, how the Commission chose to apply the ESHA/stream  
17 definition, as opposed to the wetland and/or riparian definition, remains a mystery. The  
18 Court concludes that that there is a fundamental gap in the Commission's reasoning,  
19 such that the Court cannot discern the analytic route the agency traveled from evidence  
20 to action.

21 Moreover, the Commission relied on the applicant's riparian enhancement plan  
22 to identify and presumably "map" the location of the riparian area. This was  
23 tantamount to putting the cart before the horse, as policy 11.22 requires the precise  
24 ESHA areas, including riparian areas, be located and approved by the City *prior to*  
25 *approval* of the Project.<sup>6</sup>

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26  
27  
28 <sup>6</sup> Exhibit 6 falls woefully short of providing the "precise location," "boundary line," or "map"  
of ESHAs required by Land Use Policies 11.05 (000721) and 11.22 (000725). Instead, the Commission  
chose to postpone precise mapping until *after* the Project was approved. As stated, this is not allowed  
under the LUP/LCP.

1 The analytic route the Commission traveled from evidence to action is absent.  
2 *Compare Topanga Assn.*, 11 Cal.3d at 515; *EPIC*, 44 Cal.4th at 516-517; *Great Oaks*  
3 *Water Co.*, 170 Cal.App.4th at 970-971; *Reddell*, 180 Cal.App.4th 956, 970; *Sierra*  
4 *Club v. California Coastal Com.* (1993) 19 Cal.App.4th 547, 557. The Commission did  
5 not proceed in a manner required by law, and there is a fundamental gap in the agency's  
6 reasoning process, both of which demonstrate a prejudicial abuse of agency discretion.

7 **3. The Commission failed to consult with the Department of Fish and**  
8 **Game as required by the LCP provisions regarding ESHA downward**  
9 **adjustments**

10 Save the Park's argument relative to the Department of Fish and Game  
11 consultation requirement is closely related to the ESHA boundary determination issue.  
12 Briefly, if the Commission chooses to adjust the stream or riparian ESHA setback  
13 downward, it must consult with the Department of Fish and Game under Policy 11.06  
14 before doing so.

15 The Commission claims that the administrative record contains substantial  
16 evidence showing that the Department of Fish and Game would not object to a  
17 downward adjustment of the buffer. However, the only information in the record from  
18 the Department of Fish and Game consists of two form letters confirming that the  
19 Project will not directly affect two specific threatened species.

20 There is no substantial evidence that the Department of Fish and Game was  
21 consulted regarding the Commission's decision to downwardly adjust the minimum  
22 ESHA setbacks. The analytical route is again missing. *Compare Topanga Assn.*, 11  
23 Cal.3d at 515; *EPIC*, 44 Cal.4th at 516-517; *Great Oaks Water Co.*, 170 Cal.App.4th at  
24 970-971; *Reddell*, 180 Cal.App.4th 956, 970; *Sierra Club v. California Coastal Com.*  
25 (1993) 19 Cal.App.4th 547, 557. The Commission did not proceed in a manner  
26 required by law, and there is a fundamental gap in the agency's reasoning process, both  
27 of which demonstrate a prejudicial abuse of agency discretion.

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1           **4. The Commission appropriately required the applicant to comply with**  
2           **the City of Morro Bay's Black Hill Natural Area protection standards**

3           The parties agree, and the administrative record bears out, that the western side  
4 of the Project abuts the Black Hill Natural Area wildlands. Save the Park contends that  
5 the entire Black Hill Natural Area is categorically designated as ESHA, which requires  
6 a minimum 100-foot buffer under the LCP, and that the Commission erred by allowing  
7 less than the minimum. The Commission argues that the 40-foot buffer was appropriate  
8 because only the upper portion of Black Hill Natural Area is categorically defined and  
9 mapped as ESHA.

10           In its adopted findings, the Commission concludes that: (1) only the upper  
11 portion of the Black Hill Natural Area is categorically identified and mapped as ESHA  
12 (001328; *see also* Figure 28 of the LCP; (2) there do not appear to be any sensitive plant  
13 or animal species directly adjacent to the Project (001328); (3) there is no specific  
14 buffer distance for park and recreation lands specifically prescribed by the LCP  
15 (001333); (4) development adjacent to park and recreation lands must be sited and  
16 designed to prevent impacts that would significantly degrade such areas (001333); (5)  
17 the Black Hill Natural Area is "predominately ESHA" (001334); and, (6) a 40-foot  
18 buffer would provide adequate separation to ensure protection of the adjacent park land  
19 (001334).

20           Given the adopted findings, as well as the record evidence supporting those  
21 findings, the Court can discern the analytic route the agency traveled from evidence to  
22 action.<sup>7</sup> *Topanga Assn.*, 11 Cal.3d at 515; *EPIC*, 44 Cal.4th at 516-517; *Great Oaks*  
23 *Water Co.*, 170 Cal.App.4th at 970-971; *Reddell*, 180 Cal.App.4th 956, 970; *Sierra*  
24 *Club v. California Coastal Com.* (1993) 19 Cal.App.4th 547, 557. There is substantial

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25  
26           7 The staff's initial report acknowledges that this area requires protection by the use of buffers  
27 to avoid direct impacts (000577), including fire safety buffers. Although the LCP does not specify any  
28 minimum buffers for fire safety (000578), the staff noted that the State of California recently adopted  
revised findings requiring a 100-foot setback for fire protection along wildland interface areas. (000579)  
The staff also referenced the fact that the Black Hill Natural Area is "predominately ESHA" and has been  
designed to be left in an undisturbed state in order to function as wildlands. (000580) Although the  
Commission staff recommended a minimum buffer of 100 feet, the Commission was free to disagree, so  
long as the analytical route of disagreement was evident.

1 evidence supporting the Commission's determination that the Black Hill Natural Area is  
2 not categorically considered ESHA, and that the area immediately adjacent to the  
3 Project is not in fact ESHA. The Court concludes that the Commission's approval of a  
4 40-foot buffer did not violate the LCP.

