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original staff report

F13a

Prepared May 14, 2015 for May 15, 2015 Hearing

To: Commissioners and Interested Persons
From: Dan Carl, Central Coast District Director
Mike Watson, Central Coast District Coastal Planner
Subject: **STAFF REPORT ADDENDUM for F13a**
Application A-3-SNC-98-114-EDD (SNG Dispute Resolution Hearing)

This addendum responds to the letter received from counsel for Security National Guarantee, Inc. (SNG) on May 11, 2015. For clarity and ease of reference, Staff will address each of SNG's numbered points below, but there are several overarching issues that relate to most of the points raised by SNG in its submittal that Staff highlights here.

Overall

Probably the most important difference between SNG's perception of the dispute and Staff's is based on SNG's repeated assertion that the Settlement Agreement and the introductory paragraph to Special Condition 1 require the Commission to accept the project as depicted on the Vesting Tentative Map (VTM) SNG submitted as part of its proposed project. This is inaccurate. Special Condition 1 is entitled "Revised Plans" and requires substantial conformance with the VTM, site plans and cross-sections submitted by SNG, except that those plans "shall be modified to achieve compliance with this condition, including that the Revised Plans shall show the following required changes and clarification to the project:" (emphasis added). The VTM was the starting place for what the Commission approved, but this seven-page-long condition required the project to be modified to meet the standards laid out in this condition. Had the Commission simply approved the VTM and the project as proposed by SNG, this condition would have been unnecessary. It is not enough for SNG to assert that some aspect of the project was depicted in the VTM, so the permit should be issued. Instead, the plans must show consistency with the VTM and the standards required by the special condition before the plans may be approved.¹

Another significant source of disagreement between SNG and Staff relates to the visual impacts of this project. Staff believes certain elements of the project will be more visible than is allowed by the special conditions, and SNG believes the project complies with the special conditions. As an initial matter, and as described in the staff report, Special Condition 1(v) sets the stage for the Commission's review of SNG's compliance with all other aspects of Special Condition 1. Staff

¹ It is interesting to note that in numerous places SNG claims that it is the VTM that controls, yet in the case of the elevator overrides (item #5 of SNG's submittal) it urges the Commission to allow this additional development despite it being neither consistent with the VTM nor with Special Condition 1.

is not asserting that any particular aspect of the project is inconsistent with Special Condition 1(v) per se, but it believes that the requirements of this condition (i.e., that the project be designed overall to minimize visual incompatibility with the dune landscape and public views) is the lens through which Staff and the Commission must assess SNG's compliance with all other provisions of Special Condition 1. And that as currently proposed the project does not meet these overall visual resource protection requirements.

As it has attempted to assess the visual impacts of the project, Staff has been hampered from the very beginning of its condition compliance review by the lack of accurate, professionally-prepared, architectural elevations for the proposed project. As SNG notes in its submittal, it refused to provide such elevations but instead provided staff with views of specific "cross sections" of the project. While this did not comply with Special Condition 1(e)'s requirement to provide professional architectural elevations nor Special Condition 1(b)'s requirements that the revised plans be submitted with documentation demonstrating that all buildings and related development have been sited and designed such that views of the buildings from either northbound or southbound Highway One are blocked by existing or modified dune features, Staff attempted to assess condition compliance with what SNG submitted. This took extra time, however, as Staff had to repeatedly request additional cross-sections that would provide the most relevant views through the site. And as new cross-sections were provided, they revealed potential new problems with the visual impacts of the proposed project. This was not unexpected because the site is not a flat lot where a cross-section may be representative of an entire elevation, but instead is a dune property with a variety of significant topographic variations. The project itself includes a wide variety of heights and varied rooflines that stretch more than a quarter mile along Highway One. Highway One itself varies in elevation by some 32 feet along the property. Much delay and difficulty could have been avoided had SNG complied with the informational requirements in Special Conditions 1(e) and (b) to begin with, and if Staff had been supplied with accurate visual simulations to adequately assess the visual impacts of the project and SNG's compliance with the permit's special conditions.

SNG also complains about Staff raising new issues in the more recent letters Staff has drafted in response to SNG's submittals. SNG fails to acknowledge, however, that as it submitted additional information, new issues became apparent for the first time. For example, as SNG provided the additional cross-sections requested by Staff, these cross-sections revealed that the project was more visually intrusive than SNG had claimed and thus it did not comply with the special conditions. Staff was unable to make that determination without the necessary submittals from SNG. Similarly, Staff was unaware of the necessity for elevator overrides until it received SNG's February 3, 2015 submittal. And Staff was apprised for the first time in SNG's letter dated May 8, 2015 that SNG has attempted to comply with the offsite parking requirement of Special Condition 5(h). It is not surprising that new issues arose as SNG's later submittals revealed previously unknown inconsistencies with the permit's special conditions. In addition, SNG notes that Staff's letters have simply gotten longer each time. While this may be partially true, later letters acknowledge progress that has been made and conditions that have been satisfied, as well as the remaining issues, using prior letters as an organizational framework for ease of reference. In these letters, Staff has attempted to provide comments that are as detailed as possible as a means to facilitate resolution as quickly as possible, as opposed to simply rejecting without direction, and this too necessarily requires more text.

Finally, SNG notes that it requested on April 16 and 17 that Staff agree to a meeting to resolve at least some of the outstanding condition compliance issues raised in this dispute resolution. As stated in Staff's April 21 and 22, 2015 email correspondence, Staff was eager to meet with SNG to try to narrow or resolve the areas of disagreement. SNG insisted upon this dispute resolution taking place at the Commission's May hearing, however, and counsel for SNG was out of the country the week of April 20. Thus, the only days in which such a meeting could have taken place were April 27-30. Given that there was no guarantee that these issues could be resolved, and the staff report for this dispute resolution had to be issued by May 1st at the latest (in the supplemental late mailing cycle), it was totally infeasible to schedule a meeting with SNG at best a few days before the staff report had to be completed.

1. Resort Signage

Staff has repeatedly commented on the issue of resort signage commencing with Staff's comments on the originally submitted sign plans in July 31, 2014. As noted then, the submittal did not contain the necessary documentation or detail to fully assess various project elements for consistency with the conditions on the permit. SNG claims that Staff has mischaracterized the size of each of the resort entry signs. Although SNG has asserted in letters that the signs are smaller than Staff believes (see SNG March 9, 2015 letter and May 8, 2015 letter), these signs are shown on the plan detail sheets (see Exhibit 1). The sheets depict large monolithic concrete walls and/or sign backing with lettering inset and/or placed on the face of the structures. There are seven Monterey Bay Shores resort signs depicted between the entry and the hotel access tunnel – a distance of about 400 hundred feet. These signs, which include the sign-backing structure and lettering, are shown on the project plans as follows: 1) 15' x 40' at the toe of the large dune; 2) two signs 10' x 13' in size at the resort entrance; 3) two signs 5' x 30' on either side of the hotel tunnel entrance, and surrounded by what appears to be significant concrete wrap-around elements; and 4) a wedge-shaped sign 9' x 10' with two aspects set atop of monument-style pedestal (see Exhibit 1).

If SNG has re-designed these signs to be smaller than those depicted in the detail sheet it submitted, then Staff would be more than happy to review a revised set of plans reflecting what SNG has asserted in its letters. To date Staff has received no such revised plans, and the only plans submitted by SNG do not comply with Special Conditions 1(c) or 1(p).

Although not entirely clear from the submitted materials, SNG appears to alternatively argue that while the submitted plan is accurate, Staff is misinterpreting it because the proposed signs are only that portion of the sign development that is the lettering. Staff disagrees and contends that it is the entire structure (i.e., sign backing, monument, wall, etc) *and* the lettering on it that makes up the signs. To suggest otherwise is to suggest a billboard is only as large as the lettering on it.

In addition, it has been difficult for Staff to fully evaluate the visual impact of the proposed signs because SNG has not submitted any elevation views depicting the signs - they are not even shown in any of the submitted cross sections. Staff has done its best to evaluate the visual impact of the proposed signs based on the one detail sheet provided by SNG, and this sheet shows numerous massive signs that appear likely to be highly visible from the Highway One viewshed. The one submitted plan shows that the signs will be significant intrusions into the viewshed, and with their location along the dunes that are meant to provide a visual screen to buildings and

related development, they will appear visually out of place and incompatible with the required dune visual aesthetic. These signs are simply *not* sited and designed to minimize their visibility within the Highway One viewshed to the maximum extent feasible, thus they are inconsistent with Special Conditions 1(c) and 1(p).

That is not to say that Staff doesn't recognize that a commercial resort needs signs. Of course it does, and Staff agrees on this point. In fact, Staff has made suggestions to SNG on ways to achieve both objectives (e.g., allowing the lettering to be attached directly to the retaining walls that will be surfaced to mimic dune landforms; moving signs to the Highway One side of the road where the retaining wall there can hide the signs from that view; etc. – see, for example page 5 of Staff's letter to SNG dated February 16, 2015 in Exhibit 9). SNG has chosen to ignore such suggestions, and to keep with its basic signing scheme, and is asking the Commission to conclude this scheme is consistent with the conditions. As demonstrated above, it is not. Staff continues to be happy to work with SNG to come up with a CDP-consistent signing scheme, including working with SNG on visual assessment tools (e.g., the long-requested elevations, mock up and netting to approximate signs, etc.).

2. Resort Lighting

Special Condition 1(l) requires that "[l]ighting upcoast of the main tunnel entrance (i.e., along the pathways, parking lot, and fire road access), shall be prohibited other than the minimum lighting necessary for pedestrian and vehicular safety purposes." This prohibits lighting, including explicitly in the area upcoast of the main entrance tunnel, except for the minimum necessary for safety. Because staff and the Applicant already worked out issues with other lighting (such as interior lighting and other exterior lighting), there are two aspects of the lighting that are in dispute: lighting of the trails to the beach and lighting along the access roads.

With respect to the access paths, SNG has not submitted evidence demonstrating that the lighting is necessary for safety purposes. It claims that the lighting has been minimized, but the condition prohibits lighting in this area unless it is necessary for public safety. Staff has noted several other developments in the near vicinity that have no lighting on public access boardwalks through dunes. SNG has not submitted evidence to demonstrate why its project has different public safety needs than those.

Even accepting SNG's premise that some lighting is necessary for public safety purposes, SNG has not demonstrated that what it is proposing is the minimum necessary for safety purposes. While SNG contends that it has minimized the amount of light emitted from each light standard, this measure alone is insufficient to offset the sheer number of lights proposed and the amount of light that will be emitted as a result. Prior to the Commission's April 2014 approval on the project, there were no lights proposed along the public access pathway leading out towards the bluff and beach, notwithstanding the Applicant's claim that "minimal lighting on the public and resort access pathways has been shown on the project plans since 2013, prior to the April 2014 hearing." As shown on Exhibit 2, (Figure 18: Conceptual Exterior Lighting Locations, Access, Signage, and Lighting Plan, October 2013) there was no exterior lighting proposed along the access pathway adjacent to Fort Ord Dunes State Park prior to the Commission's action on the CDP in April 2014.

In response to staff's contention that the excess lighting could harm wildlife, the Applicant contends that the lighting will be wildlife friendly and have no impacts on sensitive species including because there has not been any nesting Western snowy plover within the interior of the site in 25 years. Point Blue Conservation Science has provided maps of nesting plovers for the 2014 and 2015 nesting seasons, which shows that there have been six nests during this period located on the beach and sand dunes fronting the Monterey Bay Shores project site, including one nest in 2014 mapped within the interior of the site. See Exhibit 3. In a letter that is part of this same addendum packet, Scott Cashen, M.S. an independent biological resources consultant, concurs with Staff's assessment that the proposed lighting will harm wildlife.²

With regard to the bollard lighting along the resort entry driveway and in the public parking lot, the Applicant has not provided any justification for the need or number of proposed lights. It asserts that these are the minimum necessary for pedestrian and vehicular safety, but it has submitted no evidence to back up these bare assertions. Given that lighting is prohibited upcoast of the main entry tunnel, except for the minimum necessary for pedestrian and vehicular safety, SNG must demonstrate that all of these lights are necessary, it has failed to meet this burden. As planned by the Applicant, these lights will be clearly visible within the Highway One viewshed during both day and nighttime views. Staff has requested but has not received a visual analysis of the effects of the lighting on public views, wildlife, and the nighttime sky. The requested analysis would help to refine lighting changes necessary to comply with the condition. Absent that, reducing the number of bollards along the resort entry road and public parking area and can serve to meet this aspect of the CDP.

3. Resort Pathways

In its response to the staff report, the Applicant claims that the Vesting Tentative Map (VTM) which is attached to the Settlement Agreement and shows the resort pathway layout was approved by the Commission as submitted. It further contends that realigning the resort path as recommended by staff is unnecessary because snowy plover has not been sighted in this particular area for 25 years, and that Commission staff failed to raise any issue regarding the resort pathway until its February 16, 2015 letter.

As explained above, the development depicted on the VTM was not approved as it was depicted then, it was approved with the changes required by all of the Special Conditions of the permit. One of those conditions requires the submittal of a Dune Restoration Plan (Special Condition 3). Special Condition 3 requires that "specific provisions shall be applied to explicitly enhance sensitive species habitats including at a minimum for snowy plover and Smith's blue butterfly habitats." Contrary to the Applicants assertion about the lack of snowy plovers, the Commission was well aware that the site had been used for snowy plover habitat when it approved this project. The entire southern Monterey Bay shoreline including the beach and foredunes fronting the project is designated as critical habitat and Western snowy plover have been observed using the project site for nesting, foraging, and over-wintering for more than 25 years. In addition, as noted above, Point Blue Conservation Science has observed six plover on the Monterey Bay Shores site, including one nest in 2014 within the interior portion of the site. See Exhibit 3. The proposed resort pathway would bring people, noise, light and other disturbance to this area

² May 11, 2015 Letter Memorandum from Scott Cashen, M.S., Senior Biologist, to Mr. Steve Kinsey, pg. 3.

recently and historically used for nesting and foraging by the snowy plover. With a small modification to the project to move the resort pathway downcoast, these impacts can be avoided. Thus, in order to comply with Special Condition 3, the Applicant must site the resort pathway consistent with the requirement to enhance snowy plover habitat.

Further, and regarding timing on comments, Staff notes that it commented in its August 29, 2014 letter on the original plan submittal that the plans “do not provide any plan detail beyond a site plan illustrating the approximate location of the approved pathway system and overlooks (i.e., benches, railings, etc.)” And that “this is insufficient to allow for an evaluation of condition compliance.” Additionally, in the same August 2014 letter staff commented on the submitted Dune Restoration Plan that “the plan does not include specific provisions that enhance sensitive species habitats, including for western snowy plover...”. In other words, there wasn't enough concrete information at the time to do more than make the observations that Staff did. Once Staff was made aware of the precise details proposed, Staff informed the Applicant that the pathways would need to be moved to meet CDP requirements related to snowy plover protection. The Applicant's assertion that Staff did not raise any issues and failed to respond within the 30-day comment window is incorrect.

4. Perimeter Fencing

The only remaining area of disagreement between the Applicant and Staff regarding fencing is the proposed perimeter fencing along the downcoast border and a portion of the upcoast border of the property. The Applicant is correct that Staff's statement in the staff report that these proposed fences are solid is inaccurate, but the Applicant's description of these fences is also inaccurate. The submitted plans depict 6 foot tall fences, comprised of 6” solid wood planks and installed with 3” spacing (the Applicant asserted the reverse – that the planks would be 3” and the spacing 6”). See Exhibit 4 for fencing plans.

Even with the correction that there would be 3 inches of space between six inch solid planks, Staff believes that this predominantly solid fencing is still not compliant with Special Condition 1(u). This condition requires that fencing must be minimized and lists as acceptable types of fencing: “rough-hewn wooden split rail, low rope and pole barriers for restoration as needed, etc.” As proposed, this fencing would stand out starkly in the dune environment, block views of dunes and the coast, be highly visible from public vantage points, such as Fort Ord Dunes State Park, prevent wildlife from migrating on and off of the property, and adversely affect dune processes. The Applicant asserts, without substantiation, that safety and / or security of the resort and the dunes themselves will be compromised absent the proposed 6-foot fence. It is true that the public has accessed the site in the past primarily for recreation purposes, but the Applicant has not demonstrated that the level of trespassing on a totally undeveloped site will be the same as it is once there is a massive resort development on-site. Other hotel developments in the area, such as Asilomar Dunes and the Sanctuary Beach Resort, are not protected by six foot tall primarily solid fencing, nor is staff aware of trespassing problems on either of these properties. The Applicant has failed to meet its burden of demonstrating that the proposed fencing is the minimum necessary to meet project objectives.

Lastly, with regard to the Applicant's claim that removal of all the existing chainlink fencing is nonsensical, Staff directs the Applicant to the first sentence in Special Condition 1(u) which explicitly requires all existing fencing be removed.

5. Height Limit

The Applicant argues that although it is proposing development higher than the 45 foot height limit included in Special Condition 1(e), its project is nevertheless compliant with this condition because (1) the elevator override is required by code; (2) the Commission has allowed appurtenant structures on building roofs in the past and the LCP allows such structures to exceed height limits; and (3) even though this element exceeds the height limit it is allowed under Special Condition 1(b). The LCP does not make exceptions for mechanical roof structures, and none of these other explanations addresses how proposed development sited over 45 feet is consistent with the condition explicitly prohibiting development over 45 feet. In fact, the Applicant does not even attempt to argue that this development meets the height limits or that it is not visible from Highway One, the Applicant simply attempts to side-step these inconsistencies.

The Applicant suggests that this issue applies only to one elevator override, but the plans depict two. The Applicant's submitted plans also have several scales, so they are difficult to analyze, but they depict these structures as a minimum of 18' x 28' (SNG asserts that they are 12' x 24', but its plans show otherwise).³ See Exhibit 5. Staff compared the rooftop plans with the Height Conformance plan sheet submitted in October 2014 to conclude that both hotel overrides exceed the 45-foot height limit imposed by Special Condition 1(e).⁴ By its terms, Special Condition 1(e) applies to all development.

First, Staff is unclear of the relevance of the Applicant's assertion that these elevator overrides are required by code. Presumably they were required by code when the CDP was approved with the required 45 foot height limit. Not only did the Applicant not raise this as a potential problem when the project was being considered by the Commission, the Applicant has consistently informed Staff that this type of equipment would not be necessary due to the type of elevator the Applicant intended to use. Staff has raised concerns about the visual impacts of development on the roofs of these structures for many years, which is why the Applicant removed its "green" infrastructure (including wind turbines and solar panels) from the project. The proposed project in front of the Commission, including the VTM, did not include either these green roof proposals or the elevator overrides, yet now the Applicant argues not only that it needs this equipment but that it should be allowed to violate the height limits. This is absurd. Regardless of what is required under the building code, the Applicant must comply with the requirement that all development must be no more than 45 feet above existing grade.

Second, with respect to SNG's assertion that the LCP allows this height variation, the Sand City Implementation Plan, CZ-VSC Coastal Zone Visitor Serving Commercial policy, states that "No building shall exceed thirty-six (36) feet as measured from existing grade except hotel uses shall be permitted variation in height to forty-five (45) feet." This contains no exception for rooftop

³ Sheet FP-11 of 12 has a general scale in the legend of 1" = 60', a plan detail scale of 1" = 8', and actual measurements indicating a scale of 1" = 4'. Staff used the lesser of these scales (1" = 4') to estimate the size of the elevator overrides and rooftop stairway as shown on FP-11.

⁴ The floor plans also show an elevator override and rooftop stairway on the residential tower that is roughly 28' x 28' or 784 square feet. A similar comparison with the height compliance plan was prepared and revealed that the residential feature was in compliance with the height limitation for that portion of the development.

mechanical equipment, and SNG has cited no other provision of the LCP that contains such an exception.

Although the Applicant asserts that the Commission “routinely” allows appurtenant structures over height limits, it cites to no individual case. Staff is unaware of any such approvals where the applicable LCP did not explicitly allow deviations. For example, the City of Santa Cruz LCP has clearly articulated allowances for specific rooftop equipment and only in specific planning districts.⁵ The Commission has presumably approved development in the City of Santa Cruz where rooftop equipment exceeds height limits, but only consistent with the LCP. Where, as here, such equipment is not excluded from applicable height limits, it is not allowed to exceed those limits.

Third, the Applicant states that development inland of the dune view line may be visible in southbound Highway One views, but the proposed development will be visible from northbound Highway One, which is explicitly prohibited. The Applicant also does not explain how this allowance for some view blockage from southbound Highway One provides an exception to the specific height limit contained in the Special Condition 1(e) and the LCP. Under the Applicant’s reading of the conditions, the allowance for some development to be visible from southbound Highway One would override the required height limit, but it has no support for this interpretation. Under the Applicant’s reading of the conditions, its development could exceed the height limit by as much as it wanted, as long as the exceedances were inland of the dune view line. This is an absurd reading of the conditions, and not consistent with the plain language of Special Condition 1(e).

In short, the Applicant is asking the Commission for an exception to the requirements of the special conditions when the conditions allow for no such exception. If the equipment is required, which it wasn't apparently until very recently, given the Applicant’s prior statements and plans prior to its February 3, 2015 submittal, then it needs to meet the conditions just like any other portion of the development.

6. Dune Manipulation for Screening Purposes

The Applicant has raised a factual dispute with Staff over the height of the final proposed dune elevations in the north and northwestern portions of the site and claims that this concern of Staff’s was first stated in Staff’s February 16, 2015 letter. In its August 29, 2014 compliance letter, however, Staff stated in relevant part “Bracketing the lack of current topo information (as discussed above), the submitted plans show dune changes north and northwest of the dune view line that lead to dune elevations substantially different from baseline elevations, inconsistent with this requirement.” The same sentiment was again repeated in Staff’s November 14, 2014 compliance letter and again in its February 16, 2015 compliance letter. The February 16, 2015 letter also provided a specific comment on the degree of inconsistency (i.e., eight feet above existing grade) and only after the issue of the accuracy of the underlying topography had been resolved. Exhibit 6 depicts the dunes at issue. This exhibit depicts areas in which the dunes are

⁵ City of Santa Cruz R-T (C) Beach Commercial District.

as high as eight feet above existing grade. If this exhibit is inaccurate, Staff urges the Applicant to submit an accurate exhibit that demonstrates condition compliance.

More importantly, the intent of the conditions was to strictly limit development visibility north of the dune view line. In this area, grades were *not* to be increased so that existing views across that portion of the site would not be blocked or otherwise adversely impacted. The *only* development allowed to exceed existing grades in this area was dune manipulation for screening purposes (limited to 3 feet above existing grade), where this very narrow exception was included to allow for the area to appear as natural as possible in terms of landscaping and undulations. To argue now that buildings and dune manipulation should be allowed to be higher than existing grades, and to be higher than the 3 feet exception identified in special condition 1(a) is inconsistent with the conditions.

First, the only thing allowed above existing grade is manipulated dune, and not buildings. SNG's proposed buildings exceed existing grades in this area, in places as much as 7 feet above existing grade as shown on their plans (see Exhibit 6, Page 3). This is simply not allowed, and it will result in *more* of this particular view being blocked in this protected area than is the existing case, and this is not allowed (additional view blockage is allowed in other portions of the development). Second, even the dune manipulation proposed by SNG exceeds existing grade by more than 3 feet, up to 7 feet in places (see Exhibit 6). This is also not allowed.

The conditions require SNG to fit its development within the identified limits, and do not allow SNG the option of building into this protected view above the specified parameters.

7. Highway One Views -Buildings

Special Condition 1(b) states:

“All building and related development shall be sited and designed so that views of it from either southbound or northbound Highway One (from a height of 5 feet above the roadway) are blocked by existing and/or modified dune features (including through extending dune areas over the top of such development, as applicable) in such a way that such views are of dunes and not of buildings and related development, except that buildings and related development are allowed to be visible in the southbound Highway One view if located inland of the dune view line (see Exhibit 8x [i.e., the Applicant's dune view line shown on sheets TM-2 and TM-6; see pages 2 and 5 of Exhibit 4])). The Revised Plans shall be submitted with documentation demonstrating compliance with this requirement.”

Many of issues raised by the Applicant in this section were addressed in the introductory paragraphs. The VTM does not control, it is the development depicted in the VTM, as required to be modified by conditions, that the Commission approved. And to the extent Staff raised new issues late into the condition compliance process it was only because those issues were not apparent with the Applicant's early, incomplete, submittals.

While the Applicant asserts that the development is consistent with the Special Conditions, it has not submitted plans so demonstrating. The plans received by Staff (see Exhibit 7) instead appear to illustrate that proposed buildings will be visible from north and southbound Highway One, inconsistent with Special Condition 1(b).

The Applicant contends that the 13 cross-sections and the Auto-CAD simulations that were provided adequately demonstrate condition compliance. But these submittals simply do not provide a complete depiction of the proposed project. Although it may sound like 13 cross sections is a lot, there are only seven along the Highway One east elevation, and this property frontage is more than one-quarter mile long and varies significantly in height along its length. The cross-sections illustrate one single slice through the site at roughly every 150 feet, on average. These perpendicular views do not capture all the development across the site and thus do not tell the story as seen by motorists along this stretch of highway. And instead of providing professionally-prepared, architectural elevations, which would have allowed staff to definitively conclude on the issue of Highway One dune screening, the Applicant provided an inferior and inaccurate set of computer simulations which were so poor as to be inconclusive. Again, much delay and difficulty could have been avoided had SNG complied with the informational requirements in Special Condition 1(e) and (b) to begin with, and Staff had worked with accurate visual simulations to adequately assess the visual impacts of the project and SNG's compliance with the permit's special conditions.

What Staff can discern from these cross-sections is that the manipulated dune heights and configuration appear to be unmanageable. Thus, it does not appear that the screening dunes can be maintained in the proposed configuration and at the heights that are necessary to screen the development from Highway One. The Applicant must be able to demonstrate that the dunes can be maintained at the proposed heights, as the design height of the buildings necessitates that they be kept exactly as high as proposed, otherwise the development will be exposed. To date, the Applicant has not met this burden.

The bottom line is that this is a difficult site on which measure view impacts, as detailed earlier, and the Applicant has not helped to provide the necessary evaluation tools in this respect. Based on the materials submitted, buildings and related development will be visible when that is not allowed, and the dune screening may not be able to be maintained in its proposed configuration. Given that the Applicant provides essentially zero margin for error (i.e., building dune screening extends exactly as high as necessary to attempt to screen development), it is possible, if not likely, that buildings will be even *more* visible than shown in submitted cross-sections. This is important because these visibility requirements do not just apply to submittal of plans and initial development, but rather these visibility requirements apply to the project for as long as it is present. Staff is attempting to not only verify that when constructed the CDP terms and conditions are met, but that over time they will be met as well. This is to help protect the Applicant because if buildings or other development becomes visible in the future when it is not allowed to be visible, this will be a violation of the CDP, and the Applicant will have to modify the project to bring it into compliance at that time, potentially at great cost and difficulty. Staff is carefully evaluating the project as a means of limiting this potential issue in the future as well.

Lastly, SNG claims that staff directed SNG to remove anything between Highway One and the building area in its visual simulations. This is simply untrue. Staff did not direct any such thing, and has only been interested in accurate renderings of all development that would be seen from the identified public vantage points, including signs, fencing, tunnels, road, parking lot etc., none of which is shown in any elevation, as the Applicant has refused to submit any elevations, and none of which can be made out in the submitted simulation as it is so blurry as to be unusable for visual compliance measuring purposes.

8. Dune Restoration Plan

Special Condition 3 states in relevant part,

“The Dune Restoration Plans shall be substantially in conformance with the plans submitted to the Coastal Commission (titled Habitat Protection Plan, October 2013 and dated received in the Coastal Commission’s Offices on October 28, 2013); shall provide for dune habitat restoration and stabilization for all dune areas of the site outside of development areas (as well as for all dune extension and screening areas); and shall be modified to achieve compliance with this condition, including providing for, at a minimum, the following components:

*(a) **Objective.** Restoration shall be premised on enhancing dune habitat so that it is self-functioning, high quality habitat in perpetuity.*

...

*(d) **Sensitive Species.** Special provisions shall be applied to explicitly enhance sensitive species habitats, including at a minimum snowy plover and Smith’s blue butterfly habitats, as part of dune restoration activities, and such provisions shall be consistent with applicable state and federal agency requirements for these species.*

Location of the Easement Area

First, and similar to the discussion above, made with regard to approval of the VTM, the Commission did not approve the Applicant’s October 2013 Habitat Protection Plan as submitted, it approved that plan subject to the modifications required by Special Condition 3. Special Condition 3 explicitly states that the dune restoration plan “shall be modified to achieve compliance with this condition.” Contrary to the Applicant’s second and third justifications on page 19 of its May 8, 2015 letter, through Special Conditions 3 and 4 the Commission did, in fact, require specific modifications to the area to be protected in the Dune Restoration Plans.

The Applicant asserts that it need not include within its Dune Restoration Plan all of the area depicted in Exhibit 11a to the staff report because it was only a “general” depiction of the dune conservation area. The Applicant is correct that the condition references an area “generally depicted in Exhibit 11a.”

It is also important to note that the Commission routinely identifies development envelopes and restoration areas in dune cases (see, for example, CDPs associated with development in the Asilomar Dunes area of Pacific Grove, nearby). Development is confined to the development area, and restoration occurs outside of that area. This is the same construct as was approved here. The Applicant argues that the boundary between the two should be drastically altered to include areas generally extending to the road, including the fire road, and the edges of the buildings. Staff’s interpretation, consistent with Exhibit 11a and past practice is that the edge of proposed

development is the edge of the envelope, as is typically the case. The Applicant's interpretation of the condition is simply inconsistent with the terms and conditions of the CDP.

Moreover, as indicated in Staff's September 24, 2014 letter summarizing the discussions and agreements reached regarding the extent of the Dune Conservation Easement Area⁶, SNG agreed to revise both the dune conservation and public access easement areas consistent with Exhibits 11a and 11b of the Commission's approval and to request staff concurrence with respect to the extent/limits of the easement areas including by illustrating them on scaled plans that could be verified for conformance with the Commission's approval prior to having a metes and bounds survey prepared to accurately define the location of the easements and recordation of the Irrevocable Offer of Dedications (OTD) for Public Access and Dune Area Conservation.

Dune Restoration Seaward of the Resort

The Applicant is correct that Special Condition 1(j) allows foredune grading down to 32 feet NGVD, although it was the Applicant that proposed such grading, to provide views of the ocean from the resort. The Commission limited the grading to no lower than 32 feet NGVD in order to protect the site from wave run-up and flooding. Special Condition 1(g) (Foredune Grading) specifies that this grading is only allowed where it is "designed to: (1) replicate natural dune landforms and integrate into the surrounding dunes to the maximum extent feasible; and (2) meet other requirements of this condition." The project plans depict uniform grading to 32 feet NGVD. Staff's position is that Special Condition 1(g) both creates a limit to such grading (no lower than 32 feet NGVD) and requires that the grading replicate natural dune landforms, which means undulating dunes. This type of natural dune landform is also needed to implement the requirements of Special Condition 3 in this area, as these dunes must also be restored and function as natural habitat, which is unlikely if they are graded to a uniform height. SNG must instead grade no lower than 32 feet NGVD but still create natural-looking and functioning dune landforms here.

Dune Restoration Requirements Have not Been Satisfied

The Applicant's submitted Dune Restoration Plan lacks required specificity on *how* it will accomplish the requirement in Special Condition 3 that the site consists of self-functioning high quality habitat in perpetuity. The plan lacks the following provisions that are typically included in the types of restoration plans approved by the Commission:

- Specific implementation measures for restoration of the dunes, such as how and where dune hummocks, mounds, and similar dune formations will be established.
- Specific allowances and proposed measures for adapting to wind patterns, specific sensitive species needs, etc.

⁶ Staff met with the Applicant in the Commission's Central Coast Office on September 10, 2014 to review together the compliance-related deficiencies identified in Staff's August 29, 2014 compliance letter including those related to the extent of the Dune Conservation Easement Area.

- Identification of the specific measures that the Applicant will use to enhance sensitive species habitats, including a monitoring and maintenance plan for any such measures⁷

The submitted plans show the entire site seaward of the development graded and/or filled to a uniform 32-foot NGVD.

In sum, without the required dune formation and actual restoration elements specific to sensitive species, the site restoration is unlikely to support plant recolonization and natural regeneration, and is unlikely to meet condition requirements that the dunes be self-functioning high quality habitat in perpetuity. Staff can provide the Applicant with examples of the types of restoration plans that have been approved in the past, in order to provide it with guidance on the specificity needed here. Staff believes these issues can be worked out with the Applicant, but the required materials have simply not been submitted yet.

9. OTDs for Dune Conservation and Public Access

SNG claims that Staff failed to timely review the offers to dedicate (OTD) the Dune Conservation Easement and the Public Access Easement that SNG submitted on July 31, 2014.⁸ This is inaccurate. In its August 29, 2014 letter to SNG, staff did respond to those submittals and rejected them in full. Staff explained that these OTDs were required to reflect the restrictions included in the Dune Restoration Plans and Public Access Plan, respectively. Because those plans had not yet been approved, the scope of the restrictions that needed to be included in the OTDs were not yet clear, so the documents could not be completed. Essentially, Staff could not approve the submitted OTDs if the substance of the OTDs was not yet clear because other prior to issuance conditions had not yet been met. The Settlement Agreement requires only that staff respond to all submissions by SNG within 30 days, it does not require a line by line edit of SNG's submittals within that time. Staff's rejection of the OTDs because their full content could not yet be fully known was a timely response to these submittals.

Despite the fact that Staff's rejection of SNG's OTDs was in itself sufficient to comply with the Settlement Agreement, staff gave SNG some preliminary responses to the exhibits it attached to the OTDs, noting that neither of the graphic depictions of the easement areas were accurate.

SNG also claims that Staff did not timely respond to SNG's re-submittal of these OTDs on February 3, 2014. This, too, is inaccurate. On February 16, 2015, Staff provided some initial comments on these OTDs, while noting that it could not provide its complete response, as it had

⁷ Instead, the Applicant's plan simply states that "specific monitoring and management activities will be applied to enhance habitat for sensitive species, including habitat for western snowy plover and Smith's blue butterfly. Measures will be undertaken prior to, and during, grading and construction, as part of dune restoration activities, and during long-term protection, maintenance, and monitoring tasks. The provisions are consistent with known and accepted applicable state and federal agency requirements for these species." The plan only includes goals, no specifics on how such goals will be implemented in practice. For this restoration plan to be approved consistent with Special Condition 3, it must include the specifics of how these goals will be implemented

⁸ SNG complains that recorded documents in another, unrelated, project, Shea Homes, have taken more than two years to complete, but it fails to note that a significant source of the delay in that case relates to Shea Homes' repeated submittal of inaccurate documents (including its failure to correct multiple clerical errors and other inaccuracies that had been pointed out to the applicant by Commission staff numerous times) and failure to timely analyze all of the legal interests to which the property is subject.

been fewer than two weeks since SNG's submittal. Staff was providing an early response to SNG in an effort to facilitate review of these OTDs, particularly because the problems Staff identified required a surveyor to fix errors in the exhibits, and Staff wanted to give the surveyor as much time as possible to make these necessary changes. In this letter, Staff identified numerous inaccuracies in the graphic depiction and legal description associated with the Public Access Easement OTD. Although it was provided with these comments nearly three months ago, SNG has yet to provide accurate exhibits for the Public Access Easement OTD.

On March 5, 2015, 30 days after SNG's February submittal, Staff provided SNG with a full draft of the Dune Conservation OTD, which, when final, can be used as the base draft for the Public Access Easement OTD, once the Public Access Plan is final and in a format that can be attached as an exhibit to the recorded OTD. More than two months later, Staff has received no comments from SNG on this draft.

In sum, Staff timely responded to each of SNG's submittals. It explained that it could not draft OTDs when the content of those OTDs was still in flux. Staff did, nevertheless, comment on the exhibits to the OTDs that were not dependent on final versions of the Dune Restoration and Public Access Plans. Staff also deliberately used as a model for the draft Dune Conservation OTD that it provided to SNG an OTD with which counsel for SNG is familiar, in an attempt to facilitate processing of these OTDs. Staff is willing to work with SNG on completing each of these OTDs in an expeditious manner, but it cannot agree to a specific deadline when it has no control over when SNG or its surveyor will provide comments or proper exhibits to these OTDs – in the more than two months since Staff's last round of comments, it has received neither updated exhibits to either OTD nor comments on the Dune Conservation OTD staff prepared.

10. Public Access Management Plan

Special Condition 5 requires the Applicant to submit two copies of a Public Access Management Plan that is in substantial conformance with the plans submitted to the Coastal Commission entitled Access, Signage, and Lighting Plan dated October 2013, as modified to achieve compliance with the conditions. The document contains roughly 80 pages of background text and policy regarding the provision of public access at the site. The Applicant has submitted elements of this plan, in large site plan format which is sufficient to address the public access submittal requirements of Special Condition 1(i), but falls short of satisfying the requirements of Special Condition 5. Additionally, there have been and will continue to be modifications over the course of the compliance review process that will necessitate an update of the Public Access Management Plan, which has not yet been carried out.

For example, just this week, the Applicant submitted a letter from the City of Sand City (dated March 7, 2015) indicating how it proposes to address the Public Access Management Plan requirement for the provision of 35 off-site public parking spaces. The letter suggests that there is not a suitable location for the provision of the required public parking but does not provide any details on the locations reviewed or the amount of in-lieu fee payment. This is a good example of where the Applicant claims it has met all of the condition requirements and the permit should be issued, when in fact Staff is seeing this information for the first time less than a week before the condition compliance dispute hearing.

In addition, the Applicant has indicated that it will modify the Public Access Management Plan to demonstrate a use of wood and natural materials as required by the condition. This, too, is a new modification that will need to be folded into the Public Access Management Plan before it can be signed off as compliant with the terms of Special Condition 5.

Lastly, staff has repeatedly requested that additional way-finding signs be installed along the public parking lot and out towards the public pathway and to the beach and beach access stairway. The current iteration of the Public Access Management Plan does not show any such directional signage in this location. Refer to Exhibit 11 for the location of the required additional directional signs.

In short, the Public Access Management Plan is, by its own terms, is meant to be the document that governs public access on the site. As such, it is critical that it not only account for all necessary measures, including adequate directional signs, but that it also be produced in a stand-alone format and document to ease ongoing condition compliance moving forward. To suggest that disparate materials submitted in different pieces and at different scales over time should somehow be “signed off” is to misunderstand the terms of the condition, and the need for providing clarity for all parties moving forward. It is in all parties’ best interest that the Plan is very clear, and a one-stop reference moving forward.

11. Special Condition 1(v) in Relation to the Other Special Conditions

In response to the Applicant’s assertion that the dispute resolution staff report is the first time the issue of Special Condition 1(v) and its effect on the permit conditions has been raised by staff, we offer the following excerpt from Staff August 29, 2014 compliance letter: “The requirements of special condition 1(v) are overarching, and affect most if not all of the issues discussed above. Thus, the inconsistencies and issues described above must also be understood in terms of special condition 1(v) as well. Overall, the submittal is fairly incomplete at this time, does not include critical plan elements such as architectural elevations, visual simulations, or other means for adequately assessing the project’s compliance with the condition. Although we have identified project elements that conflict with the visual protection standards identified in the special conditions and need to change, there may be other changes necessary when more complete detail has been provided in response to these comments.” With regard to compliance with the underlying condition, the observations contained in Staff’s letter speak for itself.

12. “Existing” Road

The Applicant once again raises the issue of the “existing” “road” in the northeast corner of the site. Staff notes that this issue was addressed item 12 on page 19 of the dispute resolution staff report.

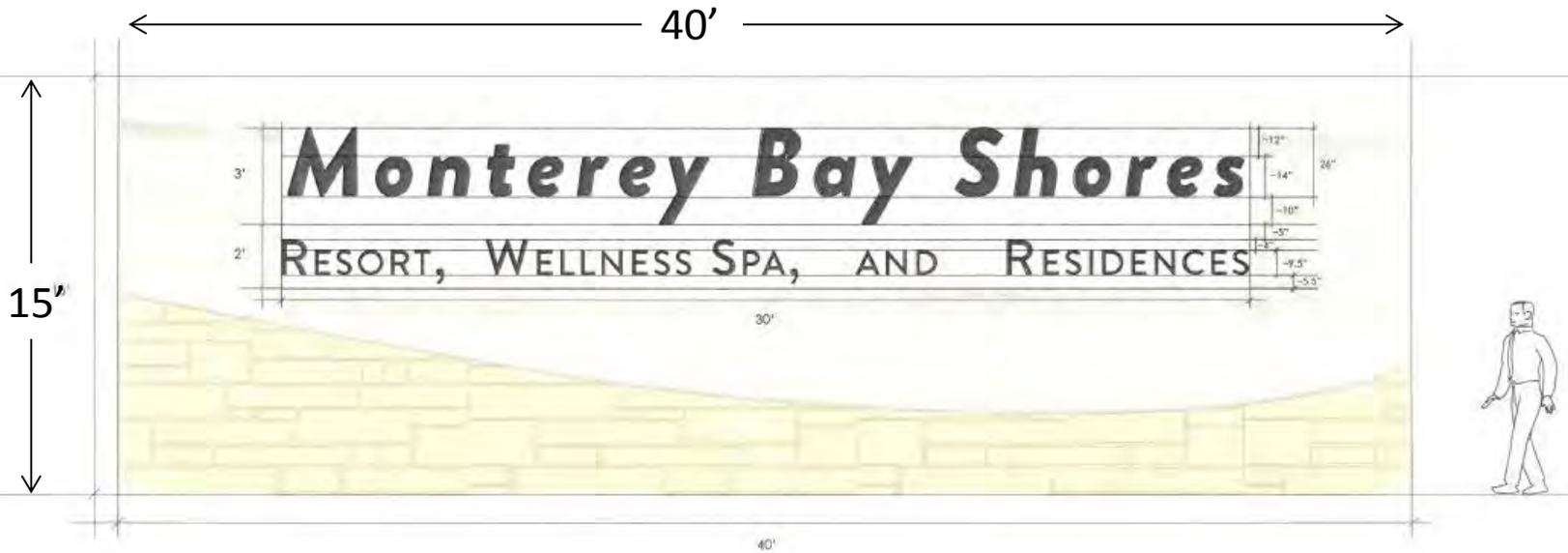
Finally, the Applicant notes that the staff report omits certain letters from the Applicant. Such omission was inadvertent, and these letters are attached here (see Exhibit 12).

Resort Signage



6 Signs Along Highway One Elevation

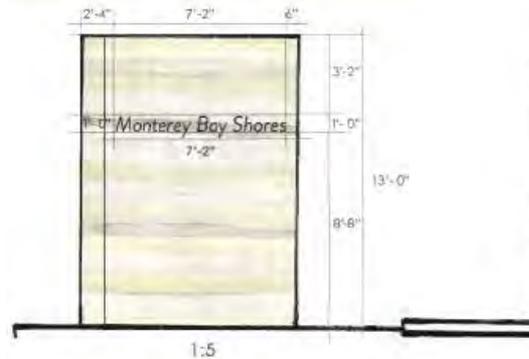
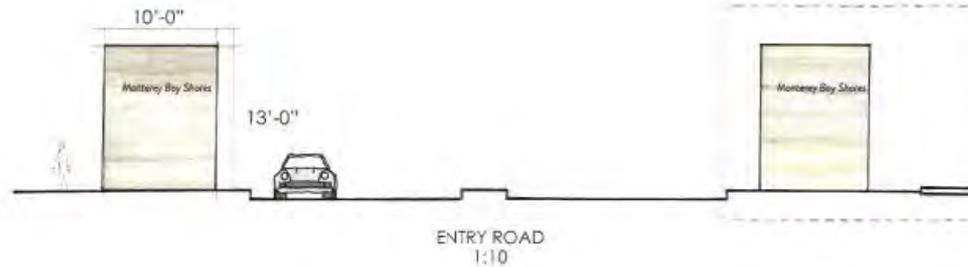
15' x 40' Entry Sign



1
OPTION A
WALL SIGNAGE

* 'Monterey Bay Shores' is a "proxy" name and may be changed.

10' x 13' Gatehouse Signs at Entrance to Resort



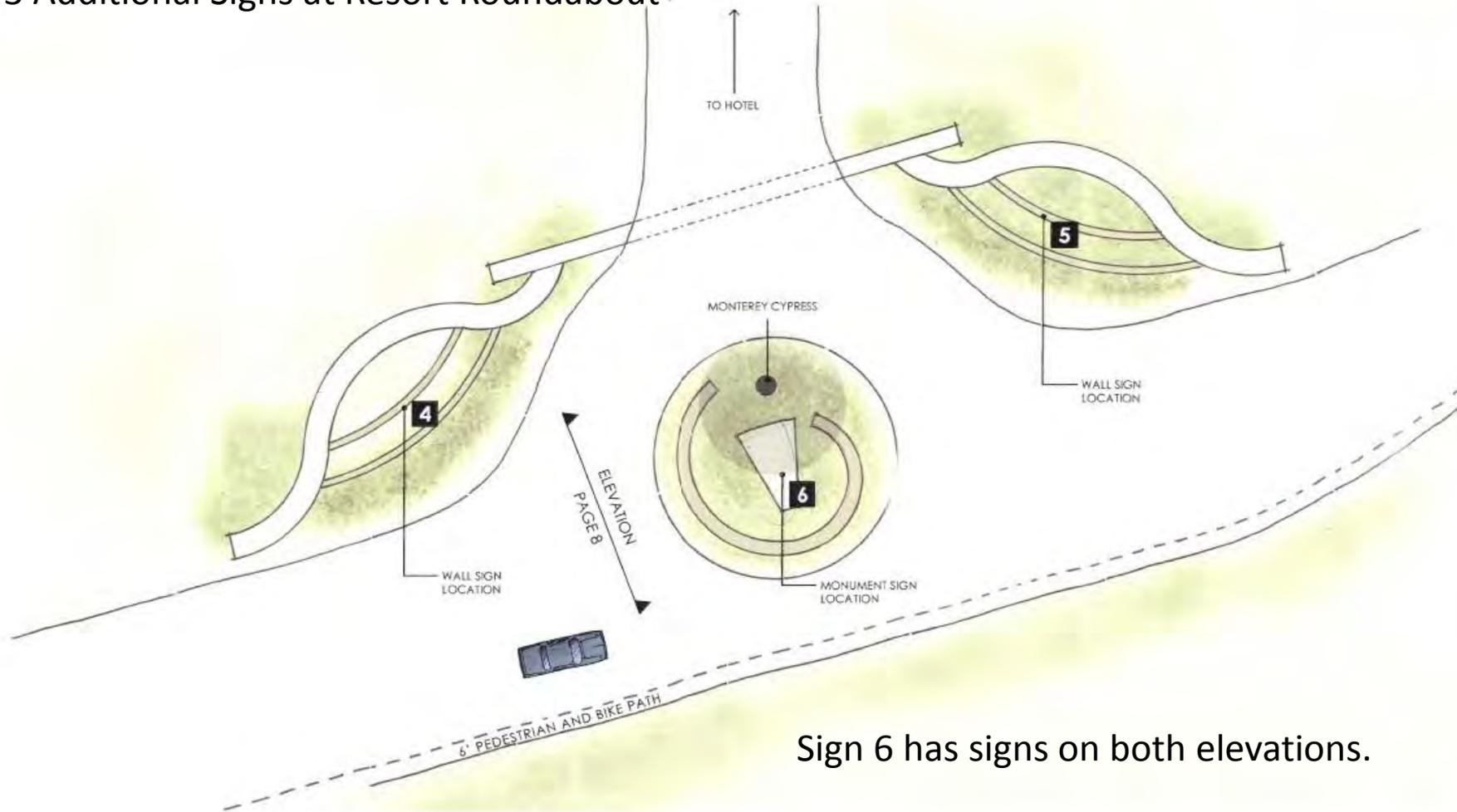
2 **3**

GATEHOUSE SIGNAGE-ELEVATION / SECTIONS

Note: Gatehouses not approved.

* 'Monterey Bay Shores' is a "proxy" name and may be changed.

3 Additional Signs at Resort Roundabout



Sign 6 has signs on both elevations.

TUNNEL SIGNAGE LOCATIONS

5' x 30' Signage at Resort Tunnel (x2)



4 5

SIGNAGE AT TUNNEL

* "Monterey Bay Shores" is a "proxy" name and may be changed.



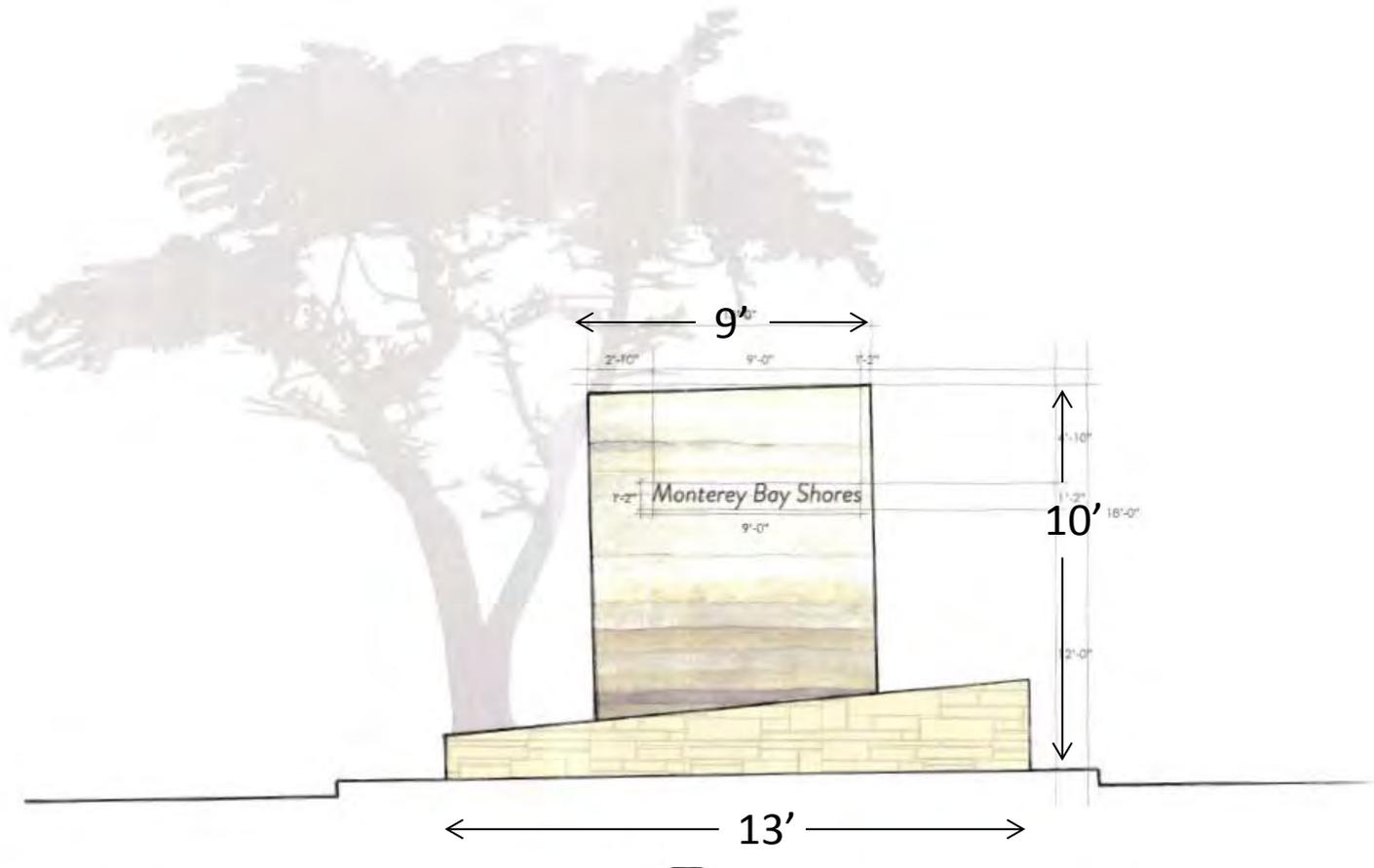
Security National Guaranty, Inc.

Monterey Bay Shores
Resort, Wellness Spa, and Residences

WATG

2014 May 13 7

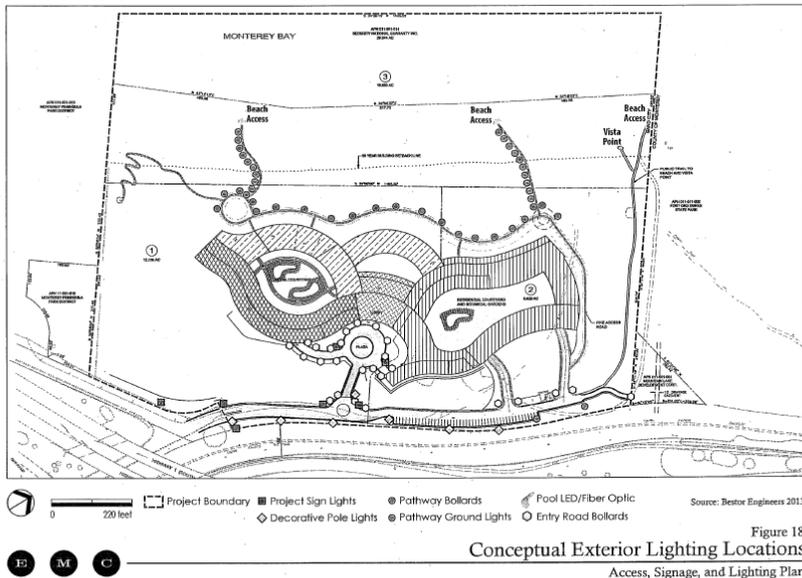
9' x 10' Monument Sign at Resort Roundabout



* "Monterey Bay Shores" is a "proxy" name and may be changed.

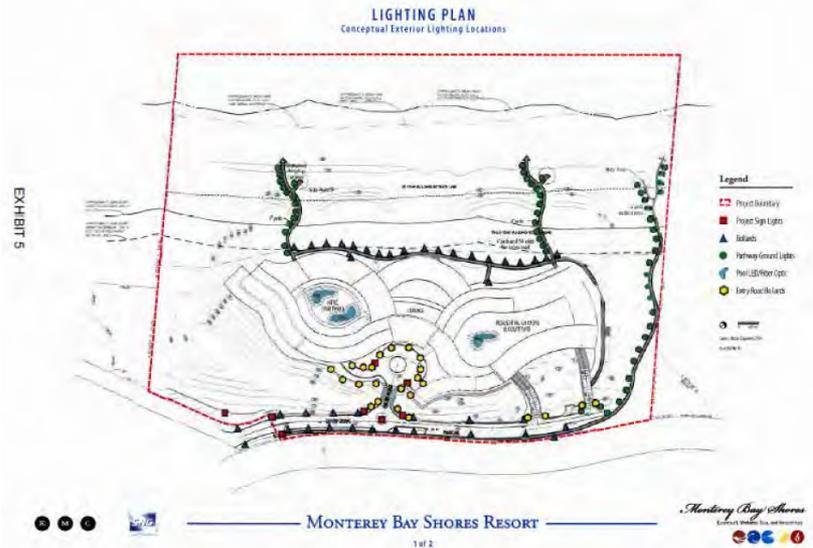
SIGNAGE AT ROUNDABOUT ELEVATION

October 2013 Lighting Plan



Few bollards. No access path lighting.

