

## **Final Draft**

Low-Effect Habitat Conservation Plan  
Morro Shoulderband Snail  
(*Helminthoglypta walkeriana*)  
Kelley-McDonough Parcel (APN 074-471-002)  
2285 Bay Vista Lane  
Los Osos, San Luis Obispo County, California

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January 2013

## Table of Contents

<b>Summary</b> .....	1
<b>Section 1. Overview and Background</b> .....	2
1.1 Permit Holder and Duration .....	2
1.2 Covered Lands .....	2
1.3 Covered Species .....	2
1.4 Regulatory Framework .....	2
Federal Endangered Species Act .....	2
The Section 10(a)(1)(B) Process .....	3
National Environmental Policy Act .....	4
National Historic Preservation Act .....	4
Other Relevant Laws and Regulations .....	4
<b>Section 2. Project Description and Covered Activities</b> .....	5
2.1 Project Description .....	5
2.2 Covered Activities .....	6
<b>Section 3. Environmental Setting and Covered Species</b> .....	6
3.1 Environmental Setting .....	6
Climate .....	6
Topography/Geology .....	6
Hydrology/Streams, Rivers, Drainages .....	6
Existing and Surrounding Land Use .....	6
3.2 Covered Species .....	7
Status and Distribution of Morro Shoulderband Snail .....	7
Species Taxonomy and Description History .....	7
Natural History .....	9
Distribution at Kelley-McDonough Parcel .....	10
<b>Section 4. Biological Impacts and Take Assessment</b> .....	10
4.1 Direct and Indirect Impacts .....	10
4.2 Anticipated Take of Morro Shoulderband Snail .....	11
4.3 Impacts to Critical Habitat .....	11
4.4 Cumulative Impacts .....	11
4.5 Anticipated Impacts of the Taking .....	12
<b>Section 5. Conservation Program</b> .....	12
5.1 Biological Goals and Objectives .....	12
5.2 Avoidance, Minimization, and Mitigation Measures .....	14
Take Avoidance .....	14
Take Minimization Measures .....	14
Mitigation for Unavoidable Take .....	15
5.3 Monitoring .....	16
5.4 Reporting .....	17

<b>Section 6. Plan Implementation .....</b>	<b>17</b>
6.1 Changed Circumstances .....	17
6.2 Unforeseen Circumstance .....	19
6.3 Amendments .....	19
Minor Amendments .....	19
Major Amendments .....	19
6.4 Permit Suspension/Revocation .....	20
6.5 Permit Renewal .....	20
6.6. Permit Transfer .....	20
<b>Section 7. Funding.....</b>	<b>21</b>
7.1 HCP Implementation Costs.....	21
7.2 Funding Source .....	21
<b>Section 8. Alternatives .....</b>	<b>22</b>
8.1 Summary .....	22
8.2 No Action Alternative.....	22
8.3 Project Redesign Alternative .....	22
<b>Section 9. Citations.....</b>	<b>23</b>

**Figures** (attached as separate file)

- 1 Project Vicinity
- 2 Project Location on USGS Quadrangle Map
- 3 Location of Assessor Parcel Number
- 4 Distribution of Morro Shoulderband Snail on Parcel

**Appendices** (attached as separate file)

- Appendix A Morro Shoulderband Snail Survey Report (Tenera Environmental 2005)
- Appendix B: In-Lieu Fee Deposit Agreement

## Summary

John Kelley and Denise McDonough, as property owners and co-applicants, are seeking an incidental take permit under section 10(a)(1)(B) of the Endangered Species Act of 1973, as amended, to cover the incidental take of the Morro shoulderband snail (= banded dune snail; *Helminthoglypta walkeriana*) associated with the construction and occupation of a single-family residence on an undeveloped parcel located at 2285 Bay Vista Lane (Assessor Parcel Number 074-471-002) in the community of Los Osos, County of San Luis Obispo, California..

A 10-year permit term is requested to address incidental take of Morro shoulderband snail associated with the construction, maintenance, and occupation of a single-family residence on an 8,000 square-foot (0.18-acre) legal parcel. Project implementation is likely to result in incidental take of Morro shoulderband snail in all life stages.

The Morro shoulderband snail is federally endangered terrestrial invertebrate that is endemic to the Los Osos and Baywood Park areas of central coastal San Luis Obispo County. While several federally listed species are known to occur in this area, only the Morro has the potential to be affected by the project. Due to the project's small size and location away from areas of habitat occupied by the species, construction and occupation of a single-family residence is not anticipated to significantly affect the survival and recovery of Morro shoulderband snail population in the wild.

The conservation strategy within this habitat conservation plan is consistent with the recovery criteria for the Morro shoulderband snail. Measures to minimize and mitigate take of the species include the following:

- Pre-construction surveys to identify Morro shoulderband snails in all life stages;
- Capture and moving of identified Morro shoulderband snails out of harm's way to a pre-selected, Service-approved receptor site;
- Pre-construction environmental awareness training for all construction personnel to be delivered prior to the commencement of any activities that could result in take;
- Construction monitoring;
- Payment of an in-lieu fee to fund recovery task actions for Morro shoulderband snail on conserved lands within the known range of the species

Implementation of the above measures will be conducted under a project-specific incidental take permit and through the deposit of \$4,000 into the Impact Directed Environmental Account administered by the National Fish and Wildlife Foundation. The project is also subject to County of San Luis Obispo permit requirements to ensure compliance with the California Environmental Quality and California Coastal Acts, both of which will be conditioned to require that an incidental take permit has been secured and payment of the in-lieu fee made prior to the issuance of necessary County permits.

## **Section 1 Overview and Background**

**1.1 Permit Holder and Duration:** John Kelley and Denise McDonough, as the legal owners and co-applicants, request an incidental take permit (ITP) to authorize the incidental take of Morro shoulderband snail, a federally endangered species, for a period of 10 years commencing upon the date of approval by the U.S. Fish and Wildlife Service (Service). They are requesting this permit pursuant to section 10(a)(1)(B) of Endangered Species Act of 1973, as amended (Act). As the applicants, they would become the permittees of the ITP if issued.

**1.2 Covered Lands:** The Kelley-McDonough parcel is approximately 0.18-acre (8,000 square feet) in size and located at 2855 Bay Vista Lane in the community of Los Osos, an unincorporated portion of San Luis Obispo County, California (Figure 1). The property is found on the United States Geological Survey Morro Bay South 7.5 minute quadrangle map (Figure 2) within an unspecified section of Township 30S and Range 11E. It is legally described as County of San Luis Obispo Assessor Parcel Number (APN) 074-471-002 (Figure 3); however, will be referred to herein as the “Kelley-McDonough parcel.”

**1.3 Covered Species:** This low-effect habitat conservation plan (HCP) is intended to provide the basis for issuance of an ITP that would authorize the incidental take of Morro shoulderband snail, a federally listed endangered terrestrial invertebrate species endemic to the Los Osos and Baywood Park area of coastal San Luis Obispo County. Surveys conducted in 2005 identified the presence of the Morro shoulderband snail on the subject parcel (Tenera Environmental 2005; Appendix A).

### **1.4 Regulatory Framework**

**Federal Endangered Species Act:** The U.S. Fish and Wildlife Service’s (Service) responsibilities include administering the Act. Section 9 of the Act prohibits the take of any federally listed endangered or threatened species. Take is defined in Section 3(19) of the Act as “to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct.” Service regulations in 50 CFR 17.3 further define harm to include significant habitat modification or degradation that actually kills or injures wildlife by significantly impairing essential behavioral patterns, including breeding, feeding or sheltering. Harassment is defined as an intentional or negligent action that creates the likelihood of injury to wildlife by annoying a species to such an extent that its normal behavioral patterns (e.g., breeding, feeding, or sheltering) are significantly disrupted. The Act provides for civil and criminal penalties for the unlawful taking of listed species. Exemptions to the prohibitions against take may be obtained through coordination with the Service in two ways. If a project is to be funded, authorized, or carried out by a Federal agency and may affect a listed species, the Federal agency must consult with the Service pursuant to section 7(a)(2) of the Act.