5 **5. The Commission appropriately required the applicant to comply with**  
6 **the City of Morro Bay's Scenic viewshed protection standards**

7 The Commission determined that the Project is located in a significant public  
8 viewshed. Under LCP policies 12.01, 12.02, and 12.06, scenic and visual qualities must  
9 therefore be protected. (001339) Save the Park generally contends that the  
10 Commission's approval violated these policies.

11 As originally approved by Morro Bay, the adjacent mobile home park would  
12 have screened the lower levels of the proposed two story residences, but not the upper  
13 levels, which would still have been visible in the public viewshed. In approving the  
14 Project, however, the Commission limited the height of the new residences to 25-feet  
15 above grade, and required them to be constructed in such a way as not to be visible from  
16 Highway 1, which would include the use of screening trees, vegetation and earth tone  
17 hues. (001340)

18 Given the specific special conditions to ensure compliance with LCP policies  
19 12.01, 12.02, and 12.06, the Court can discern the analytic route the agency traveled  
20 from evidence to action. *Topanga Assn.*, 11 Cal.3d at 515; *EPIC*, 44 Cal.4th at 516-  
21 517; *Great Oaks Water Co.*, 170 Cal.App.4th at 970-971; *Reddell*, 180 Cal.App.4th  
22 956, 970; *Sierra Club v. California Coastal Com.* (1993) 19 Cal.App.4th 547, 557.  
23 There is substantial evidence supporting the Commission's determination that the scenic  
24 and visual qualities of the significant public viewshed will be protected under LCP  
25 policies 12.01, 12.02, and 12.06.

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IV. CONCLUSION

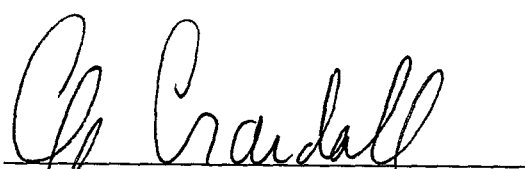
Save the Park's petition for administrative mandamus is granted in part. Accordingly, a writ of mandate will be issued directing the Coastal Commission to revoke its project approval, and to undertake any further proceedings in a manner consistent with this Ruling and Order.

The Court encourages the parties to reach agreement on the form of the Writ of Mandate and Judgment and to submit them for signature as soon as possible.

If agreement cannot be reached, on or before July 9, 2010, counsel for petitioner shall file and serve the proposed Writ of Mandate and proposed Judgment. Any objections (as to form only) shall be filed and served on or before July 16, 2010. If disagreements remain, they will be considered at a hearing on July 22, 2010. No further argument on the merits will be entertained.

\\

DATED: June 21, 2010

  
CHARLES S. CRANDALL  
Judge of the Superior Court

CSC/lk  
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## Robinson, Daniel@Coastal

---

**From:** Sanderson, Brandon@Wildlife  
**Sent:** Wednesday, January 21, 2015 12:27 PM  
**To:** Robinson, Daniel@Coastal  
**Cc:** 'Dan Dugan'; 'waynecolmer@sbcglobal.net'; Walbridge, Charles@Wildlife  
**Subject:** RE: Black Hill Villas request

**Follow Up Flag:** Follow up  
**Flag Status:** Flagged

Daniel,  
In response to your request and in review of the offsite improvements, addition of the gravel path and two bus turnouts will require a minor amendment to the CDFW Streambed Alteration Agreement for the Black Hill Villas Project. Other than that, we have no further concerns regarding potential impacts to adjacent wetlands and riparian habitats.

Thank you,

Brandon Sanderson

---

Brandon Sanderson  
Environmental Scientist  
Department of Fish & Wildlife  
3196 S. Higuera St., Suite A  
San Luis Obispo, CA 93401  
805-594-6141  
[Brandon.Sanderson@wildlife.ca.gov](mailto:Brandon.Sanderson@wildlife.ca.gov)  
<http://www.wildlife.ca.gov/>

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

---

**From:** Dan Dugan [<mailto:ddugan@slonet.org>]  
**Sent:** Thursday, January 15, 2015 6:35 PM  
**To:** Sanderson, Brandon@Wildlife  
**Subject:** Black Hill Villas request

Hi Brandon,  
Happy 2015. Hope you had the chance to relax some during the holidays. Wayne asked me to send you these files showing offsite improvements being required by the City of Morro Bay. The Coastal Commission is asking for CDFW to determine impacts to adjacent riparian and wetland habitat (see Daniel Robinson's request below). Please let me know if you have any questions or need additional information (this is something that you are going to be able to do). I can meet you onsite if you'd like.

Thanks,

Dan

Dan Dugan



# City of Morro Bay

Morro Bay, CA 93442

(805) 772-6200

www.morro-bay.ca.us

January 6, 2015

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

Subject: Water Service to serve a proposed cluster subdivision of 17 residential lots, & 1 open space lot. (S00-038/UP0-070/CP0-110/AD0-027)

Dear Mr. Come,

The City of Morro Bay Municipal Code Section 13.04.010 states, "The city will furnish water service ..., to any property within the city limits..." Since the City provides service to all properties within City limits we do not provide "will serve" letters. But, due to the limited supply of water available to the City MBMC Section 13.20 et seq states: The regulations established by this chapter may effectively limit the number of housing units which may be constructed on an annual basis, but such limitation is necessary to protect the public health, safety and welfare. If water use exceeded supply and adequate water were not available to users, there could result in increased fire hazard, adverse impacts on commerce, industry and recreation, and the public health, safety and welfare would generally be jeopardized. Therefore, by January 15th of each year, the city council shall adopt a water equivalency program for that calendar year by resolution. This water equivalency program establishes the number of new water connections that can be made each year. Council has yet to establish the water equivalency units available for 2015. The resolution established in 2014 required an offset of 2:1 for each new water equivalency unit or payment of an in-lieu fee.

If the water equivalency units have not been exceeded in a given year, water service will be extended to these parcels upon payment of development impact fees and installation charges. The applicants should receive a receipt for these payments demonstrating that the financial arrangements for the installations of water lines have been made.

Should you have any further questions please contact Scot Graham, Planning Manager.