October 2014 Lighting Plan

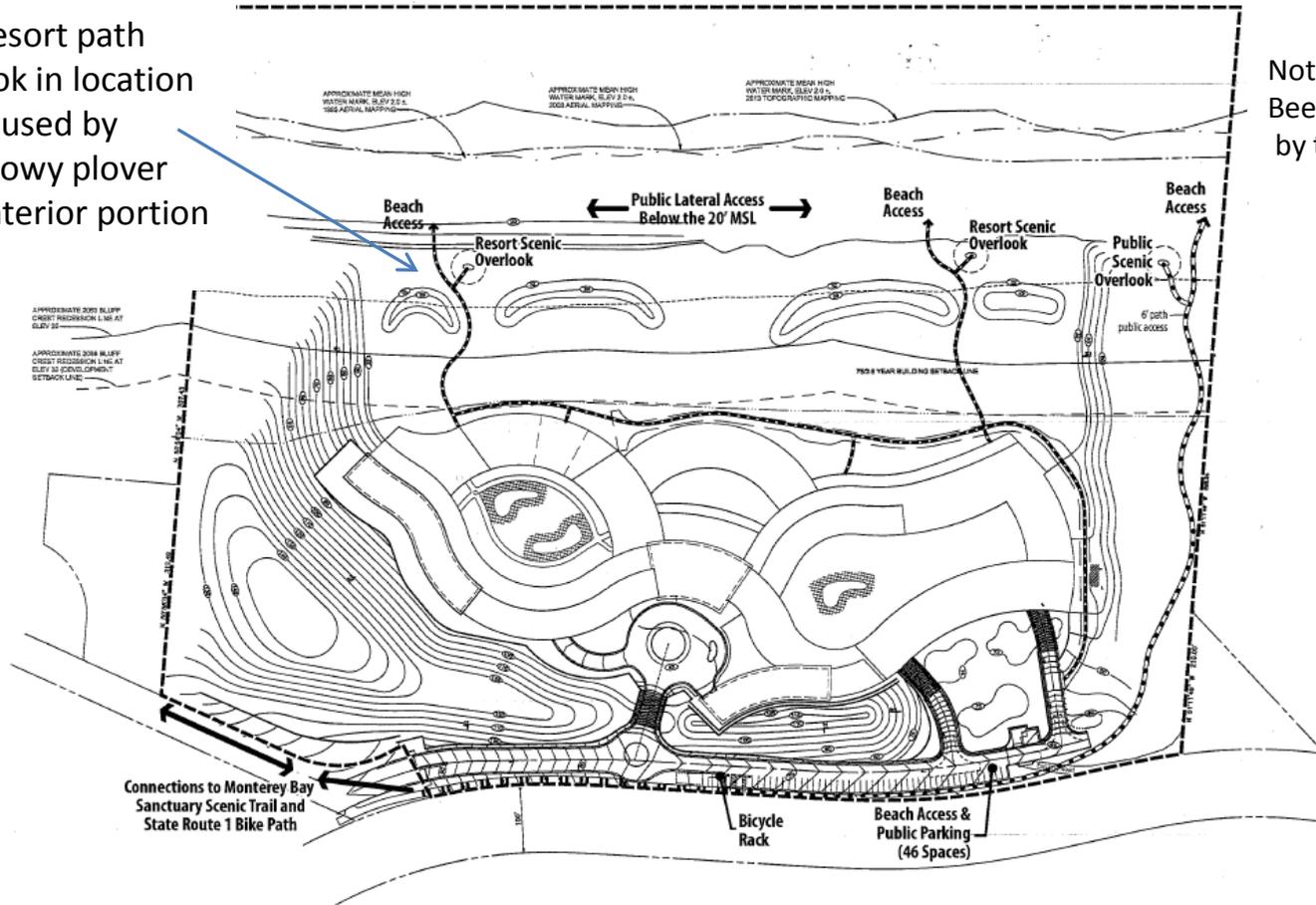


Expanded road and access path lighting.

Resort Pathways

PUBLIC ACCESS MANAGEMENT PLAN Resort Coastal Access

Southern resort path and overlook in location historically used by Western snowy plover to access interior portion of site.



Note: dune depressions have been removed from the project by the applicant.

Legend

- Project Boundary
- Public Pathways
- Resort Pathways
- Class 2 Bike Lanes

0 60 feet
Source: Besta Engineers 2014
Date: 11/13/14

RECEIVED

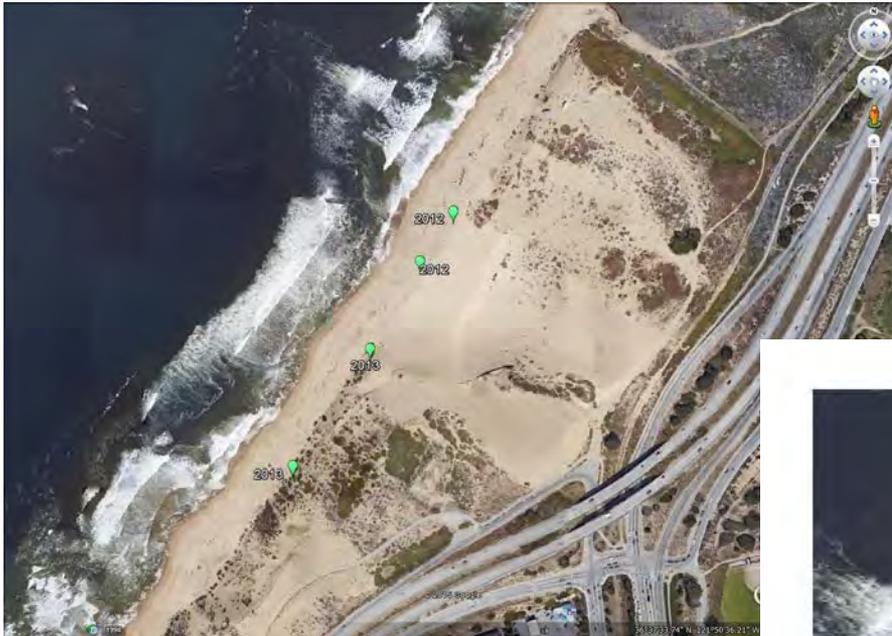
OCT 16 2014

CALIFORNIA
COASTAL COMMISSION
CENTRAL COAST AREA



MONTEREY BAY SHORES RESORT

Monterey Bay Shores
Ecoresort, Wellness Spa, and Residences



2012 – 2013 Western snowy plover nesting activity on and adjacent to SNG site.

Source: Point Blue Conservation Science; January 2014

2014 – 2015 Western snowy plover nesting activity. Note 2014 nest on interior of site.



Figure 1. 2014 and 2015 Snowy Plover nests at Sand City, CA, as of May 1, 2015. Nest locations are accurate to +/- 5m. Point Blue Conservation Science.

Plan note indicates 6-foot tall fencing with 6" wide redwood planks and 3" spacing.

Fence and Wall Types

Along the site's southern edge, retaining walls are necessary for dune stabilization. The color and finish of the retaining wall will match the natural tones of the landscape, and the wall's appearance will be softened by adjacent vegetation. Split rail weathered wood fences are prioritized throughout the site in order to minimize visual impacts, but at certain locations along the property lines, more tall and more durable fencing is necessary for site security. The following fence styles are selected for the following reasons: they utilize natural materials and site-appropriate color tones; they do not create solid barriers; they have a low profile, and they have been utilized in previous critical viewshed projects reviewed by the California Coastal Commission (such as the Pacific Grove Golf Course and the Pajero State Beach). All of the existing chain-link fencing will be removed from the site.



6' Fence On Southern Property Line & Adjacent Northern Property Line

6' tall fence with 6" wide redwood planks and 3" spacing between planks.



Split Rail Fence

Split rail fence with weathered wood posts and rails. The fence is built to the north property line and is located on adjacent property boundaries, where the fence will transition to a 6' fence.

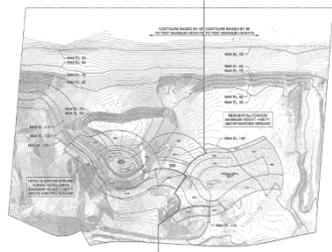


SITE FENCING PLAN
Monterey Bay Shores Resort

SCALE: 1" = 80'-0"
SUBMITTED: 6 OCT 2014
REVISED: 15 JAN 2015

SHEET: LP-04
OF 06 SHEETS

WO:



RECEIVED
OCT 14 2014
COUNTY OF MONTEREY
GENERAL SERVICES
GENERAL COUNCIL

SCALE: 1" = 60'-0"
DATE: 10/07/2014
SHEET: 10-1
OF 12 SHEETS
Sheet No. 1

HEIGHT COMPLIANCE
Monterey Bay Shores Resort

Height Compliance Map
Sheet HC-1

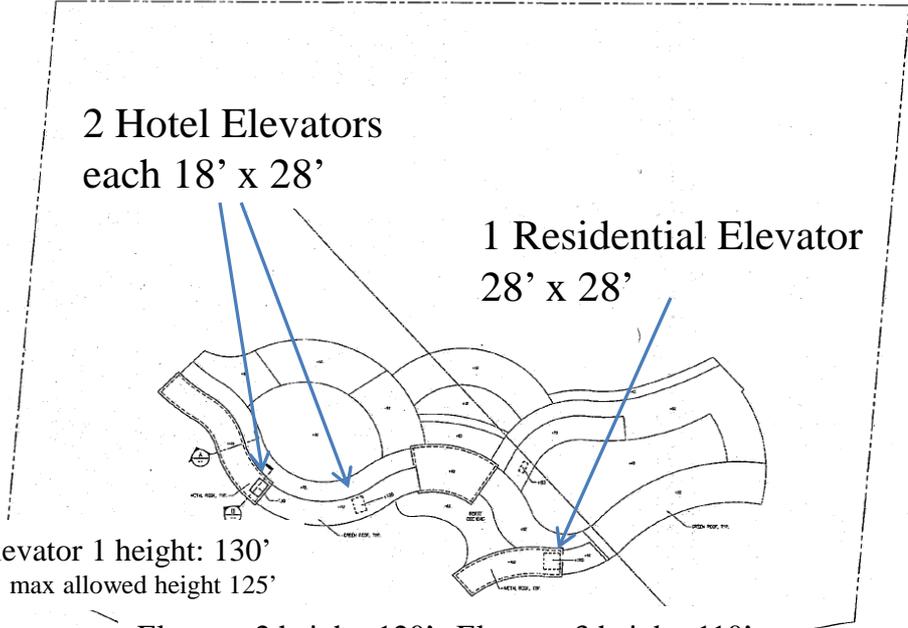
Elevator Overrides Height and Size

2 Hotel Elevators
each 18' x 28'

1 Residential Elevator
28' x 28'

Elevator 1 height: 130'
• max allowed height 125'

Elevator 2 height: 120' Elevator 3 height: 110'
• max allowed height 114 • max allowed height 115



Note: date received
February 3, 2015

WATG

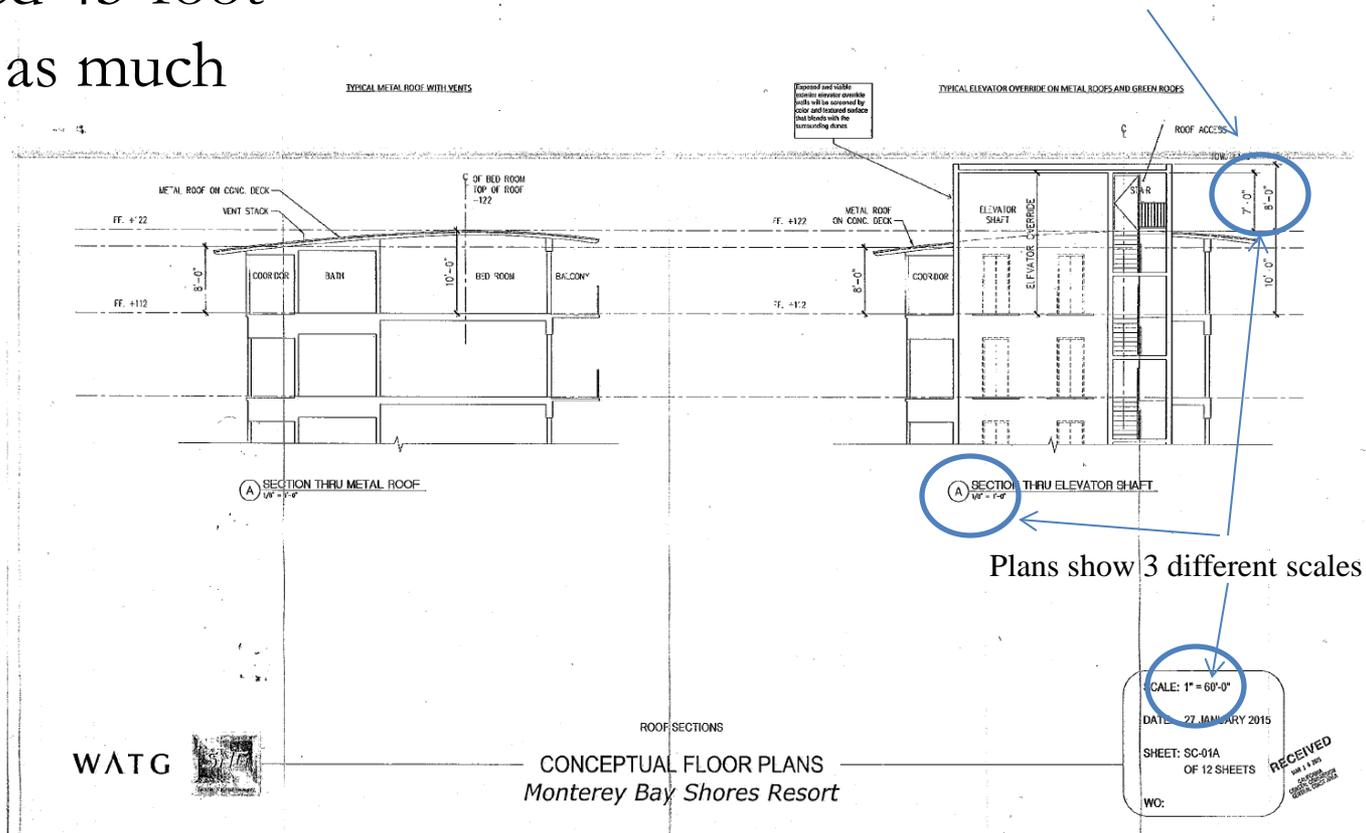


LEVEL +122 ROOF PLAN
CONCEPTUAL FLOOR PLANS
Monterey Bay Shores Resort

SCALE: 1" = 60'-0"
DATE: 27 JANUARY 2015
SHEET: FP-11
OF 12 SHEETS
W.O. [Signature]

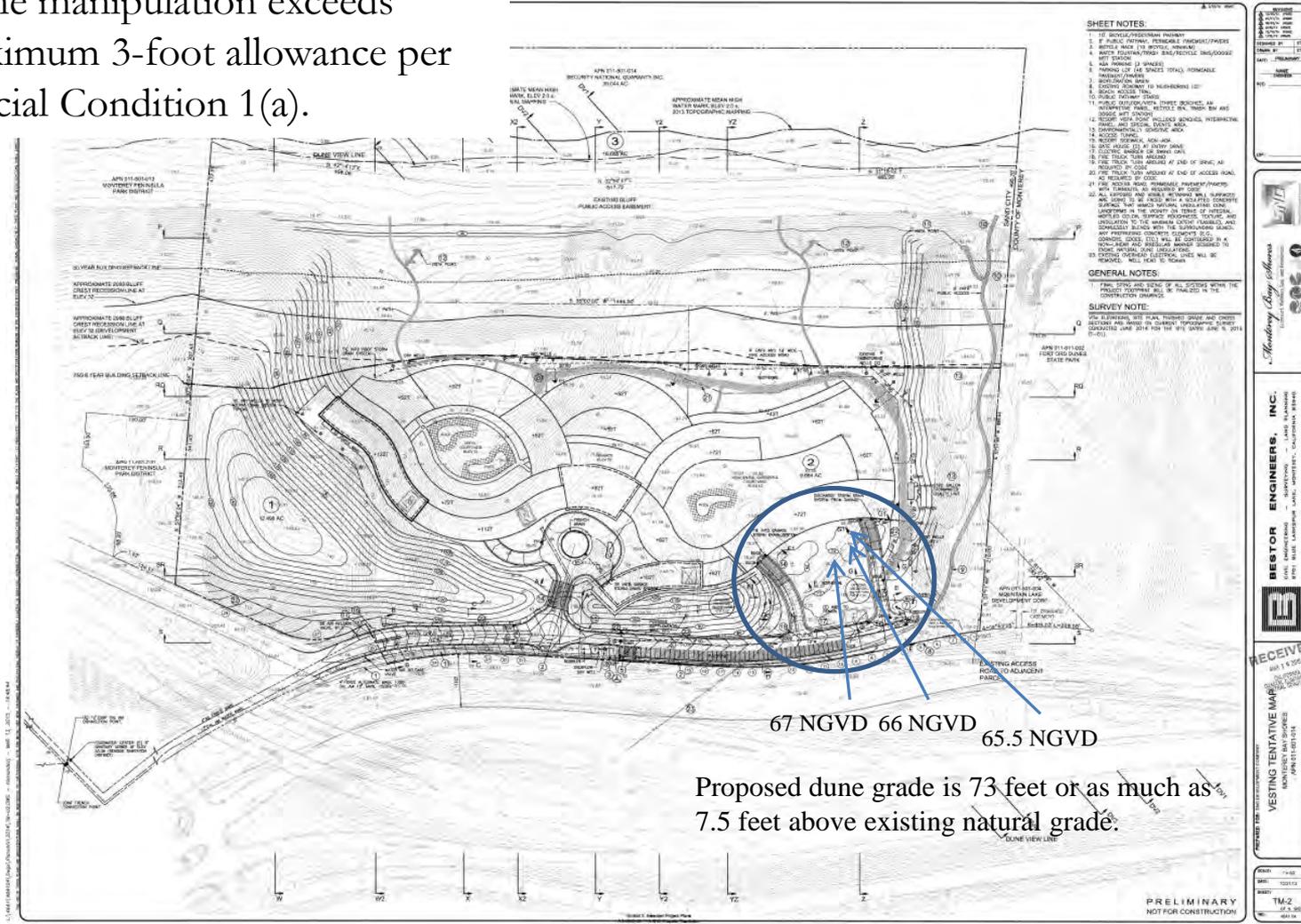
- Hotel and condo-hotel elevators and rooftop stairwells exceed 45-foot height limit by as much as 6 feet

Dimensions of elevator override roughly 18' x 28' based on 1" = 4' scale.



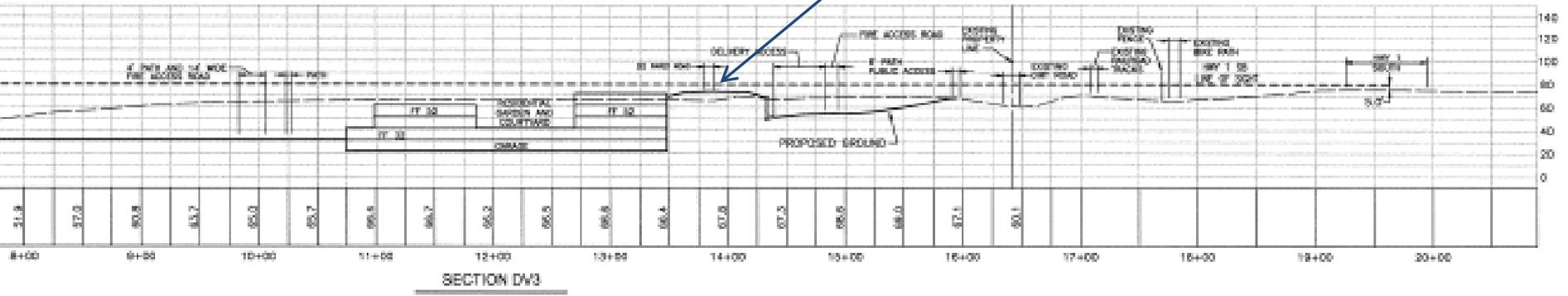
Plans show 3 different scales

Dune manipulation exceeds maximum 3-foot allowance per Special Condition 1(a).

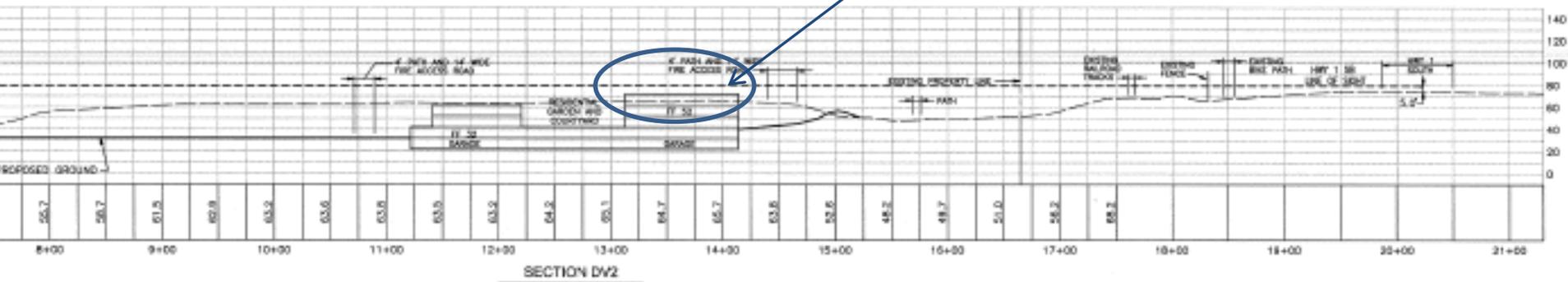


Cross-Section DV-3

Dune manipulation exceeds 3-foot limit imposed by Special Condition 1(a). Building visible from southbound Highway One.



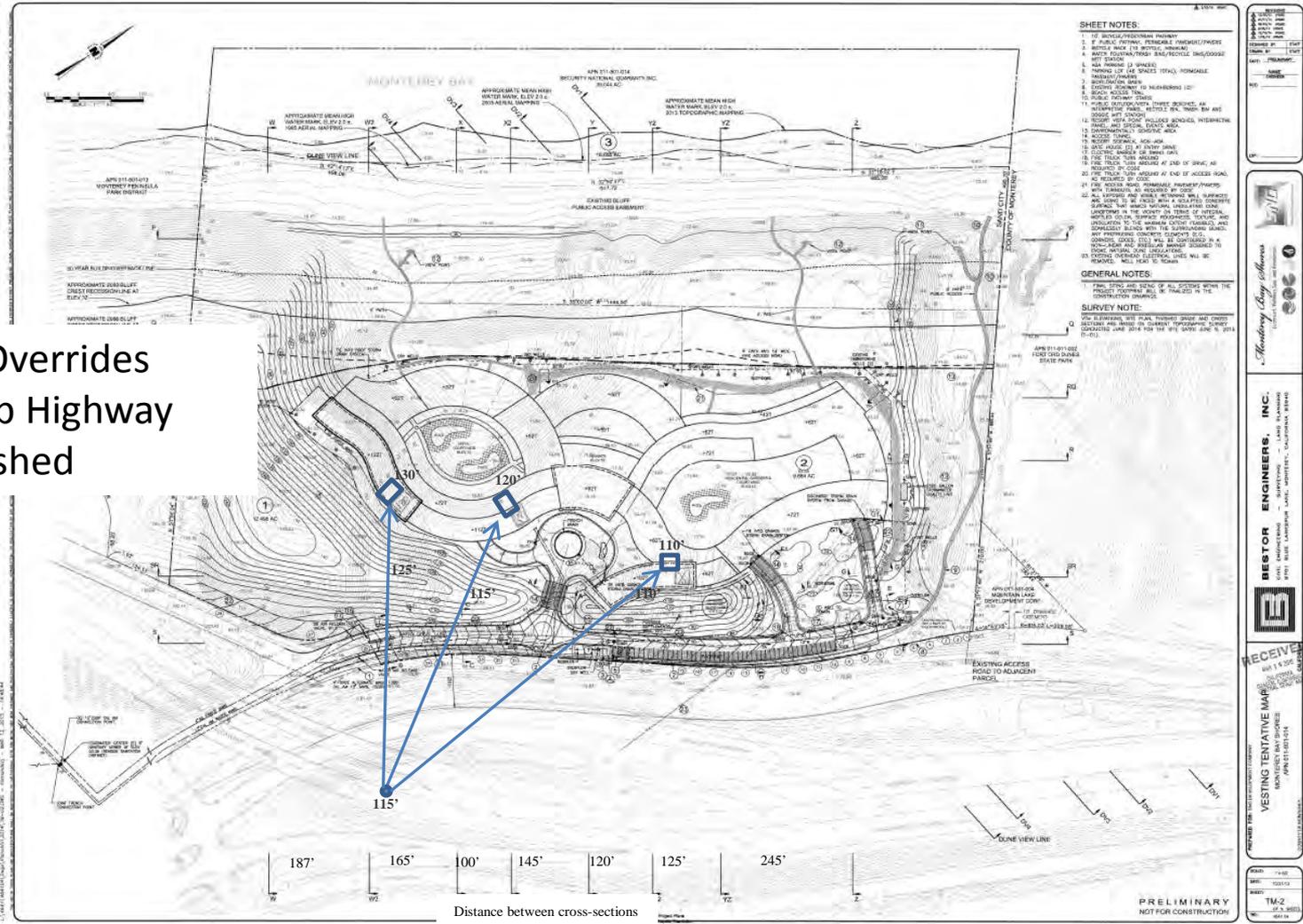
Building exceeds existing grade by 7 feet in this location.



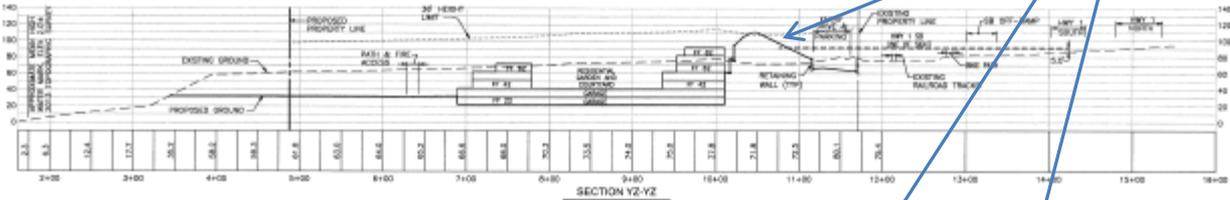
Cross Section DV-2

Northbound Highway One Views

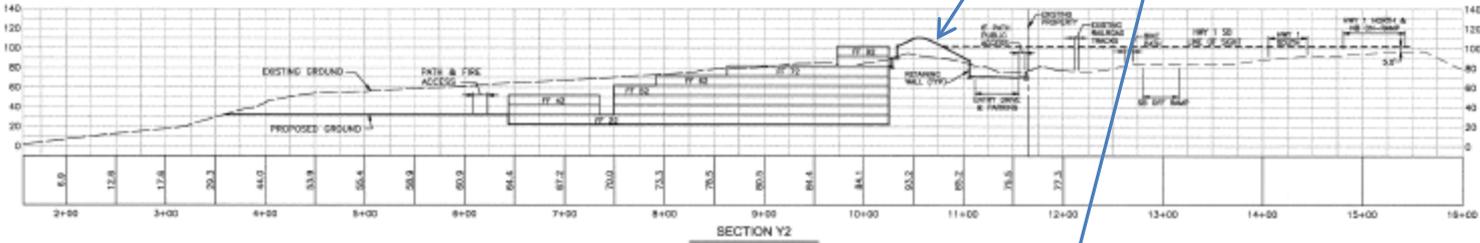
Elevator Overrides
within N/b Highway
One viewed



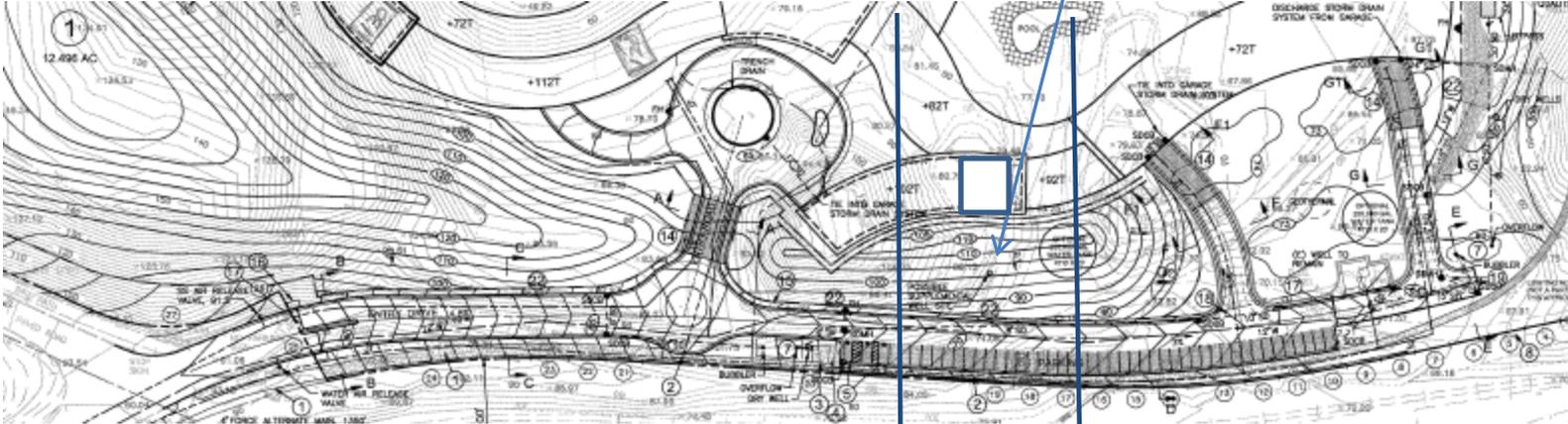
Cross Section YZ



Cross Section Y2



Dune configuration and height not sustainable.



Y2 YZ

Applicant's CAD Simulations

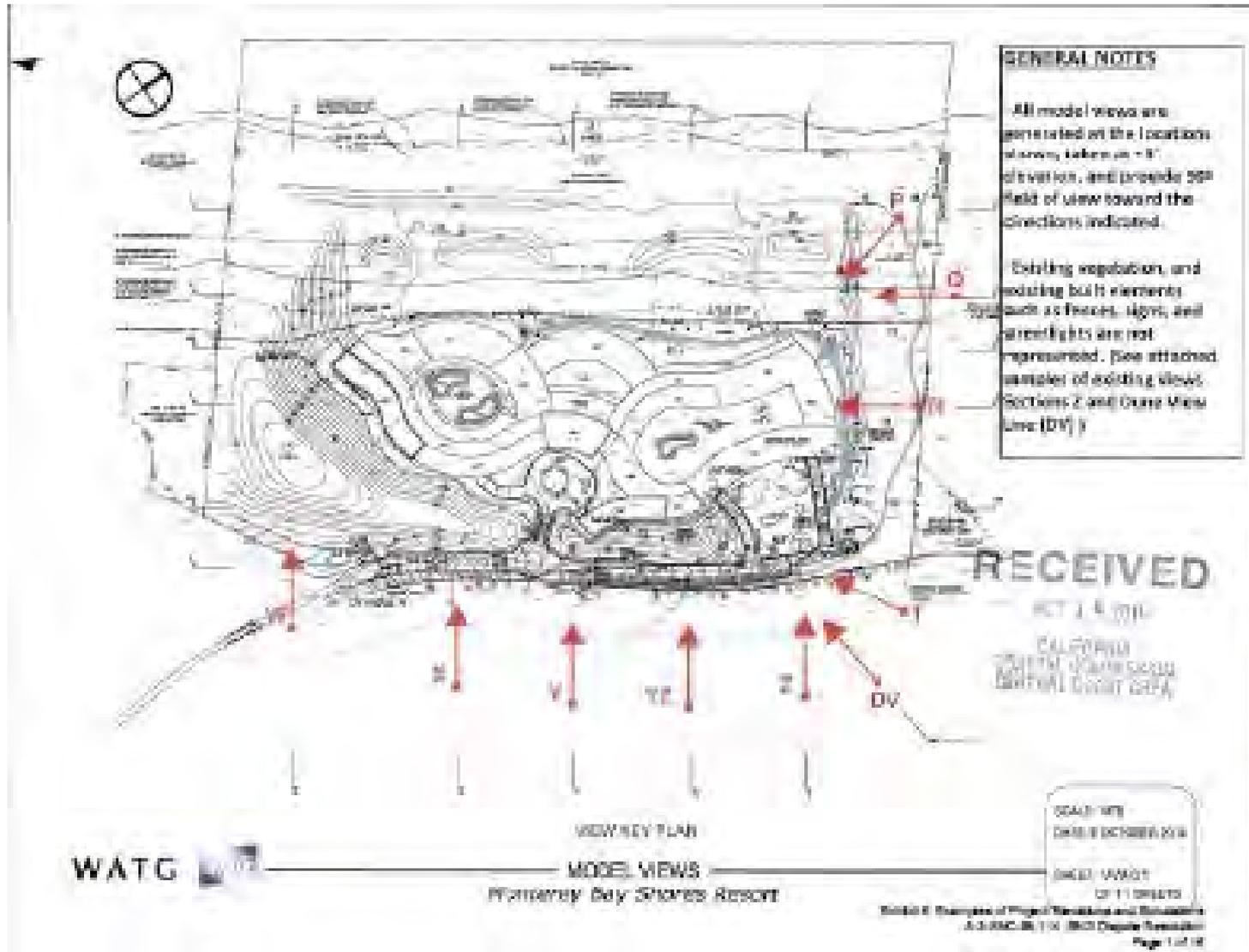




Exhibit 8 Applicant's CAD View Simulations
F13a SNG Dispute Resolution Addendum
Page 3 of 11



Exhibit 8 Examples of Project Elevations and Simulations
A-3-SAC-06-10-000 Dispute Resolution
Page 4 of 11



Y2

Exhibit 8. Examples of Project Elevations and Simulations
A-33042-06 (1) 2003 Coastal Simulation
Page 2 of 10



EXHIBIT 8 Examples of Project Structure and Simulation
A-13-000-001 (1) (S) Dispute Resolution



Figure 8. Examples of Project Visuals and Simulations

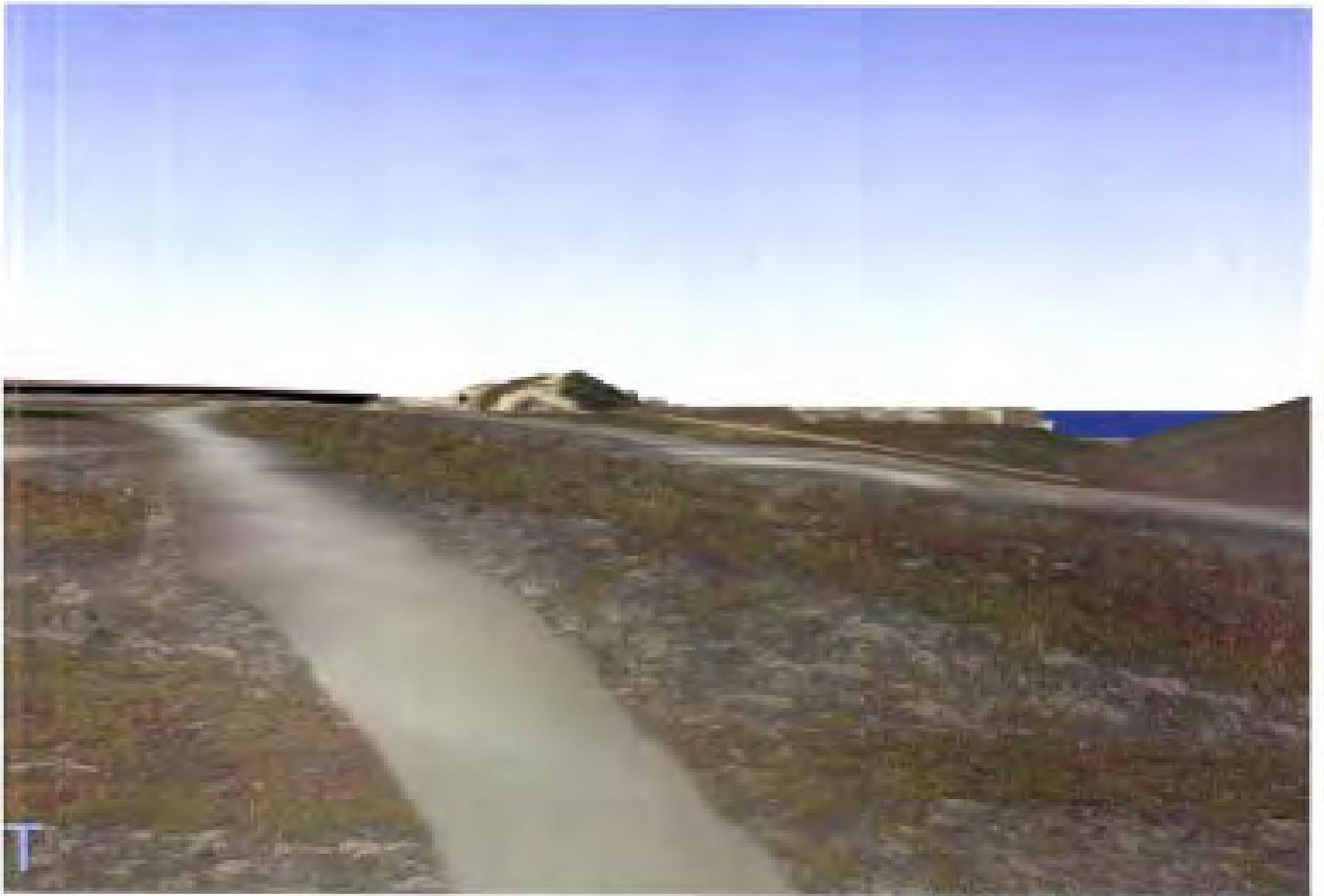


Exhibit 8. Examples of Project Revisions and Simulations
A-3-SNG-06-110-0000 Dispute Resolution

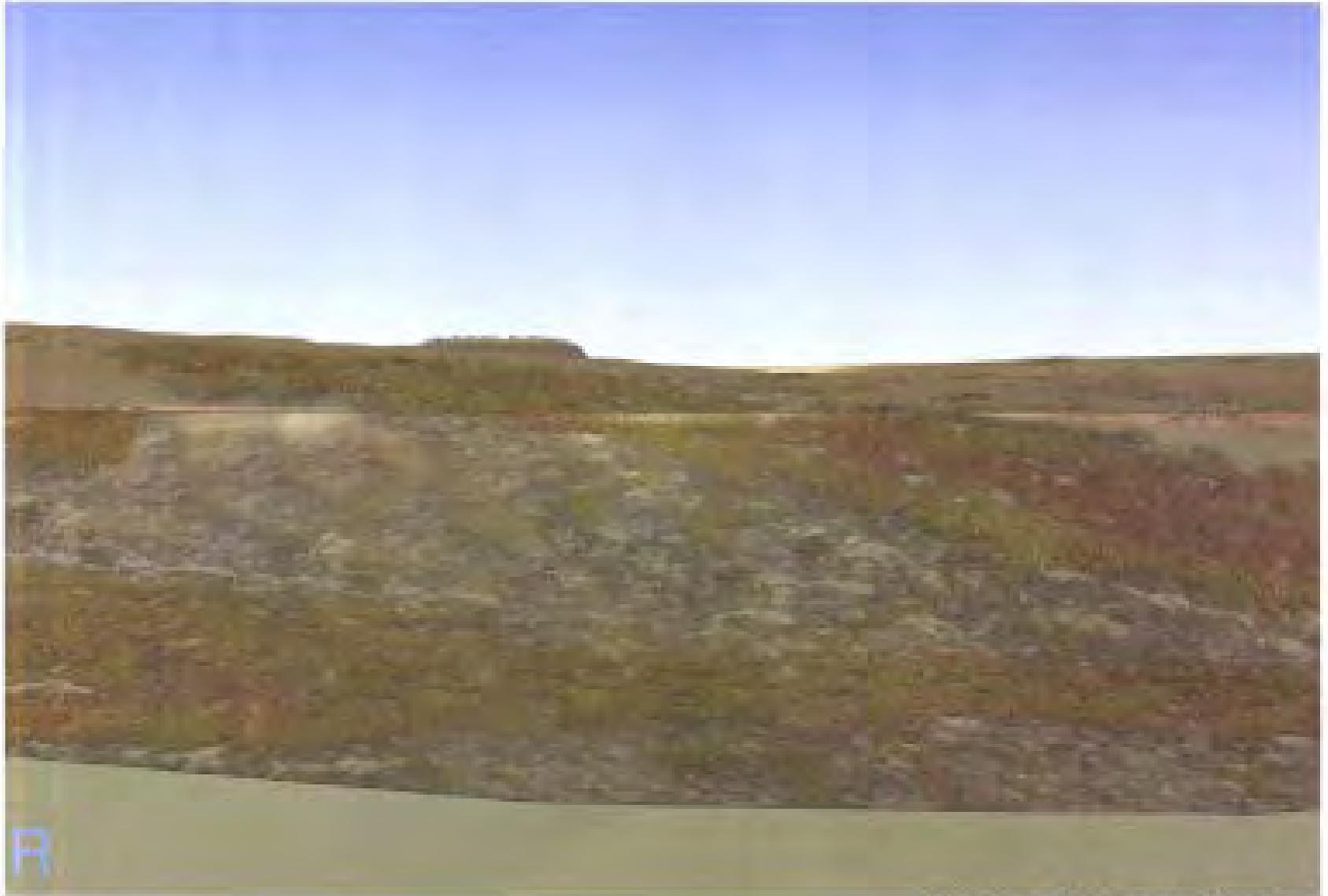
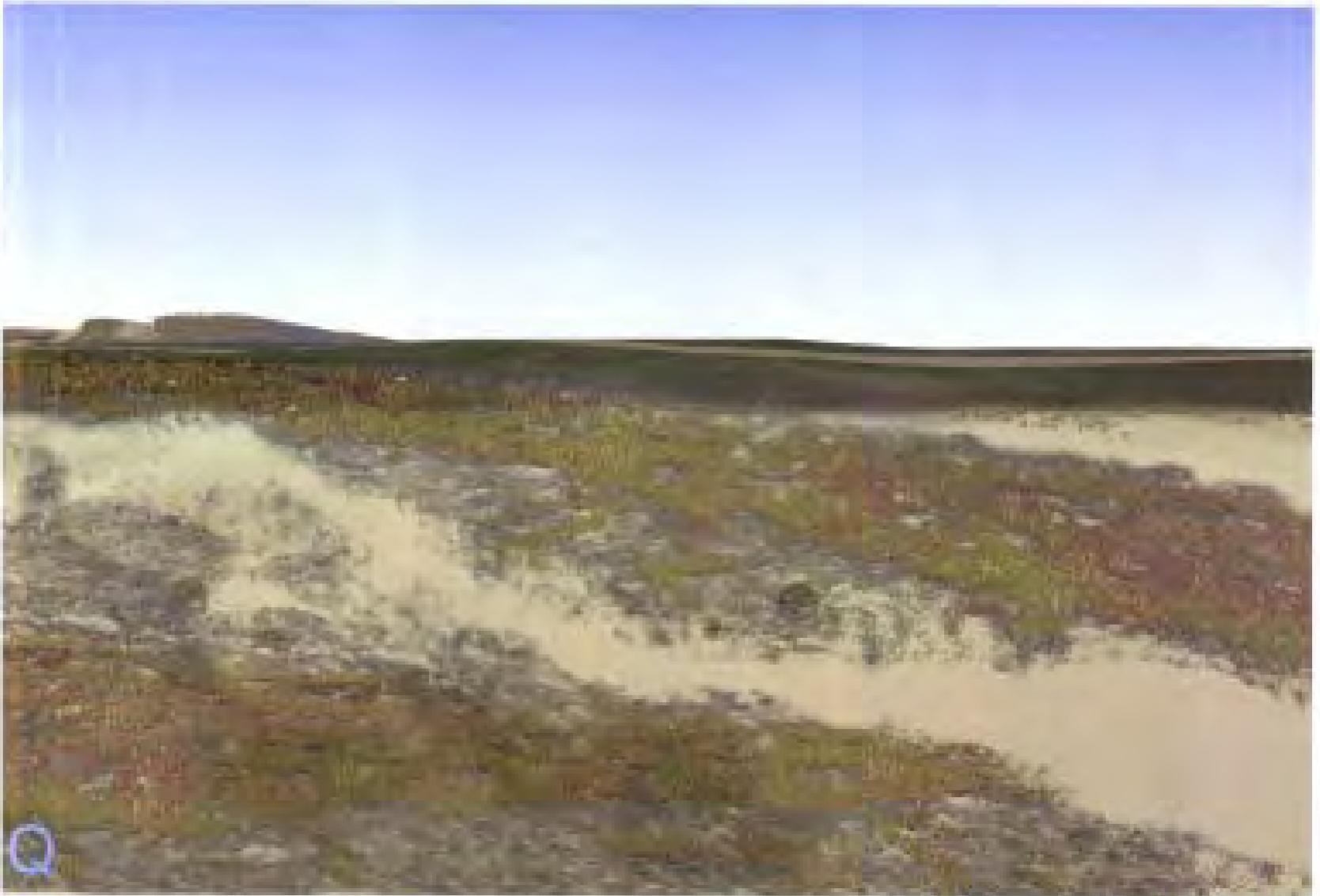


Exhibit 8: Examples of Project Revisions and Simulations
A-3-SNC-20-110 (M) Dispute Resolution
Page 8 of 18



Model 8: Examples of Project Emissions and Simulations
A-3-2012-06-10-0000 Dispute Resolution



Exhibit 8 Examples of Project Resolutions and Simulations
A-2-2014-01 (in 2012 Dispute Resolution)

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



February 16, 2015

Ed Ghandour
Security National Guaranty
505 Montgomery Street, Suite 1140
San Francisco, CA 94111

**Subject: Prior to Issuance Condition Compliance Review for Coastal Development Permit
Number A-3-SNC-98-114 (Monterey Bay Shores Resort)**

Dear Mr. Ghandour:

Thank you for your submittal of supplemental materials intended to address the prior to issuance (PTI) requirements of conditionally approved coastal development permit (CDP) number A-3-98-SNC-98-114. The submittal is intended to be a response to our November 14, 2014 letter identifying certain inconsistencies as well as requesting additional information needed to evaluate your project for conformance with the terms and conditions of the CDP. We note that we received your submitted materials over the course of multiple weeks, on December 19, 2014, with revisions on January 15, 2015, January 27, 2015, January 30, 2015, and February 3, 2015, and that we are providing you this response on Monday February 16, 2015 within the prescribed timeframe agreed to by your attorney, Steve Kaufmann in his email correspondence to staff dated January 16, 2015. We also note that we met with your representatives, Mr. Kaufmann and Tom Roth, on January 15, 2015 for several hours where we shared our observations with them related to materials submitted prior to that time, and received additional information and detail regarding your submittals. We also identified areas of agreement and disagreement regarding both the degree to which submitted materials did or did not comply with the CDP terms and conditions, and identified next steps to resolve issues.

We have now reviewed your materials, and our comments on them are included herein. Although significant progress has been made, there remain some aspects of your submittals that do not yet conform with the terms and conditions of the CDP. Please note that we are unable to issue the CDP until the deficiencies identified below are corrected, and/or the additional information identified below is submitted to allow us to evaluate your submittals for consistency. Thus, the purpose of this letter is to identify areas where your submittal does not meet the PTI condition requirements, and to provide you next steps towards meeting those requirements. The numbering of items below matches the numbering in our November 14, 2014 letter for ease of reference.

- 1. Topo.** We have received the December 19, 2014 letter from Bestor Engineers certifying that the Vesting Tentative Map (including the site plan and sheets VTM-1 – TM-9) are based on current (2014) field surveys consistent with Special Condition 1. As we discussed in our meeting on January 15, 2015, it is our understanding that Bestor's letter applies to those plans as well as all other submitted plans that show existing dune contours. If that

understanding is correct, then please confirm that, and no further documentation is needed on this point.

- 2. Plans.** Special Condition 1 requires a set of comprehensive revised final plans that address each subheading requirement (i.e., Special Conditions 1(a) – 1(v) via site plans, cross-sections, architectural elevations, additional plan detail, illustrations, etc.). We note that your recent submittals provided supplemental plans (related to construction, landscaping, stormwater, public access management, lighting, signage, dune restoration, and pile layout) that were not previously provided. Additionally, we have received supplemental plans related to rooftop equipment, living roof elements, resort and public access improvements (overlook, pathway, and beach stairways), and an expanded collection of cross-sections. We note that we have not received the requested northern elevations that we discussed in our January 15, 2015 meeting as critical for evaluating the materials for consistency with the Highway One viewshed performance standards, and our evaluation of consistency in that area is unable to be completed at the current time. As noted in the past, we will do our best to evaluate the materials submitted for conformance with the terms and conditions of the CDP absent the requested materials, but the CDP's allowance for development in that area is very specifically circumscribed, and it is critical that we ensure consistency on those points.

Finally, we note that there have been several revisions to the submitted plans, and more are likely in order to resolve issues identified herein. You have also submitted a variety of plan sheets that are in separate sets and formats. Please note that we will ultimately need two complete plan sets (i.e., sets that include all plan sheets at similar scale and orientation, as we have discussed) for final sign off (one set for your records, and one set for ours). Once we have reached agreement on the substantive points, we can discuss and make arrangements for getting the final set together for our files and yours.

- 3. NGVD.** As we discussed and agreed at our January 15, 2105 meeting, the plans are in reference to the NGVD29 vertical datum, and no further materials or response are needed on this point.
- 4. Special Condition 1(a).** As discussed on January 15, 1015, dune field manipulation north and northwest of the dune view line cannot exceed the height of the existing dune grade, with up to an additional 3 feet allowed for undulations for dune landscaping. The intent of this condition is to ensure that there is no new view blockage in this area due to dune manipulation and planting as compared to the current situation, and that any dune manipulation in this area appears natural. The plans received December 19, 2014 show dune grades that are greater than three feet above existing grade, and provide no information regarding how that is tied to undulations for replicated dune landscaping, if it is. In addition, it appears from the grading plans that these taller dune areas cover wide areas, and are not limited to undulations to allow for replicated dune landscaping, as is the express intent and language of the condition. We note that it is possible that the taller dunes depicted may be used to provide some screening of the northern building elevation, but it is difficult to

understand the relationship between the two without the requested elevation. For now, though, we need three things on this point: first, for any grade shown to be above existing grade, it must be lowered to no more than 3 feet above existing grade (e.g., plan sheets TM-2, TM-4, TM-5, and TM-6 show some instances where the grade is more than 3 feet above existing); second, any areas where the grade exceeds existing must be limited to discrete undulation areas that are sited to help make the dunes appear as natural as possible and to provide for dune landscaping and screening; and third, for any grades greater than existing grade (but, again, no more than 3 feet above that), we need evidence of the manner in which such additional grade is necessary to allow for undulations for dune landscaping in that area. Please correct all applicable plan sheets and submit revised plan sheets to address these points.

- 5. Special Condition 1(b).** As noted above, your latest submittal includes additional detail on rooftop equipment and living roof elements, as well as providing additional cross-sections, all as we discussed at our January 15, 2015 meeting. We note that we also requested a northern building elevation, and we haven't received that yet, so we may have additional observations once that is submitted, as discussed above. In addition, and critically, it is not clear that the elevations of the Highway show the elevation of the Highway surface itself, or rather the elevations of the underlying topography. The plans appear to be showing the underlying topography, which is obviously lower than the surface of the highway itself. This point needs to be clarified as soon as possible as it affects all of the public view requirements in a substantive way. The comments below are based on the topography shown on the plans. If the elevation of the Highway is higher than that shown, as appears likely to be the case, we are likely to have more comments as such a difference will materially affect Highway One view issues.

From what was submitted, though, it is clear that development is located in public views when it is not allowed to be. In fact, based on the provided cross-sections, portions of the resort development will extend above the re-configured dunes into the northbound Highway One viewshed. In particular, to date you have represented that there would be no rooftop elevator equipment, but the recently submitted plan sheets show three different areas where an additional floor would be added to accommodate rooftop elevator equipment. These floors have been added to the top of buildings, increasing their heights by 8 feet in these areas. The rooftop elevator floors on both the hotel and residential elements (see plan sheets FP-11 and SC-01A dated January 27, 2015) will be visible, inconsistent with Special Condition 1(b). In addition, by looking at the cross sections it is clear that portions of the buildings near the main resort tunnel will also be visible in this view. All of these elements need to either be removed from the project or the buildings further reduced in height to accommodate them consistent with the visibility requirements of the CDP. In addition, the plans show building development in the area north of the dune view line that is taller than existing grades (see cross-sections DV2 and DV3), and these elements need to be reduced to be at or below existing grade so as to meet the visibility requirements in this area as well. We also continue to be concerned about the northern elevation of the buildings seen in Highway One views,

and we may have more observations related to that elevation once you have submitted it. In addition, the inland rooftop elements in this area north of the dune view line show the building edges as opposed to allowing the dune and living roofs to extend over the top of them, and this needs to be corrected in this area, as these building elements are not allowed to be visible. In addition, the living roofs appear to be configured so that they will become a mass of vegetation, and not appear as dune, which does not meet the requirement that these areas blend seamlessly into the dune aesthetic in public views. Accordingly, all green roofs visible in the Highway One view need to clearly be designed as dune roofs where the plants and sands match those in the foreground views of them, and the plans need to be modified to make clear this requirement. Please correct all applicable plan sheets and submit revised plan sheets to address these points.

In addition, we note that it has become clear from the submitted plans that the project is being refined in such a way as to leave nearly no margin for error with respect to the way the dune features will provide a screening function. The cross-sections demonstrate that building heights are being tied to the elevation of views across manipulated and other dune features that if not maintained at those heights will result in buildings and related development being visible when it is not allowed to be. In addition, portions of the modified dune features are shown at what appear to be unmaintainable grades in this respect, and it is likely that they will reach a natural configuration post construction that is lower and flatter than is shown on the plan sheets. This is perhaps most obvious in the area of the extended dunes that are intended to be held together with retaining walls on either side (see plan sheets TM-2, TM-3, TM-4 and TM-7). Dunes are continually shifting in response to the effect of the wind, which is a significant factor at this location, and the dunes need to be shown in a way that will and can be maintained. Thus, the dunes being manipulated for screening purposes in this way need to be shown on the plans at a gradient that can realistically be maintained over time, such as a 4:1 gradient or lower. In addition, we would strongly suggest that the plans provide for a margin for error should shifting dunes move sand in such a way as to make building and related development visible where it is not allowed to be under the conditions. We can discuss how best to do this, but would note regardless that the visibility requirements must be met whether or not dunes shift, and we want to avoid a scenario where the project is out of compliance on these points because it didn't appropriately account for the shifting nature of dune materials.

6. **Special Condition 1(c).** This condition requires that all development located inland of the buildings and related development (e.g., road, access tunnels, parking areas, pathways, etc.), be sited, designed, and screened to minimize its visibility in Highway One views to the maximum extent feasible. With respect to the retaining wall elements, we have consulted with our engineer, and can concur on the need for the size of the retaining walls. That means they are going to be unavoidably visible in the public viewshed. Per the terms of the condition, it will thus be critical that all such retaining wall surfaces are made to appear as dune-like as possible to help minimize public viewshed impacts. Thus, please modify all applicable plan sheets to show that all exposed and visible retaining wall surfaces are going

to be faced with a sculpted concrete surface that mimics natural undulating dune landforms in the vicinity (in terms of integral mottled color, surface roughness, texture, and undulation to the maximum extent feasible), and seamlessly blends with the surrounding dunes. Any protruding concrete elements (e.g., corners, edges, etc.) need to be contoured in a non-linear and irregular manner designed to evoke natural dune undulations. The same applies for other similar and related elements visible in this portion of the site (including but not limited to exposed sides and edges of the tunnels).

With respect to signage, despite our continued comments on these points (going back to comments on the originally submitted sign plans), the plans continue to show larger signs in the protected viewshed, including large monument-style resort signs that will be very visible from Highway One. Although we can appreciate the need for identifying signage, the terms and conditions require that any such features be sited and designed to minimize visibility in Highway One views and to blend into the dune aesthetic to the maximum extent feasible. With respect to the resort entry sign, one manner of doing this is to eliminate the 15' x 40' sign backing, and allow for the resort lettering to be placed directly on the retaining wall feature. Obviously there may be other solutions, and we are open to discussion on that point, but we believe that a sign that consists of just the resort lettering on the retaining wall can meet CDP requirements.