In order to comply Federal law, private individuals and State and local or other entities who propose an action that is likely to result in the take of federally listed species and for which there is no Federal nexus, may achieve compliance with the Act by applying for an incidental take permit pursuant to section 10(a)(1)(B) of the Act. Such permits are issued by the Service when take is not the intention of and is incidental to otherwise legal activities. An application for an

incidental take permit must be accompanied by a habitat conservation plan (HCP). The regulatory standard under section 10(a)(1)(B) of the Act requires that the effects of authorized incidental take be minimized and mitigated to the maximum extent practicable. Under section 10(a)(1)(B) of the Act, a proposed action also must not appreciably reduce the likelihood of survival and recovery of the species in the wild. Adequate funding of identified actions to minimize and mitigate impacts must also be ensured.

Section 7(a)(2) of the Act requires that Federal agencies ensure that their actions, including permit issuance, do not jeopardize the continued existence of listed species or destroy or adversely modify listed species' critical habitat. Pursuant to 50 CFR 402.2, "Jeopardize the continued existence of..." means to engage in an action that would reasonably be expected, directly or indirectly, to appreciably reduce the likelihood of both the survival and recovery of a listed species in the wild by reducing the reproduction, numbers, or distribution of that species. Issuance of an incidental take permit by the Service, pursuant to section 10(a)(1)(B) of the Act, constitutes a Federal action that is subject to the requirements of section 7. As such, as a Federal agency issuing a discretionary permit, the Service must prepare an internal consultation to address our action.

**Section 10(a)(1)(B) Incidental Take Permit Process:** The process for obtaining an incidental take permit has three primary phases: (1) development of the HCP; (2) processing of the permit; and (3) post-issuance compliance. During development of the HCP, the project applicant(s) prepares a plan that integrates the proposed project or activity with protection of listed species. Every HCP submitted in support of an incidental take permit application must include the following information: (1) those impacts likely to result from the proposed taking of the species for which permit coverage is requested; (2) measures that will be implemented to monitor, minimize, and mitigate impacts; funding that will be made available to undertake such measures; and procedures to deal with unforeseen circumstances; (3) alternatives to the proposed action that would not result in take; and (4) any additional measures Service may require as necessary or appropriate for purposes of the plan.

During the post-issuance phase, the permittee(s) and other responsible entities implement the HCP, and the Service monitors the permittee's compliance with the HCP as well as the long-term progress and success of the HCP. The public is notified of permit issuance by means of the Federal Register. The HCP development phase concludes and the permit processing phase begins when a complete application package is submitted to the appropriate permit-issuing office. A complete application package typically consists of 1) the HCP document, 2) an Implementing Agreement (IA) if applicable, 3) a permit application, and 4) a \$100 fee. The Service must also publish a Notice of Availability in the Federal Register to inform the public that we have received an application for an incidental take permit (ITP) and provide an opportunity for public review and comment. The Service also prepares an internal Section 7 Biological Opinion and a Findings document that evaluates the ITP application in the context of permit issuance criteria described below. Depending on the project scope, National Environmental Policy Act (NEPA) compliance can consist of an Environmental Action Statement, an Environmental Assessment, or an Environmental Impact Statement. An Implementing Agreement is required for HCPs unless the project qualifies to be processed as a low-effect HCP. An ITP is granted upon a determination by the Service that all requirements

for permit issuance have been met. Statutory criteria for issuance of the permit specify that: (1) the taking will be incidental; (2) the impacts of incidental take will be minimized and mitigated to the maximum extent practicable; (3) the taking will not appreciably reduce the likelihood of survival and recovery of the species in the wild; (4) the applicant(s) will provide additional measures that the Service requires as being necessary or appropriate; and (5) the Service has received assurances, as may be required, that the HCP will be implemented.

During the post-issuance phase, the permittee(s) and any other responsible entities are responsible for implementing the HCP and compliance with the terms and conditions of the ITP. The Service monitors compliance with the HCP as well as its long-term progress and success.

**National Environmental Policy Act:**..The purpose of NEPA is two-fold: to ensure that Federal agencies examine environmental impacts of their actions (in this case deciding whether to issue an incidental take permit) and to utilize public participation. This act serves as an analytical tool to assess direct, indirect, and cumulative impacts of a proposed project and its alternatives to help the Service determine whether to issue an ITP. Compliance with NEPA is required as part of ITP issuance.

**National Historic Preservation Act:** All Federal agencies are required to evaluate the cultural impacts of any action they carry out in accordance with the National Historic Preservation Act. For HCPs, this action would be issuance of an ITP. Consultation with the State Historic Preservation Office is required as part of this process. All ITP applicants are requested to submit a completed “Request for Cultural Resources Compliance” form to the Service for review.

### **Other Relevant Laws and Regulations**

- **California Environmental Quality Act:** The California Environmental Quality Act (CEQA) is a statute that is considered analogous to NEPA as it also requires the completion of an environmental review for projects that may affect environmental resources. It requires lead public agencies to review the environmental impacts of proposed projects, prepare and review environmental impact reports or negative declarations and to consider feasible alternatives and mitigation measures that would substantially reduce significant adverse environmental effects. It applies to a broad range of environmental resources including state and federally listed wildlife and plant species, as well as other species and natural plant communities that are considered locally sensitive.
- The County of San Luis Obispo is lead agency responsible for conducting CEQA review and ensuring compliance for projects in the unincorporated community of Los Osos. As such, they will evaluate the Kelley-McDonough application and ensure compliance with CEQA. Impacts to the Morro shoulderband snail represent one aspect of a CEQA review; however, as with NEPA, the potential for impacts to other environmental resources is also reviewed as part of the CEQA compliance process.

- California Coastal Act of 1976:** A California voter initiative, Proposition 20 (i.e., the Coastal Zone Conservation Act), passed in 1972, creating the California Coastal Commission (Commission). It was later made permanent through the passage of the California Coastal Act of 1976. The Commission is a state environmental agency charged with ensuring that all development within California’s coastal zone (CZ) is consistent with the provisions of the Coastal Act of 1976. Commission jurisdiction within the CZ is broad and applies to both private and public entities and addresses almost all types of development activities inclusive of division of land, changes in the intensity of use of state waters, and of public access to the waters. The regulatory role of the Commission is facilitated through their review of development projects and the issuance of Coastal Development Permits (CDP) that typically include conditions of approval that, if met, will bring the development into compliance with the Coastal Act. In circumstances where a Local Coastal Program (LCP) has been prepared by a local agency and certified by the Commission, it is, in effect, the environmental review. In such cases, the issuance of a CDP is the responsibility of the local agency. The Commission retains ultimate oversight and responsibility for compliance through an appeal process. The CZ encompasses waters three miles seaward from the coastline and generally extends inland 1,000 yards from the mean high tide line except in developed urban areas where the boundary is often less than 1,000 yards. In significant estuarine habitat and recreational areas, the CZ extends inland to the first major ridgeline, or five miles from the mean high tide line. By virtue of its proximity to the Morro Bay Estuary, the entire community of Los Osos, including the Kelley-McDonough parcel, lies within the CZ. One of the primary provisions of the Coastal Act is to preserve, protect, and enhance environmentally sensitive habitat areas (ESHA). Section 30107.5 of the Coastal Act defines an ESHA as “Any area 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 be easily disturbed or degraded by human activities and developments.”
- San Luis Obispo County Local Coastal Program:** A LCP, prepared by the County of San Luis Obispo and certified by the Commission, is in effect for areas of San Luis Obispo County located within the CZ. The County is the lead agency with regard to Coastal Act compliance and is responsible for reviewing the proposed Kelley-McDonough single-family residence project for compliance with their LCP and for issuing a Minor Use Permit/CDP for the project.