Sincerely,

**Rob  
Livick**

Digitally signed by Rob Livick  
DN: cn=Rob Livick, o=City of  
Morro Bay, ou=Public Services,  
email=rlivick@morro-bay.ca.us,  
c=US  
Date: 2015.01.06 10:06:51 -0800

Rob Livick, Public Services Director/City Engineer

Cc: Scot Graham, Planning Manager  
Daniel Robinson, California Coastal Commission

**FINANCE**  
595 Harbor Street

**ADMINISTRATION**  
595 Harbor Street

**FIRE DEPT.**  
715 Harbor Street

**PUBLIC SERVICES**  
955 Shasta Avenue

**HARBOR DEPT.**  
1275 Embarcadero Road

**CITY ATTORNEY**  
595 Harbor Street

**POLICE DEPT.**  
870 Morro Bay Boulevard

**RECREATION & PARKS**  
1001 Kennedy Way

**Exhibit 13**  
**A-3-MRB-06-064**  
**Page 2 of 58**

# **BLUE HERON TERRACE MOBILEHOME PARK**

**475 South Bay Boulevard  
Morro Bay, CA 93442  
Telephone: (805) 772-8960**

Date: December 2, 2014

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

From: Darryl Wong  
[dw@dwongassociates.com](mailto:dw@dwongassociates.com)

Re: Public Hearing December 11, 2014  
Application Number A-3- MRB-06-064  
Applicant: Wayne Colmer  
Agenda Item No. Th13a  
Comments in Opposition to Application

---

Dear Commissioners,

I represent the ownership entity of the Blue Heron Terrace Mobilehome Park (the Park) , the improved and occupied property adjacent to the proposed project (Project). Please accept my comments in Opposition to the Application in the above matter proposed by Wayne Colmer.

- A. The Park is not opposed to the development of the Project, believing that the property owner should be allowed to achieve a higher and better use of his property, and provide housing in doing so. The Park is concerned about the merits of the Project as it relates to the Park.
- B. The proposed Project affects the Park by its proximity sharing common lot lines on two tangents of the Park's property lines. The homeowners (residents) in the Park have expressed their opposition to the Project, as well as to the Park, complaining about the impact to their existing lifestyle and what was anticipated when they moved into the Park. Because the homeowners have made their issues this comments will not reiterate the homeowner concerns, except as follows.
- C. The Park is very concerned about the entry road currently servicing both the Park and the Project. The City of Morro Bay removed the Park's main



entry roadway over ten years ago during the raising of South Bay Blvd. The City has never replaced the Park's main entry roadway and instead constructed the current roadway off of Quintana Road to the Park. The Park's complaint and concerns specifically with respect to the roadway, are:

- a. The Park does not have dedicated legal access and the Project proposes to share the roadway. The ownership of the roadway needs to be clarified.
  - b. The maintenance of the roadway needs to be defined. Currently the roadway is more than ten years old and is in need of maintenance.
  - c. The issue of liability for incidents resulting from the use of the roadway needs to be defined.
  - d. The use of the roadway by the Project will increase the need for maintenance and likelihood of incidents.
  - e. There is a need to determine if the roadway is sufficient to service the Project and the Park.
- D. The creation of seventeen home sites on the Project appears to provide no buffer between the Project and the Park. There will be noise and visual impact upon the Park.
- E. The presence of two story, twenty five foot tall homes, will create both a visual impact and a disruption in living peacefully with homes peering down onto the neighboring homes in the Park.
- F. The danger of Fire is a major concern. Both from the proximity of the proposed homes to the Park and the increased density impacting the Park.
- G. Landscaping. The Park is not aware of landscaping plans to buffer noise and visual impacts, and retard the threat of fire spreading, as a result of the Project.

Your consideration on the impact the proposed Project has upon the Park is greatly appreciated. Thank you for your kind attention in this matter.

Darryl Wong  
1200 Quail Street, #235  
Newport Beach, CA 92660  
213.622.8863

We request that you submit your materials to the Commission staff no later than the Friday before the hearing (staff will then distribute your materials to the Commission).

Mark the agenda number of your item (listed above), the application number, your name and your position in favor or opposition to the project on the upper right hand corner of the first page of your submission. If you do not know the agenda number, contact Commission staff at the district office.

If you wish, you may obtain a current list of Commissioners' names and addresses from any of the Commission's offices and mail the material directly to the Commissioners. If you wish to submit materials directly to Commissioners, we request that you mail the materials so that the Commissioners receive the materials no later than Thursday of the week before the Commission meeting. Please mail the same materials to all Commissioners, alternates for Commissioners, and the three non-voting members on the Commission and send a copy to the Commission staff person listed below.

You are requested to summarize the reasons for your position in no more than two or three pages, if possible. You may attach as many exhibits as you feel are necessary.

**Please note:** While you are not prohibited from doing so, you are discouraged from submitting materials to the Commission at the day of the hearing, unless they are visual aids, as it is more difficult for the Commission to carefully consider late materials. The Commission requests that if you submit written copies of comments to the Commission on the day of the hearing, that you provide 20 copies.

**ALLOTTED TIME FOR TESTIMONY:** Oral testimony may be limited to 3 minutes or less for each speaker depending on the number of persons wishing to be heard.

**ADDITIONAL PROCEDURES:**

No one can predict how quickly the Commission will complete agenda items or how many will be postponed to a later date. The Commission begins each session at the time listed and considers each item in order, except in extraordinary circumstances. Staff at the appropriate Commission office can give you more information prior to the hearing date.

Questions regarding the report or the hearing should be directed to Daniel Robinson at (831) 427-4863.