With respect to the gatehouse signage (Signs 2 & 3), these signs are both shown as 13' x 10' in size, and in locations where they will be visible from Highway One. As with the resort entry sign, there are likely many siting and design options that can appropriately address the visibility of these two signs, but we think one way of addressing the issue is to move any such signage to the Highway side of the entry road where it can be hidden from Highway One view. It may also be possible to include some sort of low-profile (48 inches or less) traffic calming and/or welcoming sign designed in a similar manner as the retaining walls if necessary. With respect to the tunnel signage (Signs 4 & 5), it is not clear why two more signs are necessary at this location, and, if these signs are necessary, it appears that similar view impact reducing measures can be applied (e.g., similar to the entry sign parameters), including where such signage is located along edges that themselves limit their visibility in the Highway One view. Finally, the 18' x 13' x 6' foot pie-shaped monument sign at the resort round-about (Sign 6) will be starkly visible, and needs to be modified and/or moved to avoid view impacts. Again, it is possible that this sign could be moved to the Highway side of the entry road out of view, and that it be reduced in size and scale. In short, the signs have not to date been changed in response to our repeated comments indicating that they do not meet the CDP terms and conditions. We are happy to work with you on possible alternative approaches to what we have identified here, but these suggested changes appear to be an appropriate starting point. Thus, we look forward to working with you on signs that are re-sited and re-designed so as to meet the CDP requirements. These modified signs must be shown in all requested materials (e.g., elevations, cross sections, visual simulations, etc.) to be able to evaluate compliance.

- 7. Special Condition 1(d).** We received the additional correspondence from the Monterey County Fire Marshall and the additional local and state Fire Code regulations that you submitted regarding the need for adequate vehicle turn-around distance. These materials provide the supporting justification for the road spur beyond the condominium tunnel access point, and no further information is needed on this point. We do note that the revised VTM plans (sheets TM-1, TM-2, and TM-9) contain a notation identifying an ‘existing access road’ to an adjacent offsite parcel located outside of Sand City and within unincorporated Monterey County. As you are aware, we spent a great deal of time discussing this road question as part of our settlement discussions, and ultimately agreed that the degree to which that road exists or not is not part of this approval, and that anything associated with it needed its own CDP. That was the genesis for the Special Condition 1(d) language. Accordingly, it is inappropriate for this plan set to identify an existing road in this area, and all such notations need to be eliminated.
- 8. Special Condition 1(e).** Thank you for the additional information you submitted related to the rooftop elements and overall building heights, including with respect to living roof details and elevator equipment features. Again, as indicated above, the elevator equipment floors came as a great surprise to us, and they lead to issues with height limits as well as the view issues discussed above). As shown on revised sheets FP-11 and SC-01A (dated February 3, 2015), the elevator equipment floors extend as much as 8-feet above the prior identified rooftop elevations for a maximum development height of 130-feet and 120-feet in the vicinity of the hotel towers. Special Condition 1(e) limits development height to no greater than 45-feet above existing grade for all hotel and hotel related development. In both cases, superimposing the elevator rooftop elevations and information from sheet FP-11 onto the Height Compliance sheet HC-1 shows that the height in these areas exceeds the 45-foot maximum height limit for hotel and condominium hotel development by between 3 to 5 feet, contrary to the requirements of Special Condition 1(e). As such the project will need to be revised to lower the overall building heights by 3 to 5 feet in the vicinity of the elevator equipment floors or to relocate these features to comply with the terms and conditions of the CDP. Please submit revised project plans making these changes.

With respect to the living roof elements, the recently submitted information now provides a scale, and shows that these take up 2 feet (one-foot for structural roof, and one-foot for the ‘trough’ to hold the living roof in place). As discussed, it seems as though this could lead to the actual building heights being 2 feet higher in all cases across the site where there are living roofs. You have indicated that this is not the case, and that these additional rooftop components are to be accommodated within the space allotted per floor. This will lead to the upper floors being some two feet shorter than other floors in order to accommodate the additional rooftop components. As this is such a critical factor for height and visibility issues, including in terms of the narrow margin for error provided as discussed above, please confirm that our understanding from your representation is correct, and that the building heights shown on the plans are measured to the top edge of the trough holding the living roofs where living roofs are present.

9. Special Condition 1(g). Thank you for the additional information provided associated with dune grading seaward of the resort. As you are aware, the terms and conditions of the CDP limit foredune grading seaward of the buildings down to 32 feet and only where such grading is designed to replicate natural dune landforms and to integrate into the surrounding dunes to the maximum extent feasible. The October 16, 2014 plans (as revised January 27, 2015) show grading of the foredune below the 32-foot contour, including for four depressions near the bluff edge and proposed fill along the bluff edge just seaward of the former main borrow pit area (see Sheets TM-2, DRP Figure 6, and GP-1). In our January 15, 2015 meeting, it was represented that the purpose of the depressions was to create habitat for snowy plovers. We requested additional information on this point, including how these features provide potential habitat enhancements. The response provided in the January 26, 2015 letter from Steve Kaufmann was that the grading was proposed to “provide the undulations and a more natural coastal dune formation.” We do not see a valid dune reason for the depressions, do not understand how they will enhance habitat, and believe them to be more unnatural than natural otherwise. In fact, given the windy environment, dune formations in this area are more likely to take the form of mounds or hillocks. The proposed depressions will not be stable and will be rapidly filled-in with blowing sand. Please eliminate this feature from the plans.

With regard to the proposed fill of the bluff edge seaward of the borrow pit area, no justification was provided either way with regard to this feature and it too needs to be eliminated from the plans. This area needs to remain in its existing state, and not be filled. In fact, and as discussed further with respect to the dune restoration plan, filling of the bluff edge in this location and steepening of the bluff gradient will hinder and may preclude use of the interior portion of the dunes for Western snowy plover, which have for years utilized the gentle slope to access the foredunes on this site. Please submit revised final plans eliminating all proposed grading below 32 feet NGVD, including fill of the bluff edge seaward of the borrow pit, on each plan sheet where it is shown (e.g., VTMs, Grading Plan, Dune Restoration Plans, Public Access Plans, etc.).

10. Special Condition 1(h). We received the January 15, 2015 plans as revised on January 27, 2015 which provides a bit more detail than the initial October 16, 2014 plan submittal on the resort path, scenic overlook, and beach access sand ladder. We have two issues with these resort elements. First, and as discussed at our meeting January 15, 2015, the boardwalk needs to be a wooden dune boardwalk that blends into the dune aesthetic. The cross section shows the boardwalk to be wood, but it is shown elevated by some two feet, on top of a base of unknown composition (and possibly concrete), with tall edging bumpers (+6 inches or more) on the top. The boardwalks need to be reduced in scope to be at-grade (as does the overlook), without any type of concrete or substantial superstructure, and with wooden bumpers that are approximately 2-3 inches as is more typical for dune boardwalks. Again, the CDP requires these elements to blend into the dune environment, and these changes are required to make that so. Second, the resort pathway and overlook is sited in the location where the plover have historically accessed the foredunes near the lower bluff edge near the borrow pit. To

protect plover, these elements must be moved downcoast to the edge of the big dune nearer to the 32-foot contour. Please submit revised project plans making these changes.

- 11. Special Condition 1(i).** Overall, and as we have discussed, the public access amenities portion of the plans are nearly all in order. However, similar to item 10 above, we received the January 27, 2015 supplemental plan sheet (sheet 4 of 4) that provides additional detail on the public access amenities including the scenic overlook and sand ladder for beach access. The same boardwalk changes as to the resort amenities need to be made to these features as well. Please submit revised project plans making these changes, both here and in relation to Special Condition 5 (see also below).
- 12. Special Condition 1(k).** Thank you for the January 15, 2015 revised Landscape Plan documents, including Sheet LP-02, and the landscape professional certification. We now have enough information to conclude that the submitted plans are adequate to meet the terms of Special Condition 1(k), and no further action is necessary on this point.
- 13. Special Condition 1(l).** The February 3, 2015 submitted plan revisions include additional lighting plan detail for exterior and interior building lighting (Sheet FP-05). As discussed, these changes reflect the addition of performance standards directly to the plans to ensure that exterior and interior building lighting will comply with the CDP including that all exterior building lighting be LEED certified, full cut-off, down lit, wall mounted or recessed into overhangs and eaves. No further information or action is required on these points.

With regard to the proposed exterior path and roadway lighting, we received the correspondence from Janet Ilse with EMC Planning Group in support of the proposed lighting plan. Although we appreciate Ms. Ilse's opinion that lighting has been minimized and will not be visible, we note that there are more than 100 lights of various sizes and lumens on project paths and roadways; 74 located on paths seaward of the proposed development within the Highway One public viewshed. As noted in our November 14, 2014 compliance letter the resort pathway lighting scheme appears excessive, not wildlife friendly, and it does not limit the amount of light or glare visible from public viewing areas. We have requested but not received a visual analysis of the effects of the lighting on Highway One views and the nighttime sky, and inadequate materials otherwise have been provided to demonstrate compliance with the terms and conditions of the CDP (i.e., evidence that it is necessary for safety purposes and/or evidence that the light wash and glare has been limited to the maximum extent feasible, etc.). Other similar resorts in the southern Monterey Bay do not have any dune path or beach lighting (see Asilomar Dunes Conference Grounds in Pacific Grove or the Sanctuary Beach Hotel in Marina). And many dune area pathways have no lights at all, consistent with their use as a nighttime feature. Further, even low lighting of the dunes, can subject vulnerable species such as Western snowy plover to increased predation by attracting predators. The sheer number of lights proposed out into the dunes will create a definite glow from the site as seen from public vantages such as Highway One. Accordingly, the proposed lighting plan is not consistent with the terms of special condition

1(l) and must be revised. It is likely that the requested lighting evaluation materials will help to refine lighting changes that are necessary, but at this juncture it appears that reducing the number of bollards along the resort entry road and parking area by half, and eliminating all pathway lighting of the public and resort vertical access paths, can serve to meet this aspect of the CDP.

14. Special Condition 1(m). The February 3, 2015 submitted plan revisions include additional detail for window and exterior surface treatments (Sheet FP-05). As discussed, these changes reflect the addition of performance standards directly to the plans to ensure that these features will comply with the CDP. No further information or action is required on this point.

15. Special Condition 1(n). Water, sewer, and storm water infrastructure are shown on the January 15, 2015 Utility Exhibit plans. The plans, however, continue to omit detail on electrical, natural gas, cable, and phone/data service, etc. Please provide a complete utility plan sheet with detail on the provision of all these services.

The plans also appear to include overhead equipment near the resort service entrance tunnel and other areas along the Highway. As noted in our November 14, 2014 compliance letter and as required by the CDP, the plan must provide for removal or undergrounding of all existing overhead utilities on the site and in areas between the site and Highway One. Please revise the plans accordingly.

16. Special Condition 1(o). The submitted plan revisions include additional detail on the proposed storm water system including with respect to the use of bio-infiltration basins, bubblers, and other storm water features. Of primary concern is the use of bio-infiltration basins within the dune areas of the site. Special Conditions 1(k) and 3 prohibit the use of non-native plant species within dune restoration areas, and Special Condition 3 requires this area to be used for dune restoration only. These storm water measures need to be accommodated within the allowed development areas of the site, and not within the protected dune areas. There appears to be ample space, including both under and inland of the fire road, to accommodate such infrastructure. Please revise the plans accordingly. Additionally, as we have previously indicated we remain concerned that bio-infiltration basins and bubblers may fail over time, particularly in conditions where blowing and drifting sand fill the basin. If the infiltration basins fill with sand, then certain plant species will not be able to grow and the efficacy of the basin to remove pollutants may be lost. Please provide information showing how such systems are intended to be maintained, including with respect to these wind blown sand issues, to ensure their operational efficiency and utility.

Additionally, the January 15, 2015 submittal includes a Storm Water Pollution Prevention Plan (SWPPP), which can be expected to address pre and post-construction infiltration and filtration requirements of the site. The SWPPP contains post-construction BMPs to handle the volume and variety of pollutants that might be expected to occur in runoff on site. Those BMPs include regularly vacuuming of the resort access driveway and public access parking

areas, periodic cleaning of oils and grease in the covered parking garage as well as the uncovered access parking, appropriate siting and containment of resort trash dumpsters, cleaning of restaurant grease traps, and regular maintenance of the resort delivery bay. The SWPPP was prepared by Bestor Engineers and is awaiting approval and certification of a Qualified SWPPP Developer. Please submit evidence that the SWPPP has been approved and certified to address the requirements of per Special Condition 1(o).

- 17. Special Condition 1(p).** We did not receive any additional materials related to signage. As detailed in number 6, above, the main entry signs need to be modified to meet the terms and conditions of the CDP.

With respect to other general resort and access signs, we continue to recommend that the proposed signage plan be modified. We believe that signage that interprets dune habitat and its inhabitants as opposed to language that states “dune restoration area...keep out” is more appropriate under this approval and more effective in managing access for the purposes of protecting sensitive resources. Similarly, if property boundary signs are needed, we believe that text that simply indicates the location of the property: “Property of Monterey Bay Shores Resort” or similar as opposed to “No Trespassing” is what is necessary to meet the terms and conditions of the CDP. With all due respect to your observations about other signs that have been approved, this is a brand new resort project with a comprehensive set of terms and conditions intended to address coastal resource issues to the maximum extent feasible given that overall package. To suggest that ‘no trespassing’ signs should be found consistent just because they have been approved before based upon issues associated with a vacant site does not recognize that issues associated with trespassing will be different once this is no longer a vacant site. We are happy to work with you on potential sign location and language that can be found consistent with the CDP, as we have indicated before, but do not believe that what has been submitted to date meets the terms and conditions of the CDP.

Further, additional directional access signs are also needed along the public access parking lot and out to the public overlook and bottom of the public beach access stairs. No information is provided on the “Dune” signs, which appear to be redundant to the Habitat Protection/interpretive type signs and thus they should be eliminated to avoid unnecessary clutter. Again, we are happy to work with you on the particulars necessary to meet access sign requirements. Alternatively, we note that all signs must be sited and designed to integrate into the dune aesthetic (i.e., natural materials, muted colors, diminutive in size, etc.) and placed in areas that minimize impacts on public views, including from Highway One and the pathway system itself, and would ask that you please provide revised sign sheets with the minimum number of signs addressing the above-described issues.

- 18. Special Condition 1(q).** In our November 14, 2014 compliance letter discussion on feasible foundation alternatives, we determined that to definitively conclude regarding the least environmentally damaging feasible alternative, you will need to examine a hybrid option that includes a drilled in place pipe pile with pressure grout tip for the higher load condition

elements of the development as shown on Sheet S1-02 (i.e., the 9-story building elements) and the mat foundation with over-excavation for the lower load condition elements. What we were provided was a hybrid of a drilled in place pipe and mat foundation with ground improvement. Although we appreciate your effort to analyze a hybrid alternative, the analysis you provided did not consider a mat foundation with over excavation for the lower load condition, so the provided analysis does not allow us to conclude that your most recent proposal is the least environmentally damaging feasible alternative. Please provide an analysis of a hybrid option that includes a drilled in place pipe for the higher load condition elements and a mat foundation with over-excavation for the lower load condition (i.e., for the buildings forward of the hotel tower). Please identify the cubic-foot per square-foot (average) estimate of the volume of disturbed soil for the over excavation option for the lighter load buildings. Please also provide the square-foot for each of the different foundation options in the hybrid options (mat versus pile or auger) so we can determine the total impacts as well as the square-foot impacts. Finally, the project contemplates a very large amount of soil excavation. Please provide an estimate of the excavation volume attributed to installation of piles or augers. In addition, please provide an estimate of how much more volume of materials, if any, is necessary for the over excavation option for the lower load buildings.

19. Special Condition 1(s). You have provided a geotechnical signoff for the project plans. The project plans may change based on necessary modifications that are identified in this letter, including potentially in terms of the foundation, as discussed above. The intent of the condition is that the approved plans are reviewed and approved by the appropriate professionals as identified in the condition. We recommend that instead of providing geotechnical signoff of the next submittal, that you wait until after the revised plan set is in a form that can be approved to obtain the required signoff. If you submit such signoff with the next submittal, it is possible that you may need to obtain another sign off at a later date, and we don't think this makes good sense. Of course, it is up to you if you want to take the chance that the next submittal satisfies all terms and conditions of the CDP, but we would recommend waiting at this point in light of the various changes that are necessary, and including in light of the uncertainty regarding foundation elements.

20. Special Condition 1(t). Based on the plans received October 16, 2014 and as clarified on our January 15, 2015 meeting, the submitted plans include detail regarding the manner in which excavated sand not necessary for the project will be disposed and/or beneficially reused consistent with the terms of the CDP (Sheet CP-1).

21. Special Condition 1(u). We did not see that you submitted additional details justifying the need for the proposed solid fencing along the perimeter of the property. As noted in our August 29, 2014 and November 14, 2014 compliance letters, the proposed 6-foot tall redwood perimeter fence with 6" planks is incompatible with the minimization requirements of the terms and conditions of the CDP. At our January 15, 2015 meeting your representatives suggested that this fencing was needed to deter trespassers, but as noted above, deterring trespassers once the site is developed will be less challenging than it is on a

vacant site. Per the condition requirement, the starting point is that all site fencing first be removed, and then it can be replaced by the minimum necessary to meet project objectives where such fencing is sited and designed to be compatible with the dune landscape and to minimize public view impacts to the maximum extent feasible. On this point we note that you have to date interpreted 'project objectives' narrowly in terms of security needs for the resort. However, the intent of the condition is not that narrow, and the project objectives include ensuring that dune and public viewshed resources are protected to the maximum extent feasible. As a general rule, fencing is not something that is consistent with the dune aesthetic, and it introduces additional clutter in the viewshed. That is one reason why the articulated starting point per the conditions is that there be no fencing, and fencing can be added only to the degree to which it is the minimum necessary for project objectives, including dune and viewshed objectives. Past your anecdotal observations, you have not submitted justification for such perimeter fencing, and we are still unconvinced that any perimeter fencing is needed or that it is appropriate under the CDP terms and conditions. If you provide conclusive evidence to the contrary, we will be happy to work with you on siting and design of fencing that can address identified security issues, such as potentially targeted and more limited fencing (e.g., split rail fence or other less intrusive fencing options). If you do not intend to submit more fencing justification, then please remove all perimeter fencing from the plans. You are always welcome to pursue additional fencing options at a future time after the resort is developed if circumstances support it.

22. Special Condition 1(v). The requirements of Special Condition 1(v) are overarching, and affect most if not all of the issues discussed above. This condition requires that all parts of the development, from buildings to roads to retaining walls to paths to other development in view, minimize visual incompatibilities with the dune landscape and public views. Although a stand alone requirement, it really is meant to be overlaid atop other condition requirements to ensure that it is clear that this primary objective is required to be met by the project overall. Thus, the issues and necessary plan changes described above must also be understood in terms of Special Condition 1(v) as well. Overall, although we have made progress on these issues, as described above the project plans are still in need of modification to address these visual concerns. In addition, any submitted materials in the future need to comply with this condition as well, and thus this condition can't be deemed complied with at the current time.

23. Special Condition 2. Thank you for the submitted Construction Plan dated October 16, 2014 and additional clarification provided on January 15, 2015. The submittal contains enough detail for us to conclude that the construction staging and stockpiling locations as shown on plan sheets CP-2 and CP-3 have been minimized to the maximum extent feasible and that our concerns with visual impacts have been addressed. We are also able at this time to sign-off on the Biological Monitor selections: John Wandke of Rana Creek and Janet Ilse of EMC Planning Consultants. However, with regard to pre-construction surveys, there is not sufficient detail regarding the survey protocol, i.e., methodology, timing, qualifications, other agency coordination, etc., for us to conclude that this aspect of Special Condition 2(e) has

been complied with. Please provide additional information / clarification on the required survey protocols.

24. Special Condition 3. Thank you for the submitted Dune Restoration Plan revisions. Your submittal basically includes slight revisions to the program figures. As noted in our November 14, 2014 letter, Figure 4 of the dune restoration plan is an exhibit illustrating areas subject to the dune restoration requirements of Special Condition 3. This condition provides that dune habitat restoration and stabilization shall occur for all dune areas of the site outside of development areas, as well as for all dune extension and screening areas. As currently shown in your submitted plan revisions, the dune restoration plan still does not cover all areas outside of the development footprint, and thus still does not comport with the requirements of Special Condition 3. The dune restoration plan must apply to all areas outside of the development footprint, including the entire areas between the tunnel access points, the sand dune areas between the roadway and public path, the path and property line, and essentially all sandy areas not covered by approved development. Please revise Figure 4 accordingly.

Secondly, Special Condition 4 specifically states that the dune conservation easement shall apply to the dune restoration area described in Special Condition 3 and generally depicted in Exhibit 11a. As illustrated in in your submitted Figure 3 (“Conservation Easement”), the easement area does not comport with the dune restoration area or the requirements of Special Condition 4 and must be revised accordingly. Although the Commission allowed some additional development in the areas covered by Exhibit 11a, it did not modify the area to be covered by the dune conservation easement. Thus, as proposed by your attorney, the easement itself will specify what development is allowed in the area covered by the easement, but the depiction of the dune easement area and the metes and bounds legal description of the area must be consistent with that shown generally in Exhibit 11a.

Third, your submitted Figure 1 illustrates the property habitat management areas, which are separated into categories including the beach, foredune, backdune, and developed areas. There are a number of areas around the perimeter of the actual physical development on the site that are classified as “developed” but in reality are either foredune or backdune – including but not limited to the dunes between the access tunnels, the area seaward of the fire access road, a triangular shaped area in the very northeast corner of the property, and the dunes between the resort driveway and public access path. Please modify the plans to correctly identify these areas as dune and not developed, although, as acknowledged above, some minimal development, such as a subsurface water tank, existing well-head, and geothermal well, will be allowed in these areas.

Fourth, with regard to the dune restoration plan specifics, Special Condition 3(a) requires that restoration be premised on enhancing dune habitat so that it is self-functioning, high quality habitat in perpetuity. The dune restoration plan provides a planting plan for the sandy areas seaward of the proposed resort development, but does not include a plan to actually re-create

a natural looking and/or functioning “dune” environment. The submitted plans show the entire site seaward of the development graded and/or filled to a uniform 32-foot NGVD. As discussed above, plan changes are necessary to remove the unnatural depressions and to eliminate the fill are near the former borrow pit. More broadly in terms of the dune restoration plan, it needs to then provide the appropriate guidance and implementation measures to restore these and other sandy areas as functioning dune. The starting point for dune habitat is the dunes themselves, and the plan does not yet provide for the establishment of dune hummocks, mounds, and similar dune formations. Without such dune formation, the site restoration is unlikely to support plant recolonization and natural regeneration, and this area is not likely to function as “self-functioning, high quality habitat in perpetuity” as is required. Please submit plan modifications that include all measures to be taken to provide for the appropriate dune landform establishment and maintenance.

Fifth, as discussed above, stormwater biofiltration areas are proposed in two locations in areas reserved for native dune restoration, and this is not authorized. Please remove these areas from the dune restoration area.

Sixth the submitted Dune Restoration Plan still does not provide any specific provisions to protect and enhance sensitive species habitats, including for Western snowy plover and Smith’s blue butterfly as required by the Special Condition 3(b). Your next plan submittal must explicitly address the required sensitive species habitat enhancements. With respect to plover, we would recommend that you at least initially focus on areas where the plover has historically occupied the site, including access to the more interior dunes through the lower area fronting the old borrow pit. With respect to Smith’s blue butterfly, grading of the entire bluff from a generally meandering 60-foot NGVD height to a uniform 32-foot NGVD is likely to eliminate the existing wind-shadowing effects of the relatively higher bluff, which has created the micro-climate needed for the colonization of Smith’s blue butterfly along the northern property boundary. Rather than being in the “lee” of the bluffs and at a lower elevation of the bluffs, the butterfly habitat will be at a higher elevation and directly affected by the predominant northwest winds. Other than proposing to plant additional buckwheat plants, the host plant for Smith’s blue butterfly, no additional information is provided on how the habitat values will be enhanced in the post-grading site condition. The plan also proposed to plant numerous Monterey spineflower plants. But as noted above, without the creation of dune formations, including high and low points, the bare sandy areas are not likely to be stable and planting efforts are not likely to be successful. The plan must also provide for a program to address these species requirements, and not just a planting plan. We would be happy to work with your biological consultant to address these questions and issues directly, should that be more efficient. We would also strongly suggest that you coordinate with the California Department of Fish and Wildlife and the United States Fish and Wildlife Service as you prepare plan revisions as the condition requires that the provisions in the restoration plan “shall be consistent with applicable state and federal requirements for these species” and those agencies implement the State and Federal Endangered Species Acts. Please submit revised plans that include dune re-establishment and contours that are designed to match

natural dune landforms along with a planting plan and program that takes advantage of dune topography to enhance habitat values of the site including for sensitive species. Please include a description of the specific provisions that enhance habitat for sensitive species, including snowy plover and Smith's blue butterfly habitats, as part of dune restoration activities. Please provide details on the provisions to enhance such habitats as required.

25. Special Conditions 4 and 6 (Dune Area Conservation and Public Access Easements). We received the supplemental drafts of the Irrevocable Offer of Dedication for the Public Access Easement (Public Access OTD) (required pursuant to Special Condition 6) and Dune Area Conservation Easement (Dune Conservation OTD) (required pursuant to Special Condition 4) on February 3, 2015. We cannot fully review and comment on them in less than the 30-day review period provided for in the Settlement Agreement due to the complexities of the documents. In an effort to review your submittal as expeditiously as possible, we have, nevertheless, started our review of these documents and wished to give you some preliminary comments in this letter related to the graphic depiction and legal description associated with the public access easement, with the understanding that we will provide the remainder of our comments within the 30-day time period allotted by the settlement agreement (i.e., by March 5, 2015). In the past, we have found it most efficient for our recorded document staff to speak directly to the surveyor that you have hired, as many of our questions and concerns can typically be addressed through a few phone call conferences.

As an initial matter, the small scale of the graphic depiction led to some potential ambiguities that must be addressed before the easement can be recorded. A larger scale map may address many of the concerns identified below, and it would allow the courses to be labeled to more accurately identify the various Points. A larger scale map (similar to what you provided for the complex portion of the dune conservation areas) is essential to a meaningful review.

With regard to Easement Parcel One, Parking Lot

On the graphic, confusion is created by the use of Parcel 1 for the point of beginning of the Easement, because the property is also identified as Parcel 1. Either labeling the parcel by letter or at least identifying it as Parcel One would help remove any ambiguity as to which "Parcel 1" is intended in this case.

With regard to Easement Parcel Two, Pathway System

This issue may be related to the One and 1 confusion, but it appears that you intend to describe the "centerline" of the pathway (the most southern portion, which is the 10-foot wide bike path), which is supposed to lie 3 feet to the southeast of this centerline and 7 feet to the northwest, but the description begins "at a point on the easterly line of said Parcel 1," which appears to be the easterly property boundary. If the description begins on the easterly property line, then the path cannot lie 3 feet to the southeast of the centerline, as that would be off of the property. From the graphic depiction it does not look like the Point of Beginning is on the parcel boundary, but based upon the legal description, it sounds like it is, so we need some clarification on this point. In addition, it is not clear if courses 18 through 28 trace

the eastern property boundary, whether the Point of Beginning is instead three feet from the eastern property boundary, or whether the curve on course 18 moves the “centerline” northwest of the property boundary. Again, if a larger scale graphic is provided, it may resolve these issues.

The above-described concerns are also related to the last statement of this easement: “The sidelines at beginning of the strip are to be shortened or extended so as to terminate on the aforesaid easterly line of Parcel 1.” This statement suggests that there are not three feet on the southeasterly side of the “centerline”, only 7 feet or 3 feet on the northwesterly side. Clarification is needed on this issue.

The 108 foot segment of the Class 2 bike lanes directly south of the parking lot is only 6 feet wide, like the rest of the public access pathway that is north of the parking lot. Special Condition 5(b)(2) requires the portion of the pathway system that extends from the public recreational trail to and along the public parking lot to be a separate, dedicated pedestrian and bicycle path similar in width as the inland public recreational trail, which is 12-feet in width. Revised plan sheet TM-2 received January 27, 2015 meets the intent of Special Condition 5(b)(2) and identifies this pathway segment as 10-feet in width. Easement Two will need to be modified to reflect a 10-foot wide, dedicated public pedestrian and bicycle trail.

Easement Parcel Four, Beach Stairway/Pathway

The description starts “A strip of land 6.00 feet wide, lying 3.00 feet on each side of the following described centerline, Beginning at the hereinabove described Point B; then continuing along the line described in course #27 hereinabove.”

This description is unclear because Point B is at the end of the Parcel Two easement pathway, which ends at Course # 45. The line described in course #27 is the parcel two easement pathway; and course #27 is about where the pathway leaves the eastern property boundary. If this understanding of the easement is correct, it would be more accurate to describe the pathway as “then continuing along the line described in the Easement Parcel Two, Pathway System from course #27 through course #45 hereinabove” or just “then continuing along the line described in course #45 hereinabove...” because the course for #45 is the same as the next course described (#50). Course #50 continues the same direction, starting at Point B, where the parcel two pathway ends at Point B. Again, these are complicated technical questions that may be easily answered and clarified by your surveyor, and we would be happy to try to work through them directly with him/her.

It is unclear from the depiction why the Parcel two easement pathway, ends at point B, which does not extend to the 20’ NGVD contour. It is also unclear why Parcel Four was separated from the Parcel Two easement.

Finally, we note that both the public access and dune conservation easements must be recorded free of prior liens and encumbrances. We will need a copy of a preliminary title

report to review the current existing liens and encumbrances on the property to determine which could interfere with the easements required by the CDP. At a minimum, we understand that there are deeds of trust recorded against the property, and these will need to be subordinated to the easements. We will provide you with a copy of the template we typically use for subordination of deeds of trust, so that you may also work on obtaining these agreements while we are continuing to review the easements you submitted.

26. Special Condition 5 (Public Access Management Plan). Special Condition 5 requires the submittal of a Public Access Management Plan designed to address and provide for the public access areas and amenities of the site. On July 31, 2014 we received a copy of the Plan, and we have provided comments and direction on modifications necessary to meet the requirements of the CDP, including in our November 14, 2014 letter. To date, however, although different plan sheets associated with the revised plans requirements of Special Condition 1 have been submitted, the Public Access Management Plan itself has not yet been updated. As you are aware, many components of the Plan have evolved or have been required to be modified via the compliance review process, including with regard to the public access amenities, lighting, signage, fencing, etc., and which have not been carried forward into the Plan. Although we are clear on the components and changes we have discussed, including in relation to the pathway and overlook system as detailed above, the Plan is intended to function as a standalone document that will guide and govern public access use of the site, and it is critical that all related materials be brought back into the Plan. In addition, it affects and is affected by other portions of the PTI condition requirements, including that it a required exhibit for the Public Access Easement OTD and will need to be finalized and approved prior to final condition compliance sign-off on that item as well.

If you would prefer, you can wait to submit a revised Public Access Management Plan until after the revised plans are finalized. Alternatively, please submit a revised Plan that addresses the changes we have discussed, including as described herein, and also addresses outstanding issues from our November 14, 2014 letter (e.g., associated with signs and off-site parking).

27. Special Condition 20 (Deed Restriction). We received and reviewed the draft Deed Restriction. Please note that all appears in order with the exception that the Notice of Intent (Exhibit B) must include your signature. Once it is signed, please record it at the Monterey County Recorder's Office. Once we have received a certified conformed copy, then this condition will be deemed satisfied.

In closing, we request that all revised materials that must be submitted prior to issuance of the CDP be submitted for review at the same time on the same date, unless you would prefer to address a subset in one submittal and defer submittal of other materials until that is resolved (e.g., resolving the Special Condition 1, 2, 3, and 5 requirements before resolving the Special Condition 4 and 6 legal document requirements). Please note that there may be additional changes and/or materials necessary to comply with the terms and conditions of approval

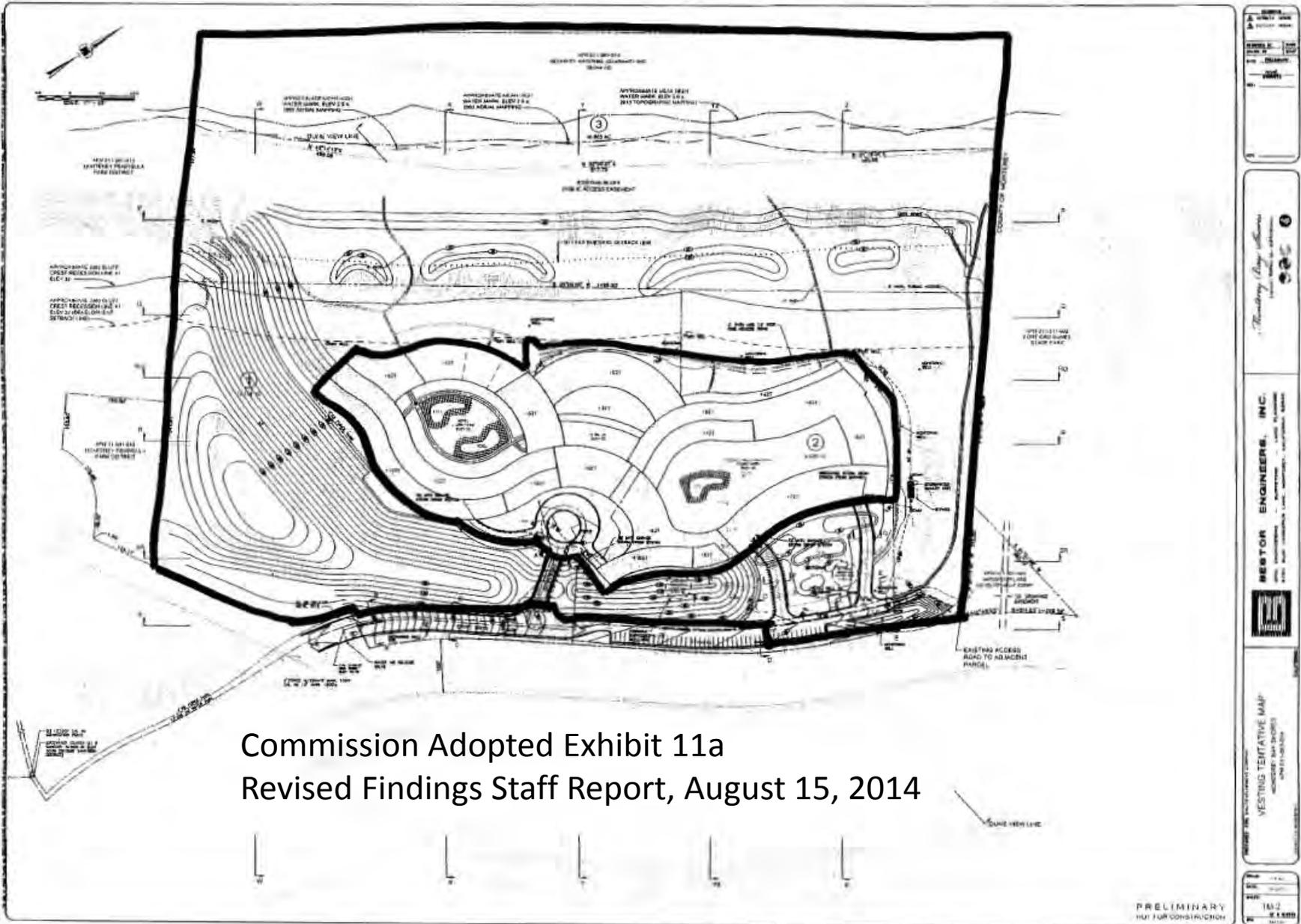
depending upon the nature of the materials you provide in response to this letter, particularly regarding submittal of a complete set of revised plans with all necessary components (e.g., including regarding compliance with height requirements, site grading, dune conservation area, etc.). Further, we note that your submittal and this response is limited to the requirements of the CDP that must be met prior to issuance of the permit, and that there are other terms and conditions, including other necessary submittals and events that also must be complied with, including certain prior to construction and occupancy requirements, that also apply but are not addressed here. We look forward to working with you on both the materials that must be submitted prior to issuance of the permit and the other conditions of approval moving forward.

If you have any questions regarding the above, please contact me (831) 427 4863 or via email at Michael.Watson@coastal.ca.gov.

Regards,

Mike Watson
Coastal Planner
Central Coast District

cc: Steve Kaufmann
Tom Roth



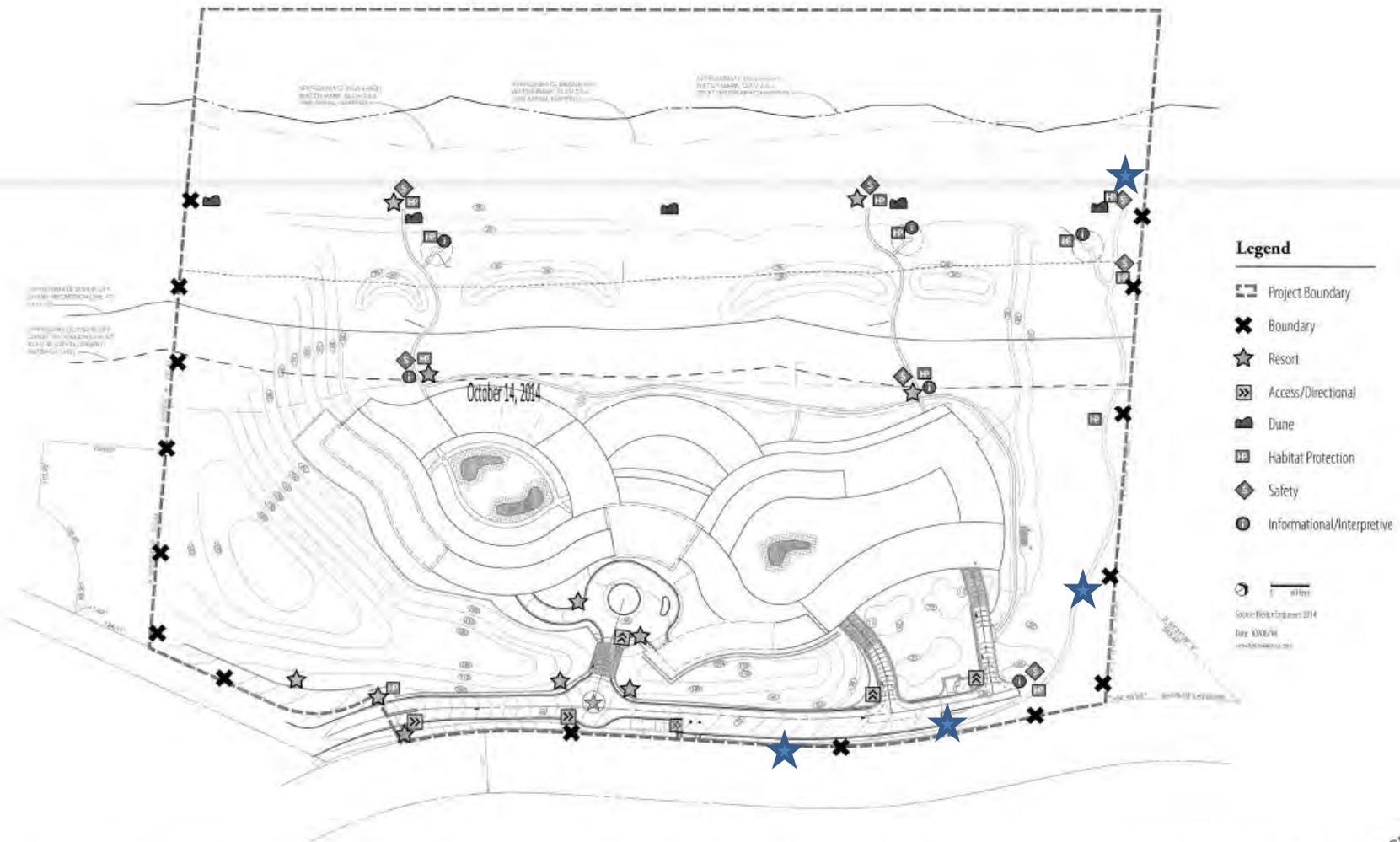
Commission Adopted Exhibit 11a
 Revised Findings Staff Report, August 15, 2014

Exhibit 11a Dune Restoration Area
 A-3-SNC-98-114 Settlement Agreement
 1 of 1

PRELIMINARY
 NOT FOR CONSTRUCTION

★ Additional access way-finding signs needed.

SIGNAGE PLAN
Conceptual Sign Locations



E M C



MONTEREY BAY SHORES RESORT

1 of 3
MONTEREY BAY SHORES RESORT
AUGUST 2014 TO 2015 (SIGNED)

RECEIVED
MAY 14 2015
Monterey Bay Shores
Ecoresort, Wellness Spa, and Residences

EX PARTE COMMUNICATION DISCLOSURE FORMFiled by Commissioner: Steve Kinsey

1) Name or description of project:

Dispute Resolution No. A-3-SNC-98-114-EDD (Security National Guaranty, Inc.
Sand City)2) Date and time of receipt of communication: May 8, 2015 at 3:00pm3) Location of communication: Telephone

(If not in person, include the means of communication, e.g., telephone, e-mail, etc.)

4) Identity of person(s) initiating communication:

Anne Blemker

5) Identity of person(s) on whose behalf communication was made:

Ed Ghandour, SNG

6) Identity of persons(s) receiving communication:

Steve Kinsey

7) Identity of all person(s) present during the communication:

Steve Kaufmann, Susan McCabe, Anne Blemker

Complete, comprehensive description of communication content (attach complete set of any text or graphic material presented):

I received a briefing from the applicant's representatives in which they discussed the project history and efforts to work with staff on condition compliance since approval of the project in April 2014. According to the representatives, the remaining points of disagreement include: 1) resort entry signage; 2) project lighting; 3) resort pathways; 4) perimeter fencing; 5) height limit/elevator "override"; 6) dune manipulation for screening purposes; 7) Highway 1 views; 8) dune restoration plan; 9) OTDs for dune conservation and public access; 10) public access management plan; and 11) Special Condition 1(v) in relation to other special conditions. At the time of the briefing, the applicants' representatives stated that they were preparing a comprehensive letter to the Commission that would be distributed to staff. The applicants request that the Commission find that the applicant is in compliance with the conditions in dispute and find that those conditions have been met.

5/10/15
Date

SK Kinsey
Signature of Commissioner

TIMING FOR FILING OF DISCLOSURE FORM: File this form with the Executive Director within seven (7) days of the ex parte communication, if the communication occurred seven or more days in advance of the Commission hearing on the item that was the subject of the communication. If the communication occurred within seven (7) days of the hearing, 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. This form may be filed with the Executive Director in addition to the oral disclosure.

RECEIVED

MAY 13 2015

CALIFORNIA
COASTAL COMMISSION
CENTRAL COAST AREA

F13a

EX PARTE COMMUNICATION DISCLOSURE FORM

Filed by Commissioner: Carole Groom

1) Name or description of project: F13a - Dispute Resolution No. A-3-SNC-98-114-EDD (Sand City)

2) Date and time of receipt of communication: 5/1/2015 at 11:00 a.m.

3) Location of communication: Telephone

(If not in person, include the means of communication, e.g., telephone, e-mail, etc.)

4) Identity of person(s) initiating communication: Anne Blemker, Susan McCabe

5) Identity of person(s) on whose behalf communication was made: Security National Guaranty/Monterey Bay Shores (Applicant)

6) Identity of persons(s) receiving communication: Carole Groom

7) Identity of all person(s) present during the communication: Anne Blemker, Susan McCabe, Steve Kaufmann, Carole Groom

Complete, comprehensive description of communication content (attach complete set of any text or graphic material presented):

The representatives of the applicant indicated that they are in dispute regarding complying with the conditions of the CDP, approved in 2013. The indicated that disputes include conforming to height limit with the elevator shaft and preserving scenic views, retaining wall and public access signage, dune restoration and stabilization, path lighting, and fire wall design. The representatives also explained other disagreements that ultimately were resolved, including the wood boardwalk.

RECEIVED
MAY 12 2015

May 11 2015
Date

Carole Groom
Signature of Commissioner

CALIFORNIA
COASTAL COMMISSION
CENTRAL COAST AREA

TIMING FOR FILING OF DISCLOSURE FORM: File this form with the Executive Director within seven (7) days of the ex parte communication, if the communication occurred seven or more days in advance of the Commission hearing on the item that was the subject of the communication. If the communication occurred within seven (7) days of the hearing, 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. This form may be filed with the Executive Director in addition to the oral disclosure.

EX PARTE COMMUNICATION DISCLOSURE FORM

RECEIVED

MAY 12 2015

CALIFORNIA
COASTAL COMMISSION
CENTRAL COAST AREA

Filed by Commissioner: Greg Cox

1) Name or description of project:

Monterey Bay Shore Ecoresort Project
A-3-SNC-98-114-EDD (Security National Guaranty, Inc.)

2) Date and time of receipt of communication: May 11, 2015 at 9:00AM

3) Location of communication: Telephone
(If not in person, include the means of communication, e.g., telephone, e-mail, etc.)

4) Identity of person(s) initiating communication:
Anne Blemker

5) Identity of person(s) on whose behalf communication was made:
Security National Guaranty, Inc. ("SNG")

6) Identity of persons(s) receiving communication:
Greg Murphy, on behalf of Greg Cox

7) Identity of all person(s) present during the communication:
Anne Blemker, Susan McCabe, Steve Kauffman

Complete, comprehensive description of communication content (attach complete set of any text or graphic material presented):

Greg Murphy on my staff had a telephone conversation with representatives of the applicant, during which they went through exactly what was written in their 26-page letter that was sent to the Commission on May 8th.

5/11/15
Date

Greg Cox
Signature of Commissioner

TIMING FOR FILING OF DISCLOSURE FORM: File this form with the Executive Director within seven (7) days of the ex parte communication, if the communication occurred seven or more days in advance of the Commission hearing on the item that was the subject of the communication. If the communication occurred within seven (7) days of the hearing, 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. This form may be filed with the Executive Director in addition to the oral disclosure.

F13a



United States Department of the Interior



FISH AND WILDLIFE SERVICE
Ventura Fish and Wildlife Office
2493 Portola Road, Suite B
Ventura, California 93003

IN REPLY REFER TO:
08EVEN00-2015-TA-0246

May 13, 2015

RECEIVED

MAY 14 2015

CALIFORNIA
COASTAL COMMISSION

Mike Watson, Coastal Program Analyst
California Coastal Commission
Central Coast Office
725 Front Street, Suite 300
Santa Cruz, California 95060

Subject: Monterey Bay Shores Resort Development, Sand City, Monterey County, California

Dear Mr. Watson:

The U.S. Fish and Wildlife Service (Service) is providing this letter to the California Coastal Commission (Commission) to provide information for consideration in a public hearing for dispute resolution (A-3-SNC-98-114-EDD) regarding Security National Guaranty's (Applicant) proposed Monterey Bay Shores Resort Development in Sand City, Monterey County, California (Project). We received a notice of the hearing, dated April 30, 2015, on May 11, 2015. The notice indicated that a staff report is available electronically at <http://www.coastal.ca.gov/mtgcurr.html>. The proposed Project includes the construction of a 184-room hotel, 184 (92 residential and 92 visitor-serving) condominium units, conference facilities, a restaurant, a spa, pools, landscaping, public access, and parking. The proposed Project development would total 1.34 million square feet of resort and residential facilities within an approximately 12-acre footprint. These facilities would be constructed on a 39-acre ocean-front site in Sand City, California.

The Service's responsibilities include administering the Endangered Species Act of 1973, as amended (Act), including sections 7, 9, and 10. Section 9 of the Act prohibits the taking of any federally listed endangered or threatened species. Section 3(19) of the Act defines "take" to mean "to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct." Harm is further defined by the Service to include significant habitat modification or degradation that results in death or injury to listed species by significantly impairing essential behavioral patterns, including breeding, feeding, or sheltering. Harass is defined by the Service as intentional or negligent actions that create the likelihood of injury to a listed species by annoying it to such an extent as to significantly disrupt normal behavioral patterns which include, but are not limited to, breeding, feeding, or sheltering. 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. If a proposed project does not involve a Federal agency but may result in the take of a listed animal species, the project proponent should apply to the Service for an incidental take permit pursuant to section 10(a)(1)(B) of the Act. To qualify for an

incidental take permit, project proponents must submit an application to the Service together with a habitat conservation plan (HCP) that describes, among other things, how the impacts of the proposed taking of federally listed species would be minimized and mitigated to the maximum extent practicable and how the plan would be funded. A complete description of the requirements for a HCP can be found at section 10(a)(2)(B) of the Act and at 50 Code of Federal Regulations 17.32.

As it is not our primary responsibility to comment on documents prepared pursuant to the California Coastal Act, our comments will not constitute a full review of Project impacts. Rather, they address potential impacts of the proposed Project on species listed under the Act, including the federally endangered Smith's blue butterfly (*Euphilotes enoptes smithi*) and the federally threatened western snowy plover (*Charadrius nivosus nivosus*) and Monterey spineflower (*Chorizanthe pungens* var. *pungens*). We offer the following information and recommendations to aid in the conservation of sensitive wildlife habitats and federally listed species that occur in the proposed Project area as a means to assist the Commission and the Applicant in complying with the Act.

We submitted comments on the Project to you via a letter dated April 7, 2014 (2014 letter). As detailed in that letter, we have various concerns regarding potential effects of the proposed project on the Smith's blue butterfly, western snowy plover, and Monterey spineflower. We have not received any information from the Applicant regarding the Project since 2008, and to the best of our knowledge, none of the concerns raised in our 2014 letter have been addressed. We are therefore enclosing a copy of that letter, rather than explicitly reiterating each of our concerns here. In addition, with this letter, we wish to provide: 1) new relevant information we have received regarding the western snowy plover, and 2) clarifying comments regarding the 2014 letter and how it is discussed in the current (April 30, 2015) staff report.

Western Snowy Plover

Western snowy plovers have nested throughout much of the Project area (Point Blue Conservation Science, in litt. 2014). This includes nesting within the Project footprint in habitat that would be permanently destroyed during construction, and in areas seaward of the Project footprint that would be disturbed during construction and by the increased human use of the Project area following construction. Since our 2014 letter, there have been at least 6 additional nests within the Project area. It should be noted that these nests were located incidentally and the Project area is not currently being thoroughly surveyed for western snowy plover nesting, which creates the likelihood that additional nests have occurred within the Project area that were never documented. During the 2014 nesting season, a nest was observed in the bluff-top portion of the Project site, very near or possibly within the footprint of proposed Project facilities (California Department of Parks and Recreation, in litt. 2014). This nest was symbolically fenced by a concerned citizen. We were not notified of this fencing before it was installed and we normally require that persons installing symbolic fencing hold a recovery permit issued under section 10(a)(1)(A) of the Act. The fence was subsequently removed by an unknown party and the eggs disappeared. If the party who removed the fence also removed the eggs, this would have been a violation of section 9 of the Act.

To date, during the 2015 nesting season, five western snowy plover nests have been documented within the Project area. Three of these nests have been lost and two remain active. One of the losses is known to have been due to trampling by a person (Point Blue Conservation Science, in litt. 2015). As discussed in more detail in our 2014 letter, the Project area contains occupied western snowy

plover nesting habitat and the Project, as proposed, is expected to result in take of the western snowy plover. In addition, observations in 2014 and 2015 indicate that direct take of western snowy plovers (i.e., trampling and/or removal of eggs) may be currently occurring within the Project area due to human activities. We are concerned that activities and unmanaged public access within the Project area may be resulting in unauthorized take.

Clarifying Comments

Our 2014 letter (page 5) included numbered comments regarding the "Habitat Protection Plan" (HPP), which was included with the 2014 staff report. The current staff report (exhibit 5, page 29) identifies these numbered comments as "the eight concerns for western snowy plover", which must be addressed prior to construction. We wish to clarify that these numbered comments were intended as examples, but not an exhaustive list, of the inadequacies of the HPP to protect the western snowy plover. We appreciate that the Commission has required that these points be addressed, but it should not be assumed that merely addressing these points will be sufficient to avoid take of the western snowy plover or the other listed species present within the Project area. As detailed in our 2014 letter, the Project area is occupied by at least 3 listed species, and approximately 88 percent of the habitat above the high tide line would be graded during construction and 38 percent would be permanently destroyed. We do not believe that the project, as proposed, can be built at this location without resulting in take of listed species. The HPP is not adequate to avoid take of listed species and is not a substitute for a HCP or incidental take permit. If the Applicant wishes to continue to pursue the proposed Project, they should prepare a habitat conservation plan in support of an application for an incidental take permit to address potential take of the western snowy plover and Smith's blue butterfly, and adverse effects to Monterey spineflower.

This concludes our comments on the subject Project. We appreciate your consideration of our comments and we are available to discuss them further. If you have any questions, please contact Jacob Martin of my staff at (831) 768-6953.

Sincerely,


Acting for Stephen P. Henry
Field Supervisor

Enclosures

In Litterae

California Department of Parks and Recreation. 2014. Electronic mail messages with attached map and data from Amy Palkovic, California Department of Parks and Recreation, to Jacob Martin, U.S. Fish and Wildlife Service. April 10, 2014.

Point Blue Conservation Science. 2014. Electronic mail messages with attached maps and data from Kriss Neuman, Point Blue Conservation Science, to Jacob Martin, U.S. Fish and Wildlife Service. March 17, 2014 and March 31, 2014.

Point Blue Conservation Science. 2015. Electronic mail message with attached map and narrative from Carleton Eyster, Point Blue Conservation Science, to Jacob Martin, U.S. Fish and Wildlife Service. May 4, 2015.



United States Department of the Interior



FISH AND WILDLIFE SERVICE
Ventura Fish and Wildlife Office
2493 Portola Road, Suite B
Ventura, California 93003

IN REPLY REFER TO:
08EVEN00-2014-TA-0211

April 7, 2014

Mike Watson, Coastal Program Analyst
California Coastal Commission
Central Coast Office
725 Front Street, Suite 300
Santa Cruz, California 95060

Subject: Monterey Bay Shores Resort Development, Sand City, Monterey County, California

Dear Mr. Watson:

The U.S. Fish and Wildlife Service (Service) is providing this letter to the California Coastal Commission (Commission) with regard to an application for a coastal development permit for the proposed Monterey Bay Shores Resort Development in Sand City, Monterey County, California (Project). You contacted Jacob Martin of my staff via electronic mail on March 26, 2014, stating that a staff report for the project (Staff Report) was available to the public and that written comments on that report, if received by April 7, 2014, would be provided to the Commission for their review and consideration in advance of their permit decision. The proposed Project includes the construction of a 184-room hotel, 184 (92 residential and 92 visitor-serving) condominium units, conference facilities, a restaurant, a spa, pools, landscaping, public access, and parking. The proposed Project development would total 1.34 million square feet of resort and residential facilities within an approximately 12-acre footprint. These facilities would be constructed on a 39-acre ocean-front site in Sand City, California.

The Service's responsibilities include administering the Endangered Species Act of 1973, as amended (Act), including sections 7, 9, and 10. Section 9 of the Act prohibits the taking of any federally listed endangered or threatened species. Section 3(19) of the Act defines "take" to mean "to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct." Harm is further defined by the Service to include significant habitat modification or degradation that results in death or injury to listed species by significantly impairing essential behavioral patterns, including breeding, feeding, or sheltering. Harass is defined by the Service as intentional or negligent actions that create the likelihood of injury to a listed species by annoying it to such an extent as to significantly disrupt normal behavioral patterns which include, but are not limited to, breeding, feeding, or sheltering. 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. If a proposed project does not involve a Federal agency but may result in the take of a listed animal species, the project proponent should apply to the Service for an incidental take permit pursuant to section 10(a)(1)(B) of the Act. To qualify for an incidental take permit, project proponents must submit an application to the Service together with a habitat conservation plan (HCP) that describes, among other things, how the impacts of the proposed taking of federally listed species would be minimized and mitigated to the maximum extent practicable and how the plan would be funded. A complete description of the requirements for a HCP can be found at section 10(a)(2)(B) of the Act and at 50 Code of Federal Regulations 17.32.