## **Section 2 Project Description and Covered Activities**

**2.1 Project Description:** The proposed project involves the construction of a single-family residence and associated uses on a legal parcel zoned for this use. No specific project design has been proposed; however, the small parcel size (~8,000 square feet) would result in disturbance of the entire area. It is anticipated that any future proposed project would involve the construction, maintenance, and occupation of a single-family residence, inclusive of associated outdoor living area, landscaping and required hazard abatement.

## 2.2 Covered Activities: Proposed covered activities are listed below:

### Permanent Impacts

- Vegetation clearing and site preparation (e.g., grading)
- Installation of the foundation and other hardscape such as a driveway, patio, etc.
- Hazard abatement activities as required by CALFIRE, the local fire protection agency
- Landscaping

### Temporary Impacts

- Staging area for construction activities
- Trenching for the installation of utilities and other infrastructure
- Excavation of septic system and installation of leach lines
- Dust, overspray during construction

All activities described above are legal actions as long they abide by the County of San Luis Obispo ordinances and permit requirements and the terms and conditions of the ITP.

## Section 3 Environmental Setting and Covered Species

### 3.1 Environmental Setting

**Climate:** The community of Los Osos experiences a coastal Mediterranean climate characterized by long, dry, summers and short, wet, mild winters. Fog is common during the late spring and summer months and moderates summer temperatures. Temperatures range from 48 F to 69 F during the summer, with an average of 58 F and from 42 F to 66 F during the winter months, with an average temperature of 53 F. On average, the warmest month is October and the coolest month is January. Rainfall is highly variable within and between winter seasons with an average of 49 days with measurable precipitation annually. The average annual precipitation in Los Osos is 17.6 inches with most of the precipitation occurring from November to April and highest rainfall occurring in February.

**Topography/Geology:** Soils underlying the Kelley-McDonough parcel consist of well-drained sandy loam in the Baywood fine sand (2 to 9 percent slopes) series (USDA 1984). The site is level, with onsite elevations of approximately 250 feet above mean sea level.

**Hydrology/Streams, Rivers, Drainages:** The Kelley-McDonough parcel occurs in the southwestern region of the Morro Bay watershed and lies within a watershed area that drains, eventually, into the Morro Bay Estuary.

**Existing and Surrounding Land Uses:** The parcel is a vacant, residential in-fill lot located in the southern portion of the community of Los Osos. Bay Vista Lane intersects with Bayview Heights Road to the north. The Kelley-McDonough parcel is one of the last two undeveloped parcels on Bay Vista Lane. It is surrounded by occupied residential development. Due to annual mowing and cleared of native woody shrubs as part of fire hazard abatement activities, the current habitat type is best described as a ruderal community consisting of a mixture of pioneering native species, re-sprouting native shrubs, invasive grasses, and various native and non-native forb species. Dominant grass and forb species include non-native perennial veldt

grass (*Ehrharta calycina*) and native California croton (*Croton californicus*), and California poppy (*Eschscholzia californica*). Remnant native shrub species include deerweed (*Lotus scoparius*), black sage (*Salvia mellifera*), California sagebrush (*Artemisia californica*), and a coast live oak (*Quercus agrifolia*). Patches of non-native iceplant (*Carpobrotus* spp.) and conicosia (*Conicosia pugioniformis*) are also present.

**3.2 Covered Species:** The subject of this HCP is the Morro shoulderband snail. This section summarizes the limited body of biological and ecological information currently available for the species, including its status, ecology, range, and distribution on the Kelley-McDonough parcel.

**Status and Distribution of the Morro Shoulderband Snail:** The Morro shoulderband snail is a native terrestrial gastropod endemic to the Los Osos and Baywood Park area of western San Luis Obispo County. It was listed by the Service as endangered on December 15, 1994 (59 FR 64613; Service 1994). The original listing recognized two subspecies or interspecific variations of the Morro shoulderband snail, *Helminthoglypta walkeriana* and *H. walkeriana* var. *morroensis*. At the time of listing *H. walkeriana* and *H. w. morroensis* (= *H. w. var. morroensis*) were classified as a single species under the taxonomic classification prescribed in Roth (1985). A recent re-examination of the taxonomic status of the two variants by Roth and Tupen (2004) resulted in their classification as separate species, *H. walkeriana* (Hemphill 1911), the Morro shoulderband snail; and *H. morroensis* (Hemphill 1911), the Chorro shoulderband snail. At the time of the listing, the range of *H. walkeriana* was described as being restricted to sandy soils of coastal dune and coastal sage scrub communities near Morro Bay and included areas south of Morro Bay, west of Los Osos Creek, and north of Hazard Canyon. The current known range is slightly expanded and encompasses approximately 7,700 acres, extending from Morro Strand State Beach in northern Morro Bay southward to Montaña de Oro State Park and inland to at least Los Osos Creek in eastern Los Osos (Roth and Tupen 2004; Service 2006).

A recovery plan for the species, *Recovery Plan for the Morro Shoulderband Snail and Four Plants from Western San Luis Obispo County, California*, was published on September 26, 1998 (Service 1998). In the plan, four Conservation Planning Areas are identified in which conservation and habitat protection efforts will be focused to facilitate the recovery of the Morro shoulderband snail and the four plant species also addressed in the plan. Critical habitat for Morro shoulderband snail was designated on February 7, 2001 (66 FR 9233; Service 2001). The designation includes three separate units consisting of a total of 2,566 acres of coastal dune, coastal dune scrub, and maritime chaparral habitats in and around the community of Los Osos and Baywood Park (Service 2001). A five-year status review for the Morro shoulderband snail was prepared and issued on September 11, 2006 (Service 2006). The status review concluded that the Morro shoulderband snail population appears to be stable and that threats have been reduced considerably. It noted; however, that recovery criteria for delisting the species have not been fully achieved.

**Species Taxonomy and Description:** The Morro shoulderband snail belongs to the phylum Mollusca, class Gastropoda, subclass Pulmonata, order Stylommatophora, family Helminthoglyptidae, genus *Helminthoglypta*, subgenus *Charodotes*, species *walkeriana*. It was first described in Hemphill (1911) as *Helix walkeriana* from specimens collected from habitat in "San Luis Obispo, Cal." but reassigned to the genus *Helminthoglypta* by subsequent

malacologists (Field 1930, Roth 1985). The genus *Helminthoglypta* currently contains three subgenera comprising 100 or more species and subspecies with individual ranges located between southwestern Oregon and Baja California, and from the Sierra Nevada and Mojave Desert westward to the Pacific coast, including islands off Baja California and California. In San Luis Obispo County, the genus is represented by six species in two subgenera, *Helminthoglypta* and *Charadotes*. The subgenus *Helminthoglypta* includes two species, *Helminthoglypta cuyama* (Cuyama shoulderband snail) and *Helminthoglypta umbilicata* (Big Sur shoulderband snail), and the subgenus *Charadotes* includes four species: *Helminthoglypta walkeriana* (Morro shoulderband snail), *H. carpenteri*, (San Joaquin shoulderband snail), *H. fieldi* (surf shoulderband snail), and the recently named *H. morroensis* (Chorro shoulderband snail). The shell of the Morro shoulderband snail is described as umbilicated, globose, reddish brown to chestnut in color but thin and slightly translucent (Hemphill 1911, Roth 1985). The shell has five to six whorls and a single, narrow (2 to 2.5 mm [0.08 to 0.1 in.]), dark spiral band on the “shoulder” with thin light yellowish margins above and below. Sculptural features of the shell include incised spiral grooves, spiral and transverse striae that give the surface a checkerboard appearance, and papillae at the intersections of some of the striae (Service 1994). Adult shell dimensions range from 18 to 29 mm (0.7 to 1.1 in.) in diameter and from 14 to 25 mm (0.6 to 1.0 in.) in height (Roth 1985).