APP # A-3-RMB-06-064 AGENDA# Th 13a  
JOHN WHITSON 475 S. BAY BLVD SP 61  
This development is a bad idea.  
Takes away valuable habitat.  
Increases demand on MB's water & sewage.  
More congestion on Quintana intersection.  
Should be incorporated into State Park system.  
Thank you,  
Sincerely, John Whitson

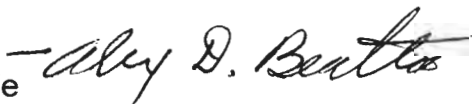
JB

Agenda Item Th13a  
Alex Beattie - Opposed

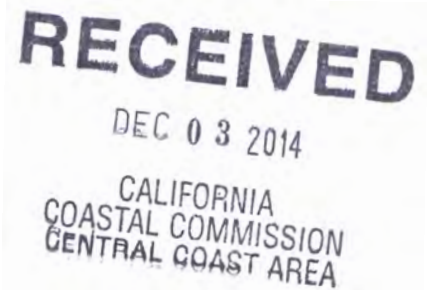
Staff of the Coastal Commission - Central Division

In regards to the Colmer development (A-3-MRB-06-064) in Morro Bay, I would like to register my disapproval. Additional (new) development in an area that is short of water and the means to dispose of its wastewater seems very premature. The current waste water discharge from the City of Morro Bay does not meet Federal Standards and the plant is operating under a temporary waiver. It will be at least five years before adequate treatment can be provided. There is also a dramatic shortage of water for municipal uses and who knows when and if this problem will be solved. This area exists along a scenic corridor and I trust that means will be provided to protect these views.

Sincerely,



Alex Beattie  
564 Acacia St  
Morro Bay, Ca  
805 772-5694





December 3, 2014

Mr. Wayne Colmer  
Colmer Construction Inc.  
23679 Calabasas Road, # 333  
Calabasas, CA 91301

Dear Mr. Colmer,

This letter provides a summary of the findings of raptor surveys conducted on the Black Hill Villas site in 2004 by Dr. Dennis Frey and Shawna Stevens (Frey-Stevens) and in 2012 by Tenera Environmental Inc. (Tenera). The summary is intended to clarify the locations and nature of the raptor activity observed and detected on the site during these two past surveys. Of particular importance is the raptor activity in the windrow of introduced Monterey cypress (*Cupressus macrocarpa*) and blue gum (*Eucalyptus globulus*) trees present between the Blue Heron Terrace mobile home park and the entrance drive to the Black Hill Villas site.

The subject tree stand, and its use by raptors, was one of the subjects of discussion between California Coastal Commission staff (Staff) and me during a conference call on 15 October 2014. During the discussion Staff stated that habitat supporting (a) listed raptor species or (b) a suite of raptors would meet the threshold for an Environmentally Sensitive Habitat Area (ESHA) and require appropriate protection in the form of development buffers/setbacks.

Staff and I agreed that, based on the results of the two studies, no listed raptor species appeared to be utilizing the subject stand of trees. However, Staff indicated, based on the second criterion, that the ESHA designation was necessary for the subject tree stand due to the suite of raptors utilizing the stand. I explained that data from the raptor survey reports indicate that the stand of trees in question was not utilized by multiple raptor species and therefore do not meet the ESHA threshold. The results of the 2012 Tenera study show only a single raptor species, the red-shouldered hawk (*Buteo lineatus*), utilizing the stand. I also stated that I believed that the red-shouldered hawk was the only species observed utilizing the stand during the 2004 Frey-Stevens study. A subsequent review of the Frey-Stevens report showed that a second raptor species, the barn owl (*Tyto alba*), was identified as utilizing the stand. Barn owl use was indicated by reports from residents and the presence of owl pellets and whitewash (excrement) below two trees in the stand. All other raptor observations/detections reported during both the 2004 and 2012 studies were from 1) fly-over events, 2) off-site observations/vocalizations, 3) great horned owl pellets found off-site along the western property boundary, and 4) anecdotal reports (from residents) of great horned owl vocalizations in the area.

The red-shouldered hawk is a common raptor species in California and the western United States and has a status of Least Concern on the International Union for Conservation of Nature and Natural Resources (IUCN) red list. The red-shouldered hawk was the primary raptor species observed on the site during both the 2004 and 2012 raptor studies and the only raptor species observed utilizing the subject tree stand during 2012. A single pair of red-shouldered hawks utilized the stand in 2012 and nested in tree E2 during the 2012 nesting season. Tree E2 was the location of the active red-shouldered hawk nest observed by Frey-Stevens in 2004. The Frey-Stevens report also indicates the presence of two large stick nests in tree C4 within the subject tree stand. Both nests were confirmed to be inactive during the 2004 nesting season and were no longer present in the tree during the 2012 study.

The nest tree (E2) is located in close physical proximity to the existing larger residence on the Black Hill Villas site and several mobile homes within the Blue Heron Terrace mobile home park. The resident red-shouldered hawk pair appears to have habituated to the presence of humans and human activity near their nest. Given that the subject stand of trees supports a single, habituated pair of red-shouldered hawks, which are a common raptor species, the application of ESHA protections to the stand does not appear to be appropriate.

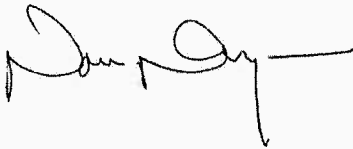
The Coastal Commission Staff Report issued on 21 November 2014 indicates that Staff now agrees that the tree stand does not rise to the level of ESHA. However the report states that the trees are a valuable natural resource that should be preserved to the maximum extent feasible. This statement was based on the Morro Bay LCP (LUP Policy 9.06), which requires that “*natural features, landforms and native vegetation, such as trees, shall be preserved to the maximum extent feasible.*” In this circumstance the subject tree stand is comprised of large non-native trees planted purposefully as a windrow and therefore would not appear to meet the criteria for preservation cited in the LCP. Blue gum trees are native to Australia and are considered an invasive species along the California coast. The California Invasive Plant Council (IPC) has issued a “moderate” rating for the blue gum tree as an invasive plant. While large blue gum trees do provide potential habitat for raptors, the dense litter from the trees and the allelopathic properties of the bark and leaf litter, function to degrade habitat beneath and surrounding the canopy by reducing the abundance and diversity of native understory plants.