As it is not our primary responsibility to comment on documents prepared pursuant to the California Coastal Act, our comments on the Staff Report will not constitute a full review of Project impacts. Rather, they address potential impacts of the proposed Project on species listed under the Act, including the federally endangered Smith's blue butterfly (*Euphilotes enoptes smithi*) and the federally threatened western snowy plover (*Charadrius nivosus nivosus*) and Monterey spineflower (*Chorizanthe pungens* var. *pungens*). We offer the following information and recommendations to aid in the conservation of sensitive wildlife habitats and federally listed species that occur in the proposed Project area as a means to assist the Commission and the Project proponent, Security National Guarantee (Applicant), in complying with the Act.

As background, the subject Project was originally proposed in 1998, but was never constructed. Subsequently, we received a draft habitat conservation plan (HCP) for the subject Project from Tom Roth (attorney to the Applicant) in February of 2006 and provided comments on that draft in June of the same year. We did not receive substantial information from the applicant regarding the proposed Project between July of 2006 and July of 2008. On July 16, 2008, representatives of the Applicant, including Mr. Roth, visited our Ventura Fish and Wildlife Office to present a briefing on a redesigned version of the Project. On August 18, 2008, we received a copy of a draft addendum to the final environmental impact report for the Project. On October 16, 2008, and October 27, 2008, we received draft and "final" copies of a "habitat protection plan" (2008 HPP). We provided comments to the Coastal Commission on the 2008 HPP in a letter dated May 6, 2009. We have received no further information from the applicant regarding the subject Project since 2008. On March 26, 2014, we received an electronic mail message from you that included a link to the Staff Report. The Staff Report indicates that the proposed residential and visitor-serving capacity of the Project has been expanded from that considered in 2008 (184 hotel rooms versus 160, and 184 condominium units versus 180). However, the Staff Report (page 98) indicates, and we agree, that the current version of the HPP (2013 HPP) (EMC Planning Group 2013, attached as exhibit 20 at page 203 of the Staff Report) is fundamentally unchanged from the version we commented on in 2009, and that comments in our 2009 letter (attached as exhibit 25 at page 481 of the Staff Report) therefore remain relevant to the currently proposed Project. We make several specific references to the HPP in the following discussion as well as refer the Commission to our May 6, 2009, letter for additional comments on the HPP.

The project site includes known occupied habitat for the Smith's blue butterfly, western snowy plover, and Monterey spineflower. The Smith's blue butterfly is dependent upon its host plant species, seacliff buckwheat (*Eriogonum parvifolium*) and coast buckwheat (*Eriogonum latifolium*), during all life stages and seacliff buckwheat plants occupied by Smith's blue butterfly are found in the project area (2013 HPP, page 3-3). Approximately 3.4 acres of habitat occupied by Monterey spineflower was located in the Project area during the most recent (2008) survey (2013 HPP, page 3-8). While we are concerned about potential take of Smith's blue butterfly and impacts to Monterey spineflower, our primary concern centers on the likely effects of the Project on the western snowy plover and its designated critical habitat.

Western Snowy Plover

Western snowy plovers have nested throughout much of the Project area (Point Blue Conservation Science, in litt. 2014). This includes nesting within the Project footprint in habitat that would be permanently destroyed during construction, and in areas seaward of the Project footprint that would be disturbed during construction and by the increased human use of the Project area following construction. We acknowledge that no western snowy plover nests have been recorded within the immediate Project footprint in the past 10 years (Point Blue Conservation Science, in litt. 2014); however, recent survey efforts have been limited and inconsistent in that area (David Dixon, Point Blue Conservation Science, pers. comm. 2014) and we are not aware of any changes to the habitat that would preclude successful nesting there. Successful western snowy plover nesting has been recorded within the broader Project area, seaward of the Project footprint, as recently as 2013. On a more regional scale, there have been 12 nests observed within Sand City (primarily in the Project area but also in areas within City limits and to the south) and 162 nests observed within Fort Ord Dunes State Park (adjacent to and north of the Project area) over the past 10 years (Point Blue Conservation Science, in litt. 2014). It should also be noted that western snowy plover chicks are precocial (active and able to move freely from hatching) and chicks hatched in nearby areas may currently feed and shelter within the Project area.

We have four primary concerns regarding the effects of the proposed Project on the western snowy plover: (1) the direct removal of habitat by construction activities, (2) the large increase in disturbance to the species and habitat by users of the proposed facilities, (3) the expected increase in predators associated with increased human presence; and (4) the interaction between habitat removal and the expected rise in sea level.

The Project area encompasses 39.0 acres, of which 28.0 would be disturbed by grading and 12.2 would be permanently converted to developed areas (Staff Report pages 39-40); it should also be noted that 7.1 of the 39.0 acres are below the high tide line. This calculates to approximately 88 percent of the habitat above the high tide line being disturbed during construction and 38 percent being permanently destroyed.

Pedestrians and their pets can cause harassment, as well as direct injury and mortality, of western snowy plovers (Service 2007). The City of Sand City (City) (2012, page 137) acknowledges that

increased human use of beaches within City limits has decreased the value of habitat for the western snowy plover. The proposed Project would contribute greatly to this ongoing loss, by bringing thousands of guests to the proposed resort annually and by facilitating increased public access. Proposed Project components include vertical public access at the north end of the Project area, a public viewpoint at the northwest corner of the Project area, horizontal public access across the Project area seaward of the proposed resort, connection to public roads and bike trails, and new public parking (Staff Report pages 118-119). This increase in human activity is likely to result in take in the forms of harm and/or harassment, as well as direct injury or mortality, of western snowy plovers both within the Project area and on habitat adjacent to the Project area.

The presence of humans facilitates increased populations of predators that prey on western snowy plovers. Human development and use of an area provides sources of food, water, and habitat features that benefit a variety of mammalian and avian predators (Service 2007). Therefore, the development of, and increased human presence associated with, the proposed Project would likely increase predation on western snowy plovers.

The Staff Report includes a discussion of sea level rise, shoreline erosion, and flooding (pages 46-66). The proposed Project would site resort facilities within areas that are projected (at a shoreline erosion rate of 2.6 feet per year) to be below the high tide line within 75 years due to sea level rise and shoreline erosion (Staff Report pages 62-63 and exhibit 9 at page 164). The Staff Report acknowledges that there is scientific uncertainty as to the rates of environmental change regionally and within the Project site (page 63) and that the shoreline could erode more quickly than the projected 2.6 feet per year. Our concern is that the setback between the high tide line and the developed area would be lost due to "coastal squeeze" (the process in which coastal habitat is lost because it is trapped between a rising sea and a hardened physical barrier (in this case the proposed resort)). Habitat for any listed species between the Pacific Ocean and the Project footprint would eventually be physically removed by sea level rise.

We expect that the proposed Project would result in take of the western snowy plover and would likely render the Project area unsuitable for the species. Habitat would be immediately lost upon construction and the amount of human disturbance and predation pressure would be increased both within the Project area and in adjacent areas. We expect take of the species would occur in the forms of harm, harassment, and/or direct injury or mortality. We respectfully disagree with the conclusion on page 100 of the Staff Report that "the project will protect the natural resources of the site." However, if the Commission chooses to permit the Project as proposed, then we strongly support the inclusion of Special Condition 15 of the Staff Report (Staff Report, page 33), which would require that the Applicant obtain all necessary permits from the Service and several other public agencies. Considering the following factors: (1) the Project area is relatively small, (2) much of it would be developed, (3) all of it would be subjected to increased human disturbance, and (4) all western snowy plover habitat therein would ultimately be lost to the combined effects of the development and sea level rise/shoreline erosion, we expect that off-site mitigation may be necessary to meet the Service's incidental take permit issuance criteria. Please also note that we have been providing input to the City of Sand City for approximately 15

years regarding the likely impacts to listed species of Ocean-front development within their City limits and the need for habitat conservation planning; copies of our letters to the City from 1999 and 2002 are enclosed for your information.

Much of the information provided in the 2013 HPP is inaccurate and outdated. In addition, we are concerned that its provisions are not adequate to avoid take of the western snowy plover. Specific comments regarding our concerns about the 2013 HPP are provided below:

- (1) The discussion of nesting activity in section 4.2.1 (pages 4-2 and 4-5) does not discuss the 2012 or 2013 breeding seasons, in which successful nests hatched within the Project area.
- (2) The biological objectives on pages 4-7 and 4-8 would not provide an undisturbed area where western snowy plovers would be free to establish nests. Instead, two areas would be surveyed for western snowy plovers (by a biologist retained by the Applicant) and if nests were found in the first of those areas (the "beach and strand"), the biologist would be "in coordination with the construction supervisor, resort manager or property owner...authorized to restrict access to nesting snowy plover areas through implementation of an adaptive management plan, and through the erection of exclosures and signage to protect nests during the breeding season." We expect that in the above-described circumstances, increased human disturbance within the nesting habitat would preclude nesting and no nests would be found. In addition, if nests were found, their protection would be left at the discretion of a biologist of unknown qualifications who would report only to the Applicant. Furthermore, the second area surveyed (the "foredune/secondary dune") would only be surveyed and no protection of any nests located is even described as "authorized."
- (3) Western snowy plovers have nested in inland areas of the Project site, but preconstruction surveys are proposed only in beach and strand areas (page 4-13).
- (4) Eggs and chicks are the least mobile and, therefore, the most vulnerable life stages of the western snowy plover. For this reason, we typically recommend seasonal avoidance of disturbance in or near western snowy plover nesting habitat during the breeding season (generally March 1 through September 30, annually). No seasonal restriction for construction during the western snowy plover nesting season is proposed in the HPP. Rather, the HPP (page 4-13) appears to assume that surveys, exclosure "during fledging" of any nests found, and "focused monitoring and care" will be sufficient to prevent nest loss. Exclosure "during fledging" is not biologically relevant to the western snowy plover; exclosures can help to protect eggs in some situations, but western snowy plover chicks are precocial and, as such, cannot be contained within an exclosure once they have hatched. Also, it is not clear to us what "focused monitoring and care" entails or how this would reduce the likelihood of nest abandonment.

- (5) The HPP (page 4-13) presumes that take of western snowy plovers resulting from nest abandonment due to construction would not occur because successful nesting occurs at Oceano Dunes State Vehicular Recreation Area (ODSVRA). This argument is flawed in two primary ways. First, take of western snowy plovers occurs at ODSVRA almost every year, and the California Department of Parks and Recreation (CDPR) is working with us on an HCP to support issuance of an incidental take permit to address such take. Second, the ODSVRA encompasses more than 3,500 acres and includes more than 6 miles of shoreline, the southern third of which (approximately 300 acres) is seasonally closed to protect nesting western snowy plovers and California least terns (please see map available at: http://ohv.parks.ca.gov/?page_id=1208). The ODSVRA is several orders of magnitude larger than the proposed Project site; as such it is not comparable to a 39-acre site where 88 percent of the terrestrial habitat is proposed to be graded.
- (6) The HPP (page 4-15) mentions a "Dynamic 1-2 acre Nesting Protection Zone." This zone is proposed to be established upon opening of the resort. It is not clear how this zone would be protected. Also, the location, orientation, and size of this zone are left to the discretion of a biologist of undetermined qualifications who would report only to the Applicant.
- (7) The HPP (page 4-16) indicates that a predator management plan would be developed, but does not provide any detail on what the plan would entail or any certainty that it would succeed.
- (8) The HPP (page 4-23) describes a success criterion for western snowy plover of one successful nesting pair within 10 years following construction and characterizes this threshold as "attracting nesting plovers back to the site." This goal is biologically inadequate to maintain the current level of nesting and does not recognize that western snowy plovers currently nest within the Project area. In addition, defining success as successful nesting (eggs surviving to hatch) would not guarantee successful fledging (chicks surviving until they are mature enough to fly).

Western Snowy Plover Critical Habitat

Unit CA 22 of designated critical habitat for the western snowy plover includes approximately a third of the Project area (77 FR 36728, <http://criticalhabitat.fws.gov/crithab/>). Unit CA 22 was designated because it was occupied at the time of listing, is currently occupied, and is an important area for breeding and wintering western snowy plovers (77 FR 36766). The primary constituent elements (PCEs) (77 FR 367474) of critical habitat for the western snowy plover include:

- (1) Areas that are below heavily vegetated areas or developed areas and above the daily high tides;
- (2) Shoreline habitat areas for feeding, with no or very sparse vegetation, that are between the annual low tide or lowwater flow and annual high tide or highwater flow, subject to

inundation but not constantly under water, that support small invertebrates, such as crabs, worms, flies, beetles, spiders, sand hoppers, clams, and ostracods, that are essential food sources;

- (3) Surf- or water-deposited organic debris, such as seaweed (including kelp and eelgrass) or driftwood located on open substrates that supports and attracts small invertebrates described in PCE 2 for food, and provides cover or shelter from predators and weather, and assists in avoidance of detection (crypsis) for nests, chicks, and incubating adults; and
- (4) Minimal disturbance from the presence of humans, pets, vehicles, or human-attracted predators, which provide relatively undisturbed areas for individual and population growth and or normal behavior.

The Project would reduce the amount of PCE 1 immediately upon construction by placing development closer to the high tide line. The Project would degrade PCE 4 by facilitating the presence of thousands of additional people within and surrounding the project area. We expect that PCEs 2 and 3 would also be degraded by the large increase in human use of the Project area and surrounding areas. All PCEs would eventually be completely lost from the Project area as sea level rises and any remaining habitat between the ocean and the development is inundated.

Cumulative Effects to Western Snowy Plover

We are aware of two additional proposed projects with likely adverse effects on the western snowy plover in the vicinity of Sand City. The "Collections" project is another proposed resort within Sand City and would be located south of the Monterey Bay Shores site. The CDPR has proposed a campground within Fort Ord Dunes State Park, which is immediately north of the proposed Monterey Bay Shores site. The Collections would directly remove western snowy plover habitat (similar to Monterey Bay Shores) and both projects would facilitate the presence of thousands of additional visitors in western snowy plover habitat. We have enclosed copies of our comment letters to the City of Sand City and CDPR on these projects for your information. We are currently working with CDPR on a HCP that would address their project. We are very concerned about the combined adverse effects of these three projects on the western snowy plover. If all three are constructed, there is potential that the species could no longer successfully breed in the southern Monterey Bay area.

Smith's Blue Butterfly

The 2013 HPP (Staff Report exhibit 20, page 3-3) indicates that Smith's blue butterflies and their habitat were present on site during a 2006 survey, which is the most recent survey cited in the HPP. The Staff Report (page 95) indicates that the distribution of Smith's blue butterfly habitat had not substantially changed as of a 2008 survey. The Staff Report (page 97) indicates that Smith's blue butterfly habitat would be avoided during grading. We are concerned that this expectation of avoidance is based on surveys that are more than 5 years old. Seacliff and coast

buckwheat are plants that colonize new areas, including disturbed areas, from seed and may have become established in new areas since the 2006 and 2008 surveys. We are also concerned that the 2013 HPP does not appear to reflect the latest available data (e.g., the Staff Report relies on a 2008 survey that is not discussed in the HPP). In addition, as discussed in our 2009 letter, the HPP (either version) is inconsistent regarding avoidance of Smith's blue butterfly habitat during construction. The 2013 HPP indicates (page 3-4) that the project would "completely avoid the area where buckwheat plants occur," but also indicates (page 4-13) that surveyors would "flag each plant of seacliff or coast buckwheat within areas proposed for development." Given these inconsistencies and the time elapsed since the most recent survey, we are not confident that removal of currently existing Smith's blue butterfly habitat can or would be avoided during project construction. We have additional concerns regarding potential take of all life stages of Smith's blue butterflies during weed removal, during seed collection, and as dispersing adults; please see the last page of our 2009 letter for a detailed discussion of these concerns.

Monterey Spineflower

The Monterey spineflower is an annual plant that germinates from its seed bank each growing season. The 2013 HPP (page 3-8) indicates that 3.39 acres of habitat occupied by Monterey spineflower were found in the Project area in a 2008 survey. The Staff Report (page 95) indicates that surveys in 1997, 2000, and 2008 revealed that Monterey spineflower has been found in additional, and different, portions of the Project area since 1997, with a 21 percent increase in known occupied habitat from 1997 to 2008. The Staff Report also indicates that when considering all survey results, up to 7 acres of occupied habitat may occur within the Project area (i.e., 3.39 acres were observed occupied by mature plants in 2008, but the area occupied by the Monterey spineflower seed bank is likely substantially larger). The 2013 HPP (page 3-8) proposes grading of all known occupied Monterey spineflower habitat and reestablishment of the species "at a minimum 1:1 ratio" within 3.7 acres following Project development. Considering the discussion at page 95 of the Staff Report, we question whether establishment of 3.7 acres of occupied Monterey spineflower would in fact constitute a 1:1 replacement ratio. It is not clear to us from the species-specific mitigation measures for Monterey spineflower (2013 HPP pages 4-30 and 4-31) exactly where the reestablishment of this species is proposed. If the re-establishment area(s) would be seaward of the Project footprint, we would have the same concerns regarding "coastal squeeze" as discussed previously for western snowy plover.

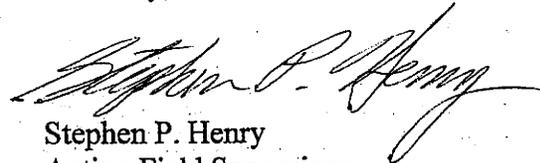
In summary, the Project is likely to cause adverse effects to listed species, including the likely take of western snowy plovers and Smith's blue butterflies. In addition, the provisions of the HPP are not sufficient to avoid this take, and it is unlikely that the take of western snowy plovers that would result from the Project, as proposed, could be adequately mitigated on-site within the Project area. If the Commission permits, and the Applicant wishes to continue to pursue, the proposed Project, then the Applicant should prepare a habitat conservation plan in support of an application for an incidental take permit to address take of the western snowy plover and Smith's blue butterfly, and adverse effects to Monterey spineflower.

Mike Watson

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This concludes our comments on the subject Project. We appreciate your consideration of our comments and we are available to discuss them further. If you have any questions, please contact Jacob Martin of my staff at (831) 768-6953.

Sincerely,

A handwritten signature in cursive script, appearing to read "Stephen P. Henry".

Stephen P. Henry
Acting Field Supervisor

Enclosures

Literature Cited

City of Sand City. 2012. Draft environmental impact report for the collection at Monterey Bay. November 2012. 213 pp.

U.S. Fish and Wildlife Service. 2007. Recovery plan for the pacific coast population of the western snowy plover. 271 pp. plus appendices.

In Litterae

Point Blue Conservation Science. 2014. Electronic mail messages with attached maps and data from Kriss Neuman, Point Blue Conservation Science, to Jacob Martin, U.S. Fish and Wildlife Service. March 17, 2014 and March 31, 2014.

Personal Communication

Dixon, David. Point Blue Conservation Science. Telephone conversation with Jacob Martin, Ventura Fish and Wildlife Office, U.S. Fish and Wildlife Service. March 31, 2014.

CALIFORNIA ENVIRONMENTAL LAW PROJECT

A Non-Profit Legal Corporation



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May 12, 2015

RECEIVED
MAY 13 2015
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SAN FRANCISCO, CA 94105

VIA FAX (415) 904-5400 and FEDEX

Steve Kinsey, Chairman
California Coastal Commission
45 Fremont Street, Suite 2000
San Francisco, CA 94105-2219

Re: A-3-SNC-98-114-EDD (Condition Compliance Dispute Resolution:
SNG EcoResort Project (GDP A-3-SNC-98-114))

Dear Mr. Kinsey:

This letter is submitted on behalf of California Audubon, the Peninsula Audubon Society, the Center for Biological Diversity, and Sierra Club in support of the Staff Report and recommendations in connection with the above-captioned Dispute Resolution hearing to be held May 15 with respect to the non-compliance of the SNG EcoResort Project with pre-issuance CDP conditions. All of the above conservation groups have deep concerns that construction and operation of this project will involve incidental take of Western Snowy Plover ("WSP") without appropriate mitigation and monitoring measures that would reduce, minimize, and avoid incidental take of WSP. With regards to the Dispute Resolution Procedure, the conservation groups believe the Developer is not in compliance with each pre-issuance condition of the Coastal Development Permit ("CDP") is not in compliance with those pre-issuance conditions of the CDP that involve protection of or compact avoidance for Western Snowy Plover (WSP). In particular, the developer has failed to comply with pre-issuance conditions related to habitat protection for sensitive species and measures intended to prevent unlawful "take" of sensitive species. 16 U.S.C. 1540.

In August 2014, this Commission approved pre-CDP issuance conditions for this Project. However, over the last seven months, despite a number of submissions, the Developer has been unable or unwilling to satisfy the terms of the pre-issuance conditions, as stated in the Staff Report. Unwilling or unable because of financial constraints to provide maps, diagrams, and required plans that satisfy the conditions, the Developer invokes Dispute Resolution in an attempt to persuade Commissioners that despite its non-compliance with the pre-issuance conditions, a CDP should issue. The conservation groups urge the Commission to adopt findings consistent with the Staff Report for the May 15, 2015 hearing and to reject the developer's contentions that it has satisfied the conditions.

The conservation groups believe that there is substantial evidence in the record to support a determination upholding "the Executive Director's determination that Special Conditions 1-6, 9(f), and 20, which are the subject of the Dispute Resolution Number A-3-SNC-98-114 EDD, have not been met." The conservation groups urge the Commission to adopt findings finding that SNG is not in compliance with Special Conditions 1-6, 9(f), and 20, as recommended by staff in its Report.

The conservation groups, through their previous correspondence with the Commission in connection with the April 2014 permit hearing and the August 2014 hearing on the pre and post CDP issuance conditions, have repeatedly set out their concerns that the SNG EcoResort Project have repeatedly set out their concerns that the Project will not adequately protect WSP. In particular, the conservation groups are concerned about the Developer having elected not to obtain an incidental take permit for WSP from USFWS pursuant to 16 USC § 1539 and failing to minimize or avoid any activities, in connection with construction and operation of the Project, that would result in unlawful take of WSP, in violation of Section 10 of the Endangered Species Act, 16 USC §1540. They are also concerned that the Developer intends to ignore the requirements in the pre-issuance conditions that there be "enhanced" habitat for WSP as part of a Dune Restoration Plan as well as other conditions intended to minimize and avoid take (such as biological survey protocols, minimization of lighting that would attract predators, and location of construction staging areas).

As the Staff Report points out, and as supplemented by the attached Report of Scott Cashen, biologist, submitted on behalf of California Audubon, Peninsula Audubon, CBD, and the Sierra Club, the submissions of the Developer fail to satisfy several of pre-issuance CDP conditions that implicate WSP (historically occupied) habitat and that were intended to enhance habitat for the WSP, as well as other conditions intended to include certain measures that would minimize and avoid take of WSP.

I. The Developer Has Failed to Comply with Conditions 3(a), 3(d), 3(h) and 3(i) Providing for a Dune Habitat Restoration Plan that Enhances Sensitive Species Habitat

Condition 3(a) provides:

“Restoration shall be premised on enhancing dune habitat so that it is self-functioning, high quality habitat in perpetuity.” (emphasis added.)

Condition 3(d) provides:

“Special provisions shall be applied to explicitly enhance sensitive species habitats, including at a minimum snowy plover and Smith’s blue butterfly habitats, as part of dune restoration activities, and such provisions shall be consistent with applicable state and federal agency requirements for these species.” (emphasis added).

The Staff Report finds that the “submitted Dune Restoration Plan does not provide any specific provisions to protect and enhance sensitive species habitats, including for Western Snowy Plover.” The Staff Report finds that any such Plan must “focus on areas where the plover has historically occupied the site, including access to the more interior dunes through the lower area fronting the old borrow pit.” (Staff Report p.14). The current draft of the Plan completely fails to do that. Since Condition 3(d) requires that the provisions in the restoration plan with respect to sensitive species “shall be consistent with applicable state and federal requirements for these species,” the Staff Report finds that with Condition 3 requires “coordination” with CDFW and USFWS in connection with preparation of the Plan. (Staff Report p. 14.) Yet, there is no evidence whatsoever that such coordination has taken place. Moreover, as pointed out by Scott Cashen in the attached letter-report, the developer has not complied with Conditions 3(h) and 3(i), which require the Dune Restoration Plan to include reporting and contingency programs, as well as monitoring and maintenance plans.

II. The Developer Has Failed To Comply with Pre-Issuance Conditions Relating to a Construction Plan

Condition 2(a) provides:

“The Construction Plan shall identify the specific location of all construction areas, all staging areas, and all construction access corridors in site plan view. All such areas within which construction activities and/or staging are to take place shall be minimized to the maximum extent feasible in order to have the

least impact on dunes, public access and public views, as well as to maintain best management practices (BMPs) to protect dune resources on-site and in the surrounding area, including by using inland areas for staging and storing construction equipment and materials, as feasible.”

Condition 2(e) provides:

“The plan shall include pre-construction surveys for sensitive species including WSP and Smith’s blue butterfly. If any such species is identified in the project impact area, the Permittee shall consult with the biological monitor, CDFW, USFWS and the Executive Director, and shall implement mitigation measures as directed by the ED, including measures consistent with the approved HPP and/or any other state or federal agency requirements.”

There is no evidence in the maps and drawings submitted as the Construction Plan, in which construction areas, staging areas, and construction access areas are designated that any consideration was given to minimizing impacts on dune resources (including sensitive species) in planning for those construction areas. Nor is there any specification of BMP’s to protect dune resources on-site or in the “surrounding area.”

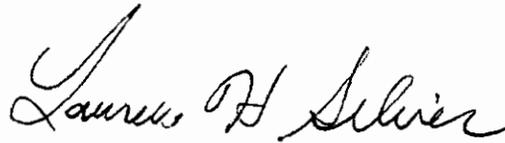
Condition 2(e) requires the Plan to include pre-construction survey protocols to determine the presence of sensitive species including WSP and also requires that there be specific location of all construction and staging areas in order to minimize to the maximum extent feasible any impact on dunes and dune resources. The conservation groups also believe that Special Condition 2 requires at a minimum consideration of historically occupied habitat in connection with the designation of the construction areas. There is no evidence that this was done. Since, as pointed out in the maps provided by Point Blue, there has been markedly increased use of the site by WSP this breeding season, it would have been appropriate as well to have performed a pre-construction survey for WSP presence. The Developer then would have been able to plan the specific location of all construction and staging areas in a manner that minimizes impacts to dune resources, as required under Condition 2(e).

Steve Kinsey
May 12, 2015
Page 5 of 5

Attached hereto is the Report of Scott Cashen, an expert biologist with extensive knowledge about the area and impacted species. The conservation groups urge the Commission to adopt and confirm the determination of the Executive Director that SNG is not in compliance with certain of the pre-issuance conditions, as reflected in the Staff Report. If you have questions or concern please feel free to contact us at your convenience.

Sincerely,

CALIFORNIA ENVIRONMENTAL LAW
PROJECT



Laurens H. Silver
California Environmental Law Project



Aruna Prabhala, Center for Biological Diversity

On Behalf of California Audubon, Peninsula
Audubon Society, Center for Biological Diversity
and Sierra Club

cc:

Michael Watson, via Fax (831) 427-4877 and FedEx
California Coastal Commission
725 Front Street, #300
Santa Cruz, CA 95060

Daniel Lester, via Fax (831) 427-4877

May 11, 2015

Mr. Steve Kinsey
California Coastal Commission
45 Fremont Street, #2000
San Francisco, CA 94105

**Subject: Monterey Bay Shores Resort Project—Compliance with Coastal
Development Permit Conditions (Dispute Resolution for CDP A-3-SNC-
98-114)**

Dear Mr. Kinsey:

This letter contains my comments on Security National Guaranty's (Applicant) compliance with the special pre-issuance conditions associated with the Coastal Development Permit for the Monterey Bay Shores Resort Project (Project). Specifically, I address the special conditions that have implications on effects to the western snowy plover, which is a federally threatened shorebird known to occur on the Project site.

I am an environmental biologist with 21 years of professional experience in wildlife ecology and natural resources management. To date, I have served as a biological resources expert for over 100 projects throughout California. My experience in this regard includes assisting various clients with evaluations of biological resource issues, and preparing comments (or testimony) on projects undergoing environmental review. My educational background includes a B.S. in Resource Management from the University of California at Berkeley, and a M.S. in Wildlife and Fisheries Science from the Pennsylvania State University.

The comments herein are based on an extensive review of scientific literature, documents in the administrative record, the analysis and associated exhibits provided by Coastal Commission staff on 30 April 2015, and the knowledge and experience I have acquired during more than 21 years of work in the field of natural resources management.

Dune Protection Plan (Special Condition 3)

Provisions to Enhance Snowy Plover and Smith's Blue Butterfly Habitats

Special Condition 3 requires Dune Restoration Plans that have been approved by the Executive Director prior to issuance of the CDP. The Dune Restoration Plans must contain special provisions to explicitly enhance snowy plover and Smith's blue butterfly habitats as part of dune restoration activities (Special Condition 3[d]). The Applicant claims the provisions for snowy plover and Smith's blue butterfly are not a required condition, and that they are a part of the Habitat Protection Plan ("HPP") that will be submitted after sign off on the pre-issuance conditions.¹ In my opinion, the Settlement

Agreement makes it clear that provisions for snowy plover and Smith's blue butterfly habitat enhancements are prior-to-issuance ("PTI") requirements. Nevertheless, I reviewed the Applicant's HPP and found nothing in it that would provide more than a superficial benefit to the snowy plover and Smith's blue butterfly. Similarly, I found nothing in the HPP (or Dune Restoration Plans) that ensures the Applicant's proposed measures would result in "self-functioning, high quality habitat in perpetuity," as is required by Special Condition 3(a).

Monitoring and Maintenance Plan

The Applicant's Dune Restoration Plans are supposed to contain a plan for monitoring and maintenance of snowy plover and Smith's blue butterfly habitat areas for the duration of the development agreement. Special Condition 3(h) identifies requisite components of the monitoring and maintenance plan. They include the schedule, proposed monitoring studies, study design, and adaptive management procedures. The Dune Restoration Plans submitted by the Applicant do not describe how the Applicant intends to monitor and maintain enhanced habitats such that they provide a long-term benefit to the snowy plover and Smith's blue butterfly.

Reporting and Contingency

Special Condition 3(i) outlines the reporting and contingency program needed to ensure the performance standards specified in the Dune Restoration Plans are met. The Applicant's Dune Restoration Plans do not identify any performance standards. This is a significant flaw, because without performance standards there is no assurance that restoration activities would be successful, or that they would have any value in conservation of the snowy plover and Smith's blue butterfly. Moreover, the performance standards identified in the HPP are entirely inappropriate because they are based on vegetation goals, and not on the response of the target species (i.e., snowy plover and Smith's blue butterfly).

Consistency with State and Federal Agency Requirements

The Applicant misleadingly contends it would implement measures "consistent with known and accepted applicable state and federal agency requirements for [western snowy plover]."² It is important for the Commissioners to understand that the U.S. Fish and Wildlife Service (USFWS) already has concluded (by letter dated 2014 Apr 7) that the Project would likely cause take of western snowy plovers, that the provisions of the Applicant's current (unapproved) HPP are not sufficient to avoid this take, and that it is unlikely that the take of western snowy plovers would be adequately mitigated on-site.³ The Applicant has refused to prepare an HCP or apply for an incidental take permit. Furthermore, the Applicant has ignored the requirements of the pre-issuance conditions

¹ Staff Exhibit 7, p. 14.

² *Ibid.*

³ USFWS, 2014 Apr 7 letter to the California Coastal Commission, p. 8.

relating to enhancement of snowy plover habitat and instead deferred habitat enhancement issues to the HPP it is required to prepare after permit issuance.

In summary, although the Applicant asserts the PTI requirements of Special Condition 3 would be satisfied, there is no evidence in the administrative record supporting that assertion. As a result, I concur with staff that the Applicant's Dune Restoration Plans are not in compliance with PTI requirements of Special Condition 3.

Habitat Protection Plan

I recognize the Applicant is not required to have an approved HPP before the CDP is issued. However, several of the special conditions that *are* required before the CDP is issued are dependent on the HPP. For example, Special Condition 2(e) requires pre-construction surveys for sensitive species including western snowy plover, and Smith's blue butterfly, *consistent with the HPP*. However, neither the existing draft of the Applicant's HPP nor the construction plan identifies the methods that would be used to ensure the efficacy of the pre-construction surveys. Moreover, the existing (unapproved) HPP specifies the need for pre-construction surveys for snowy plovers only if construction is expected to begin or continue during "prime plover nesting season."⁴ This issue is confounded because the HPP does identify what the Applicant considers to be the "prime plover nesting season." To reduce the potential for take, pre-construction surveys for plover nests, and precocial young, need to be conducted throughout the *entire* breeding season. In my opinion, the pre-construction survey requirements described in the draft HPP (together with the absence of survey protocols set out in the construction plan) do not satisfy the intent of Special Condition 2(e).

Lighting (Special Condition 1(m))

The Applicant's lighting plan includes more than 100 lights of various sizes and lumens on project pathways and roadways. Seventy-four lights would be on the proposed pathways seaward of the planned development. I concur with staff's assessment that the lighting scheme is not wildlife friendly, and that even low lighting of the dunes can subject vulnerable species, such as western snowy plover, to increased predation by attracting predators. This is significant because the Applicant intends to install lighting in the immediate vicinity of snowy plover nest sites.⁵

Public Access Management Plan and Resort Pathways (Special Conditions 5 and 11)

According to staff, the Public Access Management Plan has not been updated. In addition, the Applicant has proposed resort pathways that extend into an area historically used by western snowy plovers. Because anthropogenic disturbance is the primary threat to the western snowy plover, the location of the resort pathways and the content of the Applicant's Public Access Management Plan have direct implications on Project impacts

⁴ HPP, p. 4-13.

⁵ Data obtained from Point Blue Conservation Science, Petaluma (CA).

to the species.⁶

Conclusion

As staff notes, “[t]he special conditions were imposed to ensure that the approval conforms to LCP and Coastal Act development standards, including that it...restores and protects dune habitat on the site [and] enhances habitat values for listed species...”

Based on my review of the administrative record, including plans and other documents provided by the Applicant, it is my conclusion that the Project, as currently proposed, would not restore and protect dune habitat, nor would it enhance habitat values for the western snowy plover.

Sincerely,



Scott Cashen, M.S.
Senior Biologist

⁶ United States Fish and Wildlife Service. 2007. Recovery Plan for the Pacific Coast Population of the Western Snowy Plover (*Charadrius alexandrinus nivosus*). Sacramento, California. xiv + 751. *See also* Brindock KM, MA Colwell. 2011. Habitat Selection by Western Snowy Plovers During the Nonbreeding Season. *Journal of Wildlife Management* 75(4):786-793.



NESTING OF THE SNOWY PLOVER IN THE MONTEREY BAY AREA, CALIFORNIA IN 2014



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SYNOPSIS

Researchers and associates of Point Blue Conservation Science (Point Blue), the U.S. Fish and Wildlife Service (USFWS), and the California Department of Parks and Recreation (CDPR) monitored nesting Snowy Plovers at Monterey Bay in Monterey and Santa Cruz counties in 2014 to assess the plover's response to management efforts by the government agencies to enhance the species' breeding success and increase its population size. Management actions undertaken by federal and state agencies included:

- ❑ Roping-off upper beach and riverine spit habitat to minimize disturbance of nesting birds by the public.
- ❑ Exclosures to protect individual nests from predators when needed (Table 1).
- ❑ Predator removal by the Wildlife Services Division of the U.S. Department of Agriculture (USDA) and the Ventana Wildlife Society.
- ❑ Water management to provide nesting and feeding habitat in the managed ponds of the Moss Landing Wildlife Area (MLWA).

The estimated 419 plovers that nested in 2014 exceeded the estimate of 382 breeders the previous year (Fig. 1) and significantly exceeded the target of 338 breeders recommended for the Monterey Bay area in the USFWS Recovery Plan. No plovers were detected nesting on northern Santa Cruz County pocket beaches for the fifth consecutive year. The 2014 nesters consisted of 224 males and 195 females, all of which were uniquely color banded except for 19 males and 20 females which were unbanded. Among the uniquely color marked breeders were 20 males and 12 females produced from nesting attempts in the Monterey Bay area in 2013. Among the female nesters were 2 banded as chicks at Vandenberg, 3 at Oceano Dunes and 1 in Oregon.

Return rates of breeders of both sexes were approximately 20% above average in 2014. Of color banded adults that nested in 2013, 81% of males and 75% of females returned and bred in 2014. This compares with average return rates of 68% for males and 64% for females in the prior 15 years (Fig. 2).

We found 463 nests and 34 broods from undetected nests indicating at least 497 nesting attempts in the Monterey Bay area in 2014 (Table 2). In 2014 both the beach and pond clutch hatching rates were below their respective averages from 1999-2013. The 51% hatching rate of nests on the beaches was 16% below the 61% average of the previous 15 years and the salt pond rate of 50% was 24% below the 66% average of the previous 15 years (Fig. 3).

Predators were likely responsible for at least 58% of the 226 nest losses in 2014 (Tables 3 and 4). Of the 131 losses attributed to predators, 55.0% were attributed to avian predators, 32.1% to mammalian predators and 13.0% to unknown predators. Ravens, gulls and raven were the avian species identified depredating nests (Table 4). Skunks, canines, and raccoons were deemed responsible for 41 of the 42 nest losses attributed to mammalian predators (Table 4). One nest categorized as lost at hatch was undoubtedly also destroyed by avian or mammalian predators but we could not be sure if the loss occurred in the egg or chick phase.

Among nest losses attributed to other causes were 5 nests destroyed by humans and 23 by natural elements such as wind, tide and rain (Table 4). Nineteen nests were deserted and 4 had non-viable eggs.

No cause of loss could be attributed for 18.6% of the 226 nests categorized as failed but most of these were probably taken by predators rather than other causes listed in Table 4.

This year the chick fledging rate of 34.2% on beaches was 16% below the 1999-2013 average of 40.6% whereas the salt pond fledging rate of 52.3% was 43% above the 1999-2013 average of 36.6% (Fig. 4).

The total of 241 fledged young for the Monterey Bay area in 2014 was slightly above the 228-bird average from 1999-2013 and ended the steady decline from 2009 to 2013 (Fig. 5). The number of fledglings from the beaches was 24% above the prior 15-year 180-bird average whereas the 17 fledges from the salt ponds was 62% below the 45-bird average.

The 2014 fledging rate of 1.1 young per male was 21% lower than the 1.4 bird average of the past 15 years (Fig. 6) but sufficient to maintain population stability (USFWS Recovery Plan). The consequence of the 1.1 fledglings per male in 2014 should be a stable breeding population in the Monterey Bay area in 2015.



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INTRODUCTION

Staff and research associates of Point Blue Conservation Science (formerly PRBO), with the assistance of staff and/or interns of the U.S. Fish and Wildlife Service and the California Department of Parks and Recreation, have monitored nesting Snowy Plovers annually on the shores of Monterey Bay since 1984, and on small pocket beaches in northern Santa Cruz County since 1988, to assess the number of breeding plovers, number of nests, clutch hatching rate, chick fledging rate, and causes of egg and chick loss. Here we summarize the results of the monitoring effort in 2014.

STUDY AREA

The study area includes the beaches of Monterey Bay, former salt ponds in Elkhorn Slough (hereafter Salt Ponds), and pocket beaches in northern Santa Cruz County. For reporting purposes we divide up the study area as follows:

Monterey Bay Area

South Beach Subregion

Del Monte: Beach between the City of Monterey and Tioga Road, Sand City. Most of it is adjacent to Sand City. The beach is managed by CDPR.

Sand City: Beach between Tioga Road, Sand City and the south boundary of Fort Ord.

South Fort Ord: Beach between the south boundary of Fort Ord and the site of former Stilwell Hall. It is managed by CDPR.

North Fort Ord: Beach between the Stilwell Hall site and the Lake Court beach access to Marina State Beach. It is managed by CDPR.

Reservation Road: From the Lake Court beach access for Marina State Beach to Reservation Road. It is managed by CDPR.

Marina: The entire beach from Reservation Road to the north border of the Salinas River National Wildlife Refuge. It is managed by CDPR and the Monterey Peninsula Regional Park District. It is subdivided into four segments, all of which are completely or partly bordered by private property (Table 1).

Salinas River National Wildlife Refuge: The entire beach on the Salinas River National Wildlife Refuge (NWR), which is owned and managed by USFWS.

Salinas River North: The entire beach from the south border of the Salinas River NWR to the mouth of Elkhorn Slough. It is owned and managed by CDPR. It is further divided into three segments – the north spit of the Salinas River, Monterey Dunes, and Molera/Potrero road segments (Table 1). The Monterey Dunes segment is backed by a beach front housing development. The Molera/Potrero segment is backed by dunes, the Old Salinas River channel, salt marsh, and, east of the river channel, by agricultural fields south of and by development north of Potrero Road.

North Beach Subregion

Jetty Road to Beach Road: All the beach between Jetty Road (mouth of Elkhorn Slough) and Beach Road. It is divided into 3 segments all managed by CDPR (Table 1). The north end of the Pajaro Spit is bounded by a beach front development.

Sunset/Manresa: The entire beach from Beach Road to the north boundary of Manresa State Beach. The south end of this subregion is backed by a beach front development. The beach is managed by CDPR.

Salt Pond Region

It includes approximately half of the former salt ponds in Elkhorn Slough that have been converted to managed, diked wetlands and are now encompassed within the California Department of Fish and Wildlife's (DFW) Moss Landing Wildlife Area.

Northern Santa Cruz County Pocket Beach Region

We sporadically covered the four beaches known to have formerly supported nesting Snowy Plovers in northern Santa Cruz County. **Wilder Creek Beach** and **Laguna Creek Beach** are owned and managed by CDPR. **Scott Creek Beach** is owned and managed by the County of Santa Cruz and **Waddell Creek Beach** is owned by the CDPR and by a private party.

MONITORING

We attempt to find all plover nests initiated in the study area. Unique color band combinations are used to individually mark plover adults and chicks. For color banding, adults are usually trapped on the nest. Chicks are captured in or near the nest at the time of hatching. Clutch hatching dates are estimated from egg laying dates, when known, or from egg flotation. They are further refined by examination of eggs for cracked shells, tapping chicks, or peeping chicks just before the estimated hatching date. Chicks are considered fledged if they survive 28 or more days after hatching. Monitors look for fledglings when they have reached 28 days of age by watching banded males known to have broods and by monitoring flocks of roosting plovers during the latter part of the nesting season. Fledging success for specific sites is always categorized by nest location, even in cases where broods move to adjacent areas before fledging. In 2014, we recorded the longitude and latitude of all nests with Global Positioning Units. These locations are depicted in Appendices 1-13. Monitoring is conducted under U. S. Fish and Wildlife Service Permit TE 807078-15.

MANAGEMENT

A variety of techniques are used to improve the breeding success of the Snowy Plover in the study area. The upper beach at Salinas River NWR and the salt ponds are closed to the public to protect nesting plovers from human disturbance. On California state beaches symbolic fencing, consisting of signed, roped-off upper beach areas, is used to protect most nests (Table 1) and limit human disturbance of brood-rearing birds during the nesting season.

Mini enclosures, 24-36 inches in diameter and 24 inches high, were used to protect 16 nests from predators at Pajaro Dunes 2014. Fourteen were deployed at Pajaro nests a few days from hatching to protect them from skunks and ravens. Two nests that were enclosed early in the incubation period were deserted. One of the two deserted nests was possibly a dumped egg. Selective removal of problem mammalian and avian predators by Wildlife Service biologists also was conducted in 2014.

Biologists from the Ventana Wildlife Society captured a second-year female Peregrine Falcon at Salinas River NWR on June 9, 2014 and it was released at the Sacramento NWR by USFWS staff. It had been observed hunting in Snowy Plover habitat from Marina to the Salinas River from late March to June. It was observed taking a shorebird chick at Salinas River NWR and suspected of taking multiple adult and young Snowy Plovers during this timeframe. Fledgling production was extremely low during its presence. An adult Great Horned Owl was trapped at Ford Ord Dunes State Park by a Ventana Wildlife Society biologist and moved and released at Antioch NWR by USFWS staff on June 26, 2014. Owls were suspected to be responsible for low chick fledging rates at Fort Ord.

We continued to manage water levels at the Salt Ponds to create dry nesting substrate and associated wet foraging areas for Snowy Plovers. Water is drawn down rapidly from some ponds at the beginning of the season to provide dry nest sites. Thereafter, flooding of remnant-wet areas is undertaken several times per month throughout the nesting season to maintain foraging habitat for adults and chicks.

Table 1. Nest protection measures for Snowy Plovers at Monterey Bay in 2014.

Location	Total Nests	Large Excl. Only	Min Excl. Only	Symb. Fence Only	Fence & Mini Excl.	Fence & Large Excl.	Fence & Gull Excl.	Sign Only	None	Found Broods Only
Sand City	1	0	0	1	0	0	0	0	0	0
Fort Ord	33	0	0	33	0	0	0	0	0	0
Reservation Road	17	0	0	17	0	0	0	0	0	1
Marina										
Marina South	15	0	0	15	0	0	0	0	0	1
Marina Middle	38	0	0	38	0	0	0	0	0	2
Marina North	11	0	0	10	0	0	0	0	1	2
Martin	11	0	0	11	0	0	0	0	0	1
Salinas River NWR	57	0	0	57	0	0	0	0	0	7
Salinas River North										
Salinas River N. Spit	38	0	0	38	0	0	0	0	0	1
Monterey Dunes	20	0	0	20	0	0	0	0	0	4
Molera/Potrero	23	0	0	22	0	0	0	0	1	3
Jetty to Beach Roads										
Moss Landing	48	0	0	48	0	0	0	0	0	5
Zmudowski Beach	32	0	0	32	0	0	0	0	0	1
N. Pajaro R.M.	86	0	0	70	16	0	0	0	0	3
Sunset/Manresa	12	0	0	12	0	0	0	0	0	1
Seascape	1	0	0	1	0	0	0	0	0	0
Salt Ponds	20	0	0	19	0	0	0	0	1	2
Total	463	0	0	444	16	0	0	0	3	34

RESULTS

The 2014 Nesting Season

Number of Breeders

The estimated 419 plovers that nested in 2014 exceeded the estimate of 382 breeders of the previous year (Fig. 1) and substantially exceeded the target of 338 breeders recommended for the Monterey Bay area in the USFWS Recovery Plan. Again, no plovers were detected nesting on the northern Santa Cruz County pocket beaches in 2014 (Table 2).

The 2014 nesters consisted of 224 males and 195 females. Nineteen of the males and 20 of the females were unbanded. Among the remaining 205 uniquely color marked male breeders were 20 birds produced from nesting attempts in the Monterey Bay area in 2013. Among the 175 uniquely marked female nesters were 12 produced from nesting attempts in the Monterey Bay area in 2013. In addition to the recruitment of locally-hatched plovers into the Monterey Bay area were 2 females fledged from Vandenberg, 3 from Oceano, and 1 from Oregon

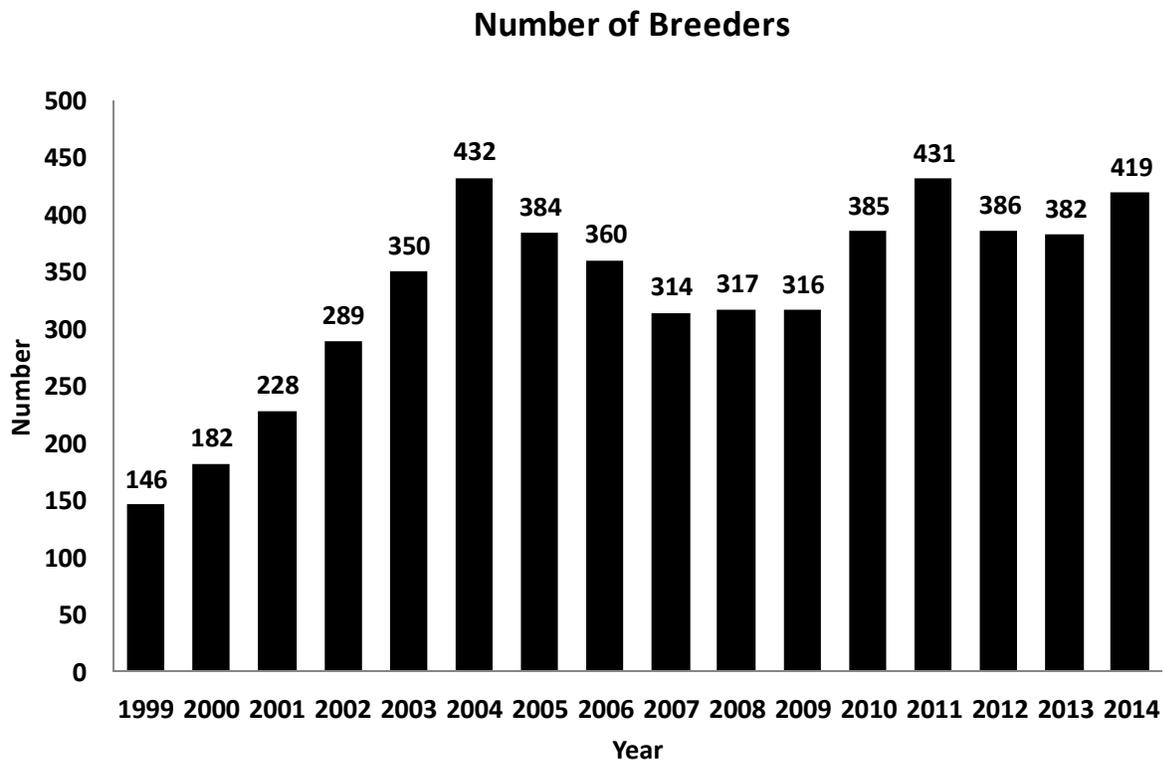


Figure1. Number of nesting Snowy Plovers at Monterey Bay, 1999-2014.

Return Rates

Return rates of breeders of both sexes were approximately 20% above average in 2014. Of color banded adults that nested in 2013, 81% of males and 75% of females returned and bred in 2014. This compares with average return rates of 68% for males and 64% for females in the prior 15 years (Fig. 2).

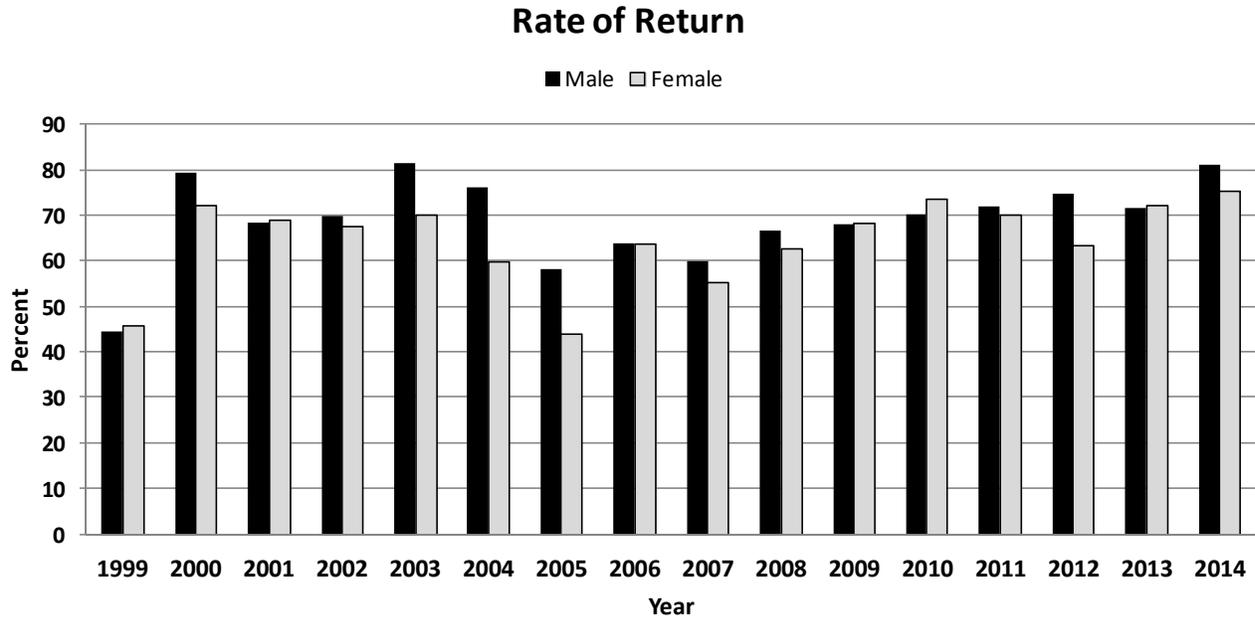


Figure 2. Return rates of nesting Snowy Plovers at Monterey Bay.

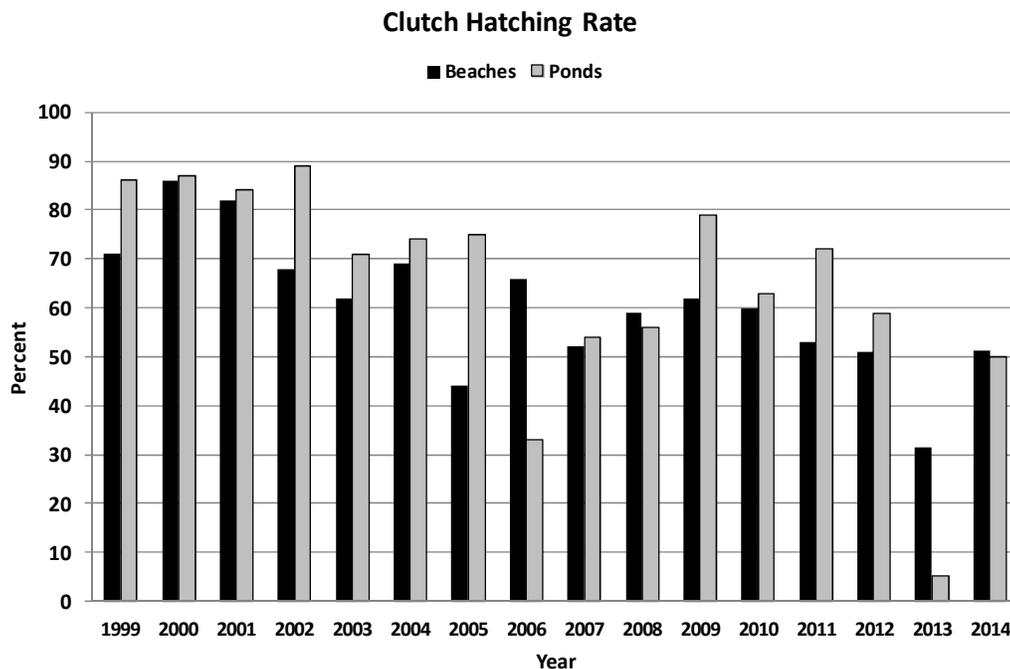


Figure 3. Clutch hatching rates of Snowy Plovers at Monterey Bay.

Clutch Hatching Rates

We found 463 nests and 34 broods from undetected nests indicating at least 497 nesting attempts in the Monterey Bay area in 2014 (Table 2). Our calculations of the clutch hatching rates of these nests exclude all nesting attempts documented only from the detection of broods.

The 2014 hatching rate of clutches on the beaches and the salt ponds was below their respective averages from 1999-2013. The 51% hatching rate on the beaches was 16% below the 61% average of the previous 15 years and the salt pond rate of 50% was 24% below the 66% average of the previous 15 years (Fig. 3).

Table 2. Snowy Plover nesting success at Monterey Bay in 2014. Juv. is Juvenile and Att. is Attempt.