Shoulderband snails can be distinguished from the sympatric non-native European garden snail (*Helix aspersa*) and cellar glass snail (*Oxychilus cellarius*) by the presence of an umbilicus and the single narrow, dark brown spiral band on the “shoulder” of the shell. *Helix aspersa* lacks an umbilicus and has a multi-band, marbled pattern on the shell. An umbilicus is present in *O. cellarius*, however, the shell lacks any dark banding. Among *Helminthoglyptid* snails (subgenera *Helminthoglypta* and *Charadotes*) that occur in San Luis Obispo County, species can generally be distinguished by shell morphology, however, the shell morphology, ecological associations, geographic isolation, and analysis of soft tissue are used for more definitive classification.

Two other *Helminthoglyptid* species occur within the known range of the Morro shoulderband snail; the Big Sur shoulderband snail (*H. [H.] umbilicata*) and the Chorro shoulderband snail (*H.[C.] morroensis*). The Big Sur shoulderband snail occurs from the Monterey Peninsula in Monterey County south into northern Santa Barbara County and is common in San Luis Obispo County from Atascadero and San Luis Obispo west to the coast, including the range of the Morro shoulderband snail. *Helminthoglypta umbilicata* and *H. walkeriana* occur sympatrically at many locations and specimens of each have been found in similar habitat and in relatively close proximity to each other (Dugan, personal observation 2005). *Helminthoglypta walkeriana* can be distinguished from *H. umbilicata* by its more globose shape, the presence of incised striae, papillations over all or most of the body whorl, and half or more of the umbilicus covered by the apertural lip (Roth 1985). *H. umbilicata* tends to have a more depressed shell shape with a shinier, malleated surface and little or no occlusion of the umbilicus. *Helminthoglypta walkeriana* and *H. morroensis* were elevated to separate full species status based on differences in soft tissue, shell morphology, and differing habitat associations. The shell of *H. morroensis* can be distinguished from *H. walkeriana* by its more depressed shape (ratio of shell height to shell width), larger, less occluded umbilicus, more profusely granulated surface, and weak to absent incised spiral grooves on the body whorl (Tupen and Roth 2004). Until recently the two species were not known to occur sympatrically, with *H. walkeriana* occurring only on Baywood

fine sand soils and *H. morroensis* being associated with clay or serpentine soils; however, in 2005 the shells of both species were collected at a location with Briones-Tierra complex soils near the northeastern extent of the suspected range of *H. walkeriana*, indicating some level of sympatry (Dugan, personal observation 2005). During 2007 the shells of both species were also collected at two locations with Baywood fine sand soils within the City of Morro Bay (Dugan, personal observation 2005).

**Natural History:** Despite increased attention due to its status as a federally endangered species, relatively little is known about the demographics and ecology of the Morro shoulderband snail. The species is associated with sandy soils that support coastal dune, coastal dune scrub, and open maritime chaparral plant communities in the Los Osos and Morro Bay region of Central California. Morro shoulderband snails typically inhabit dense, shrubby, or prostrate vegetation that has considerable contact with the ground. The early successional stages of these native plant communities are thought to offer more favorable habitat than mature stands, which may have branches that are too high off the ground to offer good cover (Roth 1985). Within such habitat, Morro shoulderband snail typically occupies shaded areas with accumulated plant litter or the undersides of low shrub branches. These areas provide a microclimate that moderates temperature and moisture loss, and provides refuge from the desiccating effects of wind. It has been suggested that vegetation on north-facing slopes is slightly more dense and shrubby than on south-facing slopes and therefore may support a substantially greater abundance of the species (Roth 1985). Known plant associates include both native and non-native species. Typical native plant associates include dune ragwort (*Senecio blochmaniae*), California sandaster (*Lessingia filaginifolia*), mock heather (*Ericameria ericoides*), coastal buckwheat (*Eriogonum parviflorum*), eriastrum (*Eriastrum densifolium*), silver lupine (*Lupinus chamissonis*), seaside woolly sunflower (*Eriophyllum staechadifolium*), dune almond (*Prunus fasciculata punctata*), dudleya (*Dudleya* spp.), California croton, black sage (*Salvia mellifera*), California sagebrush (*Artemisia californica*), coyote brush, poison-oak (*Toxicodendron diversilobum*), deerweed (*Lotus scoparius*), and California poppy (Roth 1985, Service 2003, Roth and Tupen 2004, Dugan, personal observation 2005). The most commonly reported non-native plant associates are veldt grass and iceplant (*Carpobrotus* spp.); however, Morro shoulderband snails have been found occupying other non-native invasive plants including conicosia (*Conicosia pugioniformis*), pampas grass (*Cortaderia jubata*), German ivy (*Senecio mikanioides*), fennel (*Foeniculum vulgare*), and myoporum (*Myoporum laetum*). Live Morro shoulderband snails and vacant shells have also been found in a variety of ornamental plants including rock-rose (*Cistus* sp.), aloe (*Aloe* sp.), jade plant (*Crassula ovata*), and lilies of the Nile (*Agapanthus africanus*) (Dugan, personal observation 2005).

Morro shoulderband snails are most active during wet conditions and most feeding, reproduction, and individual growth is thought to occur during the rainy season (Roth 1985). During prolonged dry periods Morro shoulderband snail are inactive and are presumed to enter a state of aestivation (summer dormancy). The species becomes active during rain, as well as periods of heavy fog and dew. Individuals may be particularly active during the evening, night, early morning hours when they emerge to feed and disperse to new habitats. The feeding habits of the Morro shoulderband snail are not well studied, however the mouth parts of the species are consistent with other snail species that feed on decaying matter and mycorrhizae. Hill (1974) indicated that, although feeding on decaying plant matter occurs, the primary food source for

Morro shoulderband snail was probably fungal mycelia that grow on decaying plant matter. Moisture is reported as important in facilitating the feeding of Morro shoulderband snail (Service 2003). Walgren (2003) reported that the Morro shoulderband snail will eat live vegetable matter when presented in the lab, however, the species is not considered a garden pest (Service 2006).

Threats to Morro shoulderband snail identified in the listing rule included degradation of its habitat due to invasive, non-native plant species (e.g., veldt grass), structural changes in its habitat resulting from the maturation of dune vegetation, habitat degradation from recreational activities (e.g., off-road vehicle use), and the habitat loss resulting from development (Service 2001). Additional threats to the snail were thought to include competition for resources with the introduced European garden snail, the introduction of non-native predatory snails (e.g., *Oxycheilus* sp.), the small and isolated nature of the remaining snail populations, fire, and parasitization by sarcophagid flies (Roth 1985, Service 2001). Morro shoulderband snails are vulnerable to mortality caused by snail bait. It was suggested by Heagy (1980) that predators may include deer mice, alligator lizards, and beetles (Heagy 1980 in Roth 1985). Another factor that may contribute to egg mortality is seasonal drought and/or heat. The results of the 2006 status review by the Service found that recreational use (off-highway vehicles) and parasitism by sarcophagid flies were no longer considered threats to the continued existence of the species (Service 2006). Off-highway vehicle use is no longer allowed in habitat areas where the activity was once considered a threat and the sarcophagid flies were identified as belonging to a group in which a majority of the flies are not parasitic (Service 2006). No evidence has been found that indicates there is competition for resources with the introduced European garden snail (Service 2006).