The subject tree stand is comprised of six Monterey cypress trees, three mature blue gum trees, and a couple of groupings of small blue gum trees. The six Monterey cypress trees (C1-C6), one of the mature blue gum trees (E1) and two smaller blue gum trees will be preserved as habitat for raptors and other birds in addition to several other large trees on the site (C7 and the row of Monterey cypress along Quintana Road). However, two of the mature blue gum trees within the subject stand (E2, E3), the two groupings of smaller trees (E4, E5), and their associated canopies are scheduled for removal as part of the project. Among the mature trees to be removed is the nest tree, Tree E2, used by the red-shouldered hawk pair. Since monogamous raptor pairs often reuse their nests, the

removal of the nest tree represents a loss of the energy investment that went into building and maintaining the nest over the years. However, the pair would not necessarily abandon the site or lose any reproductive capacity. Other suitable trees are present on the site and in the immediate site vicinity that could serve as a nest tree during future nesting seasons. Additionally, native tree plantings associated with the Riparian Enhancement Plan will, over time, mitigate for removal of the non-native blue gum trees and provide additional nesting and roosting opportunities for raptors.

If you have any questions please feel free to contact me at 805.772.4080 or [ddugan@tenera.com](mailto:ddugan@tenera.com).

Sincerely,



Dan Dugan  
Senior Biologist  
Tenere Environmental Inc.





November 11, 2014

Mr. Wayne Colmer  
Colmer Construction Inc.  
23679 Calabasas Road, # 333  
Calabasas, CA 91301

Dear Mr. Colmer,

This letter provides a summary of the findings of raptor surveys conducted on the Black Hill Villas site in 2004 by Dr. Dennis Frey and Shawna Stevens (Frey-Stevens) and in 2012 by Tenera Environmental Inc. (Tenera). The summary is intended to clarify the locations and nature of the raptor activity observed and detected on the site during these two past surveys. Of particular importance is the raptor activity in the windrow of introduced Monterey cypress (*Cupressus macrocarpa*) and blue gum (*Eucalyptus globulus*) trees present between the Blue Heron Terrace mobile home park and the entrance drive to the Black Hill Villas site.

The subject tree stand, and its use by raptors, was one of the subjects of discussion between California Coastal Commission staff (Staff) and me during a conference call on 15 October 2014. During the discussion Staff stated that habitat supporting (a) listed raptor species or (b) a suite of raptors would meet the threshold for an Environmentally Sensitive Habitat Area (ESHA) and require appropriate protection in the form of development buffers/setbacks.

Staff and I agreed that, based on the results of the two studies, no listed raptor species appeared to be utilizing the subject stand of trees. However, Staff indicated, based on the second criterion, that the ESHA designation was necessary for the subject tree stand due to the suite of raptors utilizing the stand. I explained that data from the raptor survey reports indicate that the stand of trees in question was not utilized by multiple raptor species and therefore do not meet the ESHA threshold. The results of the 2012 Tenera study show only a single raptor species, the red-shouldered hawk (*Buteo lineatus*), utilizing the stand. I also stated that I believed that the red-shouldered hawk was the only species observed utilizing the stand during the 2004 Frey-Stevens study. A subsequent review of the Frey-Stevens report showed that a second raptor species, the barn owl (*Tyto alba*), was identified as utilizing the stand. Barn owl use was indicated by reports from residents and the presence of owl pellets and whitewash (excrement) below two trees in the stand. All other raptor observations/detections reported during both the 2004 and 2012 studies were from 1) fly-over events, 2) off-site observations/vocalizations, 3) great horned owl pellets found off-site along the western property boundary, and 4) anecdotal reports (from residents) of great horned owl vocalizations in the area.

The red-shouldered hawk is a common raptor species in California and the western United States and has a status of Least Concern on the International Union for Conservation of Nature and Natural Resources (IUCN) red list. The red-shouldered hawk was the primary raptor species observed on the site during both the 2004 and 2012 raptor studies and the only raptor species observed utilizing the subject tree stand during 2012. A single pair of red-shouldered hawks utilized the stand in 2012 and nested in tree E2 during the 2012 nesting season. Tree E2 was the location of the active red-shouldered hawk nest observed by Frey-Stevens in 2004. The Frey-Stevens report also indicates the presence of two large stick nests in tree C4 within the subject tree stand. Both nests were confirmed to be inactive during the 2004 nesting season and were no longer present in the tree during the 2012 study. The Staff report issued for the project on 31 January 2014 states "Several large stick nests were discovered during the above surveys and raptors were observed using these nests." This statement is misleading and suggests multiple pairs of nesting raptors when in fact only one active nest (Tree E2) was observed during both surveys.

The nest tree (E2) is located in close physical proximity to the existing larger residence on the Black Hill Villas site and several mobile homes within the Blue Heron Terrace mobile home park. The resident red-shouldered hawk pair appears to have habituated to the presence of humans and human activity near their nest. Given that the subject stand of trees supports a single, habituated pair of red-shouldered hawks, which are a common raptor species, the application of ESHA protections to the stand does not appear to be appropriate or necessary.

If you have any questions please feel free to contact me at 805.772.4080 or [ddugan@tenera.com](mailto:ddugan@tenera.com).

Sincerely,

Dan Dugan

Senior Biologist

Tenera Environmental Inc.



# City of Morro Bay

Morro Bay, CA 93442

(805) 772-6200

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

October 30, 2014

California Coastal Commission

Attn: Daniel Robinson

725 Front Street, Suite 300

Santa Cruz, CA 95060

RE: Black Hill Villas, 485 and 495 South Bay Blvd - APN 066-371-003

Coastal Application Number (A-3-MRB-06-064)

City Application Number (S00-038/UP0-070)

Dear Mr. Robinson,

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

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

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

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

**FINANCE**  
595 Harbor Street

**ADMINISTRATION**  
595 Harbor Street

**FIRE DEPT.**  
715 Harbor Street

**PUBLIC SERVICES**  
955 Shasta Avenue

**HARBOR DEPT.**  
1275 Embarcadero Road

**CITY ATTORNEY**  
595 Harbor Street

**POLICE DEPT.**  
870 Morro Bay Boulevard

**RECREATION & PARKS**  
1001 Kennedy Way

Exhibit 13  
A-3-MRB-06-064  
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October 30, 2014  
Page 2

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

Sincerely,



Rob Livick  
Public Services Director / City Engineer

c: Scot Graham, Planning Manager



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,

A handwritten signature in cursive script that reads "Adrienne Harris".