Regions	Nest Attempts		Chicks		Juv.	% Nests	% Chicks Fledge		Juv. Per	Hatch	Failed
	Nests	Broods	Low	High		Hatch	High	Low	Nest Att.	Nests	Nests
Del Monte-Res. Rd.											
<i>Sand City</i>	1	0	0	0	0	0.0	0.0	0.0	0.00	0	1
<i>Fort Ord</i>	33	0	62	63	24	66.7	38.7	38.1	0.73	22	11
<i>Reservation Road</i>	17	1	28	34	10	70.6	35.7	29.4	0.56	12	5
Marina											
<i>Marina South</i>	15	1	15	17	4	40.0	26.7	23.5	0.25	6	9
<i>Marina Middle</i>	38	2	55	67	15	63.2	27.3	22.4	0.38	24	14
<i>Marina North</i>	11	2	23	27	8	72.7	34.8	29.6	0.62	8	3
<i>Martin</i>	11	1	22	24	6	72.7	27.3	25.0	0.50	8	3
Salinas NWR	57	7	86	99	29	49.1	33.7	29.3	0.45	28	29
Salinas River N											
<i>N. Salinas River</i>	38	1	52	54	9	50.0	17.3	16.7	0.23	19	19
<i>Monterey Dunes</i>	20	4	45	47	16	65.0	35.6	34.0	0.67	13	7
<i>Molera/Potrero</i>	23	3	50	52	21	78.3	42.0	40.4	0.81	18	5
Jetty-Beach Rds.											
<i>Moss Landing</i>	48	5	67	72	18	45.8	26.9	25.0	0.34	22	26
<i>Zmudowski Beach</i>	32	1	36	38	10	43.8	27.8	26.3	0.30	14	18
<i>Pajaro Spit</i>	86	3	78	83	53	34.9	67.9	63.9	0.60	30	56
Sunset/Manresa	12	1	6	9	1	16.7	16.7	11.1	0.08	2	10
Seascape	1	0	2	2	0	100.0	0.0	0.0	0.00	1	0
TOTAL BEACHES	443	32	627	688	224	51.24	35.7	32.6	0.47	227	216
SALT PONDS	20	2	32	33	17	50.0	53.1	51.5	0.77	10	10
GRAND TOTAL	463	34	659	721	241	51.2	36.6	33.4	0.48	237	226

Note: One Reservation Road nest of unknown fate is treated as a failed nest for these calculations.

Table 3. Total Snowy Plover clutches lost and percent attributed to different causes from 1999 to 2014. Unk. is unknown.

Year	Total Nest Losses	Mammal Predator	Avian Predator	Unknown Predator	Human	Wind Tide Rain	Desertion	Non-Viable	Unk. Cause	Lost at Hatch	Unk Fate
1999	31	13	3	13	6	23	29	13	0	0	0
2000	27	0	19	26	0	15	30	11	0	0	0
2001	51	2	45	6	4	2	22	8	12	0	0
2002	87	13	39	2	3	17	17	1	7	0	0
2003	91	10	25	4	1	9	13	3	34	0	0
2004	129	6	23	12	8	20	11	2	19	0	0
2005	216	16	47	5	3	9	6	1	14	0	0
2006	123	33	12	25	0	10	9	2	9	0	0
2007	162	12	37	14	2	10	10	5	9	0	0
2008	138	11	37	20	1	17	1	4	7	2	0
2009	113	11	33	9	2	19	4	11	12	0	0
2010	153	8	18	22	3	20	9	3	16	1	0
2011	193	8	33	16	1	11	11	1	20	0	0
2012	197	2	40	14	4	9	6	0	25	0	0
2013	340	7	36	20	0	4	3	0	28	1	0
2014	226	19	32	8	2	10	8	2	19	0	0
Mean	142	11	30	13	3	13	12	4	14	0	0

At least 58% of the 226 nest losses in 2014 were caused by predators (Tables 3 and 4). Of the 131 losses attributed to predators, 55.0 % were attributed to avian predators, 32.1% to mammalian predators and 13.0% to unknown predators. Ravens, gulls and a Whimbrel were the avian species identified depredating nests (Table 4). Nest depredation by ravens was documented at 5 sites and gull depredation at 6 sites (Table 4). Overall, 25 nest losses were attributed to ravens.

Skunks, canines, and raccoons were responsible for 42 of the 43 nest losses attributed to mammalian predators (Table 4). One nest categorized as lost at hatch was undoubtedly also destroyed by avian or mammalian predators but we could not be sure if the losses occurred in the egg or chick phase.

Among nest losses attributed to other causes were 5 nests destroyed by humans and 23 by natural elements such as wind, tide and rain (Table 4). Nineteen nests were deserted and 4 had non-viable eggs.

No cause of loss could be attributed 18.6% of the 226 nests that failed but most of these were probably taken by predators rather than other causes listed in table 4.

Table 4. Causes of Snowy Plover nest loss at Monterey Bay in 2014. Unk. is Unknown, and Pred. is Predator.

Locations	Avian Predator					Mammalian Predator					Unk.				Non-		Cause	Lost at	Fate	
	CORA	WHIM	Gull	Corvid	Unk.	Coyote	Canine	Skunk	Racoon	Unk.	Pred.	Human	Tide	Wind	Viable	Des.	Unk.	Hatch	Unk	Total
Sand City											1									1
Fort Ord							1	6								2	1			10
Reservation Road					1			1								2	1		1	6
Marina South					2						2		2		2	1				9
Marina Middle			1		2			1			3		1	1	2	3				14
Marina North																	3			3
Martin			3																	3
Salinas NWR					2		1	10			2	1	2	2	1	1	6	1		29
N. Salinas River			3		4		2	2					4			2	2			19
Monterey Dunes			1		1							1	1	3						7
Molera/Potrero	1				3											1				5
Moss Landing	7	1			5	1	1					1		3		1	6			26
Zmudowski Beach	8		4		2		1										3			18
Pajaro River Spit	7		7	1	3			8	1	1	4			5	1	4	14			56
Sunset/Manresa	2				1			3	2								2			10
Seascape																				
Salt Ponds											6	1			1	2				10
Total	25	1	19	1	26	1	6	31	3	1	17	5	7	16	4	19	42	1	1	226

Note: The Reservation Road nest of unknown fate is treated as a failed nest.

Chick Fledging Rates

Chick fledging rate was also below average on the beaches and above average at the ponds in 2014. On the beaches, only 33-36% of the chicks fledged in 2014 (Table 2). This rate was about 16% below the average of 40.6% from 1999-2013 (Fig. 4). In contrast, the 52-53% chick fledge rate at the ponds exceeded the 1999-2013 average of 36.6% by 43%.

Fledging success pooled for the areas that the peregrine hunted – from North Salinas to Marina-- was 14% for all nests that hatched prior to the falcon’s removal compared with 34% for all nests that hatched afterwards, including nests that had chicks on the ground after the falcon returned to the area. The fledging rate of chicks from plover nests that hatched prior to the removal of the Great Horned Owl was 31% and 43% subsequent to its removal.

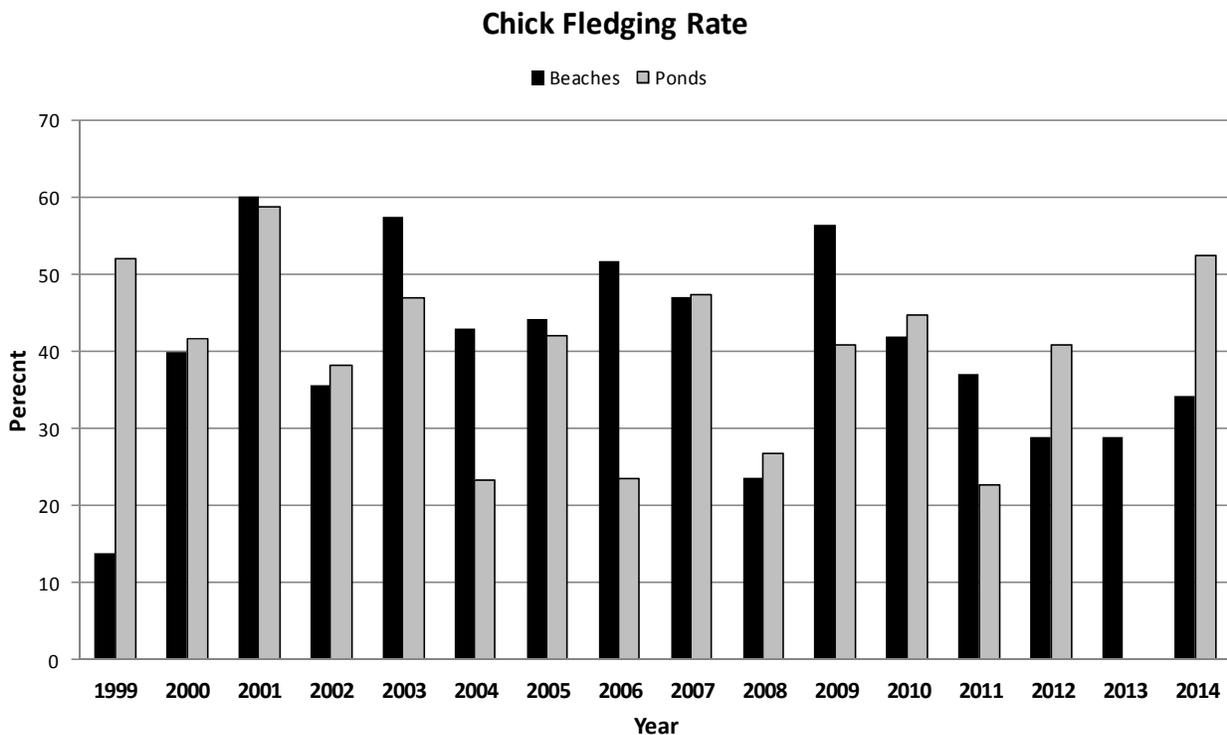


Figure 4. Chick fledging rates of Snowy Plovers at Monterey Bay.

Number of chicks fledged

The total of 241 fledged young for the Monterey Bay area in 2014 was slightly above the 228-bird average from 1999-2013 and ended the steady decline from 2009 to 2013 (Fig. 5). The number of fledglings from the beaches was 24% above the prior 15-year 180-bird average whereas the 17 fledges from the Salt Ponds was 62% below the 45-bird average.

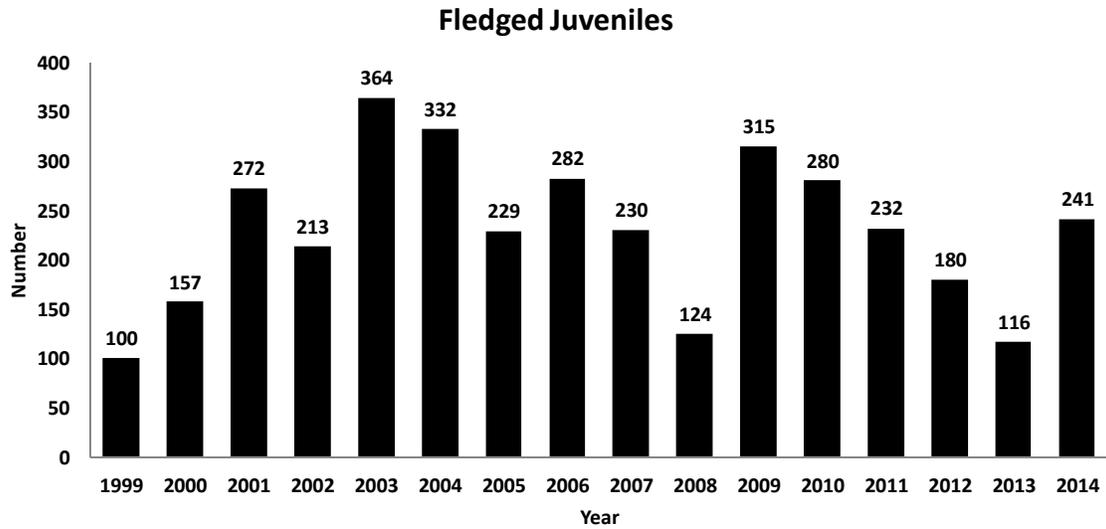


Figure 5. Number of fledged juveniles at Monterey Bay.

Young Fledged Per Male

The 2014 fledging rate of 1.1 young per male was 21% lower than the 1.4 bird average of the past 15 years (Fig. 6) but sufficient to maintain population stability (USFWS Recovery Plan).

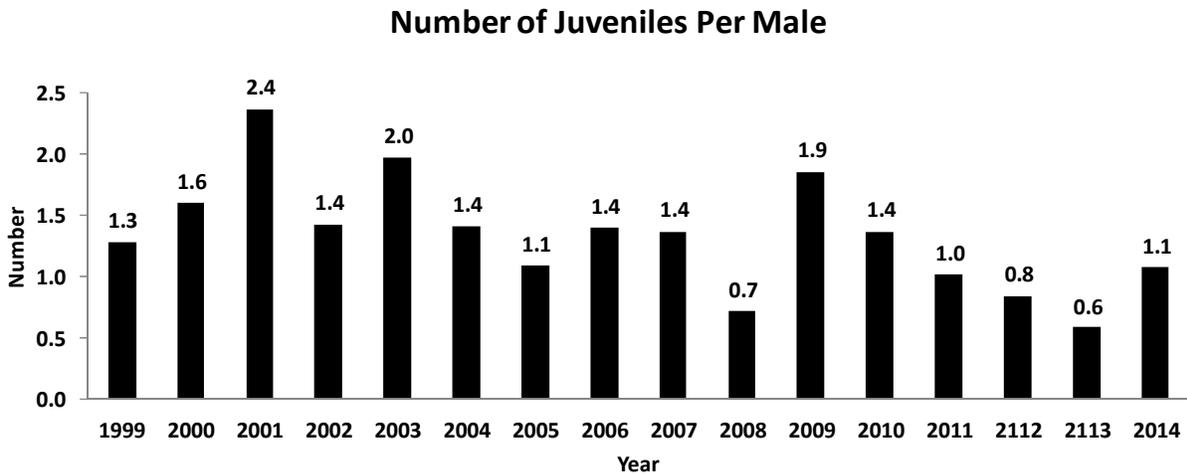


Figure 6. Mean number of juveniles reared per male at Monterey Bay.

DISCUSSION

Our estimate of 419 breeding Snowy Plovers in the Monterey Bay region again in 2014 exceeded the USFWS recovery plan target of 338 adults for the region for the 9th time in the 12 years since it was first attained in 2003. Moreover, the number of breeders in the Monterey Bay area also exceeded the 400-bird target for USFWS Recovery Unit 4 which encompasses all coastal nesting areas from Sonoma through Monterey counties.

The USFWS window survey in late May is currently the primary method of estimating the relative size of the entire U.S. Pacific coast population annually. Our data continue to suggest that the window survey underestimates the number of breeders in the Monterey Bay region. In 2014, 337 adults were detected in the study area on the window survey. This represents only 80% of the estimated 419 adults (mainly color banded birds) known to have nested there over the season. Over the 10-years from 2005-2014 the percent of plovers detected on the Monterey Bay area window survey averaged 75.1% (SE= 2.4%) of known nesters.

The 241 chicks fledged in the Monterey Bay area in 2014 slightly exceeded the previous 15 year average of 228 fledglings for Monterey Bay and the USFWS target of 1 fledgling per male for population stability. Despite the above average fledgling production plovers experienced below average hatching and fledgling rates in 2014 relative to the prior 15 years in the area. The overall clutch hatching rate was 51% compared with the 62% average and the overall chick fledging rate was 35% compared to the 41% average for the prior 15 years

Pajaro Spit experienced exceptionally high fledging success compared with recent years. Fifty-three chicks fledged there in 2014, a great increase over the average of 11 fledglings during the previous 5 years. Several factors may have contributed to this increase including the absence of Northern Harriers, the presence of a large Caspian Tern colony (not typical at this site), and an abundance of vegetation, which provided food and cover for a high density of broods. Many plover broods favored the southern half of the spit, which the highly territorial terns defended against predators. The chicks may also have benefitted from the dense vegetative cover in the closed area of the beach. Flightless chicks were rarely observed on the beach west of the protected area and consequently not subjected to human disturbance as much as observed in previous years when broods frequented the unfenced area. Great Horned Owl tracks were consistently observed throughout the 2014 season (as in previous years) and several depredated adult tern carcasses were found. The owls may have been preying on the terns and ignoring the plover chicks in contrast to prior years. The use of 14 single nest exclosures late in pairs' incubation periods also had a positive effect on hatching success at Pajaro Spit. As in recent years, hatching rates improved with control of Common Ravens and Striped Skunks.

Bay-wide, improved control of Common Ravens in or adjacent to plover habitat probably also led to improved plover productivity. Nest losses attributed to ravens were distributed over a small geographic area in 2014 with only 5 sites documented having losses to ravens in 2014 compared with 11 sites in 2013.

Capture and translocation of two avian predators this year appeared to have a positive effect on plover productivity. A second-year Peregrine Falcon observed hunting in Snowy Plover habitat from Marina to the Salinas River from late March to June was seen taking a shorebird chick at Salinas River NWR and suspected of taking multiple adult and young Snowy Plovers during the same timeframe. This bird was captured at Salinas River NWR on June 9 and transported to the Sacramento NWR where it was released. Fledging success pooled for the areas that the peregrine hunted – from North Salinas to Marina -- was 14% for hatchlings from all nests that hatched prior to the falcon's removal compared with 34% for those that hatched afterwards, including in nests that had chicks on the ground after the falcon returned. This same falcon was identified (marked with a VID band) depredating what appeared to be a 2-week old Snowy Plover chick near the Marina dredge pond on Aug 12, 2014. Nevertheless, productivity dramatically improved for all beach segments during the two month interim when this falcon was not observed and presumably absent from the area.

Owls were suspected to be responsible for low chick fledging rates at Fort Ord. Consequently an adult Great Horned Owl was trapped at Ford Ord Dunes State Park and released at Antioch NWR on June 26. The fledging rate of chicks from plover nests that hatched prior to the removal of the Great Horned Owl was 31% and 43% subsequent to its removal.

The population of Snowy Plovers increased in the Monterey Bay in spite of falling below one fledged chick per male in the previous 2 years. Potential contributors to the higher than expected numbers were the very high return rates of breeding males and females between 2013 and 2014 and the recruitment of birds from other areas such as Oceano Dunes and Vandenberg AFB into the Monterey Bay population. The high rate of return of Monterey Bay breeders from 2013 to 2014 may be a reflection of relatively mild winter in 2013-14.

On the Pacific coast, the Snowy Plover has become a management-dependent species requiring provision of undisturbed nesting areas and protection from predators to be a successful breeder. Monitoring plover nests and broods continues to be an important component of the management program because it identifies where and when plovers are experiencing breeding problems so that management actions can be directed to where they are most needed.

RECOMMENDATIONS

The following summarizes suggested management actions for Monterey Bay nesting areas.

Wilder, Laguna, Scott Creek, and Waddell Creek Beaches -- While no nests have been found on these beaches since 2009, Snowy Plovers are regularly seen during the breeding season, particularly in spring. More frequent surveys of northern Santa Cruz County beaches are needed to properly assess nesting activity.

Management and monitoring actions:

- 1) Symbolic fence maintenance (Scott Creek).
- 2) Enforcement of dog prohibition (Scott Creek).
- 3) Twice weekly plover nesting and predator surveys, particularly from March through May.

Sunset State Beach – Raccoon, Common Raven and Striped Skunk depredation of nests continues to overwhelm plover nesting efforts at Sunset.

Management actions:

1. Initiate skunk and raccoon trapping early in the nesting season.
2. Explore the possibility of Common Raven management at north Sunset early in the season by State Parks rangers using methods similar to those used at Big Basin State Park.

Pajaro River mouth (northern river spit north to Palm Beach) – Common Ravens, Striped Skunks and gulls were the primary nest predators north of the Pajaro River. Great-horned Owls were present in the nesting area for most of the season; however, moderate vegetative cover and the presence of a large Caspian Tern colony may have lessened the negative impacts owls have been suspected of causing at the Pajaro River mouth in past years.

Management actions:

- 1) Initiate skunk removal at the north end of Pajaro Spit in March.
- 2) Promote a joint State Parks/ Pajaro Dunes integrated skunk management strategy.
- 3) Consider installation of predator exclusion fence at north end of Pajaro Spit nesting area to prevent skunks from crossing into nesting area from under the condominiums.
- 4) Increase State Park ranger patrols to improve compliance with the leash law in front of Pajaro Dunes houses and compliance with the dog prohibition on Pajaro River spit.
- 5) Symbolically fence and install signs on the eastward side of fenced areas in front of the Pajaro Dunes houses to prevent trespass into nest area. Alternatively, consider leaving these areas unfenced in order to discourage nesting in this area.

Zmudowski and Moss Landing State Beaches – Common Ravens were documented taking 8 nests, nearly half of all nest losses at Zmudowski. Horseback riders continue to ride in the fenced area.

Management actions:

- 1) Increase enforcement to improve equestrian compliance with horse regulations.
- 2) Devote more State Park staff time to maintenance of cable fencing.

Salt Ponds (Moss Landing Wildlife Area) – Productivity was improved over 2013, with a lower density of nesting plovers in the ponds. However, the lack of vegetative cover is likely still a limiting factor for chick survival.

Management actions:

- 1) Increase monitoring of diurnal predator activity.
- 2) Initiate limited, experimental planting of vegetative cover.

Molera through Potrero Road (Salinas River State Beach) – Equestrian use in this area continues to heavily impact nesting habitat. In 2014 one nest was abandoned after equestrians heavily disturbed the area around an unfenced nest. Pedestrian trespass into fenced areas is especially problematic in the 300 meters just south of the Potrero access.

Management actions:

- 1) Increase enforcement to improve equestrian compliance with horse regulations.
- 2) Increase ranger foot patrols of the Potrero beach area to prevent trespass into fenced habitat areas.

Monterey Dunes Colony – There was a high level of trespass within fenced habitat areas, a lot of which came from the east (house) side. A nest was deliberately destroyed by humans and a symbolic fence vandalized. Residents persist in taking dogs onto the beach from houses in violation of the dog prohibition.

Management actions:

- 1) Increase enforcement to improve equestrian compliance with horse regulations.

North Salinas (Salinas River State Beach) The area just north of and adjacent to the Salinas River mouth is a natural preserve that, except for the outer beach area, is closed to pedestrian access during the Snowy Plover nesting season. Fisherman and beach-goers accessing the outer beach and lagoon area via the Scatini farm property continue to disturb birds as they pass through the closed nesting area. Nests and chicks are at risk of being stepped on. The river mouth was not breached this year and it provided good foraging habitat and cover for broods.

Management actions:

- 1) Repair the back gate on the levee at the corridor entrance to prevent pedestrian and vehicle trespass into the closed nesting area.
- 2) Ensure that the symbolic fencing and closed nesting area signs are up on the boundary of the Scatini farm and State Park property.
- 3) Install new signs at the end of the symbolic fence line when the river mouth is open to the ocean to alert the public of the river mouth closure. Suggested wording would be: "Attention: Do not go past this point. Area between river and cable fencing is closed to protect Snowy Plover nesting habitat. Entering this area may result in citation."
- 4) Increase patrols of the Salinas River levee by State Parks rangers to improve compliance with the closure of the nesting area.
- 5) Coordinate with all of the agencies to have river breaching occur at the earliest possible date.

Salinas River National Wildlife Refuge – Striped skunks were identified taking 10 nests, over a third of all nest losses at Salinas River NWR. A second year Peregrine Falcon suspected of depredating adult and chick plovers was captured and released at Sacramento National Wildlife Refuge in June but returned by August. Therefore, vigilant monitoring for this individual will be needed prior to and during the 2015 breeding season.

Management actions:

- 1) Initiate skunk trapping in the early nesting season.
- 2) Monitor Peregrine Falcon activity and determine appropriate management actions.

- 3) Monitor Northern Harrier hunting and nesting activity and determine management actions with consideration of overall bay-wide harrier management.
- 4) Maintain the “no dog” signs at the kiosk and on the entrance gate as they get vandalized throughout the season.
- 5) Install new signage at the end of the symbolic fence line when the river mouth is open to the ocean to alert the public of the river mouth closure. Suggested wording is “Attention: Do not go past this point. Area between river and cable fencing is closed to protect Snowy Plover nesting habitat. Entering this area may result in citation.”
- 6) Increase patrols by Refuge law enforcement officers to improve compliance with the closure of the nesting area.

Martin Dunes and Marina (Cemex) – There were a variety of causes of nest loss on these beaches. The transported Peregrine Falcon was likely responsible for depressed early season fledge rates on these beach segments.

Management Actions

- 1) Monitor Peregrine Falcon activity and determine appropriate management action.

Reservation Road and Fort Ord– Excellent hatch rates indicate productivity is limited by chick survival at these beaches. The translocation of a Great Horned Owl may have had a positive impact on fledge rates at both sites this year.

Management Actions

- 1) Consider trapping and relocating up to two Great Horned Owls.
- 2) Increase enforcement of the dog prohibition on beaches and entry into closed nesting areas.

Sand City and Monterey State Beach

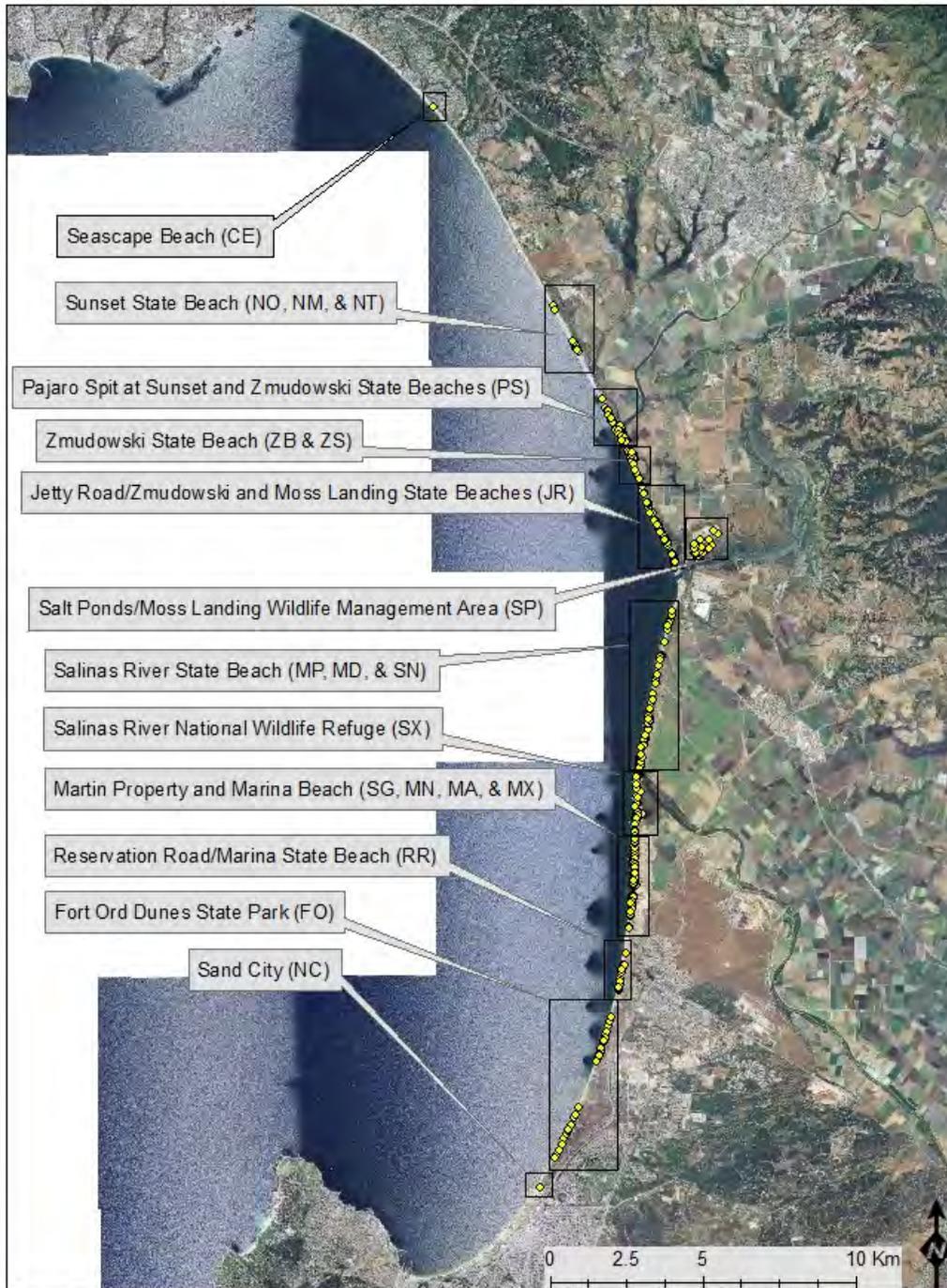
Management Actions

- 1) Increase enforcement of the dog prohibition on beaches and closed nesting areas.

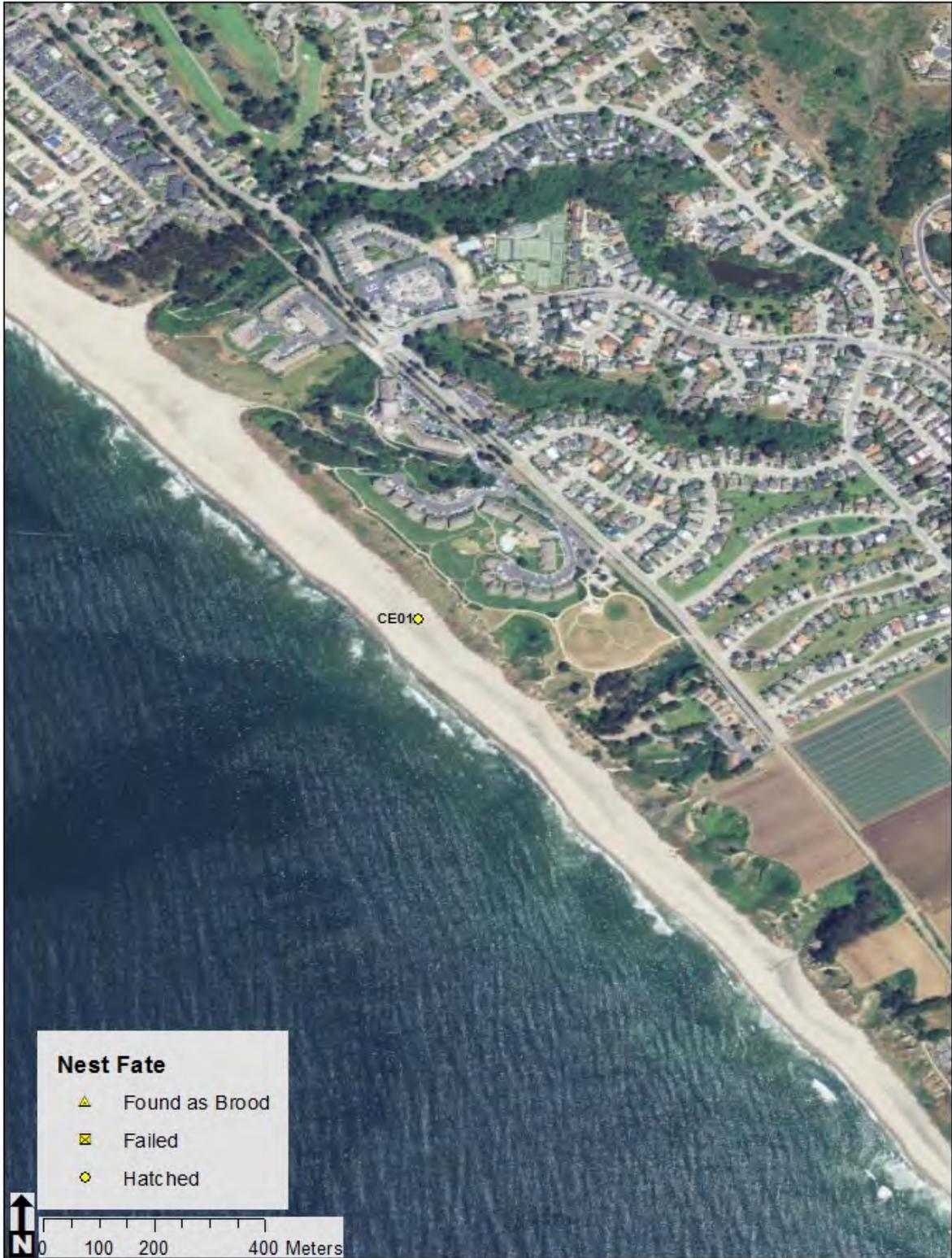
ACKNOWLEDGEMENTS

Jacob Martin greatly assisted with the fieldwork at Sunset Beach and Amy Palkovic at Reservation Road and Fort Ord. Allie Patrick, Esther Haile, and Chris Caris also contributed significantly to the field work in the south bay. Amy Palkovic deserves special thanks for preparing the nest maps. Nick Todd and the Ventana Wildlife Society conducted raptor management work. Personnel of USDA Wildlife Services were responsible for control of skunks and ravens. This project was conducted collaboratively by Point Blue (formerly PRBO) Conservation Science, the Salinas River National Wildlife Refuge Unit of the Don Edwards San Francisco Bay National Wildlife Refuge of the U. S. Fish

Wildlife Service, the California Department of Parks and Recreation, the California Department of Fish and Wildlife, the Wildlife Services Unit of the U. S. Department of Agriculture, and the Monterey Bay Aquarium.



Appendix 1. Overview of Snowy Plover nest locations in the Monterey Bay area in 2014.



Appendix 2. Snowy Plover nests found at Seascapes beach in 2014.



Appendix 3. Snowy Plover nest locations at the northern section of Sunset State Beach in 2014.



Appendix 4. Snowy Plover nest locations at the Pajaro Spit at Sunset and Zmudowski State Beaches in 2014.



Appendix 5. Snowy Plover nest locations at Zmudowski State Beach in 2014.

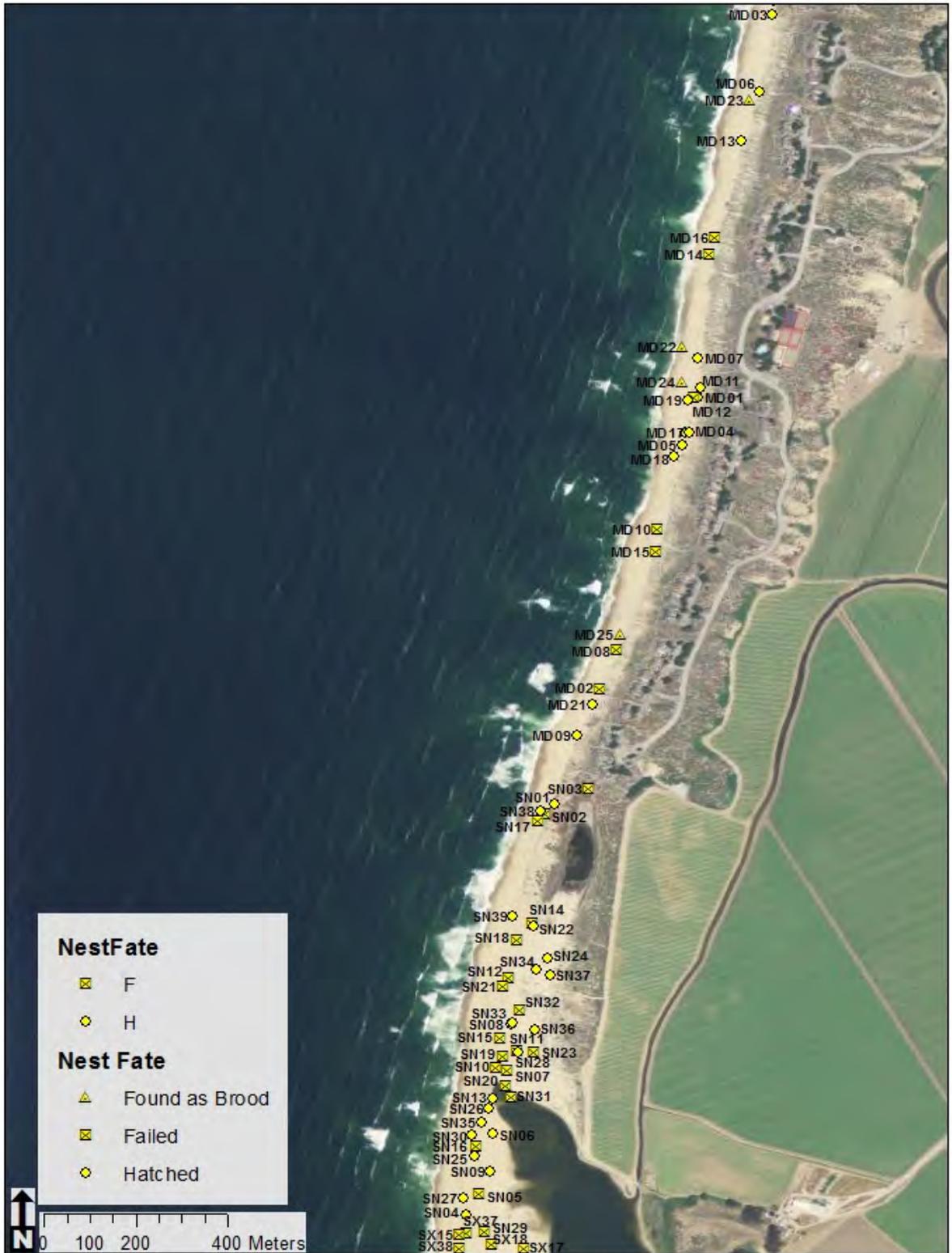




Appendix 7. Snowy Plover nest locations at Moss Landing Wildlife Management Area in 2014.



Appendix 8. Snowy Plover nest locations at the northern portion of Salinas River State Beach in 2014.



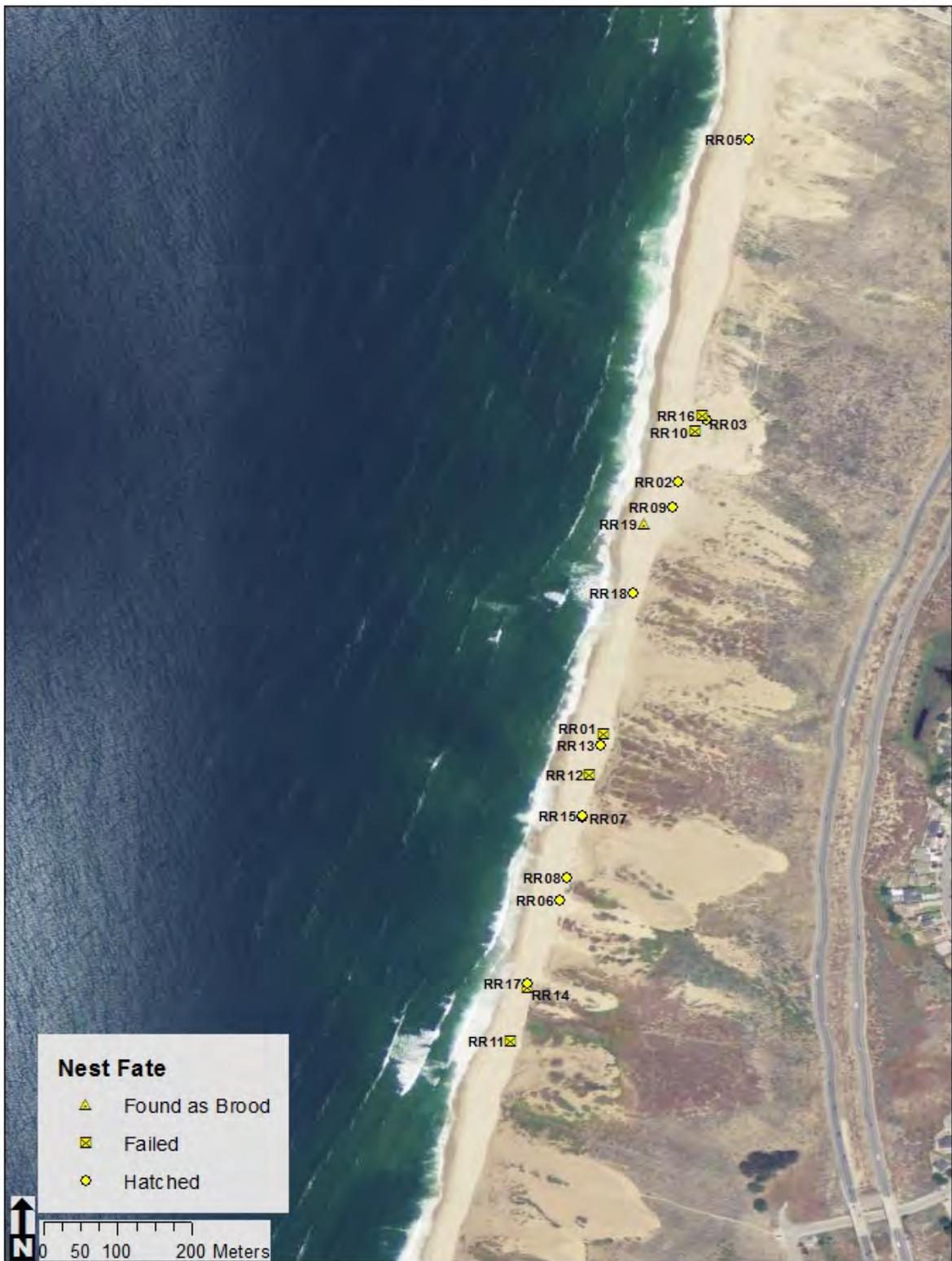
Appendix 9. Snowy plover nest locations at the southern portion of Salinas River State Beach in 2014.



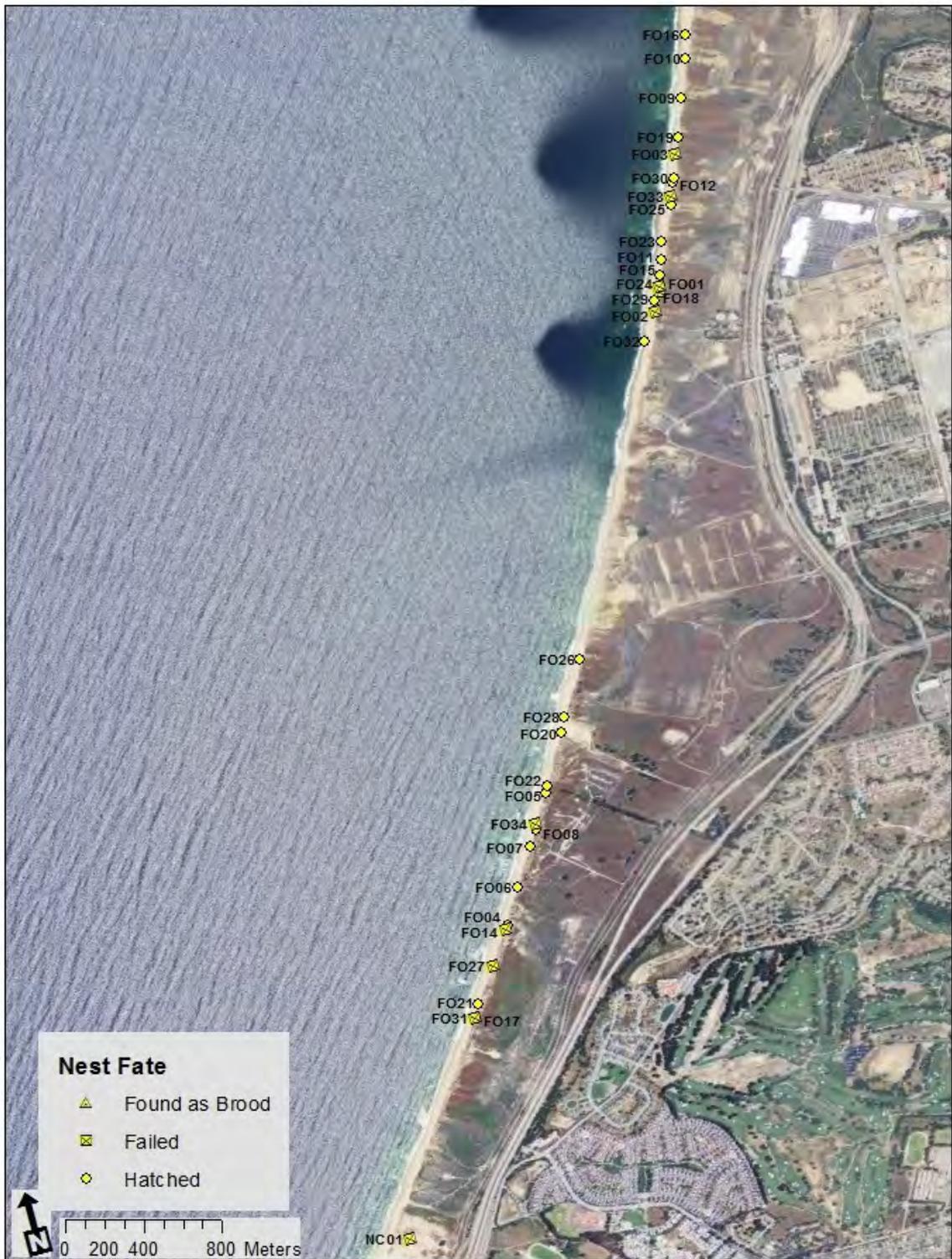
Appendix 10. Snowy plover nest locations at the Salinas River National Wildlife Refuge and the Martin dunes in 2014.



Appendix 11. Snowy Plover nest locations at Marina beach in 2014.



Appendix 12. Snowy Plover nest locations at Marina State Beach in 2014.



Appendix 13. Snowy Plover nest locations at Fort Ord Dunes State Park and Sand City in 2014.

Appendix 13. Monterey Bay, 2014, Injured and Dead Snowy Plovers

Disposition	Band Combination	Point Blue Specimen Number	MWVCRC (DFW/OSPR) No. ¹	UCD Path No. ²	Date Collected/ Captured	Disposition Date (carcass)	Disposition Location (carcass)	Location Collected/ Captured	Collector/ Observer	Age	Sex
INJURED/ DEAD	Yb og	14346	14-0363	14s0387/ 14s0529	5/18/2014	5/19/2014	MWVCRC (DFW/OSPR)	Moss Landing	Carleton Eyster	Adult	Female
DEAD	Rb ww	14868	14-0381	14s0373	5/23/2014	5/23/2014	MWVCRC (DFW/OSPR)	Marina (CEMEX dredge pond)	Allie Patrick	Adult	Male
DEAD	pr ol	13967	14-0382	NA	5/23/2014	5/23/2014	MWVCRC (DFW/OSPR)	Moss Landing State Beach	Dave Dixon	Adult	Female
DEAD	wy ba	12914	14-0404	14s0528	6/30/2014	6/30/2014	MWVCRC (DFW/OSPR)	Moss Landing State Beach	Dave Dixon	Adult	Male
DEAD	bo ra	15328	14-0446	14s0777	8/11/2014	8/11/2014	MWVCRC (DFW/OSPR)	Pajaro Spit	Jenny Erbes	Chick	Female
DEAD	ra yy	15284	14-0575	NA	9/9/2014	10/1/2014	MWVCRC (DFW/OSPR)	Moss Landing	General Public/ Kriss Neuman	2014 Fledged Juvenile	Female
DEAD	pv bg	19520	NA	NA	7/17/2014	7/17/2014	discarded	Pajaro Spit	Carleton Eyster	Adult	Male
INJURED/ DEAD	unbanded	NA	NA	NA	5/21/2014	5/22/2014	Monterey Bay Aquarium (alive)	Marina (CEMEX dredge pond)	Carleton Eyster	UNKNOWN	Male
INJURED	aa ya	15320	NA	NA	9/24/2014			Pajaro Spit	Carleton Eyster	2014 Fledged Juvenile	UNKNOW N
INJURED	oa bb	13396	NA	NA	3/12/2014			Pajaro Spit	Carleton Eyster	Adult	Female
INJURED	yy ol	12030	NA	NA	9/16/2014			Salinas River NWR	Jenny Erbes	Adult	Male

¹ MWVCRC is Marine Wildlife Veterinary Care and Research Center, CA Dept Fish and Wildlife/Office of Spill Prevention and Response

² UCD is University of California Davis (birds with these numbers had tissue samples archived at MWVCRC or sent to UCD)

CALIFORNIA COASTAL COMMISSION

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F13a

Prepared April 30, 2015 (for May 15, 2015 hearing)

To: Coastal Commissioners and Interested Persons

From: Charles Lester, Executive Director
Dan Carl, District Director
Mike Watson, Coastal Program Analyst

Subject: **A-3-SNC-98-114-EDD (Condition Compliance Dispute Resolution for CDP A-3-SNC-98-114 (Security National Guaranty Inc.))**

SUMMARY OF STAFF RECOMMENDATION

On April 9, 2014, the Coastal Commission approved a coastal development permit (CDP) for a mixed-use residential and visitor-serving development in the undeveloped dunes in Sand City subject to a series of special conditions, including several conditions that need to be satisfied prior to issuance (PTI) of the CDP. The Applicant has submitted materials in an effort to meet these PTI conditions, and staff has been working diligently with the Applicant to address deficiencies in order to allow for the CDP to be issued. Although staff believes that the issues associated with most aspects of the PTI conditions have been resolved and others could be resolved through additional discussions, the Applicant does not concur and indicates that it does not agree with staff's assessment. As is provided for by Standard Condition 3 of the CDP and under a Settlement Agreement between the Applicant and the Commission, the Applicant has requested that the Commission weigh in on the matter to resolve the difference of opinion.

The heart of the dispute is twofold. First, staff has requested certain materials to be able to assess compliance with the conditions and the Applicant has refused to provide these because it claims that they are unnecessary. Second, staff has concluded that the materials that have been submitted show the project to be inconsistent with some aspects of the Commission's approval. The Applicant asserts that his project is consistent with all of the PTI conditions. Staff notes that this is a large and complicated project, comprising some 1.3 million square feet, affecting many sensitive coastal resources, thus condition compliance review requires great care and diligence.

A primary area of dispute centers on the project's compliance with height limits and viewshed protection standards. As currently designed, the project exceeds the maximum 45-foot development height limit as well as other limits placed on the amount of dune manipulation and grading to ensure that views from Highway One are of the dunes and not the development while

also preserving scenic views of the Monterey Bay and peninsula in the background. The Applicant has also not provided required elevation views of the project, and this hampers condition compliance efforts.

Second, the Applicant and staff disagree over the content and extent of the required dune restoration. The conditions of approval require all areas outside of the development footprint to be restored and stabilized to self-functioning, high quality dune habitat and in ways that replicate natural dune landforms and integrate into the surrounding dunes to the maximum extent feasible. The submitted plans do not re-create “dunes” and further do not encompass all areas identified by the Commission for dune restoration and stabilization.

Third, the parties disagree over the content and extent of the required “offer to dedicate” Dune Area Conservation and Public Access easements. Staff notes that these documents cannot yet be completed because they must incorporate information from the Public Access Plan (Special Condition 5) and the Dune Restoration Plans (Special Condition 3), neither of which have been approved. The graphic depictions and legal descriptions of the areas subject to these easements are also deficient.

Additional areas of dispute center on staff’s assessment that the proposed exterior lighting, signage, and six-foot tall perimeter fencing exceed permit allowances; that off-site public parking that was required has not been provided; and that the Public Access Management Plan is incomplete.

Staff recommends that the Commission concur with the Executive Director’s determination regarding compliance with the approved CDP. The motion to implement this recommendation is found on page 3 below.

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EXHIBITS

Exhibit 1: Location Map

Exhibit 2: Site Photos

Exhibit 3: Selected Project Plan Sheets

Exhibit 4: Dune Conservation Easement Area

Exhibit 5: Commission-adopted Standard and Special Conditions

Exhibit 6: Examples of Project Elevations and Simulations

Exhibit 7: PTI Condition Compliance Correspondence between SNG and Staff (in date order)

I. EXECUTIVE DIRECTOR'S RECOMMENDATION

The Executive Director has determined that the prior to CDP issuance requirements of Special Conditions 1 through 6, 9(f), and 20 have not been satisfied and recommends that the Commission concur. To concur with the Executive Director's determination, the Executive Director recommends a **NO** vote on the motion below. Following the Executive Director's recommendation will result in: 1) the Commission upholding the Executive Director's determination that Special Conditions 1 through 6, 9(f) and 20, which are the subject of Dispute Resolution Number A-3-SNC-98-114-EDD, have not been met, and 2) the adoption of the following resolution and findings. The motion passes only by an affirmative vote of a majority of the Commissioners present.

***Motion.** I move that the Commission reject the Executive Director's determination that the prior to issuance conditions that are the subject of Dispute Resolution Number A-3-SNC-98-114-EDD (Special Conditions 1 through 6 and 20) have not been met, and I recommend a no vote.*

***Resolution.** The Commission, by adoption of the attached findings, determines that the special conditions that are the subject of Dispute Resolution Number A-3-SNC-98-114-EDD have not been met and adopts the findings recommended by staff below, or as modified at the hearing, to support the conclusions set forth in the staff report.*

II. FINDINGS AND DECLARATIONS

The Commission finds and declares as follows:

A. DISPUTE RESOLUTION PROCEDURES

CDP Standard Condition 3 (see Exhibit 5) addresses matters of compliance with permit conditions and grants the Executive Director and/or the Commission authority to resolve any disputes that arise. Additionally, the Settlement Agreement between the Applicant and the Commission provides a mechanism for disputes regarding CDP processing. In particular, the Mutual Cooperation Commitment (recital 6 of the Settlement Agreement) states in relevant part:

(6) Mutual Cooperation Commitment. ... If (2) a dispute arises between SNG and Commission staff regarding compliance with prior to issuance conditions that cannot be resolved informally between the parties in an expeditious manner, SNG may request that the Commission hold a dispute resolution hearing at the next regularly scheduled hearing of the Commission that is at least 49 days after the request, allowing for 10 day public notice and 10 additional days for preparation of any staff report and recommendation. If the dispute resolution hearing does not resolve the matter to SNG's satisfaction, SNG and the Commission shall submit the matter immediately to a mutually acceptable retired judge (see next sentence below), whom they will ask to resolve the issue on an expedited basis. The parties shall meet and confer regarding three mutual acceptable retired judges, and within 30 days after Commission approval of the CDP, the parties shall select a list of three mutually acceptable retired judges that the parties may use to select one judge to resolve disputes as described above. The neutral shall apply the same standard of review that would

have applied if SNG had challenged the Commission decision in Superior court under Code of Civil Procedure section 1094.5. The decision of the selected neutral shall be binding on SNG and the Commission, and shall not be subject to judicial review. SNG shall be solely responsible for any fees charged by the private adjudicator.

Commission staff received a request from the Applicant for a Commission dispute hearing on March 9, 2015. Staff has scheduled a dispute resolution hearing at the Commission's May 2015 meeting consistent with the Applicant's request and the timing requirements of recital 6 of the Settlement Agreement.

B. DISPUTE SUMMARY

On April 9, 2014 the Commission approved CDP A-3-SNC-98-114 for a 1.3 million square-foot mixed-use residential and visitor-serving development subject to a series of special conditions, including eight conditions that must be satisfied prior to issuance (PTI) of the CDP (Special Conditions 1 – 6, 9(f), and 20). The prior to issuance conditions include provisions for the submittal of revised final plans, and plans related to construction, dune restoration, public access management, and blufftop edge monitoring, as well as offers to dedicate easements for dune area conservation and public access. The Applicant is also required to submit evidence that it has recorded a deed restriction imposing the conditions of the CDP as covenants and restrictions on the use of the property. The special conditions were imposed to ensure that the approval conforms to LCP and Coastal Act development standards, including that it protects scenic public views, restores and protects dune habitat on the site, enhances habitat values for listed species, provides and protects public access and recreational opportunities in perpetuity, appropriately monitors and avoids shoreline hazards, and imposes the special conditions of the CDP as covenants and restrictions on the property. While certain components of the required PTI conditions have been satisfied, there are still areas of PTI condition conformance that have not been resolved despite the fact that staff has provided explicit guidance to the Applicant on condition requirements in eight formal written communications, multiple email exchanges (see Exhibit 3), and in four multi-hour in-person meetings.