**Distribution of Morro Shoulderband Snail at the Kelley-McDonough Parcel:** In 2004, 6 live Morro shoulderband snail individuals were identified in low-growing vegetation along the southern fence line by Dan Dugan (Tenera Environmental 2004, 2005; see Figure 4). During habitat assessments conducted by Mr. Dugan in 2005, no Morro shoulderband snails were detected; however, during a third habitat assessment conducted by Mr. Dugan in 2006, one live Morro shoulderband snail was identified in approximately the same location where the 6 live individuals were found in 2004 (Tenera Environmental 2005). In April 2008, Bob Sloan of the Morro Group identified a single Morro shoulderband snail in approximately the same location along with one vacant class B (>0.5 to 2 years old) and two vacant class C (>2 to 10 years old) empty Morro shoulderband snail shells.

## **Section 4 Biological Impacts and Take Assessment**

**4.1 Direct and Indirect Biological Impacts:** Construction and maintenance of a single-family residence would result in direct and impacts to 8,000 square feet of ruderal/non-native grassland habitat considered to be of marginal value to the Morro shoulderband snail. Despite this, as the species was documented to occur along the southern fence line in 20004, there remains the potential for take associated with the covered activities.

**4.2 Anticipated Take of Morro Shoulderband Snail:** Take of Morro shoulderband snail anticipated to result from implementation of those actions necessary to implement the proposed project (covered activities as identified in section 2.2) is considered negligible in terms of the

species' overall survival and recovery. The actual number of animals subject to incidental take is expected to be very low. Take would be predominantly in the form of capture and moving of individuals out of harm's way. The project site is located in critical habitat unit 2 (Service 2001; see below) but not within a conservation planning area considered important to species recovery (Service 1998).

**4.3 Impacts to Critical Habitat:** The Kelley-McDonough parcel is within the 320 acre (129 hectare)-critical habitat unit 2 designated on February 7, 2001 (Service 2001). It is located at the westernmost edge of the critical habitat unit and surrounded by residential development and associated landscaping and infrastructure. While primary constituent elements identified in the critical habitat rule for Morro shoulderband snail (sand or sandy soils; a slope not greater than 10 percent; and the presence of, or the capacity to develop, coastal dune scrub vegetation) are present, the parcel is very small and entirely surrounded by residences and associated landscaping and infrastructure. The loss of this small parcel represents less than 0.06 percent of critical habitat unit 2, the majority of which consists of intact coastal dune scrub and maritime chaparral. Upon consideration of these factors, permanent loss of the Kelley-McDonough parcel is not considered to be essential to the function of critical habitat unit 2 and not likely to appreciably diminish its value for both the survival and recovery of the Morro shoulderband snail.

**4.5 Cumulative Impacts:** In contrast with the analysis of cumulative impacts under section 7, HCPs (pursuant to section 10(a)(1)(B) of the Act) analyze cumulative impacts as incremental impacts of the action on the environment when added to other past, present, and reasonably foreseeable future actions regardless of whether those actions are undertaken by a Federal or non-Federal proponent. The geographic area for analysis should be defined by the manifestation of direct or indirect impacts as a result of covered activities. Cumulative impacts under section 10(a)(1)(B) of the Act can result from individually minor but collectively significant actions taking place over a period of time.

The effects of project implementation on the persistence of the Morro shoulderband snail are considered to be very low owing to the relatively small size of the project area and the isolated and degraded nature of the habitat. Construction, maintenance, and occupation of a new single-family residence will result in minor cumulative effects to the Morro shoulderband snail. Even though habitat on the entire 8,000 square-foot parcel could be permanently lost, this is not expected to negatively affect the long-term, range-wide survival of the species due to its occurrence in suitable habitat at nearby locations, as well as elsewhere throughout its geographic range. Take of individual Morro shoulderband snails will be minimized during construction activities and mitigated by contribution of \$4,000 as an in-lieu fee into an Impact-Directed Environmental Account held by the National Fish and Wildlife Foundation. A copy of the Service's agreement with the Foundation can be found as Appendix B. This fee will be used to effect recovery actions for Morro shoulderband snail that have been identified in the *Recovery Plan for the Morro Shoulderband Snail and Four Plants from Western San Luis Obispo County, California* (Service 1998).

Morro shoulderband snails have been observed inhabiting landscaping and other ruderal habitat in residential yards; however, due to the parcel's location in an existing neighborhood, it is no

anticipated that individuals of the species will recolonize portions of the project site post-development.

**4.5 Anticipated Effects of the Taking:** The take of Morro shoulderband snail that is anticipated to result from those actions necessary to implement the proposed project is considered to be insignificant in terms of the species' overall survival. The actual number of animals subject to incidental take is expected to be low (and predominantly in the form of capture), little or no native habitat for the species will be impacted, and the project site is located in an area that is not considered important to the recovery of species. For these reasons, the level of take of the Morro shoulderband snail that would result from the construction and occupation of a single-family residence on the Kelley-McDonough parcel is considered negligible.

## **Section 5 Conservation Program**

**5.1 Biological Goals and Objectives:** Section 10(a)(2)(A) of the Act requires that an HCP specify the measures that the permittee(s) will take to minimize and mitigate to the maximum extent practicable the impacts of the taking of any federally listed animal species as a result of activities addressed by the plan.

As part of the "Five Point" Policy adopted by the Services in 2000, HCPs must establish biological goals and objectives (65 *Federal Register* 35242, June 1, 2000). The purpose of the biological goals is to ensure that the operating conservation program in the HCP is consistent with the conservation and recovery goals established for the species. The goals are also intended to provide to the applicant(s) an understanding of why these actions are necessary. These goals are developed based upon the species' biology, threats to the species, the potential effects of the Covered Activities, and the scope of the HCP.

Avoidance of take is not considered feasible on the subject site because the parcel size is not of sufficient size to make any onsite conservation of habitat biologically-meaningful such that it would contribute to recovery of the Morro shoulderband snail. The goals below were developed based upon the species' biology, threats to the species, the potential effects of the covered activities, and the scope of the HCP.

### **Goal 1: Minimize take, in the form of injury or mortality, of Morro shoulderband snail**

#### **Objective 1.1: Conduct pre-construction and construction surveys for Morro shoulderband snail**

A Service-approved permitted biologist whose recovery permit includes, as a permit condition, authorization to capture and move the species will conduct a pre-construction survey to identify the location of any Morro shoulderband snail that may be present. The objective of pre-construction and construction activity surveys is to locate as many Morro shoulderband snails as possible and to move them out of harm's way.

The biologist will be present during the installation of construction fencing, demolition of existing structures, and initial grading and excavation activities (e.g., clearing of vegetation and

stripping of the surface soil layer) to monitor for the presence of Morro shoulderband snail. Any live Morro shoulderband snails in any life stage that are encountered during these monitoring events will be captured and moved to a Service approved site by the authorized monitor. The monitor will have the authority to order any reasonable measure necessary to avoid the take of Morro shoulderband snail and to immediately stop any work or activity that is not in compliance with the conditions set forth in the incidental take permit. The Service office in Ventura will be notified of any “stop work” order and the order will remain in effect until the issue has been resolved. Upon completion of site grading activities, the monitor will periodically visit the project site throughout the construction period. During periods of rain or heavy fog/dew the monitor will conduct pre-activity surveys to ensure no Morro shoulderband snails have migrated into the work area. No construction work will be initiated until the monitor determines that the work area is clear of Morro shoulderband snails.