Adrienne Harris  
Executive Director

cc: Daniel Robinson

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

March 25, 2014

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

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

Attn. Daniel Robinson  
Coastal Planner

Dear Commissioners and Mr. Robinson:

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

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

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

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

Thank you for taking our concerns into consideration.

Sincerely,



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

Encls.

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APR 18 2014

CALIFORNIA  
COASTAL COMMISSION  
CENTRAL COAST AREA

Exhibit 13  
A-3-MRB-06-064  
Page 15 of 58



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APR 18 2014

CALIFORNIA  
COASTAL COMMISSION  
GENERAL COAST AREA

## Petition to Coastal Commission.

HERON TERRACE MOBILE HOME PARK

Petition summary and background

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

Action petitioned for

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

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

MOBILE HOME PARK 93442

Exhibit 13

A-3-MRB-06-064

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

Exhibit 13

# Petition to Coastal Commission.

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

Printed Name	Signature	Address	Comment	Date
Roberta Horne	<i>R. Horne</i>	475 S. Bay Blvd #26 <del>1320</del>	✓	2/21/14
Cheryl Stae	<i>Cheryl Stae</i>	475 S. Bay Blvd #25	✓	2/21/14
Dan Peery	<i>Dan Peery</i>	735 S. Bay Blvd #49		2/21/14
WARREN RAY	<i>Warren Ray</i>	475 S. Bay Blvd #12	✓	2-21-14
Joyce Earmine	<i>Joyce Earmine</i>	475 S. Bay Blvd #61	✓	2-21-14
DUSTEN PEERY	<i>Dusten Peery</i>	475 S. Bay Blvd #50	✓	2-21-14
MARY HUDSON	<i>M. Hudson</i>	475 S. Bay Blvd #16	✓	2-26-14
Chris Hudson	<i>Chris Hudson</i>	475 S. Bay Blvd #12	✓	2-26-14
RAY CLINE	<i>Ray Cline</i>	475 S. Bay Blvd #57	✓	2/26/14
Gene David	<i>Gene David</i>	475 S. Bay Blvd #30	✓	2/26/14
Debbie Brown	<i>Debbie Brown</i>	475 S. Bay Blvd #41	✓	2/26/14
William Bowman	<i>William Bowman</i>	475 S. Bay Blvd #41	✓	2/26/14











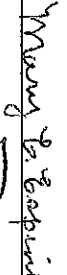
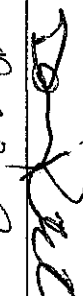

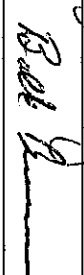
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Action petitioned for	We, the undersigned, are concerned citizens, of Blue Heron Terrace. We support the Coastal Commission staff recommendation to deny the coastal permit application of Wayne Colmer. Project: Black Hills Villa.

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

# Petition to Coastal Commission.

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

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

# Petition to Coastal Commission.

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

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



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APR 18 2014

## Petition to Coastal Commission.

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


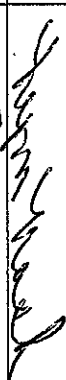
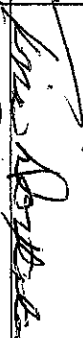

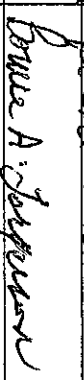

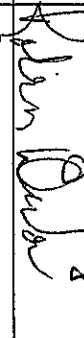
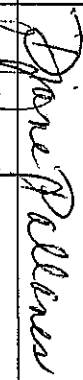
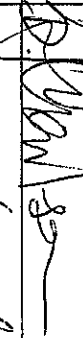

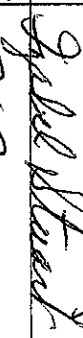

Action petitioned for: We, the undersigned, are concerned citizens, of the city of Morro Bay, and San Luis Obispo County. We support the Coastal Commission staff recommendation to deny the coastal permit application of Black Hills Villas as proposed.

Printed Name	Signature	Address	Comment	Date
Chas GLEASON		Feb 922 Templeton 93461	NO NO NO	3-14-14
Stephen Lanning		691 Lilac Drive Los Osos, CA 93402 5743 RIDGEWAY CT 93423	No way	3/14/14
HILLEN RAYMOND SEIT		PO BOX 744 PATAZCADERO	NOT IN OUR BEST INTERESTS	3/14/14
V. Condit		13406 Santa Lucia 93423	MORRO BAY -> L.A. -> TEMPELTON	3/14/14
Josh Wisniewski		PO Box 1332 Atascadero CA 93423	Coastal Preservation	3/14/14
Roxanne Ingram		6650 Monterey Rd. Paso Robles 93426	NO NEW NEEDED... rent/sale existing Bldgs.	3-14-14
Julie DAVIEL		P.O. Box 613, Paso Robles, CA 93426	NOT NEEDED - NOT IN OUR INTERESTS	3-14-14
Austin GORRILL		P.O. BOX 715 SANTA MARGARITA CA 93453	NOTE	3-14-14
Eligabeth Gorrill		22335 I ST Santa Margarita CA 93453	where's the water	3-14-14
CHUCK GOBERT		PO BOX 715 SANTA MARGARITA. CA	NO	3-14-14
Andrea Rabaraz		705 De Anza at Atascadero	NO	3-17-14



# Petition to Coastal Commission.

Petition summary and background	Wayne Colmer, Black Hills Villas application # A-3-MRB-06-064.
Action petitioned for	We, the undersigned, are concerned citizens, of the city of Morro Bay, and San Luis Obispo County. We support the Coastal Commission staff recommendation to deny the coastal permit application of Black Hills Villas as proposed.

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





# Petition to Coastal Commission.

Petition summary and background	Wayne Colmer, Black Hills Villas application # A-3-MRB-06-064.
Action petitioned for	We, the undersigned, are concerned citizens, of the city of Morro Bay, and San Luis Obispo County. We support the Coastal Commission staff recommendation to deny the coastal permit application of Black Hills Villas as proposed.

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



# Petition to Coastal Commission.

Petition summary and background	Wayne Colmer, Black Hills Villas application # A-3-MRB-06-064.
Action petitioned for	We, the undersigned, are concerned citizens, of the city of Morro Bay, and San Luis Obispo County. We support the Coastal Commission staff recommendation to deny the coastal permit application of Black Hills Villas as proposed.