In general, the Applicant (Security National Guaranty Inc., or SNG) has been reluctant to provide the full range of project plans and project plan details necessary to evaluate the development for conformance with the terms of the PTI special conditions. Additionally, the plans that have been submitted clearly show that the project violates the approved development standards imposed by the Commission, and that the plans do not conform to the avoidance and minimization requirements prescribed by the PTI conditions, including those designed to temper adverse resource impacts associated with the development in the public viewshed, and those intended to protect and enhance natural resources that are present on the site. The submitted dune restoration plan does not replicate natural dune landforms and will not ensure that the dunes function as high quality habitat into the future as required by the permit conditions. The submitted plans also show development in areas reserved for dune restoration and permanent conservation. SNG has indicated that it does not agree with the Executive Director's determination and is unwilling to modify project elements to bring the development into conformance with the permit conditions. SNG further contends that the development is in conformance with the Commission-approved project and that all PTI conditions have been satisfied.

In summary, the Executive Director has determined that the Applicant has failed to provide the documentation necessary to conclude that the project complies with the PTI conditions (see Exhibit 5 for the adopted CDP conditions, and see Exhibit 7 for the PTI condition compliance correspondence between the Applicant and staff in chronological order). Because the Applicant and the Executive Director continue to disagree with regard to compliance with the PTI conditions, the matter is to be decided by the Coastal Commission as per the terms of Standard Condition 3 and the Settlement Agreement between SNG and the Commission. Note that this dispute is only regarding PTI conditions, and that the remainder of the conditions, including conditions specifying various actions and steps that must occur prior to construction, have not even begun to be addressed by the Applicant.

C. CONTENT OF DISPUTE

Fully or Partially Satisfied PTI Condition Requirements

Although the Applicant has requested a dispute resolution hearing, it is clear that there are many areas of agreement, and staff and the Applicant have spent a great deal of time and energy to reach consensus on PTI conditions and associated requirements (see Exhibit 7 for correspondence between the Applicant and staff, organized in chronological order to help facilitate understanding of the progression of condition compliance efforts and events). Staff's correspondence, as well as the Applicant's prior submittals and its request for dispute resolution, reflect the breadth of such progress. For example, issues that have arisen in review of PTI submittals that have been resolved include ensuring that the plans are based on a current topographic survey; that access road development has been minimized to the maximum degree feasible; that public access amenities and facilities are clearly described; that wall structures in public views are sited and designed to blend into the dune aesthetic to the maximum extent feasible (including through colorization, natural materials, non-linear and curvilinear contouring, surface roughness, etc.); that all landscaping consist of non-invasive dune species native to Sand City and the southern Monterey Bay dune systems; that windows and other surfaces will be treated to avoid light reflection; that all utilities will be placed underground; that all stormwater will be appropriately collected, filtered, and treated both pre- and post-construction; that the manner in which excavated sand not necessary for the project (including dune restoration activities) will be disposed of and/or beneficially reused is adequately identified; and that a deed restriction will be recorded imposing the special conditions of the CDP as covenants and restrictions on the use of the property.

Perhaps most critically, staff and the Applicant have reached agreement on the details of the final foundation plans. This element of the project was the subject of significant discussion when the Commission approved the CDP, including because the manner in which this project element is constructed will significantly affect the manner in which it might eventually need to be removed or relocated per the terms and conditions of the CDP, and perhaps most notably Special Conditions 8 and 9 (see Exhibit 5). PTI Special Condition 1(q) required that the foundations "be the least environmentally damaging feasible alternative," among other requirements. This portion of the PTI submittals required significant back and forth between the Applicant and staff, including the Applicant's consulting geotechnical engineers and the Commission's Senior Coastal Engineer, Dr. Lesley Ewing. The initially submitted and considered alternatives involved traditional deep caisson piles (and also alternatives that included additional ground improvement and/or soil amendment), but these types of foundations across the whole of the project were

found to not adequately respond to the CDP terms and conditions, and were rejected. Ultimately, staff and the Applicant agreed on a refined foundation system,¹ and this portion of the PTI conditions has been resolved.

Thus, in short, significant progress has been made on PTI conditions. And, such significant progress has been made in an expedited manner. As is required by the Settlement Agreement between the Applicant and the Commission, staff is required to respond to the Applicant's submittals within 30 days, and has done so in every case. In addition, staff has provided detailed comments to be able to facilitate the Applicant's work on meeting condition requirements, and has met with the Applicant multiple times. This has been a significant amount of work, and has significantly impacted staff's Central Coast District program as a result, leading to increased processing time for other competing projects and LCP amendments. Staff continues to believe that it makes more sense to work with the Applicant to resolve remaining issues cooperatively, and has again provided feedback to SNG even in the time since the Applicant requested a dispute resolution hearing as a means to facilitate such progress (see staff's email correspondence dated April 22, 2015 in Exhibit 7).² Staff suggested to the Applicant that it would make more sense to wait to consider a dispute resolution hearing until staff and the Applicant had time to devote to additional meetings to narrow any issues, but the Applicant insisted on a dispute resolution hearing regardless.

Not Yet Satisfied PTI Condition Requirements

The Applicant indicates that "in its view, the conditions imposed by the Commission in its April 2014 decision have been fully satisfied." Commission staff does not agree, and believes that there are several areas where this is simply not the case, and where either additional materials need to be submitted, or the project needs to be changed, or both, to conform to the terms and conditions of the approved CDP (again, see Exhibit 5 for the adopted CDP conditions). Staff has provided explicit guidance with regard to necessary plans and/or project modifications needed to satisfy compliance with the PTI terms and conditions of the CDP (see Exhibit 7). The Applicant is unwilling to supply the necessary plan revisions or make project modifications and instead argues that the project is in "substantial conformance" with the Commission's approval. The following represents the Executive Director's determination on the disputed PTI items. See Exhibit 5 for referenced conditions of the CDP, and see Exhibit 7 for more detail on these points as identified in the correspondence (in chronological order) between the Applicant and staff regarding PTI condition compliance.

1. Height Limits

Special Condition 1(e) provides an explicit maximum height limit for all development on the site and states in relevant part:

¹ Including using auger-style drilled-in pipe with a pressure grouted tip which has a smaller diameter, can be placed at greater intervals, requires little to no additional soil modification, and can be backed-out of the earth (i.e., removed) with the minimum amount of land disturbance

² Note that the Applicant requested dispute resolution, and then shortly thereafter submitted additional materials for review in response to staff's prior comments, necessitating both a response within 30 days, and a dispute resolution hearing within 49 days.

Development height shall be limited as necessary to meet the requirements of this condition, and in no case shall development exceed 45 feet above existing grade for hotel and condominium-hotel components (hotel and condominium-hotel components include facilities commonly included in hotels and condominium-hotels such as restaurants, meeting rooms, shops for hotel guests, and spa facilities), and 36 feet above existing grade for all other development. ... (emphasis added)

Plan revisions provided by the Applicant show portions of the hotel development at more than 50 feet in height above existing natural grade, which exceeds the maximum height limit of 45 feet,³ and places such elements in Highway One views, both inconsistent with the terms and conditions of the CDP. The Applicant contends that the elements in question (i.e., the large elevator overrides and rooftop stairway access) are necessary for hotel patrons to gain access to the upper floors of the hotel tower, are minor roof equipment, and are required by the California Building Code. Staff notes that the issue is not whether these features are necessary. Special Condition 1(e) requires all such development to be lower than 45 feet at the maximum. The definition of development includes mechanical structures associated with the hotel, such as the elevator overrides. Thus, the project must be designed to ensure that no development, including that required by the Building Code or that the Applicant believes to be “minor,”⁴ is higher than 45 feet.

Further, it is noted that, up until the most recent submittals, that the Applicant indicated that such elevator equipment towers above the roof would not be needed as SNG would have them designed in a ways as to not require additional elements above the roof. This was a point of some contention in numerous discussions going back several years, and the Applicant did not show these elevator towers in plan sheets until the most recent submittals, so this is a new addition to the project.

Thus, the project exceeds the maximum height limit and places development in Highway One views inconsistent with the terms and conditions of the CDP and the Settlement Agreement,⁵ and the Applicant has been directed to modify the plans to correct these inconsistencies.

³ On this point it is important to note that the project includes excavating the dunes in order to put the buildings within the created space, including reducing the height of the foredunes so that the buildings will not be underground but instead will have a view out towards the ocean. It is this only this significant landform alteration that allows for buildings that are actually up to some 100 feet tall and 10 stories to address LCP height limit tests in the first place, as the height is measured from existing grade per the LCP. If the development were instead developed atop the existing grade of the landform, as is the more typical construction method for development (other than below grade development that is not visible above grade, like a basement), it would be significantly smaller. For example, applying the project’s grading methodology to a project atop a level 50-foot tall bluff-top with a 20-foot maximum building height limit is analogous to allowing an applicant in the bluff-top case to excavate the top 20 feet of bluff (extending back from the bluff-top edge) and to construct a 40-foot tall building in the void created to “meet” the height limit and address visual issues. Thus, the importance of meeting the maximum height limits is only magnified in this particular case.

⁴ In addition, the elevator overrides are roughly 20-foot by 30-foot in size (600 square feet) and cannot be considered “minor”, including given their size and visibility.

⁵ The Settlement Agreement identified specific standards and conditions of approval that are reflected in the Commission-adopted conditions.

2. Dune Manipulation for Screening Purposes

Special Condition 1(a) provides an explicit limit to dune manipulation for screening purposes and states:

... Dune field manipulation north and northwest of the extended dune view line (see Exhibit 8x [i.e., the Applicant's dune view line shown on sheets TM-2 and TM-6; see pages 2 and 5 of Exhibit 4]) shall be limited to a finished elevation generally equal to existing grade except that undulations in height may go up to a maximum of 3 feet greater than existing grade to allow for replicated dune landscaping. ...

The revised plans provided by the Applicant show the final dune elevations as much as eight feet above existing grade, which exceeds the maximum three-foot allowance provided for in Special Condition 1(a), which itself is only allowed to the degree it is necessary to allow for replicated dune landscaping. The Applicant does not dispute that the plans show that the prescribed maximum elevation has been exceeded but instead argues that the final dune grades are in substantial conformance with the Commission's approval. In essence, the Applicant is attempting to amend the permit conditions to fit to the development as opposed to siting and designing the development as required by the conditions of approval to conform to the agreed-upon performance standards. The intent of the terms and conditions on this point was to ensure that the existing view in this area would not be further blocked by development, whether buildings or dune manipulation development, and the Applicant's proposal to raise the dunes inconsistent with the CDP will lead to more of the view being lost in this regard.

Thus, similar to item 1 above, the Applicant's plans do not conform to the CDP's dune manipulation requirements inconsistent with the terms and conditions of the CDP and the Settlement Agreement, and the Applicant has been directed to modify the plans to correct these inconsistencies.

3. Highway One Views - Buildings

Special Condition 1(b) requires all buildings and related development to be sited and designed such that views of the buildings and related development are blocked by existing or modified dune features. An exception is made for southbound Highway One views for development inland of the dune view line:

All building and related development shall be sited and designed so that views of it from either southbound or northbound Highway One (from a height of 5 feet above the roadway) are blocked by existing and/or modified dune features (including through extending dune areas over the top of such development, as applicable) in such a way that such views are of dunes and not of buildings and related development, except that buildings and related development are allowed to be visible in the southbound Highway One view if located inland of the dune view line (see Exhibit 8x [i.e., the Applicant's dune view line shown on sheets TM-2 and TM-6; see pages 2 and 5 of Exhibit 4])). The Revised Plans shall be submitted with documentation demonstrating compliance with this requirement.

Based on a review of the revised plans and cross-sections, portions of the development will extend above the re-configured dunes into the Highway One viewshed. Specifically, all the rooftop elevator equipment, including such development that exceeds the maximum height limit

requirement (see item 1 above), will be visible within the northbound Highway One view, inconsistent with Special Condition 1(b). Additionally, it is clear from the cross-sections that portions of the buildings near the main resort tunnel will also be visible in the northbound Highway One view, also inconsistent with Special Condition 1(b). Portions of the residence tower between the hotel service and residence tunnels, northwest of the dune view line, will also be visible within the southbound Highway One viewshed. Further still, the plans show development north of the dune view line that is taller than existing grade. As noted in item 2 of this section, Special Condition 1(a) limits dune manipulation to a maximum of 3 feet above existing grade where necessary for dune replication requirements, so development must be below existing grade or hidden by dunes that can be no higher than 3 feet above existing grade. The revised plans indicate that the development exceeds existing grade by between three and nine feet, inconsistent with the CDP.

The Applicant maintains that the elevator overrides are required by code and that the design height limits are for the building and not for rooftop equipment needed for safety. This was addressed in item 1 of this section. The Applicant further contends that the buildings will not be visible and indicates that it is willing to modify the height of the re-configured dunes to aid in screening of the structures. The evidence submitted by the Applicant to date does not substantiate its claim that this portion of the development will not be visible. And the proposal to increase the height of dune areas will lead to its own additional view blockage, and would be inconsistent with the CDP as well. The Applicant also proposes additional modifications to the color and texture of the rooftop elements that exceed the height limitation in Special Condition 1(e) (again, see item 1 above), but these structures will still be unallowably highly visible.

Each of these determinations regarding the visibility of the development has been significantly complicated due to the fact that the Applicant has not provided architectural elevations for the project, as required by Special Condition 1(e). From the outset, the Applicant has refused to provide all requested project plans, including architectural elevations, that would allow staff to fully evaluate the visual impact of the development as seen from Highway One. The lack of elevations particularly has hampered staff's review.⁶ As memorialized in its September 24, 2014 letter to the Applicant (see Exhibit 7), staff requested and the Applicant agreed to provide a number of deliverables that were determined to be necessary to evaluate compliance with the permit conditions, including the necessary additional cross-sections and architectural elevations located within the Highway One view. The Applicant provided the additional cross-sections but has thus far refused to provide elevations for the project.

Given that plans showing the building elevations have not been provided, staff has had to rely on a set of incomplete materials (i.e., a site plan and cross-sections only) from which it is not possible to fully gauge conformance with the visual requirements of Special Condition 1. While cross-sections provide a slice through the project at a particular point, they do not provide a complete visual representation of the project as it would appear when looking across the site. In lieu of the requested elevations, the Applicant provided a set of computer renderings of the

⁶ Elevations are a very typical element of CDP review packages, and allow for an assessment of what the development would look like from various perspectives, typically at least from north, south, east, and west (or other four "sides" of projects). It is extremely unusual in a CDP review process to not have elevations as a tool for measuring compliance with conditions, and SNG has not provided any elevations for the project.

projects. However, these renderings are blurry and are not to scale and essentially useless for assessing the project's compliance with Special Condition 1 with respect to visual impacts.⁷

Nevertheless, based on the site plans and cross-sections submitted to date, staff was able to determine that the elevator overrides, a portion of the hotel tower, and a portion of the residence tower will be visible from Highway One, inconsistent with Special Condition 1(b). The Applicant argues that this is not the case and that the dunes can be manipulated to provide additional screening. First, though it may be true that the dunes could be manipulated to block the development from Highway One views, manipulating the dunes in this manner will also block more of the Monterey Bay blue-water and peninsula views that the conditions of the permit are intended to protect.

Second, with respect to dune screening, the project is designed with no margin for error with respect to the manner in which the dune features provide screening of the development. The cross-sections demonstrate that building heights are being tied to the elevation of manipulated and other dune features. However, if the heights of those dune features are not maintained, the buildings and related development will be visible, inconsistent with the requirements of Special Condition 1(b). SNG has not described how it will maintain the heights of the modified dune features. In addition, portions of the modified dune features are shown at what appear to be unmaintainable steepness and grades, and it is likely that these dunes will reach a natural configuration post construction that is lower and flatter than is shown on the plan sheets. This is most obvious in the area of the extended dunes on the north of the site that are intended to be held together with retaining walls on either side (see plan sheets TM-2, TM-3, TM-4 and TM-7). As we know, dunes are continually shifting in response to the effects of the wind, which is a significant factor at this location. Thus, the dunes that will be manipulated for screening purposes need to be shown on the plans at elevations and gradients that can realistically be maintained over time, and buildings sited and designed so as to be below these features in the Highway One view.

Third, the dunes in the vicinity of the hotel service and residence tunnels would be manipulated (heightened) in ways not allowed by Special Condition 1(a) of the permit in order to screen development that is not allowed to be seen in the Highway One viewshed (see item 2 above). The dune heights on the project plans, and the development itself, must be modified such that the buildings are not visible in Highway One views consistent with the terms of the permit. Finally, as mentioned above, the project exceeds the height limits established for hotel elements (a maximum of 45 feet above existing grade) and development north of the dune view line (equal to existing grade).

The project site is a dune site that is not uniform, the project includes a series of dunes that are being added to the site to help screen development from view (as required), and the views of and over the site are continuous and not only from particular and specific points (e.g., views are from all along Highway One as opposed to a specific singular point). In addition, the Applicant has refused to provide elevations that show the overall view of the site from different sides, and has

⁷ See Exhibit 6 for examples of typical elevations and simulations that are provided as part of CDP packages generally, and that have been provided to the Applicant to show that these are not unusual or extraordinary requests in this case. Exhibit 6 also includes the Applicant's submitted rendering for comparison on this point.

provided visual simulations that are of extremely poor quality. All of this has made it difficult to gauge compliance with the terms and conditions. In addition, the Applicant has proposed grades and steepness of screening dunes that appear difficult to maintain, and is proposing heights that are keyed to these grades for screening purposes with no margin for error or flattening. Staff is trying to sign off plans that will result in the development being screened as is required by the CDP terms and conditions, and has identified areas where buildings need to be further reduced in height to avoid visibility, where dune configurations need to be modified to reflect natural dune conditions, and similar measures to address visibility standards. The intent is to avoid a scenario where the constructed project is immediately out of compliance with the CDP's visibility requirements, and where the Applicant is then made to make what would presumably be much, much more costly modifications to the project at that time, such as removing/reconfiguring visible building elements to meet the terms and conditions of the CDP.

Again, the Applicant has refused to provide the requisite elevations that would allow staff to fully evaluate development height and the visual impact of the development including the visibility of the buildings as seen from northbound and southbound Highway One and other public vantages. The Applicant contends it has supplied ample materials to assess the project for conformance with the CDP's height limit. This interpretation ignores the stated requirement of Special Condition 1(e), as well as all other conditions imposed to protect the scenic and visual character of the surrounding site. It is the staff's position and the expressed intent of Special Conditions 1(b), 1(c), 1(d), 1(e), 1(g), 1(h), 1(i), 1(l), 1(n), 1(p), 1(q), 1(u), and 1(v) that all development be sited, designed, colored, and screened to minimize visual incompatibility, seamlessly integrate into the dune aesthetic, protect important public views, and blend with the surrounding dune environment. Given the size of the approved development (some 1.3 million square feet and up to some 100 feet and 10 stories tall) and the prominence of the site in the Highway One viewshed, and given the absolute bare minimum tolerance proposed between building heights and dune screening, it is not possible to fully understand the impact of the project with respect to its visibility in the Highway One viewshed and compatibility with the dune aesthetic (i.e., scale and massing relative to existing dune features) with just site plans and cross-sections. These plans are not expressed in three-dimensions and do not provide a complete view of the development across the entire Highway One frontage.

To meet the visual standards contained in Special Condition 1(b), the project must be sited and designed to comply with the terms of the height limits imposed by Special Condition 1(e), the dune manipulation limitations in 1(a), and the primary objective of Special Condition 1(v) which is to site, design, and screen all development in order to minimize visual incompatibilities with the dune landscape and public views.

Thus, the Applicant's plans do not conform to the CDP's Highway One view protection requirements inconsistent with the terms and conditions of the CDP and the Settlement Agreement, and the Applicant has been directed to modify the plans to correct these inconsistencies.

4. Highway One Views - Other Development

Special Condition 1(c) requires all development located inland of buildings and related development (including signs) to be sited, designed, and screened to minimize its visibility in Highway One views to the maximum extent feasible. All visible development must be sited and

designed to blend into the dune aesthetic to the maximum extent feasible (including through colorization, natural materials, non-linear and curvilinear contouring, surface roughness, etc.).

With respect to signage, despite staff's continued comments on this issue (commencing with staff's comments on the originally submitted sign plans – see Exhibit 3), the plans continue to show large signs in the protected viewshed, including oversized monument-style resort signs that will be very visible from Highway One (see signs proposed in Exhibit 3). Although staff appreciates the need for signage that identifies the resort, the terms and conditions require that any such features be sited and designed to minimize visibility in Highway One views and to blend into the dune aesthetic to the maximum extent feasible. With respect to the resort entry sign, one manner of doing this is to eliminate the 15-foot by 40-foot sign backing, and allow for the resort lettering (at the size and scale proposed by the Applicant) to be placed directly on the retaining wall. Staff believes that lettering on the retaining wall that includes the resort's name can meet CDP requirements. The Applicant continues to insist on its proposed signs.

With respect to the gatehouse signage (proposed signs 2 and 3), these signs are both shown as 13 feet by 10 feet in size, and in locations where they will be visible from Highway One. As with the resort entry sign, there are likely other siting and design options that can appropriately address the visibility of these two signs. One way of addressing this issue is to move any such signage to the Highway One side of the entry road where it will not be visible from Highway One views but it will still be visible to visitors to the resort. It may also be possible to include some sort of low-profile (e.g., 48 inches or less in height) traffic calming and/or welcoming sign designed in a similar manner as the retaining walls if necessary. With respect to the tunnel signage (proposed signs 4 and 5), it is not clear why two more signs are necessary at this location, and, if these signs are necessary, it appears that similar view impact reducing measures can be applied (e.g., similar to the entry sign parameters), including where such signage is located along edges of the road, limiting their visibility in the Highway One view. Staff has presented these options to the Applicant, but the Applicant refuses to modify anything related to the signs.

In addition, the Applicant's proposed three-foot reduction in the 18-foot by 13-foot by 6-foot pie-shaped monument sign at the resort round-about (proposed sign 6) is inadequate to address the visual impacts as required by the condition. At such a large size and dimension, this proposed monument will still be starkly visible, and needs to be significantly modified and/or moved to avoid view impacts. This sign could be moved to the Highway side of the entry road out of view, and reduced in size and scale, as has been suggested by staff, but the Applicant is not interested in such changes. In short, the signs have not to date been significantly modified in response to staff's repeated comments indicating that they do not meet the CDP terms and conditions. In addition, there are also a series of sign issues related to the dune restoration and security that warrant changes to meet CDP terms and conditions.

Finally, signs have also not been shown in the context of an elevation, as is typical for CDP review packages, and this lack of elevations makes it more difficult to understand the visual impact of such elements. The same goes for all of the development in this case, buildings as well as other parts of the project (e.g., in addition to signs, the tunnels, roads, walls, fences, manipulated dunes, etc.). Absent elevations, staff has been forced to use the limited information available to assess condition compliance. Further plan submittal must include such elevations.

Thus, in short, the Applicant's plans do not conform to the CDP's Highway One view protection requirements inconsistent with the terms and conditions of the CDP and the Settlement Agreement, and the Applicant has been directed to modify the plans to correct these inconsistencies.

5. Fencing

In addition to the Highway One view requirements as stated above, the CDP includes very specific requirements for fencing. Special Condition 1(u) states:

All existing site fencing shall be removed and replaced with the minimum amount of fencing necessary to meet project objectives, and where such replacement fencing is minimized, sited and designed to be compatible with the dune landscape (e.g., rough-hewn wooden split rail, low rope and pole barriers for restoration areas as needed, etc.) and to minimize public view impacts to the maximum extent feasible.

Thus, this requirement anticipates that the starting point for understanding site fencing is where all fencing currently present has been removed, and there is no fencing on the site. At that point, fencing can be considered, but it must be minimized (and only what is necessary to meet project objectives is allowable), including to minimize public view impacts to the maximum extent feasible. In this case, the project objectives include both the development area, as well as the dune restoration and public viewshed protection requirements, all of which needs to be understood in terms of the significant viewshed within which the project is located. In this sense, fencing needs to be purpose driven and limited, including because fencing is antithetical to dune habitats and dune viewsheds.⁸

The Applicant contends that a 6-foot solid fence is needed along the entire southern property boundary as well as a portion of the northeastern boundary for security reasons. SNG's justification for this fencing is the historic use of the site by the public and the need to protect sensitive resources. As noted in each of staff's previous PTI condition compliance letters, the proposed 6-foot tall redwood perimeter fence with 6-inch planks is incompatible with the fencing requirements of the CDP. Such a fence will lead to incongruous development in the dunes inconsistent with visual and dune requirements of the CDP, and must be removed from the project.

In terms of addressing the need to deter trespassers, deterring trespassers once the site is developed will be less challenging on a fully developed site than it is on a vacant site. Per the condition requirement, the starting point is that all site fencing first be removed, and then it can be replaced by the minimum necessary to meet project objectives where such fencing is sited and designed to be compatible with the dune landscape and to minimize public view impacts to the maximum extent feasible. On this point the Applicant has interpreted 'project objectives' narrowly in terms of security needs for the resort. However, the intent of the condition is not that narrow, and the project objectives include ensuring that dune and public viewshed resources are protected to the maximum extent feasible. There is existing chain link fencing around the site,

⁸ For example, consistent with the Commission's approach to fencing within such dune areas where development is allowed, such as in the Asilomar Dunes in downcoast Pacific Grove where the Commission is not only not approving fences, but it is requiring removal of existing fences.

which has fewer visual impacts than the fencing the Applicant is proposing. Had the Commission intended Special Condition 1(u) to allow more visually intrusive fencing than that existing today, it would not have required removal of the existing fencing as a starting point and replacement with a fence that minimize impacts. Fencing is not something that is consistent with the dune aesthetic, and it introduces additional clutter in the viewshed. Past mere anecdotal observations, the Applicant has not submitted justification for such perimeter fencing. If conclusive evidence to the contrary is provided, staff is prepared to work on siting and design of fencing that can address identified security issues, such as potentially targeted and more limited fencing (e.g., split rail fence or other less intrusive fencing options).

Thus, the Applicant's plans do not conform to the CDP's fencing requirements inconsistent with the terms and conditions of the CDP and the Settlement Agreement, and the Applicant has been directed to modify the plans to correct these inconsistencies.

6. Dune Restoration Plan

Staff and the Applicant are in disagreement over the requirements of Special Condition 3 and the overall extent of the dune restoration area. Special Condition 3 provides for dune habitat restoration and stabilization of all areas outside of the development areas as well as for all the dune extension and screening areas. Staff insists that the dune restoration plan applies to all areas outside of the development footprint, including the areas between the tunnel access points, the sand dune areas between the roadway and public path, the path and property line, and essentially all sandy areas not covered by approved development. Providing additional support for staff's position, Special Condition 4 specifically states that the dune conservation easement shall apply to the dune restoration area described in Special Condition 3 and generally depicted in Exhibit 11a to the Commission-approved staff report (see Exhibit 4). This exhibit generally follows the development footprint with an exception for the fire access road and main resort driveway/public access parking lot. Although the Commission allowed some additional development in the areas covered by this exhibit, it did not modify the area to be covered by the dune conservation easement. The easement itself will specify what development is allowed in the area covered by the easement, but the depiction of the dune easement area and the metes and bounds legal description of the area must be consistent with that shown generally in the adopted staff report.

Second, there are a number of areas around the perimeter of the actual physical development on the site that are classified as "developed" but in reality are either foredune or backdune (including but not limited to the dunes between the access tunnels, the area seaward of the fire access road, a triangular shaped area in the very northeast corner of the property, and the dunes between the resort driveway and public access path). As acknowledged above, some minimal development, such as a subsurface water tank, existing well-head, and geothermal well, will be allowed in these areas, but they must still be included within the dune restoration area and covered by the dune easement.

Third, with regard to the dune restoration plan specifics, Special Condition 3(a) requires that restoration be premised on enhancing dune habitat so that it is self-functioning, high quality habitat in perpetuity. The submitted plan provides a planting plan for the sandy areas seaward of the proposed resort development, but does not include a plan to actually re-create a natural looking and/or functioning "dune" environment. The submitted plans show the entire site seaward of the development graded and/or filled to a uniform 32-foot NGVD. More broadly in

terms of the dune restoration plan, it needs to then provide the appropriate guidance and implementation measures to restore these and other sandy areas as functioning dune. The starting point for dune habitat is the dunes themselves, and the plan does not yet provide for the establishment of dune hummocks, mounds, and similar dune formations tied to the specific of the restoration area (including in terms of wind patterns, specific sensitive species needs, etc.). Without such dune formation specific, the site restoration is unlikely to support plant recolonization and natural regeneration, is not likely to “enhance sensitive species habitats, including at a minimum snowy plover and Smith’s blue butterfly habitats” as required by Special Condition 3(d), and this area is not likely to function as “self-functioning, high quality habitat in perpetuity” as is required. These are areas where it appears minimal work between the Applicant and staff can resolve such issues, but the Applicant is apparently uninterested.

Additionally, as discussed Special Condition 1(o) (see below), stormwater infrastructure (including bio-filtration areas, engineered stormwater filters, piping, and dry well pits) are proposed in locations reserved for dune restoration, and this is not authorized by the CDP. These stormwater facilities need to be accommodated within the allowed development areas of the site, and not within the protected dune areas. There appears to be ample space, including both under and inland of the fire road, to accommodate such infrastructure, and staff has communicated this to the Applicant, but the Applicant is unwilling to make any such changes.

Finally, the submitted Dune Restoration Plan does not provide any specific provisions to protect and enhance sensitive species habitats, including for Western snowy plover and Smith’s blue butterfly as required by the Special Condition 3(d), which states:

Special provisions shall be applied to explicitly enhance sensitive species habitats, including at a minimum snowy plover and Smith’s blue butterfly habitats, as part of dune restoration activities, and such provisions shall be consistent with applicable state and federal agency requirements for these species.

The plan states that “specific monitoring and management activities will be applied to enhance habitat for sensitive species”, but does not define what those activities are beyond mentioning that the site will be restored and outlining biological goals to “avoid take of Smith’s blue butterfly and Western snowy plover.” These are appropriate construction goals but not adequate to satisfy the requirements of Special Condition 3(d). Staff has suggested that the Applicant coordinate with the California Department of Fish and Wildlife and the United States Fish and Wildlife Service in the preparation of plan revisions as the condition requires that the provisions in the restoration plan “shall be consistent with applicable state and federal requirements for these species” and those agencies implement the State and Federal Endangered Species Acts. The Applicant has not been interested in pursuing such coordination to date, including as the Applicant intends to work on such issues with these agencies to the extent necessary through the parameters of Special Condition 15, a prior to construction (not prior to issuance) condition.

On this point it is noted that staff has consistently encouraged the Applicant to work on the Habitat Protection Plan (HPP) identified in Special Condition 15 in the near term, including as it may have a significant material effect on the project (see August 29, 2014 and November 14, 2014 letters in Exhibit 7). Again, although this is not a condition that must be met before the CDP is issued, it is important to note that Special Condition 15 requires confirmation of other

agency approvals subject to certain criteria, and requires a modified HPP that incorporates standards to address certain U.S. Fish & Wildlife Service concerns (see Special Condition 15 in Exhibit 5). Special Condition 15 also requires submittal of any changes to the plans for the project that may be necessary to comply with the approved modified HPP and/or agency requirements, all prior to construction. It seems possible if not likely that other agency consultations and revisions to the HPP may require material changes to the project that will affect many of the materials submitted for PTI requirements, perhaps most clearly the case with the revised final plans pursuant to Special Condition 1. Although staff has worked diligently with the Applicant on PTI condition requirements, even when all of the PTI submittals have been approved they may still need to be modified at a later date prior to construction if those HPP or agency changes dictate. That will mean a whole new round of submittals and revisions. Although not required, it would appear to be a more prudent use of time and resources to resolve the agency and HPP issues now so that they can inform the sign off of the plans that must be approved prior to issuance of the permit, thus ensuring that the current plan materials submitted for PTI compliance don't end up needing to all be revised at a later date at potentially significant cost and time. Staff has consistently suggested to SNG that the revised HPP be prepared and submitted, and that agency consultations be pursued as needed consistent with Special Condition 15, as soon as possible. Nonetheless, the Applicant has indicated that they will pursue the revised HPP and any necessary agency consultations at a later time, notwithstanding that the revised HPP and/or agency requirements may lead to the need to change project plans, potentially in significant ways.

In any case, the Applicant's plans do not conform to the CDP's dune restoration requirements inconsistent with the terms and conditions of the CDP and the Settlement Agreement, and the Applicant has been directed to modify the plans to correct these inconsistencies.

7. Public Access Management Plan

Special Condition 5 requires the submittal of a Public Access Management Plan designed to address and provide for the public access areas and amenities of the site. On July 31, 2014 Commission staff received a copy of the Applicant's Plan, and provided comments and direction on modifications necessary to meet the requirements of the CDP, including as recently as staff's November 14, 2014 letter (see Exhibit 7). To date, however, although different plan sheets associated with the revised plans requirements of Special Condition 1 have been submitted, the Public Access Management Plan itself has not yet been updated. Many components of the Plan have evolved or have been required to be modified via the compliance review process, including with regard to the public access amenities, lighting, signage, fencing, etc., and which have not been carried forward into the Plan. Although it has been fairly clear in discussions between the Applicant and staff that these measures need to be carried forward into a standalone Plan, this has yet to occur. The Plan is intended to function as a standalone document that will guide and govern public access use of the site, and it is critical that all related materials be brought back into the Plan. In addition, it affects and is affected by other portions of the PTI condition requirements, including that it is a required exhibit for the Public Access Easement OTD, and it will need to be complete and approved in its final form before the OTD can be recorded and that condition signed-off as well (see also below).

Further, Special Condition (1)(i)(2) requires that the public access pathway system that extends from the upcoast edge of the parking lot to the beach overlook be a wooden boardwalk. The

Applicant has proposed the use of a non-wood material for this path, inconsistent with the CDP. The plans must therefore be modified to illustrate the use of wood for the public access boardwalk.

In addition, the Applicant maintains that it has provided adequate and appropriate signage to manage and direct public access and hotel patrons. However, staff believes that directional access signs are also needed along the public access parking lot and out to the public overlook and bottom of the public beach access stairs. As no information is provided on the proposed "Dune" signs, which appear to be redundant to the habitat protection/interpretive type signs and thus they should be eliminated to avoid unnecessary clutter. All signs must be sited and designed to integrate into the dune aesthetic (i.e., natural materials, muted colors, diminutive in size, etc.) and placed in areas that minimize impacts on public views, including via the minimum number of signs addressing the above-described issues.

Finally, Special Condition 5(h) requires the Applicant to provide for the construction and development of 35 offsite public beach access parking spaces to meet LCP and Coastal Act requirements. The Applicant has not yet submitted information describing how this requirement will be met.

Thus, the Applicant's plans do not conform to the CDP's public access requirements inconsistent with the terms and conditions of the CDP and the Settlement Agreement, and the Applicant has been directed to modify the plans to correct these inconsistencies.

8. *OTDs for Dune Conservation and Public Access*

Special Conditions 4 and 6 require the submittal of dune conservation and public access easements (see Exhibit 5). The Applicant claims that the submittals were not timely reviewed and that the original submittals have thus been approved. Staff does not agree. Staff received the initial drafts of the Irrevocable Offer of Dedication for the Public Access Easement (Public Access OTD) (required pursuant to Special Condition 6) and Dune Area Conservation Easement (Dune Conservation OTD) (required pursuant to Special Condition 4) on July 31, 2014. In its August 29, 2014 compliance letter, staff responded to the Applicant's submittal indicating that the OTDs were incomplete and could not be fully reviewed because they must incorporate information from the Public Access Plan (Special Condition 5) and the Dune Restoration Plans (Special Condition 3), neither of which have been approved. That response also provided more general comments regarding the inconsistency with the dune conservation easement area depiction with the approved area shown in adopted staff report Exhibit 11a (see Exhibit 4), as described above. Similar comments were made regarding the public access easement area and that the OTDs must be recorded free of all prior liens and encumbrances that may affect the interests being conveyed. This was done within the 30-day review period prescribed by the Settlement Agreement. Staff provided similar timely responses to the Applicant following each revised submittal of the OTDs including the most recent February 3, 2015 submittal. On February 16, 2015, staff provided specific recommendations for addressing irregularities with the metes and bounds description of the public access easement OTD. That was followed up with an entire revised draft of the dune conservation easement OTD language and graphic depiction of the easement area on March 5, 2015 (because there are only 28 days in February, this was a timely response, despite the Applicant's allegation to the contrary). Staff responded to the Applicant's submittal within the 30-day timeframe provided in the Settlement Agreement.

With regard to the Applicant's argument that the dune conservation easement is inaccurate and doesn't provide exceptions for monitoring wells, dry wells, path lights, and storm drain infrastructure, staff notes that the graphic depiction of the dune conservation easement area forwarded to the Applicant is consistent with the Commission's approval of the easement area in Exhibit 11a (see Exhibit 4). As to the remaining utilities and infrastructure, it is staff's position that the stormwater facilities can appropriately be accommodated within the development footprint (i.e., inland or beneath the fire access road). The monitoring wells can be included in the exceptions in the conservation easements and the pathway lights should be appropriately removed.

The Applicant's plans do not conform to the CDP's OTD requirements inconsistent with the terms and conditions of the CDP and the Settlement Agreement, and the Applicant has been provided the direction necessary to correct these deficiencies.

9. Lighting

Special Condition 1(l) requires lighting be limited to the minimum amount necessary for pedestrian and vehicular safety purposes. This includes limiting the amount of light or glare visible from public viewing areas such as Highway One, Fort Ord Dunes State Park, the beach, recreational amenities, recreational trail, and the Monterey Peninsula. The Applicant submitted correspondence from Janet Ilse with EMC Planning Group in support of the proposed lighting. While staff appreciates Ms. Ilse's opinion that lighting has been minimized, staff noted to the Applicant that the submitted lighting plan includes more than 100 lights of various sizes and lumens on project pathways and roadways; 74 of those lights are proposed for the resort and public access paths seaward of the development in public view and dune restoration areas. The original proposed project plans in front of the Commission in April 2014 showed 40 lights along the resort and residential paths and no lighting along the public access pathway.

As noted in staff's November 14, 2014 compliance letter (see Exhibit 7), the resort pathway lighting scheme appears excessive, not wildlife friendly, and it does not limit the amount of light or glare visible from public viewing areas. Staff has requested but not received a visual analysis of the effects of the lighting on Highway One views and the nighttime sky, and inadequate materials otherwise have been provided to demonstrate compliance with the terms and conditions of the CDP (i.e., evidence that it is necessary for safety purposes and/or evidence that the light wash and glare has been limited to the maximum extent feasible, etc.). Other similar resorts in the southern Monterey Bay do not have any dune path or beach lighting (see Asilomar Dunes Conference Grounds in Pacific Grove or the nearby Sanctuary Beach Hotel in Marina). And many dune area pathways have no lights at all, consistent with their use as a nighttime feature. Further, even low lighting of the dunes can subject vulnerable species, such as Western snowy plover, to increased predation by attracting predators. The sheer number of lights proposed out into the dunes would appear likely to create a glow in this area of the site as seen from public vantages such as Highway One, the beach, and Fort Ord Dunes State Park. The requested lighting evaluation materials would help to refine lighting changes that are necessary, but at this juncture it appears that reducing the number of bollards along the resort entry road and parking area by half, and eliminating all pathway lighting of the public and resort vertical access paths, can serve to meet this aspect of the CDP. Staff has communicated this approach to the Applicant, but SNG has been unwilling to change lighting.

Thus, the Applicant's plans do not conform to the CDP's lighting requirements inconsistent with the terms and conditions of the CDP and the Settlement Agreement, and the Applicant has been directed to modify the plans to correct these inconsistencies.

10. Stormwater and Drainage

The submitted plans include detail on the proposed stormwater system such as the use of bio-infiltration basins, bubblers, and other storm water features. Of primary concern is the placement of these features within areas of dune reserved for native dune restoration and conservation easement. Special Conditions 1(k) and 3 prohibit the use of non-native plant species within dune restoration areas, and Special Condition 3 requires this area to be used for dune restoration only. These storm water measures need to be accommodated within the allowed development areas of the site, and not within the protected dune areas. There appears to be ample space, including both under and inland of the fire road, to accommodate such infrastructure. Thus, the Applicant's plans do not conform to the CDP's stormwater and drainage requirements inconsistent with the terms and conditions of the CDP and the Settlement Agreement, and the Applicant has been directed to modify the plans to correct these inconsistencies.

11. Resort Pathways

The resort pathways extend into an area historically used by Western snowy plover to access the foredunes. To meet Dune Restoration Plan and Conservation Easement requirements (Special Conditions 3 and 4, respectively), staff has recommended siting the resort pathways further south towards the edge of the big dune. The Applicant has thus far not made this change. Thus, the Applicant's plans do not conform to the CDP's Dune Restoration Plan and Conservation Easement requirements inconsistent with the terms and conditions of the CDP and the Settlement Agreement, and the Applicant has been directed to modify the plans to correct these inconsistencies.

12. "Existing" Road

With regard to the Applicant's plan annotations identifying an "existing road" in the northeast corner of the site, the Applicant maintains that SNG has an "existing road" in this area.⁹ Staff does not agree, and notes that it has not been established that there exists an existing road in this area. It is clear that the sandy area there has been manipulated over time, but it is unclear to what degree this constitutes a pre-CDP requirement road.¹⁰ There is no dispute that there does not exist any CDP authorizing a "road" in this area. This issue was the subject of much discussion in the time leading up to the Settlement Agreement and ultimately the Commission's CDP approval. Ultimately, it was agreed that the issue of the road would not be a part of this CDP. As a result, staff has consistently informed the Applicant that any references to an existing road in this area needed to be removed, as the Commission did not approve a road in its action.

The Applicant recently submitted new plan sheets that call this area out as "existing access - not part of this approval." Staff believes that this statement more accurately reflects the current feature, but at the same time that it does not confer any CDP status on it. It is important to note

⁹ The "road" area is not part of the access road for the development, and rather is an additional area north of the end of such access road.

¹⁰ CDPs for a road would have been required starting on February 1, 1973 pursuant to Proposition 20, "the Coastal Initiative" and the precursor to the 1976 Coastal Act..

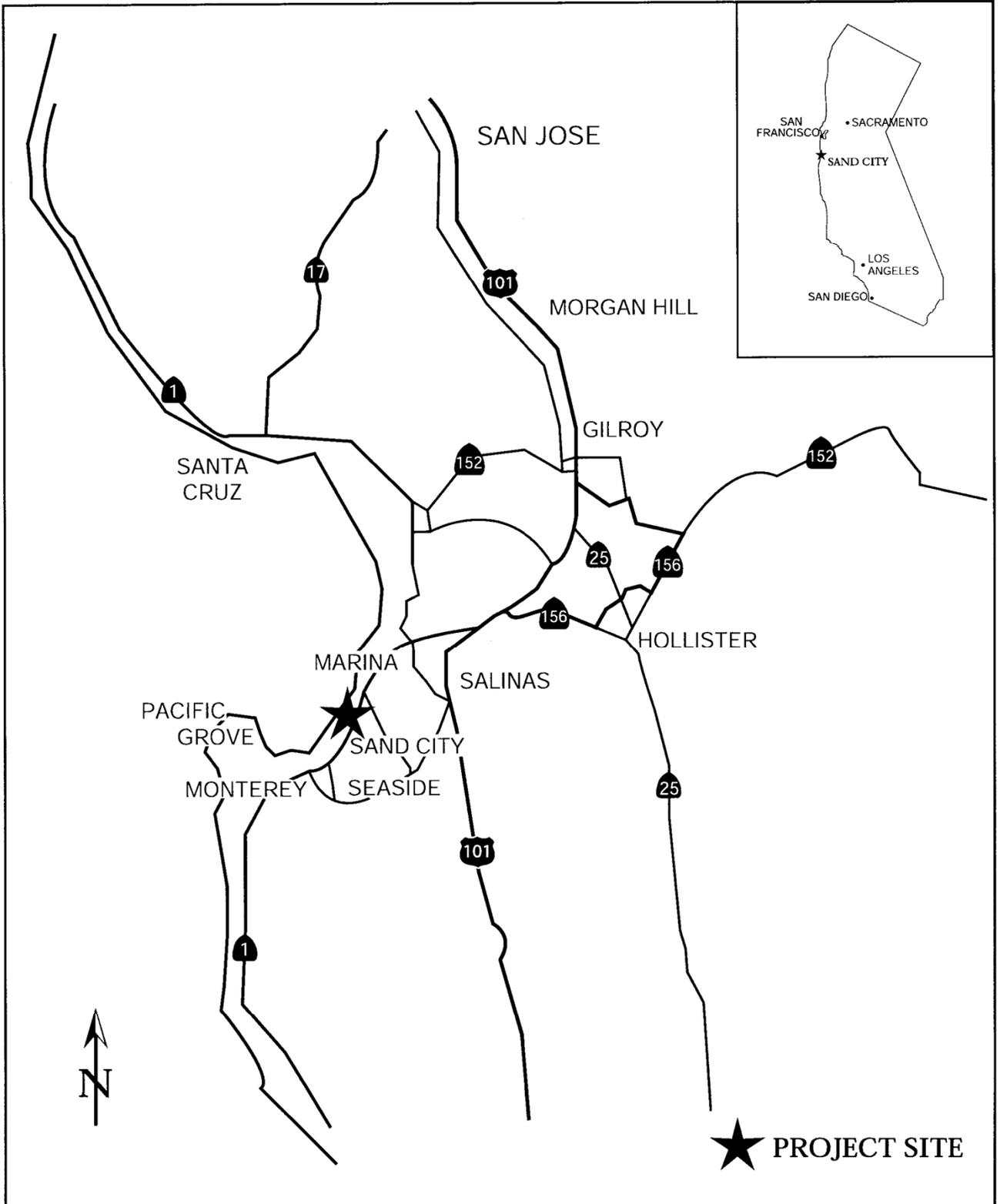
that this area is in the approved Dune Restoration Area and subject to dune restoration requirements. The Applicant appears to be intending to carve out a road to access ESHA property north of the property line in Monterey County. These two objectives are not compatible. Thus, although the recently identified label satisfies staff, it must be understood in terms of the site restoration context, and all that goes along with being part of a dune restoration area, and not as a means to try to accommodate additional non-dune restoration related development in this area.

12. Views Overall

Special Condition 1(v) states:

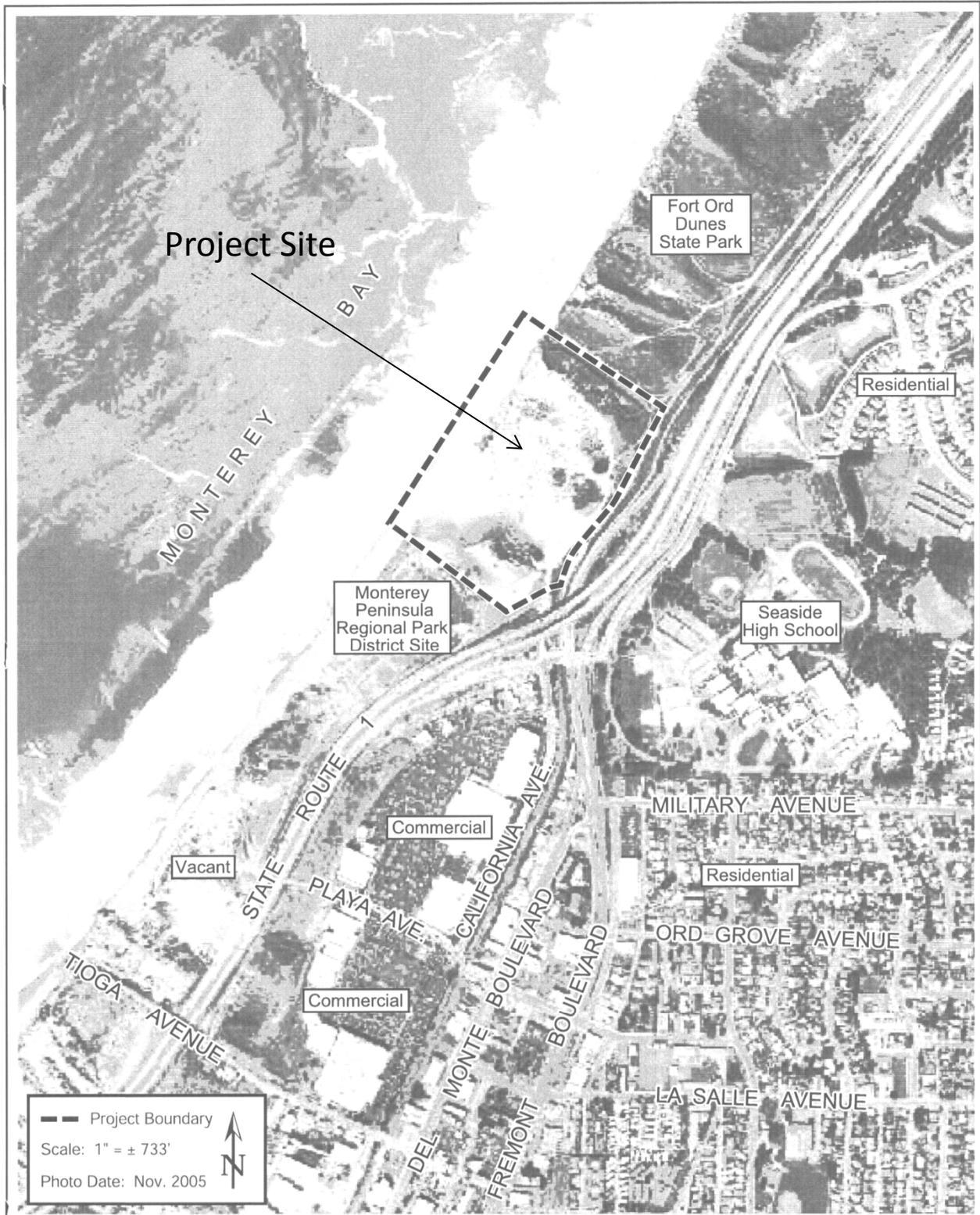
Views. All development shall be sited, designed, colored, screened, and camouflaged (including making maximum use of integrated dune screening and natural landscaping and screening elements to the maximum extent feasible) to minimize visual incompatibility with the existing dune landscape and public views.

The Applicant contends that it has complied with Special Condition 1(v) because it claims to have met the terms of all the other conditions. Staff notes that the requirements of Special Condition 1(v) are overarching, and generally affect all of the issues discussed above. This condition requires that all parts of the development, from buildings to roads to retaining walls to paths to signs to other development in view, minimize visual incompatibilities with the dune landscape and public views. Although a standalone requirement, it really is meant to be overlaid atop other condition requirements to ensure that it is clear that this primary objective is required to be met by the project overall. The issues and necessary plan changes described above must also be understood in terms of Special Condition 1(v) as well. Thus, the Applicant's plans overall do not conform to the CDP's view protection requirements inconsistent with the terms and conditions of the CDP and the Settlement Agreement, and the Applicant has been directed to modify the plans to correct these inconsistencies.



REGIONAL LOCATION MAP

FIGURE 1



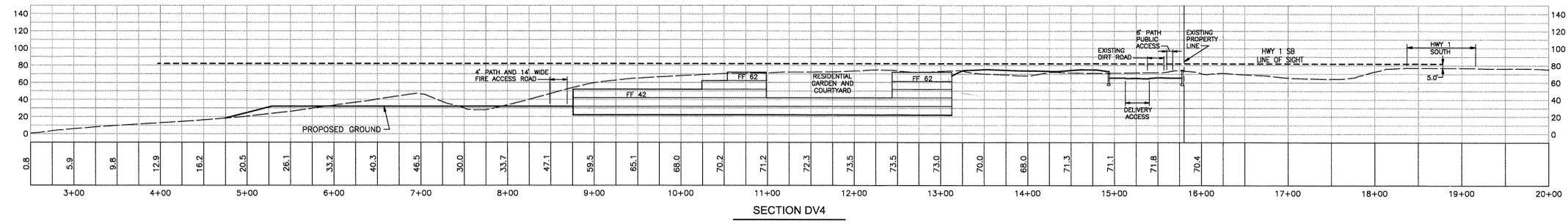
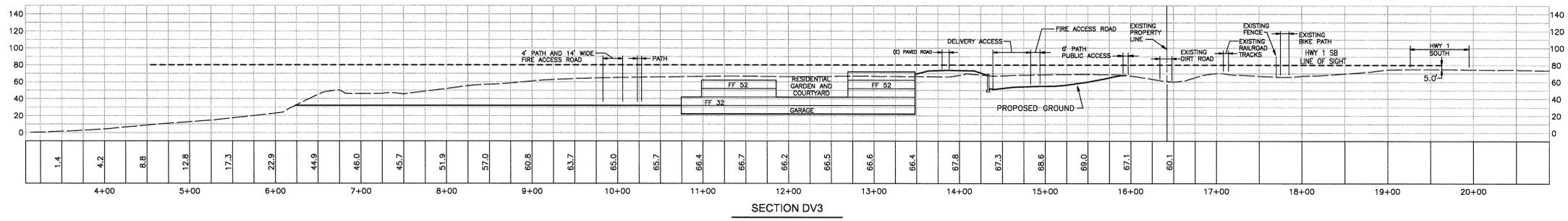
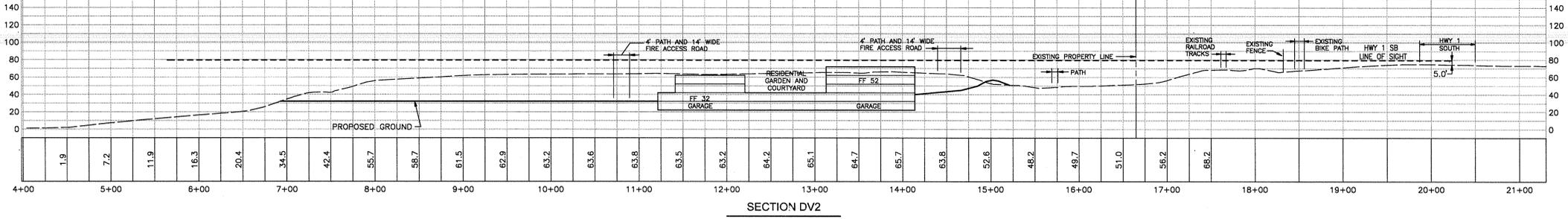
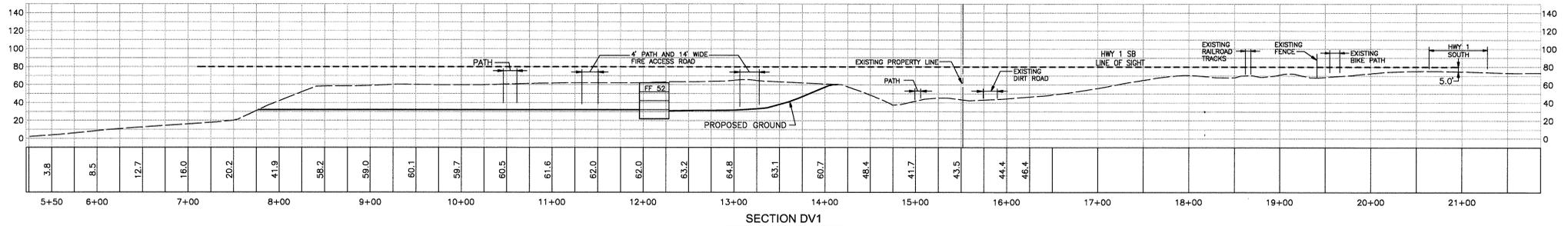
AERIAL PHOTOGRAPH & SURROUNDING LAND USES

FIGURE 3



Source: California Coastal Records Project Aerial 200508214

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SURVEY NOTE:

VTM ELEVATIONS, SITE PLAN, FINISHED GRADE AND CROSS SECTIONS ARE BASED ON CURRENT TOPOGRAPHIC SURVEY CONDUCTED JUNE 9, 2014 FOR THE SITE DATED JUNE 9, 2014 (T-01).