This condition will be included in both the Minor Use and Coastal Development permits that are required from the County of San Luis Obispo in order to obtain grading and construction permits.

### **Objective 1.2: Capture and Moving of Morro Shoulderband Snail**

All live Morro shoulderband snails in any life stage that are found during the pre-construction surveys or construction monitoring will be captured and moved to a Service-approved receptor site. These activities will be performed by a Service-approved biologist in possession of a valid recovery permit for the species.

### **Objective 1.3: Conduct pre-construction environmental awareness training**

A Service-approved biologist with knowledgeable and experience with Morro shoulderband snail and its habitat will conduct a pre-construction training session for all construction personnel involved in site disturbance or any other activity that could result in take of Morro shoulderband snail. This training session is intended to inform construction crews, field supervisors, and equipment operators about the status and presence of the species, grading and construction-activity restrictions, and those minimization measures specified in the HCP.

**Goal 2: To mitigate unavoidable take of Morro shoulderband snail by effecting recovery actions as identified in the *Recovery Plan for the Morro Shoulderband Snail and Four Plants from Western San Luis Obispo County, California*.**

**Objective 2.1: Unavoidable take of the Morro shoulderband snail will be mitigated through the funding of recovery task actions on conserved lands within the known range of the species.**

The primary objective of the mitigation is to facilitate the collection of data that will address some of the remaining recovery task needs for to consider the down- and potential delisting of the Morro shoulderband snail. Data resulting from the research will also be useful in the development of habitat management strategies that will be necessary for the eventual delisting of the species. The level of funding provided in this HCP intended to mitigate take of Morro

shoulderband snail is expected to contribute to the (1) implementation of population surveys on conserved lands within the range of the Morro shoulderband snail, (2) compilation and analysis of the data collected, and (3) preparation of a final report presenting study results and Morro shoulderband snail population estimates. More detail is provided in section 5.3.4 to follow.

## 5.2 Avoidance, Minimization, and Mitigation Measures

**Take Avoidance:** Avoidance of take is not considered feasible for any proposed development of the Kelley-McDonough parcel because conservation of onsite areas on a parcel of this small size and in a residential neighborhood would not contribute to recovery of the Morro shoulderband snail. As such, take avoidance through maintenance of onsite habitat for the species it is not considered to be biologically meaningful and has not been further considered.

### Take Minimization Measures

**Pre-construction Surveys:** In coordination with the Service, the County of San Luis Obispo requires the Kelley-McDonoughs, or their legal successor(s) in ownership, to retain a Service-approved biologist (i.e., a person in possession of a valid recovery permit for Morro shoulderband snail) to conduct pre-construction surveys prior to the initiation of each construction phase as a measure to minimize take of Morro shoulderband snail. This is made a condition of both the Minor Use and Coastal Development permits that are required to obtain grading and construction permits. The objective of pre-construction surveys is to locate as many Morro shoulderband snails as possible and move them out of harm's way. These surveys will represent systematic search of vegetation and objects onsite that could provide suitable shelter for Morro shoulderband snail and the results will be presented as part of HCP reporting requirements.

**Capture and Moving of Morro Shoulderband Snails:** All live Morro shoulderband snails in any life stage that are found during the pre-construction surveys or construction monitoring activities will be captured and moved out of harm's way to a pre-determined, Service-approved receiver site by a Service-approved biologist.

- **Pre-construction Environmental Awareness Training:** A Service-approved biologist knowledgeable about the Morro shoulderband snail and its habitat will conduct preconstruction environmental awareness training session for all personnel who will work on-site during construction. This meeting is intended to inform construction crews, field supervisors, equipment operators, etc. about the status and presence of the species, grading and construction-activity restrictions, and the protection and minimization measures specified in the HCP and ITP.
- **Construction Monitoring:** A Service-approved permitted biologist whose recovery permit includes, as a permit condition, authorization to capture and move the species will be present daily during the installation of construction fencing, demolition of existing structures, and initial grading and excavation activities (e.g., clearing of vegetation and stripping of the surface soil layer). Any live Morro shoulderband snails or egg masses found during these monitoring events will be moved out of harm's way by the authorized

biologist. This biologist will have the authority to order any reasonable measure necessary to avoid the take of Morro shoulderband snail and to immediately stop any work or activity that is not in compliance with the conditions set forth in the incidental take permit. The Service office in Ventura will be notified of any “stop work” order and the order will remain in effect until the issue has been resolved. Upon completion of site grading activities, the monitor will periodically visit the project site throughout the construction period to ensure that impacts to the project site are consistent with the project description contained in this HCP and the ITP. During periods of rain or heavy fog/dew the monitor will conduct pre-activity surveys to ensure no Morro shoulderband snails have migrated into the work area. No construction work will be initiated until the monitor determines that the work area is clear of Morro shoulderband snails.

**Mitigation for Unavoidable Take:** Unavoidable take of the Morro shoulderband snail will be mitigated through the payment of an in-lieu fee of \$4000 to fund Morro shoulderband snail recovery task actions on conserved lands within the known range of the species. A priority task entails determining the status of populations of the species present on these conserved lands. Currently there are minimal data available for estimating Morro shoulderband snail population levels on these lands. The Recovery Plan for the Morro shoulderband snail (Service 1998) specifies that downlisting of the species can be considered when sufficient populations and suitable occupied habitats from all four Conservation Planning Areas (Morro Spit, West Pecho, South Los Osos, and Northeast Los Osos) are secured and protected. The five-year status review for the Morro shoulderband snail (Service 2006) indicates that sufficient habitat blocks have been secured and protected to satisfy the criterion for downlisting; however, existing Morro shoulderband snail population information is based largely on presence/absence surveys prompted by applications for changes in land use (*e.g.*, residential development) and does not produce data suitable for estimating population estimates. Activities on conserved lands do not generally trigger Morro shoulderband snail surveys, so many of the parcels have not been surveyed and it is unknown whether the species is present. On the conserved parcels where Morro shoulderband snail presence has been established there is little or no information regarding population size or viability. To consider downlisting, the Recovery Plan also specifies that Morro shoulderband snail populations must be large enough to minimize the short-term (next 50 years) risk of extinction in any of the four Conservation Planning Areas. Therefore, additional data suitable for population estimation would greatly improve the means of assessing whether sufficiently large populations exist to meet the recovery criteria.

A primary objective of this mitigation strategy is to facilitate the collection of data that will address some of the remaining recovery task needs for downlisting (and potential de-listing) of the Morro shoulderband snail. Data resulting from the research will also be useful in the development of habitat management strategies that will be necessary for the eventual delisting of the species. The level of funding provided in this HCP for mitigating take of Morro shoulderband snail is expected to facilitate (1) implementation of population surveys on conserved lands within the range of the Morro shoulderband snail, (2) the compilation and analysis of the data collected, and (3) the preparation of a final report presenting study results and Morro shoulderband snail population estimates. Examples of the conserved parcels on which recovery activities may be undertaken are listed in Table 1 below.