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



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

Exhibit 13

October 21, 2014

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

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

Dear Mr. Colmer and Mr. Robinson,

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

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

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

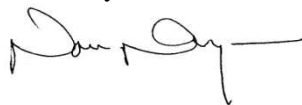
length and 14 m (45 ft) across at its widest point. The seasonal stream channel that crosses the Black Hill Villas site transits the northern part of the basin bed more or less diagonally from box culvert to box culvert for approximately 37 m (120 ft). The stream channel within the basin is shallow and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

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

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

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

Sincerely,



Dan Dugan  
Senior Biologist  
Tenera Environmental Inc.

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

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Mr. Robinson,

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

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

Thank you,

Brandon Sanderson

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Brandon Sanderson

Environmental Scientist



Department of Fish & Wildlife

3196 S. Higuera St., Suite A

San Luis Obispo, CA 93401

805-594-6141

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

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

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

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

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Dear Daniel,

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Sincerely, Cynthia Hawley



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

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Hi Cynthia –

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

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

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

---

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

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

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

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Dear Daniel,

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

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

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

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

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

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

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

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

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

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

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

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

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

§ 13074. Rescheduling.

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

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



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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**Serious concerns remain.**

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

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

Sincerely,

Cynthia Hawley



Attorney for Save The Park

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

---

Dear Daniel,

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

Please consider the following.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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



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

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

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

Applicable text of the laws cited is below.

We appreciate your consideration of these matters.

Cynthia

[Division 20. California Coastal Act](#)

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

[Article 3. Powers and Duties](#)

§ 30335.1. Employees to give procedural assistance

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

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

§ 30006. Legislative findings and declarations; public participation

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

§ **13074**. Rescheduling.

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

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

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

.....

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

....

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

....

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

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

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Hi Daniel,

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

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

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

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

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

Thank you, Cynthia



April 4, 2014

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

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

Agenda Item: 10B, Wednesday April 9, 2014

Dear Chair Kinsey and Commissioners,

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

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

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

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





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

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

Sincerely,

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

**August 21, 2014**

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

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

Dear Mr. Colmer,

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

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

Sincerely,

Daniel Robinson,  
Coastal Program Analyst  
Central Coast District

**June 6, 2014**

Wayne Colmer  
23679 Calabasas Rd #333  
Calabasas, California 91302

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

Dear Mr. Colmer:

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

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

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

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

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

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

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

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

Sincerely,

Daniel Robinson  
Coastal Planner  
Central Coast District

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



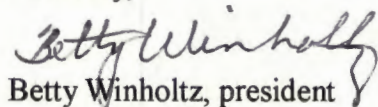
February 5, 2014

Dear Commissioners:

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

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

Sincerely,



Betty Winholtz, president

cc: Daniel Robinson, Santa Cruz CCC

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

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

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

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

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

**RECEIVED**

FEB 06 2014

Exhibit 13  
CALIFORNIA  
COASTAL COMMISSION  
AS AMRB-06-064  
Page 57 of 58

# Memo

**To:** Ms. Jamie Hill, Interim Planner  
**From:** Tom Prows, Fire Prevention Officer  
**Date:** 11/26/08  
**Re:** 485 South Bay Blvd., Vesting Tentative Tract Map-**Second Review**

---

Jamie,

I have reviewed Tentative Tract Map 2739 (Second Review), for a 17-unit subdivision at 485 South Bay Blvd., and offer the following Fire Department Comments:

1. The project shall provide 3 fire hydrants. The required fire hydrants have been added at locations illustrated on Sheet 2.
2. The project shall provide for no parking areas. The no parking areas are controlled by signage and red-painted/stenciled curbs as illustrated on Sheet 2. (See enclosed exhibit on Marking of Fire Lanes)
3. The project shall provide fire department access gates in the masonry wall. Presently, the plan shows one gate, we will work with the project developer to add more gates where possible.

The above conditions are in addition (also contained) to Fire Department Memo to Michael Prater, dated August 21, 2008. With these comments and marked plan, we find for "Conditional Approval" of Vesting Tentative Tract Map 2739.

Tom



**FORM FOR DISCLOSURE  
OF EX PARTE  
COMMUNICATION**



Date and time of communication: December 5, 2014 11:00am

Location of communication: Sherman Oaks, Ca

Person(s) initiating communication: David Neish and Dave Neish Jr.

Person(s) receiving communication: Wendy Mitchell

Name or description of project: Black Hill Villas Project, City of Morro Bay (Colmer)

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



Applicants' representatives provided an overview of the project plan and discussed the application history to date. Changes from the original plan to the new plan were discussed including the creation of a detailed Riparian Enhancement Plan, incorporating water quality and storm water runoff protection features, relocation of the entryway, reduction of the existing access road width and moving the development away from sensitive areas. The proposed development consists of 17 single family detached lots and the current zoning allows 48 units.

The applicants' project team then discussed that the existing roadway access to the subject property has been there for over 70 years and provides access to 2 single family homes that both have been there over 60 years and in the most later stages of their useful life. They indicated that CCC Staff was recommending denial of the application primarily because the access road to the property was within the 50 foot buffer area of an off-site Riparian area. It was suggested that there was no other feasible access to serve the property other than the existing roadway and that every other option was explored. The applicant has requested that access through the adjacent owner of the Mobile home Park might be possible, but that the owner would not allow access through his property. Finally, they indicated that even if the 2 existing homes were allowed to be remodeled or re-built that the City of Morro Bay Fire Department would require a minimum 20 foot wide road to include the water quality and runoff protection features that the applicant is providing.