SCALE: 1"=60' H & V

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REVISIONS

12/8/14	UPDATE
2/22/15	UPDATE
3/12/15	UPDATE

DESIGNED BY: STAFF
 DRAWN BY: STAFF
 DATE: PRELIMINARY
 NAME: ENGINEER
 RCE:



BESTOR ENGINEERS, INC.
 CIVIL ENGINEERING - SURVEYING - LAND PLANNING
 9701 BLUE LARKSPUR LANE, MONTEREY, CALIFORNIA 93940

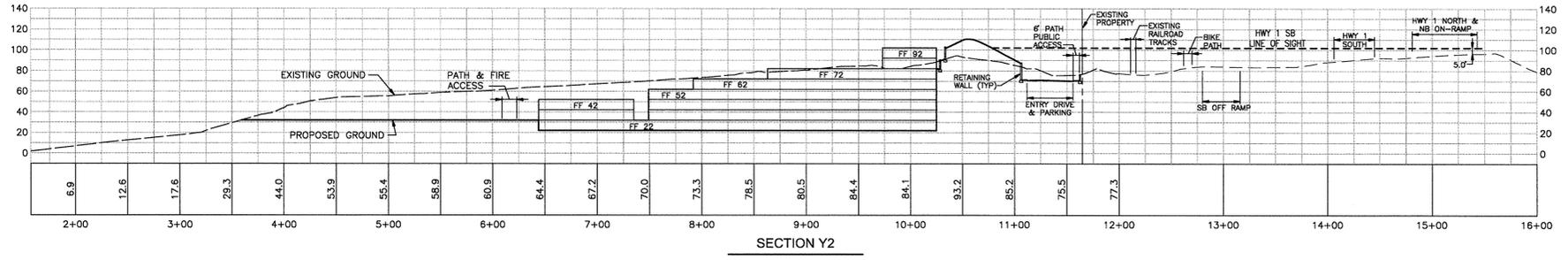
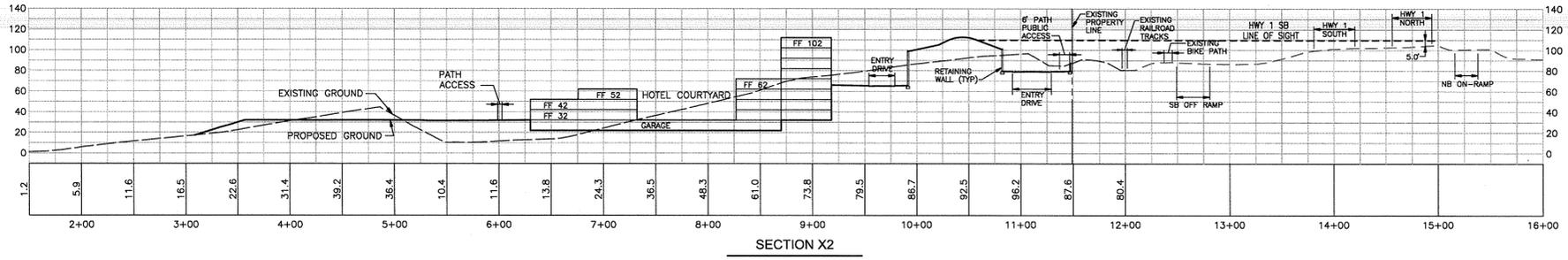
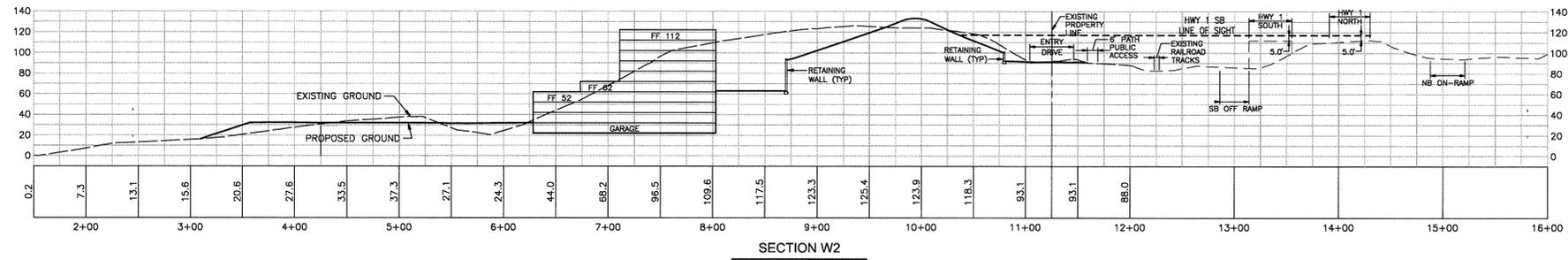


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 MAR 16 2015
 CALIFORNIA COASTAL COMMISSION
 CENTRAL COAST AREA

PREPARED FOR: SNG DEVELOPMENT COMPANY
ROAD SECTIONS
 MONTEREY BAY SHORES
 APN 011-501-014
 COUNTY OF MONTEREY, CALIFORNIA

SCALE:	1"=60'
DATE:	12/18/14
SHEET:	TM-6
WO:	OF 9 SHEETS
	4641.04

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SCALE: 1"=60' H & V
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△ 1/22/15 UPD	
△ 3/12/15 UPD	
DESIGNED BY	STAFF
DRAWN BY	STAFF
DATE:	PRELIMINARY
NAME	ENGINEER
RCE:	
EXP:	



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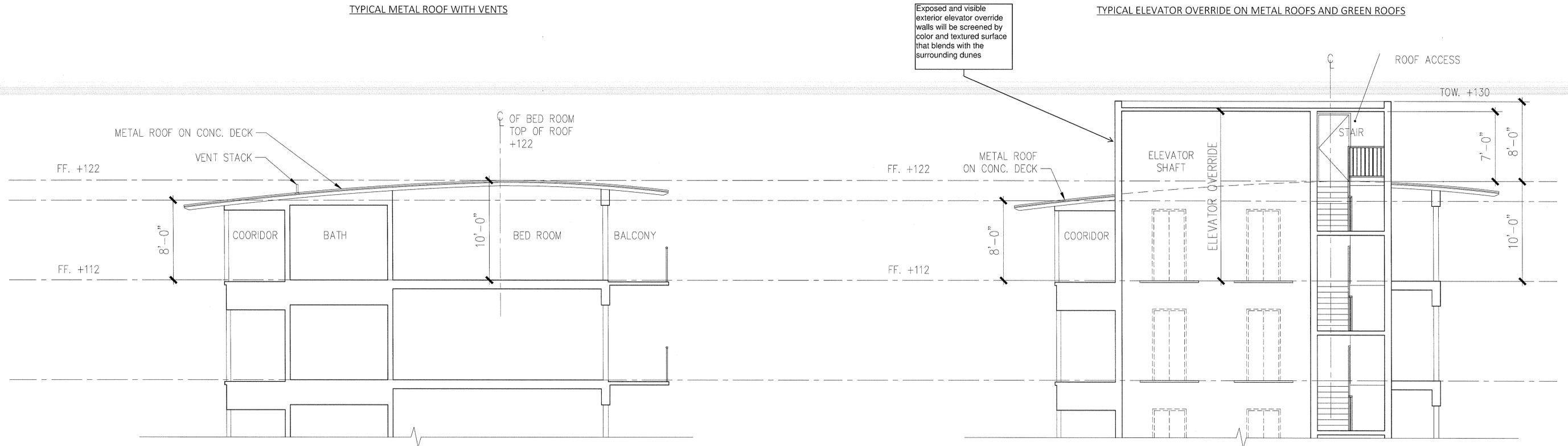
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 COUNTY OF MONTEREY, CALIFORNIA

SCALE:	1"=60'
DATE:	12/18/14
SHEET:	TM-7
	OF 9 SHEETS
WOR:	4641.04

TYPICAL METAL ROOF WITH VENTS

TYPICAL ELEVATOR OVERRIDE ON METAL ROOFS AND GREEN ROOFS



A SECTION THRU METAL ROOF
1/8" = 1'-0"

A SECTION THRU ELEVATOR SHAFT
1/8" = 1'-0"

ROOF SECTIONS

CONCEPTUAL FLOOR PLANS
Monterey Bay Shores Resort

WATG



SCALE: 1" = 60'-0"

DATE: 27 JANUARY 2015

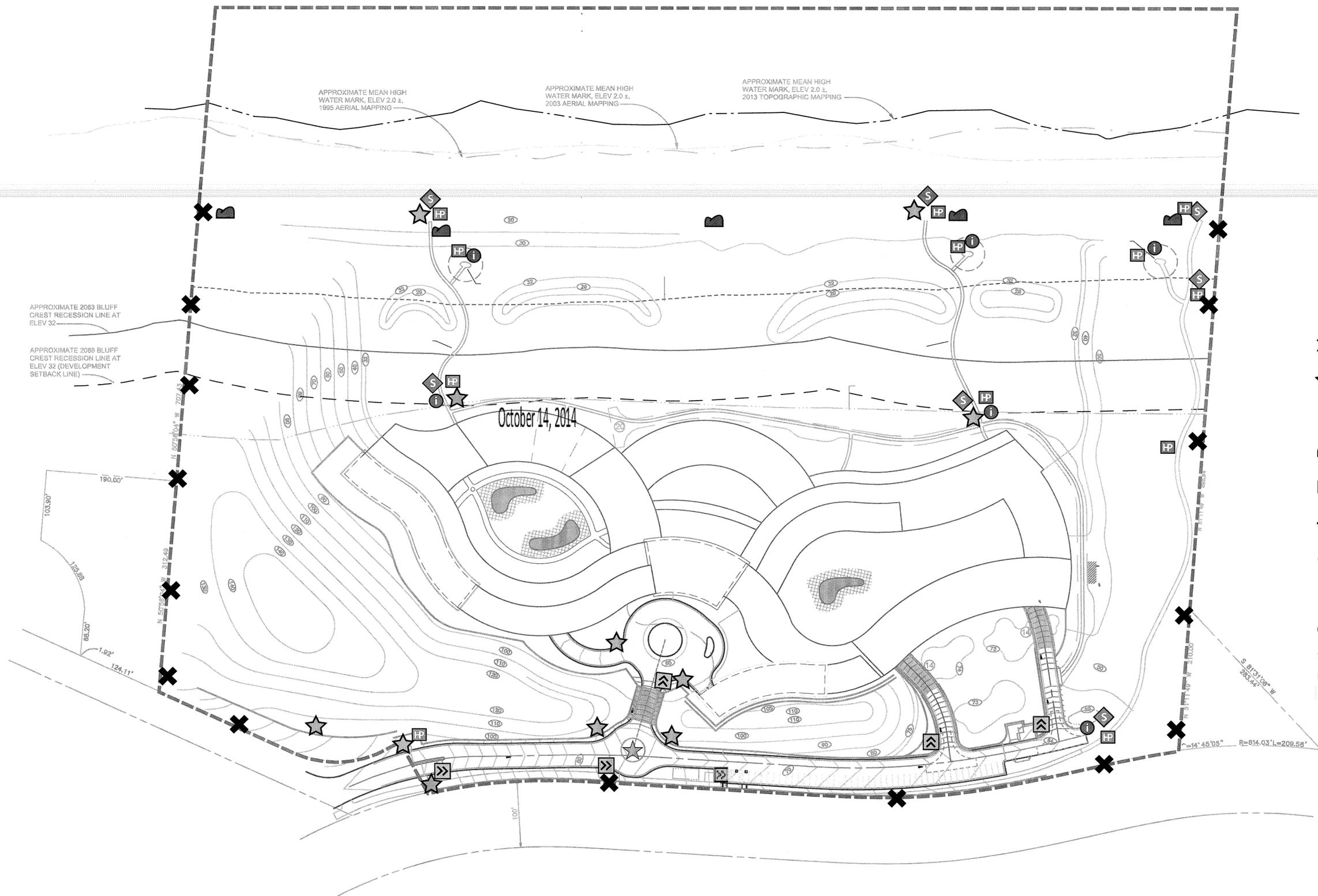
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SIGNAGE PLAN

Conceptual Sign Locations



Legend

- Project Boundary
- Boundary
- Resort
- Access/Directional
- Dune
- Habitat Protection
- Safety
- Informational/Interpretive

0 60 feet

Source: Bestor Engineers 2014
Date: 10/06/14
UPDATED: MARCH 12, 2015

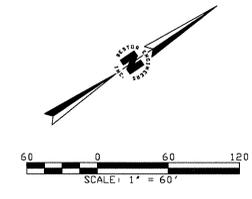


MONTEREY BAY SHORES RESORT

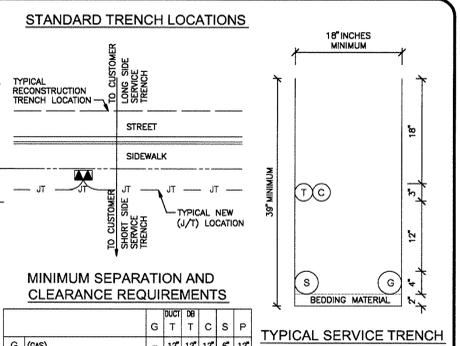
Monterey Bay Shores RECEIVED
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CENTRAL COAST AREA
Ecoresort, Wellness Spa, and Residences



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 39.044 AC



MINIMUM SEPARATION AND CLEARANCE REQUIREMENTS

	DUCT	TR	TS	CS	SP
G (GAS)	-	12"	12"	12"	12"
T (TELEPHONE) DUCT	12"	-	1"	12"	12"
T (TELEPHONE) DIRECT BURY	12"	1"	-	12"	12"
C (CIVIL)	12"	1"	1"	-	12"
S (ELECTRIC SECONDARY)	6"	12"	12"	-	14"
P (ELECTRIC PRIMARY)	12"	12"	12"	12"	-
SL (STREET LIGHT)	6"	12"	12"	1"	14"

TYPICAL SERVICE TRENCH

SEPARATION AND CLEARANCE DEFINITIONS

COVER:
THE TERM "COVER" MEANS THE RADIAL DISTANCE BETWEEN THE SURFACE OF AN UNDERGROUND CABLE, CONDUIT, PIPE, OR OTHER SUBSTRUCTURE AND THE SURFACE ELEVATION (GRADE).

BACKFILL:
THE TERM "BACKFILL" REFERS TO THE MATERIALS USED TO REFILL A CUT OR OTHER EXCAVATION, OF THE ACT OF SUCH REFILLING AFTER ANY NEEDED SHADING IS PERFORMED.

SHADING:
THE TERM "SHADING" REFERS TO THE MATERIALS USED TO PROVIDE A MEASURE OF SEPARATION BETWEEN FACILITIES INSTALLED AT DIFFERENT LEVELS WITHIN AN EXCAVATION OR CUT.

LIFT:
THE TERM "LIFT" IS A LAYER OF FILL AS SPREAD OR AS COMPACTED OR A MEASUREMENT OF MATERIAL DEPTH THAT IS THE RATED EFFECTIVE SOIL DEPTH A COMPACTOR CAN ACHIEVE.

BEDDING:
THE TERM "BEDDING" REFERS TO THE MATERIALS INSTALLED BENEATH FACILITIES AT THE BOTTOM OF A CUT OR OTHER EXCAVATION INTENDED TO PROVIDE SUPPORT AND/OR PROTECTION FOR THOSE FACILITIES.

REVISIONS
 3/12/15 UPDATE

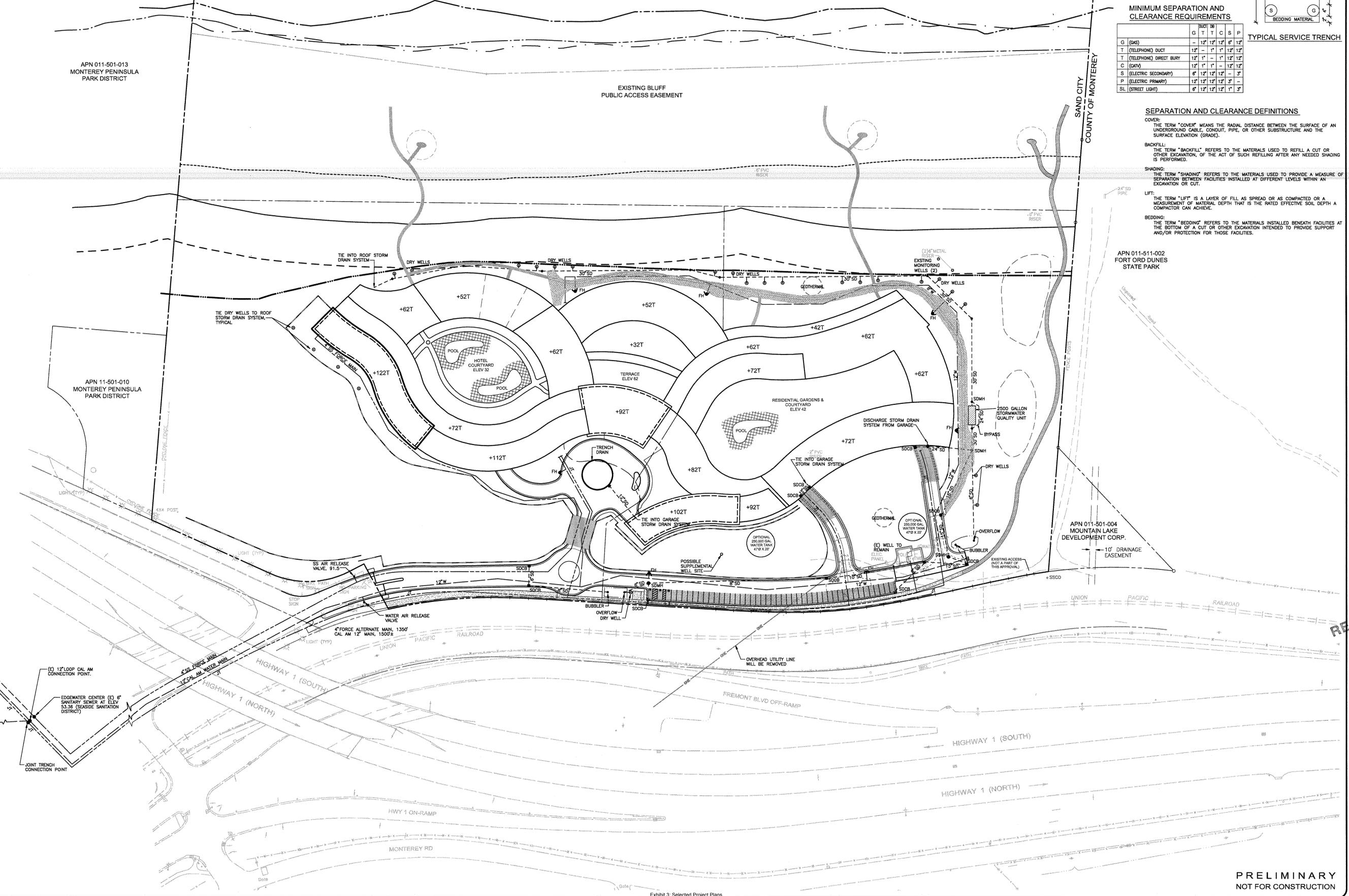
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 COUNTY OF MONTEREY

SCALE: 1" = 60'
 DATE: 1/12/14
 SHEET: 1 OF 1
 WO: 4641.04



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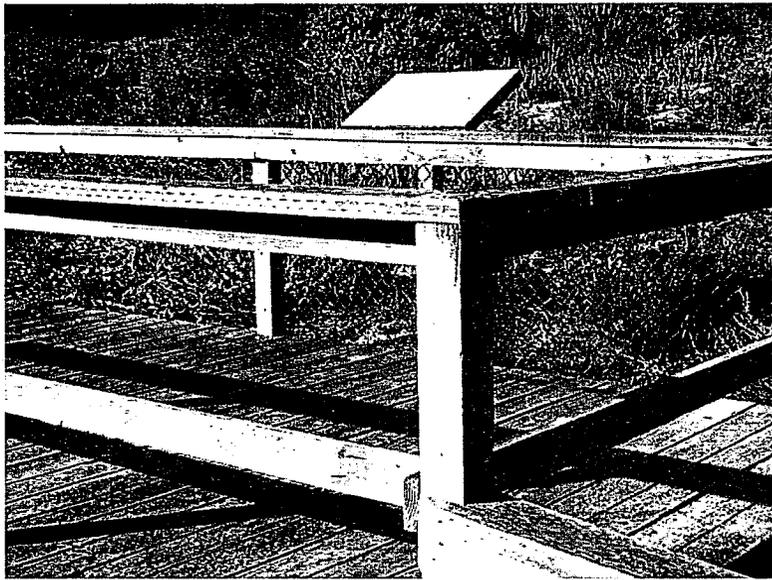


Figure 11
Vista Points

Access, Signage, and Lighting Plan



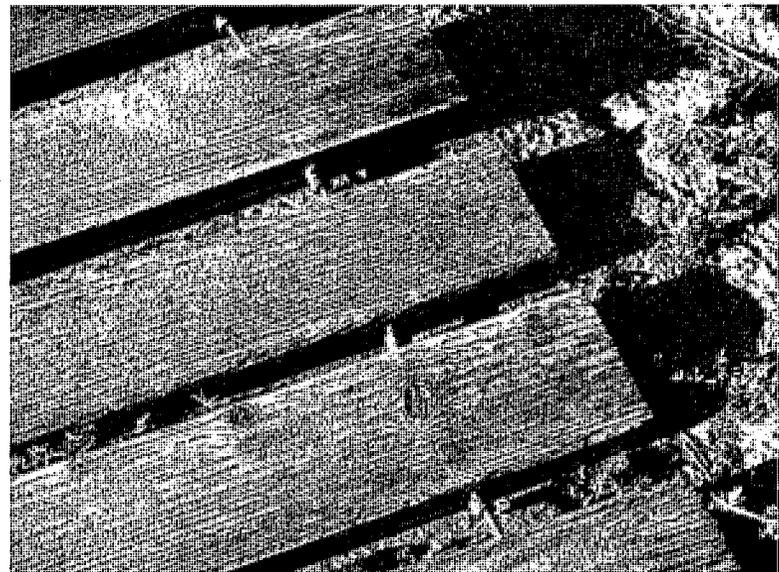
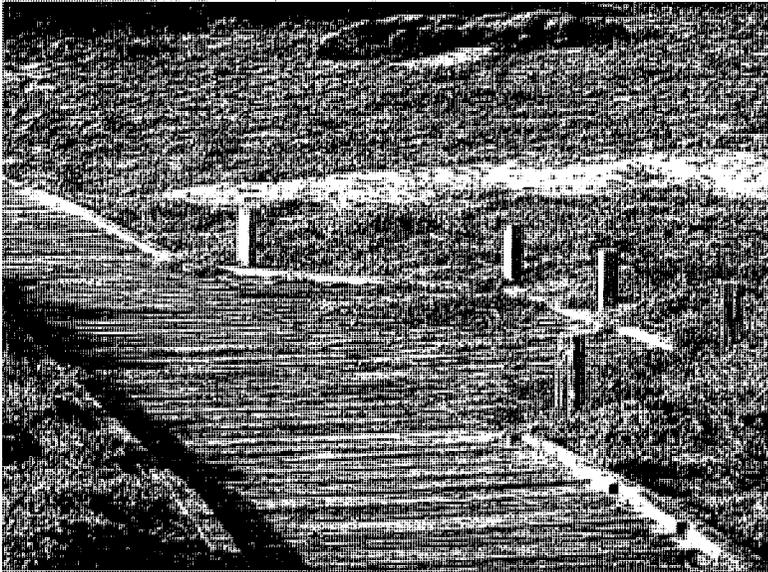
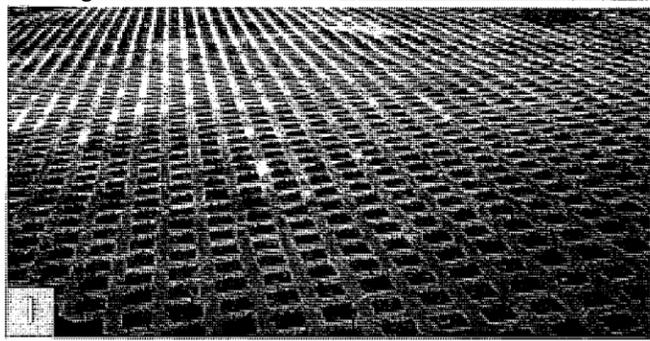


Figure 9
Boardwalk

Access, Signage, and Lighting Plan

Paving



Green Pavers at EVA

Green pavers are used in the Emergency Vehicle Access route. Planted with native ground cover species, the EVA green pavers will visually blend into the surrounding dune landscape.

Signage Types

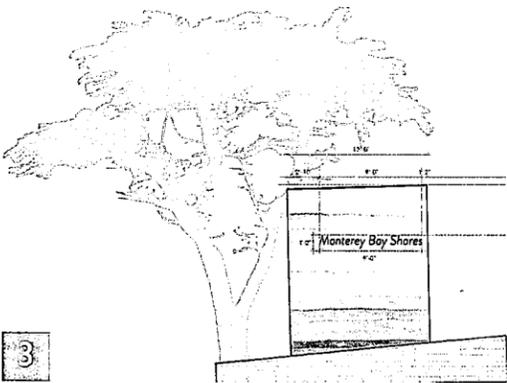
Proposed signage utilizes naturalistic materials such as rammed earth, which mimic the colors and tones of the surrounding landscape and minimizes visual impact on the site. The retaining wall and sign at the entry draw upon the undulating forms of the dunes, incorporating curvilinear shapes. The planting of native species adjacent to the retaining wall and entry sign helps soften their appearance, allowing them to blend into the landscape.

Monterey Bay Shores

RESORT, WELLNESS SPA, AND RESIDENCES



Retaining Wall & Entry Sign



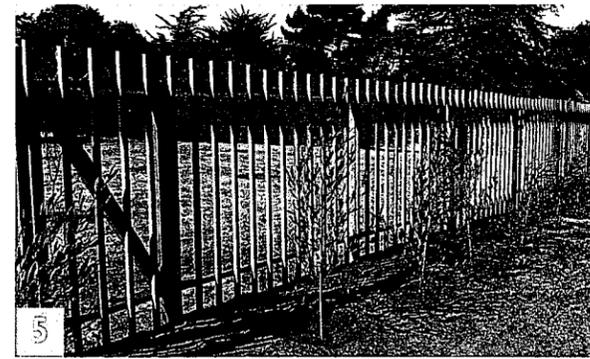
Roundabout Sign



Tunnel Sign

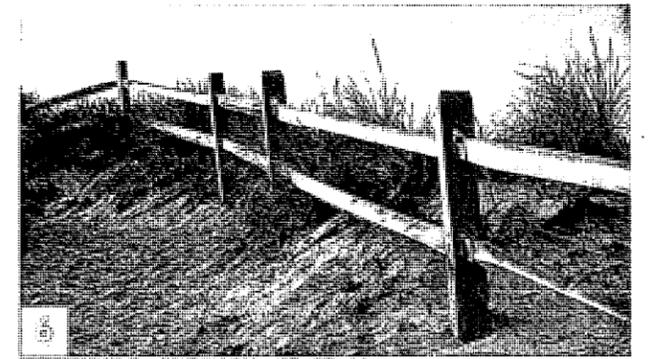
Fence and Wall Types

Along the site's southern edge, retaining walls are necessary for dune stabilization. The color and finish of the retaining wall will match the natural tones of the landscape, and the wall's appearance will be softened by adjacent vegetation. Split rail weathered wood fences are prioritized throughout the site in order to minimize visual impacts, but at certain locations along the property lines, more taller and more durable fencing is necessary for site security. The following fence styles are selected for the following reasons: they utilize natural materials and site-appropriate color tones; they do not create solid barriers; they have a low profile; and they have been utilized in previous critical viewshed projects approved by the Coastal Commission (such as the Pacific Grove Golf Course and the Asilomar State Beach).



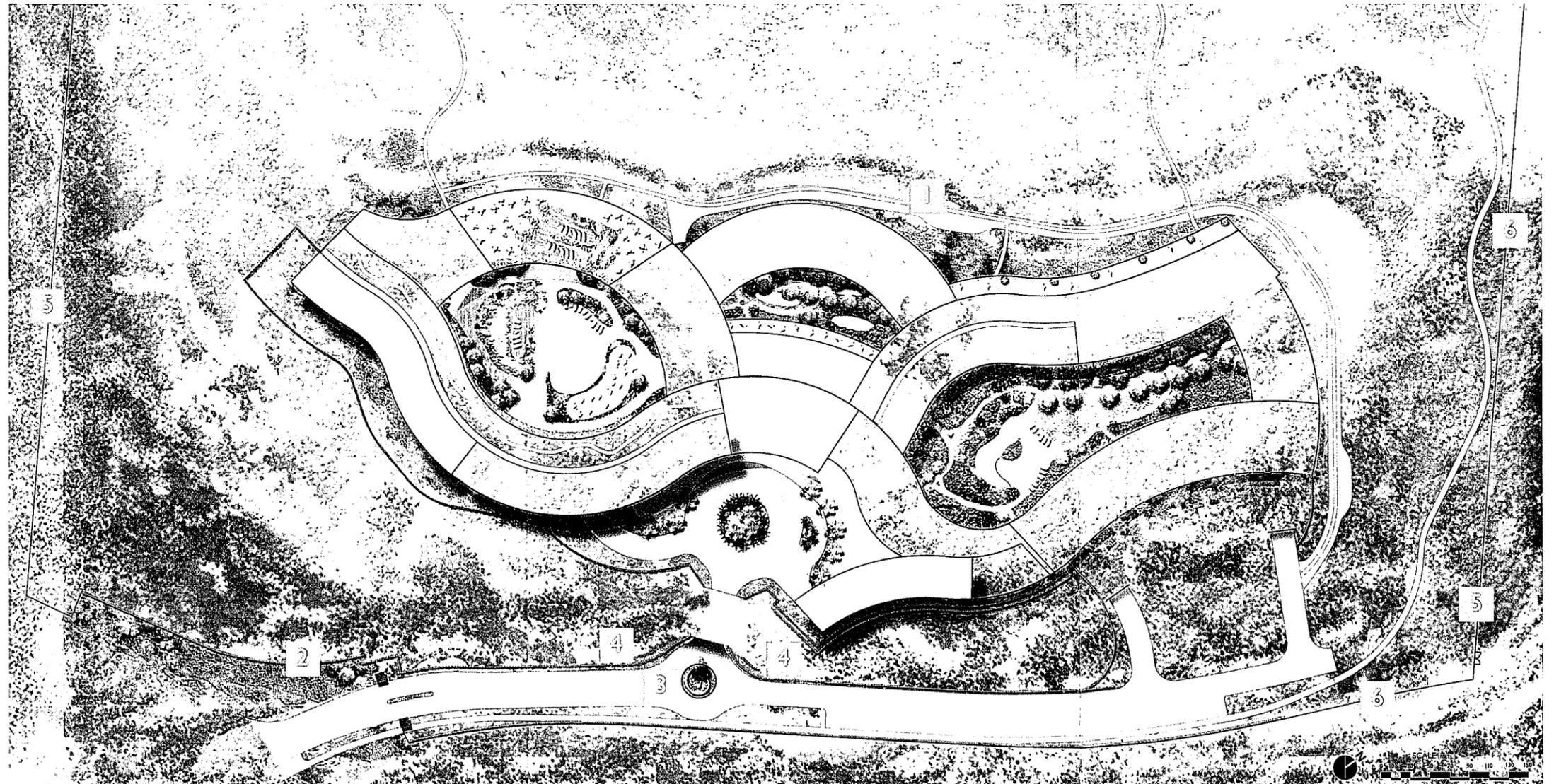
6' Fence On Southern Property Line & Adjacent Northern Property

Fencing along the south and a section of the north property lines will have a roughly 6'0" tall x 6" wide redwood fence boards with pointed/tapered tops and ~3" spacing between boards.



Split Rail Fence

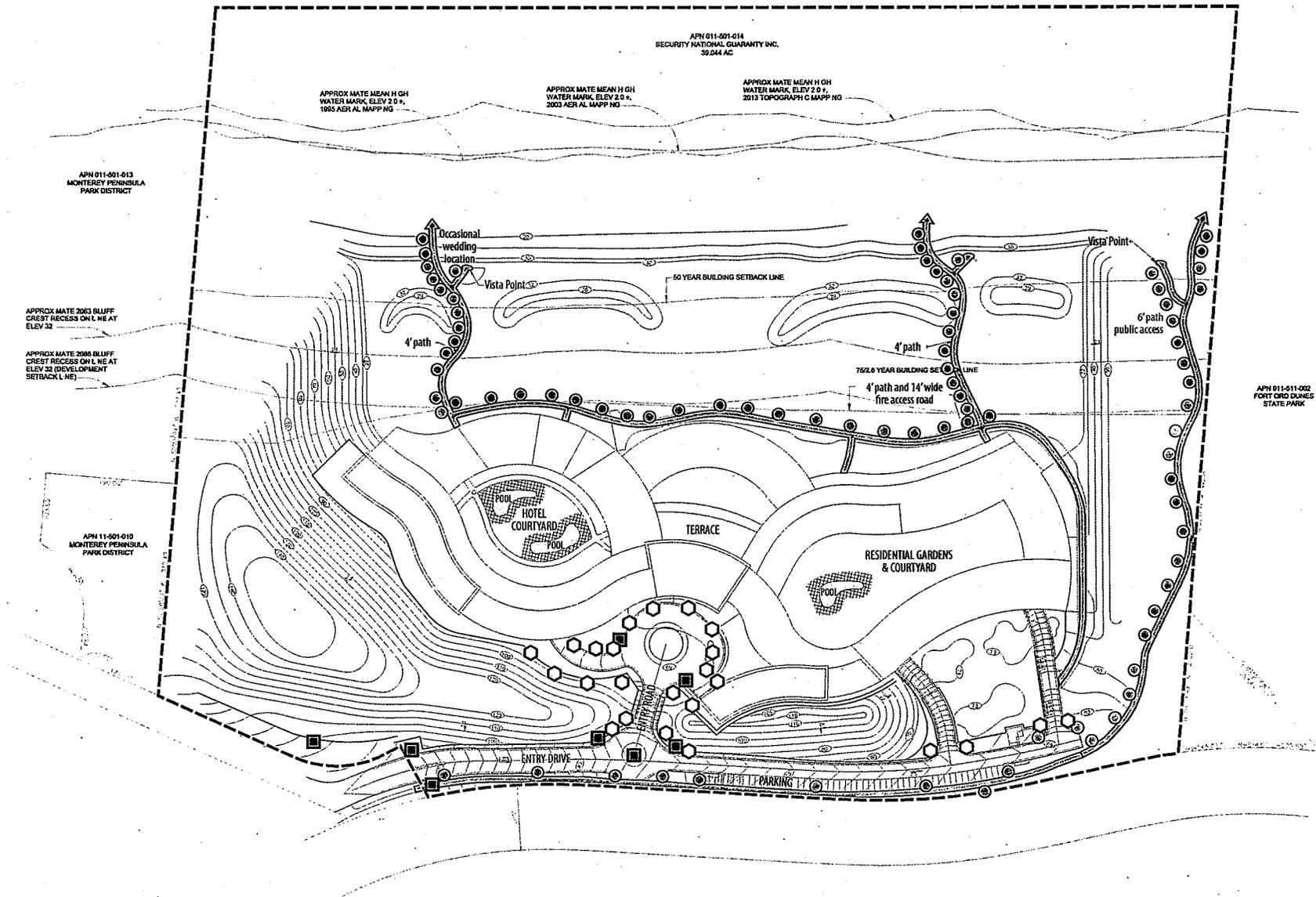
A split rail fence will run along the entire eastern property line. This fence will also follow the northern property line from the bluff to the adjacent property boundary, where the fence will transition to a 6' fence.



LANDSCAPE SITE ELEMENTS

Monterey Bay Shores

Ecoresort, Wellness Spa, and Residences



Source: Bestor Engineers 2014

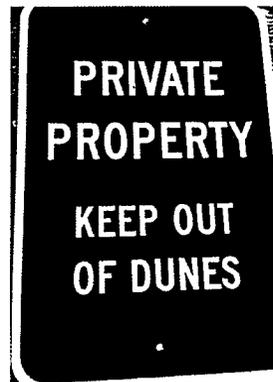
Figure 18
Conceptual Exterior Lighting Locations

Access, Signage, and Lighting Plan





Upper Beach Signage Example



Lower Beach Signage Example

Figure 17
Boundary Signage

Access, Signage, and Lighting Plan

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

JUL 07 2014

CALIFORNIA
 COASTAL COMMISSION
 CENTRAL COAST AREA



NOTICE OF INTENT TO ISSUE COASTAL DEVELOPMENT PERMIT

CDP A-3-SNC-98-114 (Monterey Bay Shores Resort)

NOI Issue Date: May 30, 2014¹

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Please note: this is NOT a coastal development permit

A coastal development permit (CDP) for the development described below has been approved but is not yet effective. Development on the site cannot commence until the CDP is effective. The sole purpose of this notice of intent (NOI) is to inform the permittee(s) of the steps necessary to obtain a valid and effective CDP. In order for the CDP to be effective, Commission staff must issue the CDP, and the permittee(s) must sign and return a copy of the CDP to the Commission. Commission staff cannot issue the CDP until each of the “prior to issuance” (PTI) conditions have been fulfilled (all of the conditions, including the PTI conditions, for this CDP are identified later in this notice).

Unless otherwise specified, the Commission’s approval of this CDP is valid for five years from the date of approval. To prevent expiration of the CDP, the permittee(s) must fulfill the PTI conditions, obtain and sign the CDP, and commence development within five years of the approval date specified below (unless otherwise specified). The permittee(s) may also apply for an extension of the CDP pursuant to California Code of Regulations, Title 14, Section 13169.

CDP A-3-SNC-98-114

CDP A-3-SNC-98-114 was approved by the California Coastal Commission on April 11, 2014 and allows the applicant to construct a 368-unit mixed-use residential and visitor-serving facility in the dunes seaward of Highway One, between Fort Ord Dunes State Park and the Monterey Peninsula Regional Park District’s (MPRPD) Eolian Dunes Preserve in the City of Sand City in Monterey County. The project includes a land division of a roughly 40-acre parcel into three parcels, construction of 184 hotel rooms, 92 visitor-serving condominium units, 92 residential condominium units, hotel and residential courtyards, a restaurant, conference center, spa, garden, 3 swimming pools, and surface and underground parking for 947 vehicles. In total, the project would result in some 1.34 million square feet of resort and residential facilities spread out over roughly 12 acres. The project also includes a roadway extension from inland public roads, three entrance driveways, public access trails and amenities, dune restoration, utility extensions and infrastructure, and related development (i.e., emergency access road, tunnel access to resort, signs, fences, lights, trails, etc.). Roughly 700,000 cubic yards of grading and nearly 400,000 cubic yards of sand disposal are also proposed (all as more specifically described in the Commission’s CDP file). CDP A-3-SNC-98-114 is subject to certain terms and conditions, including the standard and special conditions beginning on page 2 of this NOI.

¹ This NOI dated May 30, 2014 supersedes and replaces the NOI dated April 21, 2014. The NOI dated April 21, 2014 is of no further force nor effect.

NOTICE OF INTENT TO ISSUE CDP CDP A-3-SNC-98-114 (Monterey Bay Shores Resort)

NOI Issue Date: May 30, 2014

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If you have any questions regarding this notice, including regarding how to fulfill the PTI conditions, please contact Mike Watson in the Central Coast District Office at the address and phone number above.

NOI issued

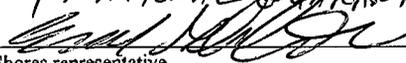
By my signature below, this notice of intent to issue a CDP is issued on behalf of the California Coastal Commission on April 21, 2014.

 5/30/2014

Dan Carl, Central Coast District Director, for Charles Lester, Executive Director

Acknowledgement

The undersigned permittee(s) acknowledge receipt of this notice and fully understand its contents, including all conditions imposed. **Please sign and return a copy of this notice to the Central Coast District Office at 725 Front Street Suite 300, Santa Cruz, CA 95060.**

SECURITY NATIONAL GUARANTEE INC.
By:  7-2-14
Monterey Bay Shores representative Date
ETS: President

I. 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 Permittee or authorized agent, acknowledging receipt of the permit and acceptance of the terms and conditions, is returned to the Commission office.
- 2. Expiration.** If development has not commenced, the permit will expire five 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 of 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.



California Coastal Commission

NOTICE OF INTENT TO ISSUE CDP CDP A-3-SNC-98-114 (Monterey Bay Shores Resort)

NOI Issue Date: May 30, 2014

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5. **Terms and Conditions Run with the Land.** These terms and conditions shall be perpetual, and it is the intention of the Commission and the Permittee to bind all future owners and possessors of the subject property to the terms and conditions.

II. SPECIAL CONDITIONS

This permit is granted subject to the following special conditions:

1. **Revised Plans.** PRIOR TO ISSUANCE OF THE CDP, the Permittee shall submit two full size sets of Revised Plans with graphic scale to the Executive Director for review and approval. The Revised Plans shall be prepared by a licensed professional or professionals (i.e., architect, surveyor, geotechnical engineer, etc.), and shall be based on current professionally surveyed and certified topographic elevations for the entire site. The Revised Plans shall be substantially in conformance with the VTM, site plans, and cross-sections sheets TM-1 – TM-6 submitted to the Coastal Commission (dated October 21, 2013 as revised on October 28, 2013, December 20, 2013, and January 17, 2014 and dated received in the Coastal Commission's Central Coast District Office January 3, 2013 and January 30, 2014) as shown on Exhibit 4 – 6; the MBS Access, Signage and Lighting Plan (dated October 2013 and dated received in the Central Coast District Office October 28, 2013 –Exhibit 23); and the Habitat Protection Plan (dated October 2013 and dated received in the Central Coast District Office October 28, 2013 –Exhibit 20), but shall be modified to achieve compliance with this condition, including that the Revised Plans shall show the following required changes and clarifications to the project:

- (a) **Dune Manipulation for Screening Purposes.** The project includes re-contouring of the protected dune feature, an extension of the protected dune feature to the north, and dune field manipulation north of the extended dune for screening purposes. Dune field manipulation north and northwest of the extended dune view line (see Exhibit 8x [i.e., the Applicant's dune view line shown on sheets TM-2 and TM-6; see pages 2 and 5 of Exhibit 4]) shall be limited to a finished elevation generally equal to existing grade except that undulations in height may go up to a maximum of 3 feet greater than existing grade to allow for replicated dune landscaping. All such dune manipulation shall be designed to replicate natural dune landforms and integrate into the surrounding dunes to the maximum extent feasible.
- (b) **Highway One Dune Screening for Buildings and Related Development.** All building and related development shall be sited and designed so that views of it from either southbound or northbound Highway One (from a height of 5 feet above the roadway) are blocked by existing and/or modified dune features (including through extending dune areas over the top of such development, as applicable) in such a way that such views are of dunes and not of buildings and related development, except that buildings and related development are allowed to be visible in the southbound Highway One view if located inland of the dune view line (see Exhibit 8x [i.e., the Applicant's dune view line shown on sheets TM-2 and TM-6; see pages 2 and 5 of Exhibit 4])). The Revised Plans shall be submitted with documentation demonstrating compliance with this requirement.



NOTICE OF INTENT TO ISSUE CDP CDP A-3-SNC-98-114 (Monterey Bay Shores Resort)

NOI Issue Date: May 30, 2014

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- (c) **Highway One Dune Screening/View Mitigation for Other Development.** All other development located inland of buildings and related development (e.g., road access, tunnel access, parking areas, pathways, etc.) shall be sited, designed, and screened in such a way as to minimize its visibility in Highway One views to the maximum extent feasible, including through utilizing below grade development as appropriate to meet such standard. All development that is visible (including any retaining walls – see also below) shall be sited and designed to blend into the dune aesthetic to the maximum extent feasible (including through colorization, natural materials, non-linear and curvilinear contouring, surface roughness, etc.).
- (d) **Road Development Minimized.** All road development (providing access to the project through the tunnels as well as access to the project to the north) shall be minimized consistent with the VTМ. No other road development is authorized by this CDP, thus any proposed future road development shall require either an amendment to this CDP or approval of a separate CDP.
- (e) **Height Limits.** Development height shall be limited as necessary to meet the requirements of this condition, and in no case shall development exceed 45 feet above existing grade for hotel and condominium-hotel components (hotel and condominium-hotel components include facilities commonly included in hotels and condominium-hotels such as restaurants, meeting rooms, shops for hotel guests, and spa facilities), and 36 feet above existing grade for all other development. The Revised Plans shall be submitted with documentation demonstrating compliance with this requirement, including through site plans and architectural elevations prepared and certified by a licensed architect that identify all hotel and condominium-hotel components versus other components of the project, and evidence demonstrating why components fall into either category.
- (f) **Visitor-Serving Priority Maintained.** If a fewer number of units can be accommodated in order to meet the terms and conditions of this CDP, then the mix of units shall be maintained at the same ratio as proposed (i.e., 184 standard hotel units, 92 visitor-serving condominium hotel units, and 92 residential condominium units), or at a ratio that results in a higher percentage of standard hotel units than proposed and the same or a higher percentage of visitor-serving condominium hotel units than proposed. In no case shall the ratio of residential condominium units to other units increase as compared to that proposed.
- (g) **Foredune Grading.** Foredune grading shall be allowed as low as 32 feet above NGVD only in areas directly seaward of buildings and for the fire access road, and only where such grading is designed to: (1) replicate natural dune landforms and integrate into the surrounding dunes to the maximum extent feasible; and (2) meet the other requirements of this condition. Other foredune grading, other than for approved dune restoration and/or public access purposes, shall be prohibited.
- (h) **Resort Pathways.** The portion of the resort pathways (not including public access pathways) that extend southwest and on top of the protected dune feature shall be eliminated from the project, leaving two resort pathways extending toward the ocean and one along the fire access road. These remaining resort pathways shall be sited and designed to blend into the dune



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aesthetic (including through colorization, natural materials, non-linear and curvilinear contouring, surface roughness, etc.) as seen in public views to the maximum extent feasible. Any portion of the resort pathways that extend to the beach from the buildings and related development shall be sited and designed to minimize landform alteration and to conform to the bluffs to the maximum extent feasible, to eliminate or minimize (if elimination is not possible) railings, and to minimize impacts on public views.

(i) **Public Access Amenities.** The Revised Plans shall clearly identify all public access amenities to be provided as part of the approved development, including but not limited to:

1. **Parking Lot.** A public parking lot providing 46 full-size parking spaces. The parking lot shall be surfaced (including curbs and gutters) with permeable pavement or permeable concrete colored to blend with the surrounding dune environment as much as possible. A minimum of ten bicycle parking stands; three recycling bins; three trash bins; one water fountain; three ADA parking spaces; and one doggie mitt station, shall be provided in the parking lot in locations that maximize their public utility and minimize their impact on public views. The parking lot shall be ADA compatible.
2. **Pathway System.** A dedicated public pathway system that extends from the inland public recreational trail adjacent to and along the public parking lot and then to an overlook atop the bluff and then to the beach via a stairway/path. The portion of the pathway system that extends from the public recreational trail to and along the public parking lot (to the upcoast edge of the parking lot) shall be a similar width as the inland public recreational trail, but shall be surfaced with permeable pavement or permeable concrete colored to blend with the surrounding dune environment as much as possible from at least the point where it enters onto the subject property, and shall include separation from the road and parking utilizing concrete curbs, bumpers, or other barriers to insure safety of pedestrians and bike riders. The portion of the pathway system that extends from the upcoast edge of the parking lot to the overlook shall be a wooden boardwalk approximately 6 feet in width. All portions of the pathway system, other than the beach stairway/path, shall be ADA compatible, and shall be curvilinear (and not linear) in appearance to the maximum extent feasible.
3. **Overlook.** A public overlook near the blufftop edge of approximately 300 square feet. The overlook shall be a wooden boardwalk surface, and shall be sited and designed to eliminate the need for railings to the maximum extent feasible (e.g., setback a sufficient distance from the blufftop edge so as to not necessitate such features). At least: three benches; one interpretive panel/installation; one recycling bin; one trash bin; and one doggie mitt station, shall be provided at the overlook in locations that maximize their public utility and minimize their impact on public views. The overlook shall be ADA compatible.
4. **Beach Stairway/Pathway.** A public beach stairway/pathway providing access down the bluff and to the beach from the overlook location. The stairway/pathway shall be sited and designed to minimize landform alteration and to conform to the bluffs to the maximum extent feasible, to eliminate or minimize (if elimination is not possible) railings; to avoid to the



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maximum extent feasible construction and post-construction impacts to sensitive species, including seacliff buckwheat; and to maximize public utility and minimize impacts on public views. The public beach stairway/pathway may extend onto Fort Ord Dunes State Park if such extension is allowed by State Parks, and if such extension better meets the intent of this condition, including in terms maximizing public access utility and protecting dune landforms and public views.

5. **Signs.** Public access identification, interpretation, and direction signs. At a minimum, public access identification and direction signs shall be placed where the pathway system connects with the inland public recreational trail, at the base of each Fremont Street off-ramp, at the entrance to the approved project (where it meets the public street), at or near the point where the tunnel entrance diverges from the parking lot entrance, at the entrance to the parking lot, at the beginning of the boardwalk section of the pathway system (at the parking lot), at the base of the beach stairway/pathway, and at other locations where identification and direction is necessary and appropriate. The Permittee shall also make reasonable efforts to work with Caltrans to install a Coastal Commission Public Access ("Feet") sign on both southbound and northbound Highway One, provided that the Permittee shall not be responsible for any decision made by Caltrans regarding such signage or for the installation or maintenance of such signs. The Permittee shall pay for such signage, including installation costs, upon Caltrans consent for such signs. At least one interpretive panel/installation that provides interpretation of the site, dunes, erosion and coastal hazards, the Monterey Bay, or other related and/or similar subjects shall be provided at the overlook. Signs shall include the California Coastal Trail and California Coastal Commission emblems and recognition of the Coastal Commission's role in providing public access at this location. All signs shall be sited and designed to maximize their utility and minimize their impacts on public views.

The public access amenities shall utilize a similar design theme that is subordinate to and reflective of the surrounding dune environment to the maximum extent feasible. Natural and curvilinear forms (e.g., curving pathway segments, rounded overlook areas, etc.) shall be used to the maximum extent feasible. The public access amenities portion of the Revised Plans shall be in conformance with all parameters of the Public Access Management Plan (see Special Condition 5). Minor adjustments to the above requirements may be allowed by the Executive Director if such adjustments enhance public access and public view protection and do not legally require an amendment to this permit.

- (j) **Setbacks.** All development, other than (1) public access pathways, overlooks, and stairways, (2) resort pathways, (3) foredune grading down to 32 feet above NGVD (subject to the requirements of this condition), and (4) dune restoration (subject to the approved dune restoration plan – see below), shall initially be located inland of the 75 year at 2.6 feet per year setback line as shown on Exhibit 9 of the adopted findings (using the inland edge of the line). [Exhibit 9 of the adopted findings shall be the same as Exhibit 20a of the staff report dated November 20, 2009 and prepared for the December 11, 2009 hearing on the application.] As circumstances dictate, development shall be removed and the affected area restored (subject to Special Condition 9 requirements), with the same allowable seaward located exceptions.



California Coastal Commission

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- (k) **Landscaping.** All non-native and/or invasive plants on the site, including iceplant, shall be removed and the site kept free of such plants for as long as any portion of the approved development exists at this site. All landscaping, other than decorative landscaping within interior courtyards and similar areas (such as the port cochere area), shall consist of only non-invasive dune species native to the Sand City and southern Monterey Bay dune systems (see also Special Condition 3 below). 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. The Revised Plans shall include certification from a licensed landscape professional experienced with native dune species indicating that all plant species to be used are non-invasive dune species native to the Sand City and southern Monterey Bay dune systems.
- (l) **Lighting Minimized.** Exterior lighting shall be wildlife-friendly, shall use lamps that minimize the blue end of the spectrum, and shall be limited to the minimum lighting necessary for pedestrian and vehicular safety purposes. All lighting (exterior and interior) shall be sited and designed so that it limits the amount of light or glare visible from public viewing areas (including but not limited to views from Highway One, Fort Ord Dunes State Park, the recreational trail, the public access amenities, the beach, and areas across Monterey Bay (e.g., Cannery Row) to the maximum extent feasible (including through uses of lowest luminosity possible, directing lighting downward, directing lighting away from windows, etc.). Lighting upcoast of the main tunnel entrance (i.e., along the pathways, parking lot, and fire road access), shall be prohibited other than the minimum lighting necessary for pedestrian and vehicular safety purposes. Otherwise allowable lighting from the public road to the main tunnel entrance shall be limited to pathway and roadway bollards 48 inches or less in height, and any such allowable lighting extending north and seaward from the main tunnel entrance shall be bollard or footing lighting that is as low to the ground as feasible. Overhead light standards and decorative pole lights shall be prohibited. The Revised Plans shall be submitted with documentation demonstrating compliance with these lighting requirements.
- (m) **Windows and Other Surfaces.** All exterior windows shall be non-glare glass, and all other surfaces shall be similarly treated to avoid reflecting light. The windows shall have ultraviolet-light reflective coating or have pigmentations or tints specially designed to reduce bird strikes by reducing reflectivity. Any coating or tinting used shall be installed to provide coverage consistent with manufacturer specifications.
- (n) **Utilities.** The Revised Plans shall clearly identify all utilities (e.g., sewer, water, stormwater, gas, electrical, telephone, data, etc.), the way in which they are connected to inland distribution networks, and "will-serve" or equivalent documentation demonstrating that each applicable utility provider can and will serve the approved development. All utilities shall be located underground, including that the Revised Plans shall provide for removal or undergrounding of all existing overhead utilities on the site and in areas between the site and Highway One.



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- (o) **Stormwater and Drainage.** The Revised Plans shall clearly identify all stormwater and drainage infrastructure and related water quality measures (e.g., pervious pavements, etc.), with preference given to natural BMPs (e.g., bioswales, vegetated filter strips, etc.). Such infrastructure and water quality measures shall provide that all project area stormwater and drainage is: filtered and treated to remove expected pollutants prior to discharge, and directed to inland stormwater and drainage facilities (and is not allowed to be directed to the beach or the Pacific Ocean) if needed to handle the volume of stormwater and drainage expected, including during extreme storm events (see also below). Infrastructure and water quality measures shall retain runoff from the project onsite to the maximum extent feasible, including through the use of pervious areas, percolation pits and engineered storm drain systems. Infrastructure and water quality measures shall be sized and designed to accommodate runoff from the site produced from each and every storm event up to and including the 85th percentile 24-hour runoff event. In extreme storm situations (>85th percentile 24-hour runoff event storm) where such runoff cannot be adequately accommodated on-site through the project's stormwater and drainage infrastructure, any excess runoff shall be conveyed inland off-site in a non-erosive manner. Stormwater and drainage apparatus shall be coordinated in conjunction with the Dune Restoration Plans (see Special Condition 3) to determine the best suited locations to avoid any adverse impacts on dune restoration activities.
- (p) **Signage.** The Revised Plans shall clearly identify all signs associated with the project and the site, and all signs shall be sited and designed: (1) to minimize their visibility in public views; (2) to seamlessly integrate into the dune landform to the maximum extent feasible (including using natural materials, earth tone colors and graphics, avoiding lighted signs as much as feasible, directing any allowed sign lighting downward, etc.); and (3) to be subordinate to the dune setting.
- (q) **Foundations and Retaining Walls.** Foundation and retaining wall plans shall be prepared in consultation with a licensed civil and structural engineer (or engineers as appropriate), and such structures shall be sited and designed consistent with standard engineering and construction practices in such a way as to best meet the objectives and performance standards of these conditions (including to minimize visual incompatibility with the existing dune landscape and public views, and to facilitate removal as required). The building foundation or foundations shall be the least environmentally damaging feasible alternative, in compliance with current California Building Code requirements. Foundation systems shall not be designed or engineered to address ocean and related forces (e.g., wave attack, ocean flooding, erosion, etc.) except to the extent that such design may facilitate their removal, as these forces are to be addressed through appropriate development setbacks and removal over time (see below and see Special Conditions 8 and 9).
- (r) **Subsurface Elements.** The Revised Plans shall clearly identify all subsurface elements associated with the project (e.g., parking, back of house, etc.).
- (s) **Geotechnical Signoff.** The Revised Plans shall be submitted with evidence that they have been reviewed and approved by a licensed geotechnical and/or structural engineer (or engineers, as appropriate) as meeting applicable regulations for site stability (i.e., seismic and liquefaction)



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and the requirements of these conditions, including in terms of foundations and retaining walls (see above). The geotechnical signoff shall be supported and accompanied by a site specific geotechnical analysis of the site that evaluates and addresses applicable hazards, including the potential for liquefaction and/or dynamic settlement. The geotechnical analysis shall include, at a minimum: analysis of the subsurface soil characteristics, the structural loading of the building elements, and recommendations on spacing and depth of all foundation elements.