Table 1: Conserved Parcels in the Los Osos Area

Assessor Parcel Number (APN)	Name	Ownership	Size (acres)	Conservation Planning Area	Critical Habitat Unit
APN 038-711-016	BLM	BLM <sup>1</sup>	4.7	Northeast Los Osos	3
APN 038-711-016	Powell I	CDPR <sup>2</sup>	15.6	Northeast Los Osos	3
APN 067-012-011	Powell II	CDPR	50.6	Corridor Area <sup>5</sup>	3 <sup>6</sup>
APN 038-721-024	Pismo	CDPR	10.9	--	--
APN 074-022-003	Butte	CDPR	18.9	West Pecho	--
APN 074-022-061	Hotel	CDPR	42.4	West Pecho	1
APN 074-229-010	Sweet Springs I	MCAS <sup>3</sup>	24.0	--	--
APN 074-229-009	Sweet Springs II	MCAS	~8	--	--
APN 038-711-015	Attman	LCSLO <sup>4</sup>	11.2	Northeast Los Osos	3
APN 038-711-004	Garris	LCSLO	~4	Northeast Los Osos	3
APN 074-224-019	Los Osos Oaks	CDPR	~90	A <sup>5</sup>	--

1 Bureau of Land Management

2 California Department of Parks and Recreation, San Luis Obispo Coast

3 Morro Coast Audubon Society

4 Land Conservancy of San Luis Obispo

5 Designated as “Other Habitat Area” in Recovery Plan

6 A portion is within critical habitat

**5.3 Monitoring:** Monitoring tracks compliance with the terms and conditions of the HCP and ITP. There are three types of monitoring: (1) compliance monitoring tracks the permit holder’s compliance with the requirements specified in the HCP and ITP; (2) effects monitoring tracks the impacts of the covered activities on the covered species; and (3) effectiveness monitoring tracks the progress of the conservation strategy in meeting the HCP’s biological goals and objectives (includes species surveys, reproductive success, etc.). Monitoring provides information for making adaptive management decisions.

**Pre-construction Monitoring:** A Service-approved biologist knowledgeable about the Morro shoulderband snail and its habitat will conduct a pre-construction training session for all construction personnel who will be involved in site disturbance activities. This session is intended to inform construction crews, field supervisors, and equipment operators, about the status and presence of the species, grading and construction-activity restrictions, and those avoidance and minimization measures specified in the HCP.

**Construction Monitoring:** A Service-approved permitted biologist whose recovery permit includes, as a permit condition, authorization to capture and move the species will be present during the installation of construction fencing, demolition of existing structures, and initial grading and excavation activities (e.g., clearing of vegetation and stripping of the surface soil layer) to monitor for the presence of Morro shoulderband snail. All live Morro shoulderband snails in any life stage that are encountered during these monitoring events will be captured and moved to a Service-approved receptor site by the authorized monitor. The monitor will have the authority to order any reasonable measure necessary to avoid the take of Morro shoulderband snail and to immediately stop any work or activity that is not in compliance with the conditions set forth in the incidental take permit. The Fish and Wildlife Service office in Ventura will be notified of any “stop work” order and the order will remain in effect until the issue has been resolved. Upon completion of site grading activities, the monitor will periodically visit the project site throughout the construction. During periods of rain or heavy fog/dew the monitor will conduct daily pre-activity surveys to ensure no Morro shoulderband snails have migrated into the work area. No construction work will be initiated until the monitor determines that the work area is clear of Morro shoulderband snails.

**Access to Project Site:** The permittees will allow a representative from the Service access to the project site to monitor compliance with the terms and conditions of the ITP and project effects.

**5.4 Reporting:** Annual Reports will be submitted to the Service by December 31 each year and include (as necessary): (1) a brief summary or list of project activities accomplished during the reporting year (e.g., inclusive of construction activities and other covered activities); (2) project impacts (e.g., quantification of the area graded.); (3) a description of any take that occurred for each covered species (inclusive of the cause, form, amount, location of take and deposition of dead or injured individuals); (4) a brief description of conservation strategy implemented; (5) results of monitoring results (compliance, effects and effectiveness monitoring) and survey information (if applicable); (6) a description of circumstances that made adaptive management necessary and how it was implemented; (7) a description of any changed or unforeseen circumstances that occurred and how they were addressed; (8) all funding expenditures, balance, and accrual; and (9) a description of any minor or major amendments. It is likely that one construction activities are completed; these reports will be brief in nature and are not anticipated to add significant funding costs. Preparation and submittal of all reports will be the responsibility of the permittee and include supporting information in the form of photocopied field notes compiled and signed by the monitoring biologist.

## **Section 6 Plan Implementation**

**6.1 Changed Circumstances:** Section 10 regulations [(69 FR 71723, December 10, 2004 as codified in 50 Code of Federal Regulations (CFR), Sections 17.22(b)(2) and 17.32(b)(2))] require that an HCP specify the procedures to be used for dealing with changed and unforeseen circumstances that may arise during the implementation of the HCP. In addition, the HCP No Surprises Rule [50 CFR 17.22 (b)(5) and 17.32 (b)(5)] describes the obligations of the permittee(s) and the Service. The purpose of the No Surprises Rule is to provide assurance to the non-Federal landowners participating in habitat conservation planning under the Act that no additional land restrictions or financial compensation will be required for species adequately

covered by a properly implemented HCP, in light of unforeseen circumstances, without the consent of the permittee(s).

Changed circumstances are defined in 50 CFR 17.3 as changes in circumstances affecting a species or geographic area covered by an HCP that can reasonably be anticipated by plan developers and the Service and for which contingency plans can be prepared (e.g., the new listing of species, a fire, or other natural catastrophic event in areas prone to such event). If additional conservation and mitigation measures are deemed necessary to respond to changed circumstances and these additional measures were already provided for in the plan's operating conservation program (e.g., the conservation management activities or mitigation measures expressly agreed to in the HCP or IA), then the permittee(s) will implement those measures as specified in the plan. However, if additional conservation management and mitigation measures are deemed necessary to respond to changed circumstances and such measures were not provided for in the plan's operating conservation program, the Service will not require these additional measures absent the consent of the permittee(s), provided that the HCP is being "properly implement" (properly implemented means the commitments and the provisions of the HCP and the IA have been or are fully implemented).

Two changed circumstances have been identified for the Kelley-McDonough HCP: presence of a newly listed species and a newly discovered listed species

**Newly Listed Species:** If a species that is not covered by the HCP, but may be affected by activities covered by the HCP is discovered onsite or listed under the Act during the term of the ITP, the permit will be re-evaluated by the Service. Based upon the results of this review, covered activities may be modified to ensure that they are not likely to jeopardize or result in take of this species or adversely modified its critical habitat. The permittees will implement those modifications to covered activities identified by the Service as necessary to avoid the likelihood of jeopardy to or take of the newly listed species and/or adverse modification designated critical habitat. The Kelley-McDonoughs, or their legal successor(s) in ownership, will continue to implement such modifications until such time as the permittee(s) has applied for and the Service has approved an amendment of the Section 10(a)(1)(B) permit, in accordance with applicable statutory and regulatory requirements, to cover the newly listed species or until the Service notifies the permittee(s) in writing that the modifications to the HCP covered activities are no longer required to avoid the likelihood of jeopardy of the newly listed species or adverse modification of newly designated critical habitat.

**Newly Discovered Listed Species:** In the event that one or more other already listed species is discovered at the project site during the term of the permit, the permittee will cease project activities that are likely to result in take and work with the Service to develop a permit amendment to address said species. For this particular project, it is extremely unlikely that any other listed species will be discovered at the project site due to the small size and location of the parcel and limited habitat area.

**6.2 Unforeseen Circumstances:** Unforeseen circumstances are defined in 50 CFR 17.3 as changes in circumstances that affect a species or geographic area covered by the HCP that could not reasonably be anticipated by plan developers and the Service at the time of the HCP's

negotiation and development and that result in a substantial and adverse change in status of the covered species. The purpose of the No Surprises Rule is to provide assurances to non-Federal landowners participating in habitat conservation planning under the Act that no additional land restrictions or financial compensation will be required for species adequately covered by a properly implemented HCP, in light of unforeseen circumstances, without the consent of the permittee(s).