Exhibit 14  
A-3-MRB-06-064  
Page 1 of 12

Date

Signature of Commissioner

FORM FOR DISCLOSURE  
OF EX PARTE  
COMMUNICATION

Received at Commission  
Meeting

JAN 07 2015

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

Date and time of communication: December 4, 2014, 12:00 noon  
Location of communication: Los Angeles, Ca Conference Call  
Person(s) initiating communication: David Neish  
Person(s) receiving communication: Effie Turnbull-Sanders  
Name or description of project: Black Hill Villas Project, City of Morro Bay (Colmer)

Detailed substantive description of  
content of communication:

Applicants' representatives provided an overview of the project plan and discussed the application history to date. Changes from the original plan to the new plan were discussed including the creation of a detailed Riparian Enhancement Plan, incorporating water quality and storm water runoff protection features, relocation of the entryway, reduction of the existing access road width and moving the development away from sensitive areas. The proposed development consists of 17 single family detached lots and the current zoning allows 48 units.

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December 10, 2014  
Date

Effie Turnbull  
Signature of Commissioner



**FORM FOR DISCLOSURE  
OF EX PARTE  
COMMUNICATION**

**Date and time of communication:** December 2, 2014, 4:45pm

**Location of communication:** San Rafael, CA

**Person(s) initiating communication:** David Neish and David Neish Jr.

**Person(s) receiving communication:** Steve Kinsey

**Name or description of project:** Black Hill Villas Project, City of Morro Bay (Colmer)

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

Applicants' representatives provided an overview of the project plan and discussed the application history to date. Changes from the original plan to the new plan were discussed including the creation of a detailed Riparian Enhancement Plan, incorporating water quality and storm water runoff protection features, relocation of the entryway, reduction of the existing access road width and moving the development away from sensitive areas. The proposed development consists of 17 single family detached lots and the current zoning allows 48 units.

The applicants' project team then discussed that the existing roadway access to the subject property has been there for over 70 years and provides access to 2 single family homes that both have been there over 60 years and in the most later stages of their useful life. They indicated that CCC Staff was recommending denial of the application primarily because the access road to the property was within the 50 foot buffer area of an off-site Riparian area. It was suggested that there was no other feasible access to serve the property other than the existing roadway and that every other option was explored. The applicant has requested that access through the adjacent owner of the Mobile home Park might be possible, but that the owner would not allow access through his property. Finally, they indicated that even if the 2 existing homes were allowed to be remodeled or re-built that the City of Morro Bay Fire Department would require a minimum 20 foot wide road to include the water quality and runoff protection features that the applicant is providing.

12/5/14  
Date

  
Signature of Commissioner

## DISCLOSURE OF EX PARTE COMMUNICATIONS

---

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

November 6, 2014 at 2:00 p.m.

**Location of communication:**

Redwood City

**Type of communication:**

Teleconference

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

Dave Neish

**Person(s) receiving communication:**

Carole Groom

**Name or description of project:**

Item Th22a – Coastal Permit Application No. A-3-MRB-06-064 (Black Hill Villas, Morro Bay)

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

Mr. Neish indicated that this item has been postponed due to a request by the project's opponents, Save the Park. He indicated that it was originally postponed at the applicant's request to complete studies and that they have worked with staff so that there no significant outstanding issues.

**Date:** 11-10-14

**Signature of Commissioner:** Carole Groom

FORM FOR DISCLOSURE  
OF EX PARTE  
COMMUNICATIONS

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

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

Identity of person(s) initiating communication: DAVID NEISH

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

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

Description of content of communication:

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

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

11/6/14  
Date

SK Kinsey  
Signature of Commissioner

**FORM FOR DISCLOSURE OF  
EX PARTE COMMUNICATIONS**

✓ postponed

Name or description of project, LPC, etc.:

Nov/ Wed 22a/ Black Hills

Date and time of receipt of communication:

11/4/14/2:30 Villas

Location of communication:

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

telephone

Person(s) initiating communication:

David Neush

Detailed substantive description of content of communication:

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

(attached)

Received at Commission Meeting

NOV 12 2014

From:

11/5/14

Date

Bocheo

Signature of Commissioner

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

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

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

EX-100-14  
A3-MRB-06-004



David Neish represents Black Hill Villas, which was pulled from the schedule. He had booked an ex parte and asked, after the project was pulled, could we still talk about "administrative" issues.

Talked on telephone for a few minutes. He outlined the projects administrative history from '08 when it was approved by the Commission, to '09 when it was remanded on appeal, a long hiatus when nothing was happening, applicant working on reports that might persuade staff into writing an approval report, the staff refusing to consider those reports in any serious way (denial was guaranteed), the staff report that recommended denial last year ('13), applicant then asking staff to postpone. The applicant said he was ready for the Nov '14 meeting and the report, but a Cynthia Hawley emailed staff complaining about the existence of 2 staff reports and that her side had not been consulted. Applicant said the project was pulled without explanation.

# FORM FOR DISCLOSURE OF EX PARTE COMMUNICATIONS

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

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

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

10/25/14  
Date

Paul Howell  
Signature of Commissioner

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

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If communication occurred within seven days of the hearing, complete this form, provide the information orally on the record of the proceeding and provide the Executive Director with a copy of any written material that was part of the communication. Exhibit 14  
A-3 MRB 06-064  
Page 8 of 12

FORM FOR DISCLOSURE  
OF EX PARTE  
COMMUNICATIONS

Received at Commission  
Meeting

APR 11 2014

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

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

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

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

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

Name or description of project: Colmer Morro Bay  
W 106 No A-3-MRB-06-064

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

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

Date

4/9/14

Signature of Commissioner

Effie Turnbull Sanders

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

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

## DISCLOSURE OF EX PARTE COMMUNICATIONS

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

April 4, 2014 at 11:00 am

**Location of communication:**

Phone

**Type of communication:**

Teleconference

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

Dave Neish

**Person(s) receiving communication:**

Carole Groom

**Name or description of project:**

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

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

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

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

**Date:** Apr 7 2014

**Signature of Commissioner:** Carole Groom



Received at Commission Meeting

APR 11 2014

# FORM FOR DISCLOSURE OF EX PARTE COMMUNICATIONS

Rec'd @ Mtg  
4/10/14

Name or description of project, LPC, etc.:

W106-Colmer

Date and time of receipt of communication:

4/4 - 3:15

Location of communication:

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

Telephone

Person(s) initiating communication:

David Keist

Detailed substantive description of content of communication:

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

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

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

4/4/14

Date

J. Boches

Signature of Commissioner

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Exhibit 14

13-MRE-06-064

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

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