In case of an unforeseen event, the permittee will immediately notify the Service staff that has functioned as the principal contacts for the proposed action. In determining whether such an event constitutes an unforeseen circumstance, the Service will consider, but not be limited to, the following factors: size of the current range of the affected species; percentage of range adversely affected by the HCP; percentage of range conserved by the HCP; ecological significance of that portion of the range affected by the HCP; level of knowledge about the affected species and the degree of specificity of the species' conservation program under the HCP; and whether failure to adopt additional conservation measures would appreciably reduce the likelihood of survival and recovery of the affected species in the wild.

If the Service determines that additional conservation and mitigation measures are necessary to respond to the unforeseen circumstances where the HCP is being properly implemented, the additional measures required of the permittee must be as close as possible to the terms of the original HCP and must be limited to modifications within any conserved habitat area or to adjustments within lands or waters that already set-aside in the HCP's operating conservation program. Additional conservation and mitigation measures involve the commitment of additional land or financial compensation or restrictions on the use of land or other natural resources otherwise available for development or use under original terms of the HCP only with the consent of the permittee(s).

### **6.3 Amendments**

**Minor Amendments:** Minor amendments are changes that do not affect the scope of the HCP's impact and conservation strategy, change amount of take, add new species, and change significantly the boundaries of the HCP. Examples of minor amendments include correction of spelling errors, minor corrections in boundary descriptions, or minimal changes to covered activities such that they would not affect the take analysis contained in the supporting documentation. The minor amendment process is accomplished through an exchange of letters between the permit holder and the Service's Ventura Fish and Wildlife Office and is not subject to public review.

**Major Amendments:** Major amendments to the HCP and permit are changes that do affect the scope of the HCP and conservation strategy, increase the amount of take, add new species, and change significantly the boundaries of the HCP. Major amendments often require amendments to the Service's decision documents, including the NEPA document, the biological opinion, and findings and recommendations document. Major amendments typically require additional public review.

**6.4 Permit Suspension or Revocation:** The Service may suspend or revoke their respective permits if the Kelley-McDonoughs, or their legal successor(s), in ownership fail to implement the HCP in accordance with the terms and conditions of the permits or if suspension or revocation is otherwise required by law. Suspension or revocation of the Section 10(a)(1)(B) permit, in whole or in part, by the Service will be in accordance with 50 CFR 13.27-29, 17.32 (b)(8).

**6.5 Permit Renewal:** Upon expiration, the Section 10(a)(1)(B) permit may be renewed without the issuance of a new permit, provided that the permit is renewable, and that biological circumstances and other pertinent factors affecting covered species are not significantly different than those described in the original HCP. To renew the permit, the Kelley-McDonoughs, or their legal successor(s), will submit to the Service, in writing: (1) a request to renew the permit; reference to the original permit number; (2) certification that all statements and information provided in the original HCP and permit application, together with any approved HCP amendments, are still true and correct, and inclusion of a list of changes; (3) a description of any take that has occurred under the existing permit; and (4) a description of any portions of the project still to be completed, if applicable, or what activities under the original permit the renewal is intended to cover.

If the Service concurs with the information provided in the request, it will renew the permit consistent with permit renewal procedures required by Federal regulation (50 CFR 13.22). If the Kelley-McDonoughs, or their legal successor(s), files a renewal request and the request is received by the issuing Service office at least 30 days prior to permit expiration, the permit will remain valid while the renewal is being processed, provided the existing permit meets renewal criteria. The Kelley-McDonoughs, or their legal successor(s), may not take listed species beyond the quantity authorized by the original permit. If the renewal request is not submitted within 30 days prior to permit expiration, the permit will become invalid upon expiration. The Kelley-McDonoughs, or their legal successor(s), must have complied with all annual reporting requirements to qualify for a permit renewal.

The need for permit renewal could result from any of the following: 1) prevailing economic climate reduces the motivation for project initiation or transfer of parcel via sale, 2) delays in approval of project design or inspections, 3) timing of County and Coastal permits, and/or 4) construction not complete.

**6.6 Permit Transfer:** In the event of a sale or transfer of ownership of the property during the life of the permit, the following will be submitted to the Service by the new owner(s): a new permit application, permit fee, and written documentation providing assurances pursuant to 50 CFR 13.25 (b)(2) that the new owner will provide sufficient funding for the HCP and will implement the relevant terms and conditions of the permit, including any outstanding minimization and mitigation. The new owner(s) will commit to all requirements regarding the take authorization and mitigation obligations of this HCP unless otherwise specified in writing and agreed to in advance by the Service.

The most likely scenario that would require transfer of the permit would be if, after obtaining the ITP, the Kelley-McDonoughs sell the parcel to another party who must then agree to implement the terms and conditions of the HCP and ITP.

## Section 7 Funding

**7.1 HCP Implementation Costs:** Estimated costs to implement the Kelley-McDonough HCP are provided below.

**7.2 Table 2: Funding Costs**

Item/Activity	Unit Cost	One-Time Cost	Re-occurring Costs	Total
<b>Conservation Strategy</b>				
Payment of In-Lieu Fee	\$4,000	\$4,000	n/a	\$4,000
<b>Subtotal</b>				\$4,000
<b>Monitoring</b>				
Pre-construction Survey	\$400		n/a	\$400
Worker Awareness Training	\$100		n/a	\$100
Construction Monitoring	\$800		up to 3 events	\$2,400
Capture and Moving of Morro Shoulderband Snails	\$200		up to 3 events	\$600
<b>Subtotal</b>				\$3,500
<b>Changed Circumstances</b>				
	\$500		n/a	\$500
<b>Subtotal</b>				\$500
<b>Reporting</b>				
Post-Construction Monitoring			up to 3 events	**
Annual Reports			9 events	**
Final Report			1 event	**
<b>Subtotal</b>				**
<b>TOTAL COST</b>				\$8,000

\*\* to be provided by permittees in accordance with section 5.4

**Funding Source:** John Kelley and Denise McDonough, as permittees, will be responsible for the full cost of implementing the minimization and mitigation measures as described in section 5.1, those changed circumstances described in section 6.2.1.1, and cost estimated in Table 2. They understand that failure to provide adequate funding and/or failure to implement the terms of this HCP in full could result in temporary permit suspension or permit revocation. A copy of the receipt for payment of the in-lieu fee will be provided to the Service's Ventura Fish and

Wildlife Office and the County of San Luis Obispo as a condition of the issuance of any/all necessary permits associated with project implementation.

## **Section 8      Alternatives**

Section 10(a)(2)(A)(iii) of the Act [and 50 CFR 17.22(b)(1)(iii) and 17.32(b)(1)(iii)] require that alternatives to the taking of species be considered and reasons why such alternatives are not implemented be discussed.

Two alternatives to the proposed project were considered: the No Action Alternative and the Project Redesign Alternative. The effects of the proposed action were previously discussed; however, a discussion of the no action and alternative design alternatives is provided below.

**No Action Alternative:** Under the No Action Alternative an ITP for the Kelley-McDonough single-family residence would not be issued. As such, the Kelley-McDonough single-family residence could not legally be built and a contribution of \$10,200 in in-lieu fees would not be made to effect recovery actions for Morro shoulderband snail. Since the property is privately owned, there are ongoing economic considerations associated with continued ownership of a property without its intended use (e.g., payment of property taxes). The sale of the properties for purposes other than the identified activity is not economically feasible. Because of economic considerations and because the proposed action results in a net benefit for the covered species, Morro shoulderband snail, the No Action Alternative has been rejected.

**Project Redesign Alternative:** This alternative would involve design of a project that would reduce or avoid altogether take of Morro shoulderband snail. This alternative was not selected due to the small parcels size and degraded nature of onsite habitat. A reduction or redesign of the project footprint would not meet the applicants' needs and would not significantly reduce impacts to Morro shoulderband snail such that there would be a greater benefit to the species. For these reasons, the project redesign alternative has been rejected.

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