- (t) **Excess Sand.** The Revised Plans shall clearly identify the manner in which excavated sand not necessary for the project (e.g., not necessary for dune extension, restoration, screening, etc.) is to be disposed of and/or beneficially reused. PRIOR TO COMMENCEMENT OF CONSTRUCTION, the Permittee shall obtain a separate CDP or CDP amendment, or a determination from the Executive Director that no CDP or CDP amendment is required, authorizing all aspects of such sand movement and disposal/reuse within the coastal zone and/or affecting coastal zone resources.
- (u) **Fencing.** All existing site fencing shall be removed and replaced with the minimum amount of fencing necessary to meet project objectives, and where such replacement fencing is minimized, sited and designed to be compatible with the dune landscape (e.g., rough-hewn wooden split rail, low rope and pole barriers for restoration areas as needed, etc.) and to minimize public view impacts to the maximum extent feasible.
- (v) **Views.** All development shall be sited, designed, colored, screened, and camouflaged (including making maximum use of integrated dune screening and natural landscaping and screening elements to the maximum extent feasible) to minimize visual incompatibility with the existing dune landscape and public views.

The Permittee shall undertake development in accordance with the approved Revised Plans.

- 2. **Construction Plan.** PRIOR TO ISSUANCE OF THE CDP, the Permittee shall submit two copies 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, and all construction access corridors in site plan view. All such areas within which construction activities and/or staging are to take place shall be minimized to the maximum extent feasible in order to have the least impact on dunes, public access, and public views, as well as to maintain best management practices (BMPs) to protect dune resources on-site and in the surrounding area, including by using inland areas for staging and storing construction equipment and materials, as feasible. 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.
 - (b) **Construction Methods and Timing.** The plan shall specify the construction methods to be used, including all methods to be used to keep the construction areas separated from dune resources



NOTICE OF INTENT TO ISSUE CDP CDP A-3-SNC-98-114 (Monterey Bay Shores Resort)

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and public recreational use areas (including using unobtrusive fencing (or equivalent measures) to delineate construction areas). All work, other than interior work where any lighting is minimized in the same way as identified in Special Condition 1, shall take place during daylight hours and lighting of the work area is prohibited.

- (c) **Property Owner Consent.** The plan shall be submitted with evidence indicating that the owners of any properties on which construction activities are to take place, including properties to be crossed in accessing the site, consent to such use of their properties.
- (d) **Biological Monitor.** The plan shall provide that a qualified biological monitor, selected by the Permittee and approved by the Executive Director, shall be present during all construction activities to ensure that dune areas and sensitive species are protected. The biological monitor shall prepare weekly reports, and shall submit such reports monthly to the Executive Director. If the reports indicate that development is not in conformance with the terms and conditions of this CDP, including with respect to protecting dune and sensitive species habitats, then the Permittee shall modify construction activities to ensure conformance, including as directed by the Executive Director.
- (e) **Pre-construction Surveys.** The plan shall include pre-construction surveys for sensitive species, including western snowy plover and Smith's blue butterfly. If any such species is identified in the project impact area, the Permittee shall consult with the biological monitor, the California Department of Fish and Wildlife, the U.S. Fish and Wildlife Service and the Executive Director, and shall implement mitigation measures as directed by the Executive Director, including measures consistent with the approved Habitat Protection Plan and/or any other state or federal agency requirements. The Permittee shall apply for an amendment to this CDP to implement such mitigation measures if the Executive Director determines that an amendment is legally required.
- (f) **BMPs.** The plan shall clearly identify all BMPs to be implemented during construction, including their location and their specific use parameters. The plan shall also contain provisions for specifically identifying and protecting all natural drainage swales (with sand bag barriers, filter fabric fences, straw bale filters, etc.) to prevent construction-related runoff and sediment from entering into these natural drainage areas which ultimately deposit runoff into the Pacific Ocean or to Fort Ord Dunes State Park. Silt fences, straw wattles, or equivalent measures shall be installed at the perimeter of all construction areas. At a minimum, the plan shall also include provisions for stockpiling and covering of graded materials, temporary stormwater detention facilities, revegetation as necessary, and restricting grading and earthmoving during the rainy weather. The plan shall indicate that: (a) dry cleanup methods are preferred whenever possible and that if water cleanup is necessary, all runoff shall be collected to settle out sediments prior to discharge from the site; all de-watering operations shall include filtration mechanisms; (b) off-site equipment wash areas are preferred whenever possible; if equipment must be washed on-site, the use of soaps, solvents, degreasers, or steam cleaning equipment shall be prohibited; in any event, such wash water shall be collected and appropriately disposed off-site, and shall not be allowed to enter any natural drainage areas; (c) concrete rinsates shall be collected and



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appropriately disposed off-site, and they shall not be allowed to enter any natural drainage areas; (d) good construction housekeeping shall be required (e.g., clean up all leaks, drips, and other spills immediately; refuel vehicles and heavy equipment off-site and/or in one designated location; keep materials covered and out of the rain (including covering exposed piles of soil and wastes); all wastes shall be disposed of properly, trash receptacles shall be placed on site for that purpose, and open trash receptacles shall be covered during wet weather); and (e) all erosion and sediment controls shall be in place prior to the commencement of grading and/or construction as well as at the end of each day. Particular care shall be exercised to prevent foreign materials from making their way to the beach or Pacific Ocean or Fort Ord Dunes State Park. Contractors shall insure that work crews are carefully briefed on the importance of observing the appropriate precautions and reporting any accidental spills. Construction contracts shall contain appropriate penalty provisions to address non-compliance with the approved Construction Plan, including provisions sufficient to offset the cost of retrieving or cleaning up improperly contained foreign materials.

- (g) **Construction Site Documents.** The plan shall provide that a copy of the signed CDP be maintained in a conspicuous location at the construction job site at all times, and that such copy is available for public review on request. The signed CDP and approved Construction Plan shall also be retained in the project file at the Commission's Central Coast District office and be available for review by the public 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.
- (h) **Construction Coordinator.** The plan shall provide that a construction coordinator be designated to be contacted during construction should questions arise regarding the construction (in case of both regular inquiries and emergencies), and that their contact information (i.e., address, phone numbers, etc.) including, at a minimum, a telephone number that will be made available 24 hours a day for the duration of construction, is conspicuously posted at the entrance to the job site where such contact information is readily visible from public viewing areas while still protecting public views as much as possible, along with indication that the construction coordinator should be contacted in the case of questions regarding the construction (in case of both regular inquiries and emergencies). The construction coordinator shall record the name, phone number, and nature of all complaints received regarding the construction, and shall investigate complaints and take remedial action, if necessary, within 24 hours of receipt of the complaint or inquiry.
- (i) **Notification.** The Permittee shall notify planning staff of the Coastal Commission's Central Coast District Office at least 3 working days in advance of commencement of construction, and immediately upon completion of construction.

Minor adjustments to the above construction requirements may be allowed by the Executive Director in the approved Construction Plan if such adjustments: (1) are deemed reasonable and necessary; (2) do not adversely impact coastal resources; and (3) do not cause delays in construction. The Permittee shall undertake construction in accordance with the approved Construction Plan.



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3. **Dune Restoration Plans.** PRIOR TO ISSUANCE OF THE CDP, the Permittee shall submit two full size sets of Dune Restoration Plans to the Executive Director for review and approval. The Dune Restoration Plans shall be substantially in conformance with the plans submitted to the Coastal Commission (titled Habitat Protection Plan, October 2013 and dated received in the Coastal Commission's Offices on October 28, 2013); shall provide for dune habitat restoration and stabilization for all dune areas of the site outside of development areas (as well as for all dune extension and screening areas); and shall be modified to achieve compliance with this condition, including providing for, at a minimum, the following components:
- (a) **Objective.** Restoration shall be premised on enhancing dune habitat so that it is self-functioning, high quality habitat in perpetuity.
 - (b) **Non-Native and Invasive Removal.** All non-native and/or invasive species shall be removed, and continued removal shall occur on an as-needed basis to ensure complete removal over time.
 - (c) **Native Dune Plants.** All vegetation planted outside interior courtyards and similar areas (such as the port cochere area) shall consist of non-invasive dune plants native to the Sand City and southern Monterey Bay dune systems, including explicitly providing for a program to enhance Monterey spineflower and dune buckwheat populations.
 - (d) **Sensitive Species.** Special provisions shall be applied to explicitly enhance sensitive species habitats, including at a minimum snowy plover and Smith's blue butterfly habitats, as part of dune restoration activities, and such provisions shall be consistent with applicable state and federal agency requirements for these species.
 - (e) **Plant Maintenance.** All required plantings shall be maintained in good growing conditions for as long as any portion of the approved development exists at this site, and whenever necessary shall be replaced with new plant materials to ensure continued compliance with the approved plans.
 - (f) **Performance Standards.** Success criteria for biodiversity and vegetative cover for each vegetation type (as characterized by a specific plant palette and planting plan and any modifications based on slope and aspect) rather than on management areas shall be provided.
 - (g) **Dune Contours.** Final contours of the restoration shall mimic and seamlessly integrate with natural dune contours present and/or generally historically present in this area.
 - (h) **Implementation.** A map shall be provided showing the type, size, and location of all plant materials to be planted, the irrigation system (if any), topography and finish contours, and all other landscape features. If fencing is required to protect restored habitat, then such fencing shall be limited to temporary rope and pole barriers or equivalent, and shall be sited and designed to limit visual impacts as much as possible. Detailed guidance on plant propagation, planting methods, and irrigation shall be included, as shall a schedule for all restoration activities.



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- (i) **Monitoring and Maintenance.** A plan for monitoring and maintenance of habitat areas for the duration of any development approved pursuant to this CDP shall be included, and shall at a minimum include:
1. **Schedule.** A schedule out to 5 years.
 2. **Field Activities.** A description of field activities, including monitoring studies.
 3. **Monitoring.** Monitoring study design, including: goals and objectives of the study; field sampling design; study sites, including experimental/revegetation sites and reference sites; field methods, including specific field sampling techniques to be employed (photo monitoring of experimental/re-vegetation sites and reference sites shall be included); data analysis methods; presentation of results; assessment of progress toward meeting success criteria; recommendations; monitoring study report content and schedule; and an analysis of high resolution aerial photographs at least every five years.
 4. **Adaptation.** Adaptive management procedures, including provisions to allow for modifications designed to better restore, enhance, manage, and protect dune restoration areas.
- (j) **Reporting and Contingency.** Five years from occupancy of the approved development, and every ten years thereafter, the Permittee shall submit, for the review and approval of the Executive Director, a restoration monitoring report prepared by a qualified specialist that certifies the restoration is in conformance with the approved Dune Restoration Plans, along with photographic documentation of plant species and plant coverage beginning the first year after initiation of implementation of the plan, annually for the first five years, and then every ten years after that. If the restoration monitoring report or biologist's inspections indicate the restoration is not in conformance with or has failed to meet the performance standards specified in the approved Dune Restoration Plans approved pursuant to this CDP, the Permittee shall submit a revised or supplemental restoration plan for the review and approval of the Executive Director. The revised or supplemental restoration plan shall be prepared by a qualified specialist, and shall specify measures to remediate those portions of the original approved plans that have failed or are not in conformance with the original approved plans. These measures, and any subsequent measures necessary to carry out the approved plans, shall be carried out in coordination with the direction of the Executive Director until the approved plans are established to the Executive Director's satisfaction.
- (k) **Dune Restoration Implemented Prior to Occupancy.** Initial dune restoration activities, including at a minimum non-native and invasive removal and initial site planting, shall be implemented prior to occupancy of the approved development.
- (l) **Dune Restoration Maintained.** All dune restoration activities pursuant to the approved Dune Restoration Plans shall be the Permittee's responsibility for as long as any portion of the approved development exists at this site.



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The Permittee shall undertake development in accordance with the approved Dune Restoration Plans, which shall be initiated within 90 days of Executive Director approval of such plans, or within such additional time as the Executive Director allows if there are extenuating circumstances.

- 4. Dune Area Conservation Easement.** PRIOR TO ISSUANCE OF THE CDP, the Permittee shall execute and record a document, in a form and content acceptable to the Executive Director, granting or irrevocably offering to dedicate to a political subdivision, public agency or private association approved by the Executive Director a dune area conservation easement (Dune Easement). The Dune Easement shall apply to the Dune Restoration Area described in Special Condition 3 above and generally depicted in Exhibit 11a. If development is removed in response to coastal hazards (see Special Condition 9), including to allow for the public access easement to move inland (see Special Conditions 5 and 6), the affected area shall be restored in compliance with the dune restoration parameters of the approved Dune Restoration Plans (see Special Condition 3 above) and the restored dune area incorporated into the Dune Area Conservation Easement. Development, as defined in Public Resources Code Section 30106, shall be prohibited in this area other than: (a) dune restoration, monitoring, and maintenance activities conducted in accordance with the approved Dune Restoration Plans (Special Condition 3); (b) public access development and activities conducted in accordance with the approved Public Access Management Plan (Special Condition 5); (c) resort pathways (subject to the requirements of these conditions); and (d) foredune grading down to 32 feet above NGVD (subject to the requirements of these conditions). The Dune Easement shall be recorded free of all prior liens and encumbrances that the Executive Director determines may affect the interest being conveyed. The Dune Easement 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 Dune Easement area prepared by a licensed surveyor based on an on-site inspection, drawn to scale, and approved by the Executive Director.
- 5. Public Access Management Plan.** PRIOR TO ISSUANCE OF THE CDP, the Permittee shall submit two copies of a public access management plan (Public Access Plan) to the Executive Director for review and approval. The Public Access Plan shall be substantially in conformance with the plans submitted to the Coastal Commission (titled Access, Signage, and Lighting Plan dated October 2013 and dated received in the Coastal Commission's Central Coast District Office October 28, 2013) but shall be modified to achieve compliance with this condition. The Public Access Plan shall clearly describe the manner in which general public access associated with the approved project is to be provided and managed, with the objective of maximizing public access and recreational use of all public access areas associated with the approved project (including but not limited to the public parking lot, pathway system, overlook, beach stairway/pathway, and the beach) and all related areas and public access amenities (e.g., bench seating, bike parking, signs, etc.) as described in this special condition. The Public Access Plan shall be consistent with the approved Revised Plans (see Special Condition 1), and shall at a minimum include the following:

 - (a) Clear Depiction of Public Access Areas and Amenities.** All public access areas and amenities, including all of the areas and amenities described above and in this condition, shall be clearly identified as such on the Public Access Plan (including with hatching and closed polygons so that it is clear what areas are available for public access use).



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(b) **Public Access Areas.** All parameters for use of the public access areas of the site, including but not limited to the following areas, shall be clearly identified. All access areas and amenities shall be sited and designed to integrate with the surrounding dune environment to the maximum extent feasible; shall be made up of natural materials (e.g., wood) when feasible; shall be natural and curvilinear forms (e.g., curving pathway segments, rounded overlook areas, etc.) when feasible and shall utilize the same design theme throughout. In addition:

- 1. Parking Lot.** The parking lot shall be publicly available for general public vehicle parking, bicycle parking, pedestrian access, and bicycle access. At least: ten bicycle parking stands; three recycling bins; three trash bins; one water fountain; three ADA parking spaces; and one doggie mitt station, shall be provided in the public parking area in locations that maximize their public utility and minimize their impact on public views. The parking lot shall be ADA compatible. Use of the parking lot for other than general public access purposes shall be prohibited during public access use hours (see below). The Public Access Plan shall include a description of the manner in which the Permittee will ensure that other site users and/or employees will not park in the parking lot during these times.
- 2. Pathway System.** The pathway system shall be publicly available for general public pedestrian (and bicycle from the inland public recreational trail to the upcoast edge of the parking lot) access. The portion of the pathway system that extends from the public recreational trail to and along the public parking lot (to the upcoast edge of the parking lot) shall be a separate, dedicated pedestrian and bicycle path similar in width as the inland public recreational trail; shall include separation from the road and parking utilizing concrete curbs, bumpers, or other barriers to insure safety of pedestrians and bike riders; and shall be surfaced with permeable pavement or permeable concrete colored to blend with the surrounding dune environment to the maximum extent feasible from at least the point where it enters onto the subject property. The portion of the pathway system that extends from the upcoast edge of the parking lot to the overlook shall be a wooden pedestrian boardwalk approximately 6 feet in width. All portions of the pathway system shall be ADA compatible, and shall be curvilinear (and not linear) in appearance to the maximum extent feasible.
- 3. Overlook.** The overlook shall be publicly available for general public pedestrian access. The overlook shall be approximately 300 square feet, shall be made up of a wooden boardwalk surface, and shall be sited and designed to eliminate the need for railings to the maximum extent feasible (e.g., setback a sufficient distance from the blufftop edge so as to not necessitate such features). At least: three benches; one interpretive panel/installation; one recycling bin; one trash bin; and one doggie mitt station, shall be provided at the overlook in locations that maximize their public utility and minimize their impact on public views. The overlook shall be ADA compatible.
- 4. Beach Stairway/Pathway.** The beach stairway/pathway shall be publicly available for general public pedestrian access. The stairway/pathway shall be sited and designed to minimize landform alteration and to conform to the bluffs to the maximum extent feasible, to eliminate or minimize (if elimination is not possible) railings; to avoid to the maximum



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extent feasible construction and post-construction impacts to sensitive species, including seacliff buckwheat; and to maximize public utility and minimize impacts on public views. The public beach stairway/pathway may extend onto Fort Ord Dunes State Park if such extension is allowed by State Parks, and if such extension better meets the intent of this condition, including in terms maximizing public access utility and protecting dune landforms and public views.

5. **Beach.** The beach and offshore area (i.e., extending from the seawardmost property line to the toe of the dune bluff, including as the toe of the dune bluff migrates inland) shall be publicly available for general public pedestrian and beach access, and all activities typically associated with same (e.g., walking, swimming, surfing, sunbathing, picnicking, stargazing, etc.). Resort development, other than minimal landings, if necessary, associated with approved resort pathways (see Special Condition 1), shall be prohibited in the beach area.

(c) **Public Access Signs/Materials.** The plan shall identify all signs and any other project elements that will be used to facilitate, manage, and provide public access to the approved project, including identification of all public education/interpretation features that will be provided on the site (i.e., educational displays, interpretive signage, etc.). Sign details showing the location, materials, design, and text of all public access signs shall be provided. The signs shall be sited and designed so as to provide clear information without impacting public views and site character. At a minimum, public access identification and direction signs shall be placed where the pathway system connects with the inland public recreational trail, at the base of each Fremont Street off ramp, at the entrance to the approved project (where it meets the public street), at or near the point where the tunnel entrance diverges from the parking lot entrance, at the entrance to the parking lot, at the beginning of the boardwalk section of the pathway system (at the parking lot), at the base of the beach stairway/path, and at other locations where identification and direction is necessary and appropriate. The Permittee shall also make reasonable efforts to work with Caltrans to install a Coastal Commission Public Access ("Feet") sign on both southbound and northbound Highway One provided that the Permittee shall not be responsible for any decision made by Caltrans regarding such signage or for the installation or maintenance of such signs. The Permittee shall pay for such signage, including installation costs, upon Caltrans consent for such signs. At least one interpretive panel/installation that provides interpretation of the site, dunes, erosion and coastal hazards, the Monterey Bay, or other related and/or similar subjects shall be provided at the overlook. Signs shall include the California Coastal Trail and California Coastal Commission emblems and recognition of the Coastal Commission's role in providing public access at this location. All signs shall be sited and designed to maximize their utility and minimize their impacts on public views.

(d) **No Disruption of Public Access.** No development or use of the property governed by this CDP may disrupt and/or degrade public access or recreational use of any public access areas and amenities associated with the approved project such as by setting aside areas for private uses or installing barriers to public access (e.g., furniture, planters, temporary structures, private use signs, fences, barriers, ropes, etc.), except that temporary low rope and pole barriers or similar measures may be used if approved by the Executive Director to protect sensitive species. Except



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with respect to temporary low rope and pole barriers or similar measures set forth above, any development, as defined in Public Resources Code Section 30106, that diminishes public access and recreational use of the access areas and amenities required by this CDP shall be prohibited.

- (e) **Reconstruction/Relocation Required.** In the event that the approved public access amenities (including but not limited to the pathway system, overlook, and beach stairway/pathway) are threatened to a degree that they are in danger of being damaged or destroyed, or are damaged or destroyed, or become located ten feet or more seaward of the toe of the bluff, such amenities shall be reconstructed with due diligence and speed, and with minimum disruption to continued public use (and relocated inland as necessary to provide long term stability). Prior to reconstruction, the Permittee shall submit two copies of a Reconstruction Plan to the Executive Director for review and approval. If the Executive Director determines that an amendment to this CDP or a separate CDP is legally required, the Permittee shall immediately submit and complete the required application. The Reconstruction Plan shall clearly describe the manner in which such amenities are to be reconstructed (and relocated as applicable), and shall be implemented immediately upon Executive Director approval or approval of the CDP or CDP amendment application, unless such CDP or CDP amendment identifies a different timeframe for implementation.
- (f) **Public Access Use Hours.** All public access areas and amenities shall be available to the general public from 5 a.m. until midnight, except that the beach shall be available to the public 24 hours a day, and all public access areas shall be free of charge.
- (g) **Public Access Required Prior to Occupancy.** All public access areas and amenities of the approved project shall be constructed and available for public use prior to occupancy of the approved development.
- (h) **Offsite Public Parking.** The plan shall provide for the construction and development of free public beach access parking spaces as close as possible to the project site, and in no case further than one-half mile from the project site, unless the Permittee submits evidence substantiating to the Executive Director's satisfaction that only construction and development of a lesser number of such spaces is feasible. If the Executive Director determines that only a lesser number of such spaces is feasible, then the plan shall provide for payment to the City of Sand City's in-lieu parking fee fund at the current rate for the number of such spaces that are deemed by the Executive Director to be infeasible, and such payment shall be specifically earmarked and reserved and only allowed to be used for providing and maintaining public beach access parking. Any such funds shall only be used for said purpose subject to Executive Director review and approval. For any such parking spaces that are deemed feasible, the plan shall clearly document the manner in which the 35 (or fewer if fewer are deemed feasible) required parking spaces are to be constructed, developed, and maintained, including providing for other property owner consent, for as long as some portion of the approved development remains. The Permittee shall undertake such offsite parking space development in accordance with the approved plan, and such spaces shall be available prior to occupancy of the approved development.



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- (i) **Public Access Areas and Amenities Maintained.** All public access areas and amenities of the approved project shall be maintained in their approved state in perpetuity, unless they are threatened by coastal hazards. If threatened by coastal hazards, such public access areas and amenities shall be relocated and/or modified to ensure the approved public access is maintained. If the Executive Director determines that an amendment to this CDP or a separate CDP is legally required to relocate or modify public access areas or amenities, the Permittee shall immediately submit and complete the required application.

The Public Access Plan shall be approved and attached as an exhibit to the easement required by Special Condition 6 prior to recordation of the easement. The Permittee shall undertake development in accordance with the approved Public Access Plan, which together with the public access easement required by Special Condition 6, shall govern all general public access to the site pursuant to this CDP.

6. **Public Access Easement.** PRIOR TO ISSUANCE OF THE CDP, the Permittee shall execute and record a document, in a form and content acceptable to the Executive Director, granting or irrevocably offering to dedicate to a political subdivision, public agency or private association approved by the Executive Director either fee title or an easement for public access (Public Access Dedication). The Public Access Dedication shall apply to all public access areas described in Special Condition 5 and generally depicted in Exhibit 11b and shall restrict these areas in the same ways identified in Special Condition 5. The Public Access Dedication area shall be ambulatory, including that (a) the beach portion of the easement area shall move inland if the toe of the dune bluff moves inland; and (b) the pathway system, overlook, and beach stairway/pathways portion of the easement area shall move inland if the toe of the dune bluff moves inland and/or if, as a result of coastal hazards, relocation and/or reconstruction of access amenities in these areas is necessary to retain their utility. The Public Access Dedication shall be recorded free of all prior liens and encumbrances that the Executive Director determines may affect the interest being conveyed. The Public Access Dedication 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 Public Access Dedication area prepared by a licensed surveyor based on an on-site inspection, drawn to scale, and approved by the Executive Director.
7. **Public Rights.** By acceptance of this CDP, the Permittee acknowledges and agrees, on behalf of itself and all successors and assigns, that the Coastal Commission's approval of this CDP shall not constitute a waiver of any public rights, if any, that may exist on the property, and that the Permittee shall not use this CDP as evidence of a waiver of any public rights that may exist on the property.
8. **Coastal Hazards Risk.** By acceptance of this CDP, the Permittee acknowledges and agrees, on behalf of itself and all successors and assigns:
- (a) **Coastal Hazards.** That the site is subject to coastal hazards including but not limited to episodic and long-term shoreline retreat and coastal erosion, high seas, ocean waves, storms, tsunami, tidal scour, coastal flooding, liquefaction and the interaction of same;



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- (b) **Assume Risks.** To assume the risks to the Permittee and the property that is the subject of this CDP of injury and damage from such coastal hazards in connection with this permitted development;
 - (c) **Waive Liability.** To unconditionally waive any claim of damage or liability against the Commission, its officers, agents, and employees for injury or damage from such coastal hazards;
 - (d) **Indemnification.** To indemnify and hold harmless the Coastal Commission, its officers, agents, and employees with respect to the Commission's approval of the development against any and all liability, claims, demands, damages, costs (including costs and fees incurred in defense of such claims), expenses, and amounts paid in settlement arising from any injury or damage due to such coastal hazards; and
 - (e) **Property Owners Responsible.** That any adverse effects to property caused by the permitted development shall be fully the responsibility of the property owners.
9. **Coastal Hazards Response.** By acceptance of this CDP, the Permittee acknowledges and agrees, on behalf of itself and all successors and assigns, that:
- (a) **CDP Intent.** The intent of this CDP is to allow for the approved development to be constructed and used consistent with the terms and conditions of this permit for only as long as it remains safe for occupancy and use without additional measures beyond ordinary repair and/or maintenance (including sealing and waterproofing repair and/or maintenance that does not involve extraordinary measures) to protect it from coastal hazards. The intent is also to ensure that development is removed and the affected area restored under certain circumstances (including as further described and required in this condition), including that development, except public access amenities and resort pathways, is required to be removed, consistent with the Removal and Restoration Plan required in subsection (g) of this special condition;
 - (b) **Shoreline Protective Structures Prohibited.** Future shoreline protective structures (including but not limited to seawalls, revetments, groins, etc.) shall be prohibited for the life of the development;
 - (c) **Section 30235 Waiver.** Any rights to construct such shoreline protective structures, including rights that may exist under Public Resources Code Section 30235 and LCP Sections 4.3.1 and 4.3.5, are waived;
 - (d) **Public Access Amenities.** In the event that the approved public access amenities (including but not limited to the pathway system, overlook, and stairway/pathway) are threatened with damage or destruction from coastal hazards, or are a hazard, or are damaged or destroyed by coastal hazards, or become located ten feet or more seaward of the toe of the bluff, such amenities shall be reconstructed with due diligence and speed, and with minimum disruption to continued public use (and relocated inland as necessary to provide long term stability). Prior to reconstruction, the Permittee shall submit two copies of a Reconstruction Plan to the Executive Director for review



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and approval. If the Executive Director determines that an amendment to this CDP or a separate CDP is legally required, the Permittee shall immediately submit and complete the required application. The Reconstruction Plan shall clearly describe the manner in which such amenities are to be reconstructed (and relocated as applicable), and shall be implemented immediately upon Executive Director approval or approval of the CDP or CDP amendment application, unless such CDP or CDP amendment identifies a different timeframe for implementation;

- (e) **Resort Pathways.** In the event that the two approved resort pathways providing resort access towards the ocean (see Special Condition 1) are threatened with damage or destruction from coastal hazards, or are damaged or destroyed by coastal hazards, or become located ten feet or more seaward of the toe of the bluff, such amenities shall be reconstructed (and relocated inland as necessary to provide long term stability) subject to the same parameters of their approved initial construction. Prior to reconstruction, the Permittee shall submit two copies of a Reconstruction Plan to the Executive Director for review and approval. If the Executive Director determines that an amendment to this CDP or a separate CDP is legally required, the Permittee shall immediately submit and complete the required application. The Reconstruction Plan shall clearly describe the manner in which such amenities are to be reconstructed (and relocated as applicable);
- (f) **Blufftop Edge Monitoring.** PRIOR TO ISSUANCE OF THE CDP, the Permittee shall submit two copies of a blufftop edge monitoring plan (Blufftop Plan) to the Executive Director for review and approval. The Blufftop Plan shall be prepared by a certified engineering geologist and/or geotechnical engineer familiar and experienced in shoreline processes, and it shall provide for a schedule and methodology for monitoring and reporting on the location of the blufftop edge in relation to the approved development (including but not limited to buildings, roads, utility infrastructure, subsurface elements, etc.). The Blufftop Plan shall include, at a minimum, the following:
1. **Reference Points.** Provisions for establishing, prior to construction, numbered monuments or surveyed points of measurement (reference points) to be located along the seaward edge of the approved development at a minimum of 25-foot increments, as well as at the most downcoast and most upcoast portions of the seaward edge of the approved development.
 2. **Measurement Episodes.** Provisions for a licensed surveyor, in coordination with a certified engineering geologist, civil engineer and/or geotechnical engineer familiar and experienced in shoreline processes, to conduct measurements, in feet, of the linear distance (measured perpendicular from the shoreline) between the established reference points and the blufftop edge immediately after any event that results in the blufftop edge eroding inland 10 feet or more, or any combination of events that total 10 feet since the last measurement episode, or no less than every five years. The Plan shall provide for a methodology consistent with standard surveying and blufftop delineation methods for determining the location of the blufftop edge and documenting distances on land. Each measurement episode shall also be documented through identification of: (a) the date of the measurement; (b) the person making the measurement and their qualifications; (c) tidal and weather details for the times and dates



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of the measurement episode, including each date/time associated with any photos (see below); and (d) photos (in color, and in both hard copy 8.5" by 11" and electronic jpg formats (or equivalent), and at a scale and resolution that allows for comparison by the naked eye between photos of the same location taken at different times) of: (i) the area between each reference point and the blufftop edge, providing full photographic coverage of the blufftop area between each reference point and the blufftop edge; (ii) each reference point and the surrounding area; and (iii) the point on the blufftop edge from which each measurement derives and the surrounding area, including photos both from a blufftop and a beach vantage so as to provide full photographic coverage of the bluff face itself and the blufftop edge. The photo documentation shall be accompanied by a site plan that identifies the location and orientation of each photo, each view of which shall be numbered. Measurement episodes shall include photos from the same vantage points each time to the extent possible, and shall include additional vantage points (and coverage of those additional vantage points as well in subsequent measurement episodes) as necessary to provide coverage of the required photographic area.

3. **Other Removal and Restoration Criteria.** Provisions for assessing and documenting each of the other removal and restoration criteria described in subsection (g) of this special condition. Assessment shall, at a minimum, evaluate all removal and restoration criteria and make recommendations on how to meet those criteria. Documentation shall, at a minimum, include: (a) site plans; and (b) photographic documentation (in color, and in both hard copy 8.5" by 11" and electronic jpg formats (or equivalent), and at a scale and resolution that allows for comparison by the naked eye between photos of the same location taken at different times) sufficient to provide full photographic coverage of the areas in question.
4. **Public Access Amenities and Resort Pathways.** Provisions for assessing and documenting the public access amenities and resort pathway areas, including at least the parameters associated with their reconstruction, as identified in subsections (d) and (e) of this special condition above. Assessment shall, at a minimum, evaluate all reconstruction criteria and make recommendations on how to meet those criteria. Documentation shall, at a minimum, include: (a) site plans; and (b) photographic documentation (in color, and in both hard copy 8.5" by 11" and electronic jpg formats (or equivalent), and at a scale and resolution that allows for comparison by the naked eye between photos of the same location taken at different times) sufficient to provide full photographic coverage of the areas in question.
5. **Reporting.** Provisions for submittal of two copies of a report documenting and analyzing the required monitoring. The report shall be submitted to the Executive Director for review and approval every five years, starting with May 1st, 2019, and within one month of any event that results in the blufftop edge eroding inland 10 feet or more. The report shall provide a site plan that identifies the blufftop edge extending from the downcoast to upcoast property lines, and that identifies the established reference points as well as a line that extends through them. The report shall also include: (a) all of the documentation described in the previous sections; (b) a narrative description of all measurement episode activities; (c) tables showing changes over time between the blufftop edge and the established reference points as compared to all



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past reports, including in terms of average annual changes, largest change between reports, and any other relevant data that helps identify changes over time; (d) identification and documentation of coastal hazards in the area over the time since the last report, including any significant storm and erosion events; and (e) any additional information relevant to helping understand any changes in the distance between the blufftop edge and the approved development. Should any approved report identify next steps that involve development, such development shall be undertaken within the timeframes identified in the approved report. If the Executive Director determines that an amendment to this CDP or a separate CDP is legally required to perform such development, the Permittee shall immediately submit and complete the required application, and such development shall occur within the timeframes identified in the CDP or CDP amendment. The Permittee shall undertake development, if any, in accordance with the approved Blufftop Plan.

- (g) **Removal and Restoration.** The Permittee shall immediately submit two copies of a Removal and Restoration Plan (RRP) to the Executive Director for review and approval when any of the following criteria are met, which RRP shall also be implemented subject to all of the following:
1. **Government Agency.** If a government agency has ordered that any portion of the approved development (including but not limited to buildings, roads, utility infrastructure, subsurface elements, etc.) are not to be occupied or used due to one or more coastal hazards, and such government agency concerns cannot be abated by ordinary repair and/or maintenance. The RRP shall provide that all development meeting such criteria is immediately removed, as necessary to allow for such government agency to allow occupancy to all of the remainder of the development, after implementation of the approved RRP.
 2. **Setback.** If the blufftop edge erodes (including as identified through the Blufftop Plan reports required pursuant to subsection (f) above) to within 50 feet of any portion of the approved development (including but not limited to buildings, roads, utility infrastructure, subsurface elements, etc.) other than the two resort pathways providing access toward the ocean and the public access amenities (whose relocation is addressed separately, see above), the RRP shall provide for removal of the development as necessary to ensure that at least a 50-foot blufftop setback area free of development (other than public access amenities, the two resort paths towards the ocean, and dune restoration, all subject to the terms and conditions of this CDP) remains after implementation of the approved RRP.

The RRP shall identify the width of the blufftop area (as measured between the established reference points and the blufftop edge) needed to conduct the required removal (i.e., the area necessary to place and/or operate construction equipment between the bluff edge and development, including providing clear documentation and evidence supporting identification of that width (e.g., identification of construction methods and equipment, expected removal structures and areas, construction timeframes, etc.)). The required removal shall take place when any portion of the blufftop width is at or less than the width identified in the approved RRP as needed to conduct the required removal, or when the blufftop edge is within 10 feet of any portion of the approved development, whichever is sooner.



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3. **Public Access Easement.** If any portion of the approved development (including but not limited to buildings, roads, utility infrastructure, subsurface elements, etc.) other than the two resort pathways providing access toward the ocean and the public access amenities (whose relocation is addressed separately, see above) encroaches into the ambulatory public access easement area (i.e., from the toe of the bluff seaward – see Special Condition 5), then the RRP shall provide that all development meeting such criteria is immediately removed as necessary to ensure that no development is located in the ambulatory public access easement area after implementation of the approved RRP.
4. **Daylighting.** If any portion of the approved foundation and/or subsurface elements (including but not limited to mat foundations, caissons, piers, pilings, grade beams, retaining walls, etc.) become visible at or below 22 feet above NGVD, then the RRP shall provide that all development supported by these foundation elements as well as the foundation elements themselves shall be immediately removed as necessary to ensure that no development is visible at or below 22 feet above NGVD after implementation of the approved RRP.

In cases where more than one of the above criteria is met, the RRP shall be required to meet all requirements for all triggered criteria. In all cases, the RRP shall also ensure that: (a) all non-building development necessary for the functioning of the approved development (including but not limited to emergency access roads and utilities) is relocated as part of the removal episode, as necessary, so that it is located at least 50 feet inland of the blufftop edge; (b) all removal areas are restored as dune that is functionally and visually connected with surrounding dune areas in compliance with the dune restoration parameters of the approved Dune Restoration Plans (see Special Condition 3 above), and all such restored dune areas are incorporated into the Dune Area Conservation Easement (see Special Condition 4 above); (c) resultant uses of the reduced scale development remain primarily designed for visitor-serving use at least the same ratio as originally approved pursuant to the approved Revised Plans required by Special Condition 1; and (d) all modifications necessary to maintain compliance with the terms and conditions of this CDP, including the objectives and performance standards of these conditions (including to minimize visual incompatibility with the existing dune landscape and public views) are implemented as part of the RRP.

If the Executive Director determines that an amendment to this CDP or a separate CDP is legally required to implement the approved RRP, then the Permittee shall submit and complete the required application within 30 days or, in the case where removal is going to be required in the future (e.g., in the case of the setback criteria above) at least one year before removal is expected to be required. The RRP shall be implemented according to the above timeframes for implementation unless the Executive Director (or the approved CDP or CDP amendment, if applicable) identifies a different time frame for implementation. The Permittee shall undertake development in accordance with the approved RRP.

10. **Hotel Overnight Units.** By acceptance of this CDP, the Permittee acknowledges and agrees, on behalf of itself and all successors and assigns, that:



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- (a) **Hotel Length of Stay Provisions.** All hotel overnight units shall be open and available to the general public. Rooms shall not be rented to any individual, family, or group for more than 29 consecutive days; and
- (b) **Conversion Prohibited.** The conversion of any of the hotel overnight units to limited use overnight visitor accommodation units (e.g., timeshare, fractional ownership, etc.) or to full-time occupancy condominium units or to any other units with use arrangements that differ from the approved project shall be prohibited.

11. **Condominium-Hotel Visitor-Serving Overnight Units.** By acceptance of this CDP, the Permittee acknowledges and agrees, on behalf of itself and all successors and assigns, that:

- (a) **Hotel and Condominium Hotel Overnight Units.** The approved development includes a standard operating hotel with 184 overnight units and a condominium-hotel component with 92 visitor-serving overnight condominium-hotel units, or lesser numbers at a similar or more hotel to condominium-hotel ratio if: (1) required to meet the terms and conditions of this CDP, including pursuant to the approved Revised Plans required by Special Condition 1; and/or (2) portions of the project are modified through removal.
- (b) **Condominium Hotel Component.** PRIOR TO ISSUANCE OF THE CDP, the Permittee shall submit two copies of plans and documentation materials (Condominium Hotel Plans) for Executive Director review and approval that clearly identify: all elements of the condominium-hotel visitor-serving component of the project; the manner in which ownership will be applied to each element of the condominium-hotel visitor-serving component (including common areas and individual units); an operator responsible for managing the condominium-hotel visitor-serving units (operator), including the booking of reservations for all units; the non-hotel lobby area configuration and operational parameters; the mechanism by which the individual units are to be booked, including at a minimum provisions for a reservation database to be managed by operator; and all other provisions necessary to meet the requirements of this special condition. As used in this condition, the terms "book", "booked", and "booking" shall mean the confirmation of a reservation request for use of an individual unit by either the owner of the unit, the owner's permitted user, or by a member of the public, and the entry of such confirmation in the operator's reservation database. The condominium-hotel visitor-serving (CHVS) component of the project shall be maintained in its approved state, and shall be managed and operated consistent with the approved Condominium Hotel Plans.
- (c) **Unit Owner Occupancy Limitations.** Each owner of a CHVS unit, including any individual, family, group, or partnership of owners for a given unit (no matter how many owners there are) may use their unit for no more than 84 days in any calendar year, with no stay exceeding 29 consecutive days. Such occupancy limitations shall be unaffected by multiple owners of an individually owned unit or the sale of a unit to a new owner or new owners during the calendar year, meaning that all such owners of any given unit shall be collectively subject to the occupancy restrictions as if they were a single, continuous owner. Whenever any unit is not



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occupied by its owner(s), that unit shall be available for use by the general public on the same basis as a traditional hotel room.

- (d) **CHVS Unit Rentals.** The operator shall manage the booking and the reservation of all CHVS units. The operator shall have the right and obligation to offer any unit for general public use during all time periods not reserved by a unit owner for his or her personal use. The operator shall book all unit reservations in the operator's reservation database, a service for which the operator may charge the unit owner a reasonable fee.

The operator shall have the right, working through the unit owners, to book any unoccupied room to fulfill public demand. The owner may not withhold units from use unless they have already been reserved for use by the owner, consistent with the length of occupancy limitations identified above. In all circumstances, the operator shall have full access to the unit's reservation and booking schedule so that the operator can fulfill its booking and management obligations hereunder.

- (e) **CHVS Unit Marketing.** The operator shall market all CHVS units to the general public. Owners of individually owned CHVS units may also independently market their units. Unit owners shall not discourage rental of their units nor create disincentives meant to discourage rental of their units.
- (f) **CHVS Units Management.** The operator shall manage all aspects of the condominium-hotel component of the project, including all CHVS units, including but not limited to reservation booking, mandatory front desk check-in and check-out, maintenance, and cleaning services (including preparing units for use by guests/owners, a service for which the operator may charge unit owners a reasonable fee). All unit keys shall be electronic and shall be newly created by the operator upon each change in user occupancy for any unit. All units shall be rented at a rate similar to that charged for traditional hotel rooms of a similar class or amenity level in the California coastal zone.
- (g) **Marketing and Sale of Condominium Hotel Interests.** All documents related to the marketing and sale of condominium interests in CHVS units (including marketing materials, sales contracts, deeds, CC&Rs and similar documents, etc.) shall notify potential buyers of the following:

1. Liability. Each owner of any unit is jointly and severally liable with the property owner(s) and the operator for any violations of the terms and conditions of this CDP with respect to the use of that owner's unit;

2. Occupancy Limits. The occupancy of a unit by its owner(s) and their guests is restricted to a maximum of 84 days per calendar year, and a maximum of 29 consecutive days. When not in use by the owner, the unit shall be made available for rental by the operator to the general public pursuant to the terms of this CDP, which permit and the CC&Rs applicable to the unit contain additional restrictions on use and occupancy; and



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3.Operator. The operator, or designee, shall manage the booking and the reservation of all CHVS units. The operator shall have the right and obligation to offer any unit for general public use during all time periods not reserved by a unit owner for his or her personal use. The operator shall book all unit reservations in the operator's reservation database, a service for which the operator may charge the unit owner a reasonable fee.

Prior to the sale of an individual unit, the unit's seller and the operator (and any successors-in-interest) shall obtain a written acknowledgement from the buyer indicating that he or she understands, acknowledges, and accepts each of the above marketing and sale restrictions.

- (h) Conversion Prohibited.** The conversion of the approved CHVS units to other types of limited use overnight visitor accommodation units (e.g., to timeshare, fractional ownership, etc.) or to full-time occupancy condominium units or to any other units with use arrangements that differ from the approved project, other than to standard operating hotel units, shall be prohibited.
- (i) Occupancy and Use Monitoring and Recording.** The operator shall monitor and record occupancy and use by the general public and the owners of individual CHVS units throughout each year. Such monitoring and record keeping shall include specific accounting of owner usage for each individual unit; rates paid for occupancy and for advertising and marketing efforts; and transient occupancy taxes (TOT) for all units, services for which the operator may charge unit owners a reasonable fee. The records shall be sufficient to demonstrate compliance with the restrictions set forth in this special condition. All such records shall be maintained for at least ten years and shall be made available to the Executive Director upon request and to any auditor required by the section below. Within 30 days of commencing operations, the operator shall submit notice to the Executive Director of commencement of operations.
- (j) Audit.** WITHIN 120 DAYS OF THE END OF THE FIRST CALENDAR YEAR OF OPERATIONS, the operator shall retain an independent auditing company, approved by the Executive Director, to perform an audit to evaluate compliance with this special condition regarding occupancy restrictions; marketing and sale restrictions; management requirements, recordkeeping, and monitoring by the hotel owner(s), the owners of individual CHVS units, and the operator. The operator shall instruct the auditor to prepare a report identifying the auditor's findings, conclusions and the evidence relied upon, and such report shall be submitted to the Executive Director, upon request, within six months after the conclusion of the first year of operations.

Within 120 days of the end of each succeeding calendar year, the operator shall submit a report to the Executive Director identifying compliance with this special condition and the approved Condominium Hotel Plans, including regarding occupancy restrictions, marketing and sale restrictions, management requirements, recordkeeping, and monitoring by the hotel owner(s), the individual unit owners, and the operator. The audit required after the first year of operations and all subsequent reports shall evaluate compliance with this special condition by the operator and owners of individual CHVS units during the prior one-year period. After the first five calendar years of operations, the one-year reporting period may be extended to every five years upon



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written approval of the Executive Director if each of the previous reports reveal compliance with all restrictions imposed by this special condition. The Executive Director may, by written notice to the operator, require a third party audit regarding the subject matter of the reports required in this section for the prior three or fewer calendar years if he or she reasonably believes that the foregoing submitted reports are materially inaccurate. The property owner(s), each individual unit owner, and the operator shall fully cooperate with and shall promptly produce any existing documents and records which the auditor may reasonably request. The expense of any such audit shall be borne by the property owner(s) and/or the operator.

- (k) Compliance Required.** The property owner(s) and operator or any successors-in-interest shall maintain the legal ability to ensure compliance with the terms and conditions stated herein at all times in perpetuity, and shall be responsible in all respects for ensuring that all parties subject to these restrictions comply with the restrictions. The property owner(s) and the operator shall be jointly and severally responsible for ensuring compliance with the requirements described in this condition and/or recorded against the property, as well as jointly and severally liable for violations of said requirements. Each owner of an individual CHVS unit is also jointly and severally liable with the property owner(s) and operator for all violations of said requirements and for any and all violations of the terms and conditions of this CDP with respect to the use of that owner's unit. Violations of this CDP can result in penalties pursuant to Public Resources Code Section 30820.
- (l) CC&R Declaration of Restrictions.** PRIOR TO OCCUPANCY OF THE APPROVED DEVELOPMENT, the Permittee shall submit for the review and approval of the Executive Director two copies of a declaration of restrictions in a recordable covenants, conditions, and restrictions (CC&R) form (CC&R Declaration of Restrictions for the CHVS units) that shall include: (1) all the specific restrictions listed in Sections (a) through (k) above; (2) acknowledgement that these same restrictions are independently imposed as condition requirements of this CDP; and (3) a statement that the provisions of the CC&R Declaration of Restrictions that reflect the requirements of Sections (a) through (k) above, cannot be changed without approval of a CDP amendment, unless it is determined by the Executive Director that such an amendment is not legally required (if there is a section of the CC&Rs related to amendments, and the statement provided pursuant to this paragraph is not in that section, then the section on amendments shall cross-reference this statement and clearly indicate that it controls over any contradictory statements in the section of the CC&Rs related to amendments). The approved CC&R Declaration of Restrictions for the CHVS units described above shall be recorded against all individual property titles simultaneously with the recordation of the subdivision map for the approved project.
- (m) Implementation Plan.** PRIOR TO OCCUPANCY OF THE APPROVED DEVELOPMENT, the Permittee shall submit two copies of a plan specifying how the requirements of this condition will be implemented for Executive Director review and approval. The plan must include, at a minimum, the form of the sale, deed and CC&R terms and restrictions that will be used to satisfy these special condition requirements and the form of the rental program agreement to be entered into between the individual unit owners, the property owner(s), and the operator. The plan shall



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demonstrate that the Permittee will establish mechanisms that provide the property owner(s) and operator and any successor-in-interest property owner(s) and operator(s) adequate legal authority to implement the requirements of this special condition. Any proposed changes to the approved plan and subsequent documents pertaining to compliance with and enforcement of the terms and conditions required by this special condition, including deed restrictions and CC&Rs, shall be prohibited without an amendment to this CDP, unless it is determined by the Executive Director that an amendment is not legally required.

- 12. Visitor-Serving Units Available Prior to Occupancy of Residential Units.** PRIOR TO THE OCCUPANCY OF THE RESIDENTIAL CONDOMINIUMS, the Permittee shall provide evidence in a form acceptable to the Executive Director that construction of the project's visitor-serving elements, including the 184 hotel units and the 92 visitor-serving condominium-hotel units (or lesser numbers at a similar or more hotel to condominium-hotel ratios if required to meet the terms and conditions of this CDP, including pursuant to the approved Revised Plans required by Special Condition 1) have been completed and are available for transient occupancy use. Occupancy of the residential units shall not precede the completion and operation of the project's visitor-serving elements.
- 13. Transient Use of Residential Condominiums.** Any declaration of restrictions (i.e., covenants, conditions, and restrictions (CC&Rs), etc.) prepared for the residential properties and uses on-site shall not preclude the transient use of the 92 (or lesser numbers if required to meet the terms and conditions of this CDP, including pursuant to the approved Revised Plans required by Special Condition 1) residential condominiums for vacation rentals or other short-term visitor-serving arrangements, including explicitly allowing for the conversion of the residential condominiums to standard operating hotel units or condominium-hotel units coordinated with those units onsite, subject to a CDP or CDP amendment.
- 14. Lower Cost Visitor Accommodations Mitigation Payment.** PRIOR TO CONSTRUCTION, the Permittee shall provide evidence in a form and content acceptable to the Executive Director, that a payment of \$25,700 per unit for 25% of the total number of high cost overnight visitor accommodation units (184 hotel units and 92 visitor-serving overnight condominium-hotel units, or 276 total such units) in the approved project has been paid in lieu of providing lower cost accommodations on site. Based on 276 such units, the payment would be \$1,773,300 (i.e., $0.25 \times 276 \times 25,700 = 1,773,300$). If there are fewer units to meet the terms and conditions of this CDP, including pursuant to the approved Revised Plans required by Special Condition 1, then the payment would be proportionally reduced.

The required \$1,773,300 (or less, if applicable) mitigation payment shall be deposited into an interest bearing account, to be established and managed by one of the following entities as approved by the Executive Director: the City of Sand City, Monterey County, the California Department of Parks and Recreation, Hostelling International, or similar entity. The purpose of the account shall be to establish new lower cost overnight visitor-serving accommodations, such as new hostel or tent campground units, at appropriate locations within the coastal area of Monterey County with a priority given to local hostels. The entire mitigation payment and any accrued interest shall be used



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for the above-stated purpose, in consultation with the Executive Director, within ten years of it being deposited into the account. If any portion of the fee remains ten years after it is deposited into the interest-bearing account required by this condition, the Executive Director may require that the funds be transferred to another entity that will provide lower cost visitor amenities in a Central California coastal zone jurisdiction.

PRIOR TO EXPENDITURE OF ANY FUNDS CONTAINED IN THIS ACCOUNT, the Executive Director must review and approve the proposed use of the funds as being consistent with the intent and purpose of this condition. In addition, the entity accepting the funds required by this condition shall be required to enter into a memorandum of understanding (MOU) with the Commission, which shall include, but not be limited to, the following: (1) a description of how the funds will be used to create or enhance lower cost accommodations in the coastal zone; (2) a requirement that the entity accepting the funds must preserve these newly created lower cost accommodations in perpetuity; and (3) an agreement that the entity accepting the funds will obtain all necessary permits and approvals, including but not limited to a CDP, for development of the lower cost accommodations required by this condition.

- 15. Confirmation of Other Agency Approval.** PRIOR TO CONSTRUCTION, the Permittee shall submit to the Executive Director written evidence that all necessary permits, approvals, and/or authorizations for the approved project have been granted, if legally required, by the City of Sand City and the Monterey Peninsula Water Management District. The Permittee also shall submit written evidence, if legally required, that all permits and/or authorizations for the approved project have been granted by the California Department of Fish and Wildlife (if required by the California Endangered Species Act) and the U.S. Fish and Wildlife Service (if required by the Federal Endangered Species Act). Prior to construction, the Habitat Protection Plan (HPP, dated October 2013 and dated received in the Central Coast District Office October 28, 2013 – Exhibit 20) referenced in Special Condition 3 shall be modified and submitted for Executive Director review and approval to incorporate standards in the HPP that address the eight concerns for western snowy plover, and each of the concerns for Smith's blue butterfly and Monterey spineflower, in the U.S. Fish and Wildlife Service April 7, 2014 letter on the project addressed to Mike Watson of the Coastal Commission. Prior to construction, the Permittee shall submit to the Executive Director for review and approval any revisions to the plans for the project that may be necessary to comply with standards included in the approved modified HPP. If no permit, approval or authorization is required from a given agency, then the Permittee shall have no obligation to submit any documentation to the Commission from that agency. Any mandatory changes to the approved project required by an agency listed in this condition shall be reported to the Executive Director. No changes to the approved project, either as a result of any mandatory changes required by the agencies listed or changes required by the approved modified HPP, shall occur without a Commission amendment to this CDP unless the Executive Director determines that no amendment is legally necessary.
- 16. Traffic.** PRIOR TO CONSTRUCTION, the Permittee shall submit to the Executive Director for review and approval evidence that all EIR transportation (including all traffic and circulation) mitigation measure requirements (including the requirements of the EIR Addendum) have been met and/or achieved.



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- 17. Transportation Demand Management Program.** PRIOR TO CONSTRUCTION, the Permittee shall submit to the Executive Director for review and approval a Transportation Demand Management Program (TDMP). Said program shall include, but not be limited to, the following:
- (a) **Transit.** An agreement to work with the Monterey-Salinas Transit District to encourage increased bus service for visitors, residents, and employees (e.g., a bus stop at California Avenue extension, etc.);
 - (b) **Shuttle.** Participation in shuttle systems to the Monterey airport and Monterey Transit Plaza, Monterey Fisherman's Wharf, Cannery Row, and other area attractions;
 - (c) **Bicycles.** Adequate bicycle storage for visitors, residents, and employees;
 - (d) **Showers.** Adequate on-site shower facilities and lockers available to all employees;
 - (e) **Carpool.** Creation and implementation of a carpool plan for at least employees, and coordinated with residents as appropriate, with notices of the carpool program posted in employee work areas and residential common areas;
 - (f) **Subsidies.** Public transportation fare/monthly pass subsidies for all employees; and
 - (g) **Information.** Information regarding the aforementioned components of the Transportation Demand Management Program shall be provided to all employees (and visitors and residents as applicable) and included in any employment paperwork for new employees.

The Permittee shall undertake the development in accordance with the approved TDMP.

- 18. Future Development Restrictions** By acceptance of this CDP, the Permittee acknowledges and agrees, on behalf of itself and all successors and assigns that this CDP is only for the development described in this CDP. Pursuant to Title 14 California Code of Regulations (CCR) Section 13253(b)(6), the exemptions otherwise provided in Public Resources Code Section 30610(b) shall not apply to the development governed by this CDP. Accordingly, any future improvements to the development authorized by this CDP, including but not limited to repair and maintenance identified as requiring a CDP in Public Resources Code Section 30610(d) and 14 CCR Section 13252(a)-(b), shall require an amendment to this CDP.

- 19. Indemnification by Permittee/Liability for Costs and Attorneys Fees.** By acceptance of this CDP, the Permittee agrees to reimburse the Coastal Commission in full for all Coastal Commission costs and attorneys fees – including (1) those charged by the Office of the Attorney General, and (2) any court costs and attorneys fees that the Coastal Commission may be required by a court to pay – 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 CDP. The Coastal Commission retains



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complete authority to conduct and direct the Commission's defense of any such action against the Coastal Commission.

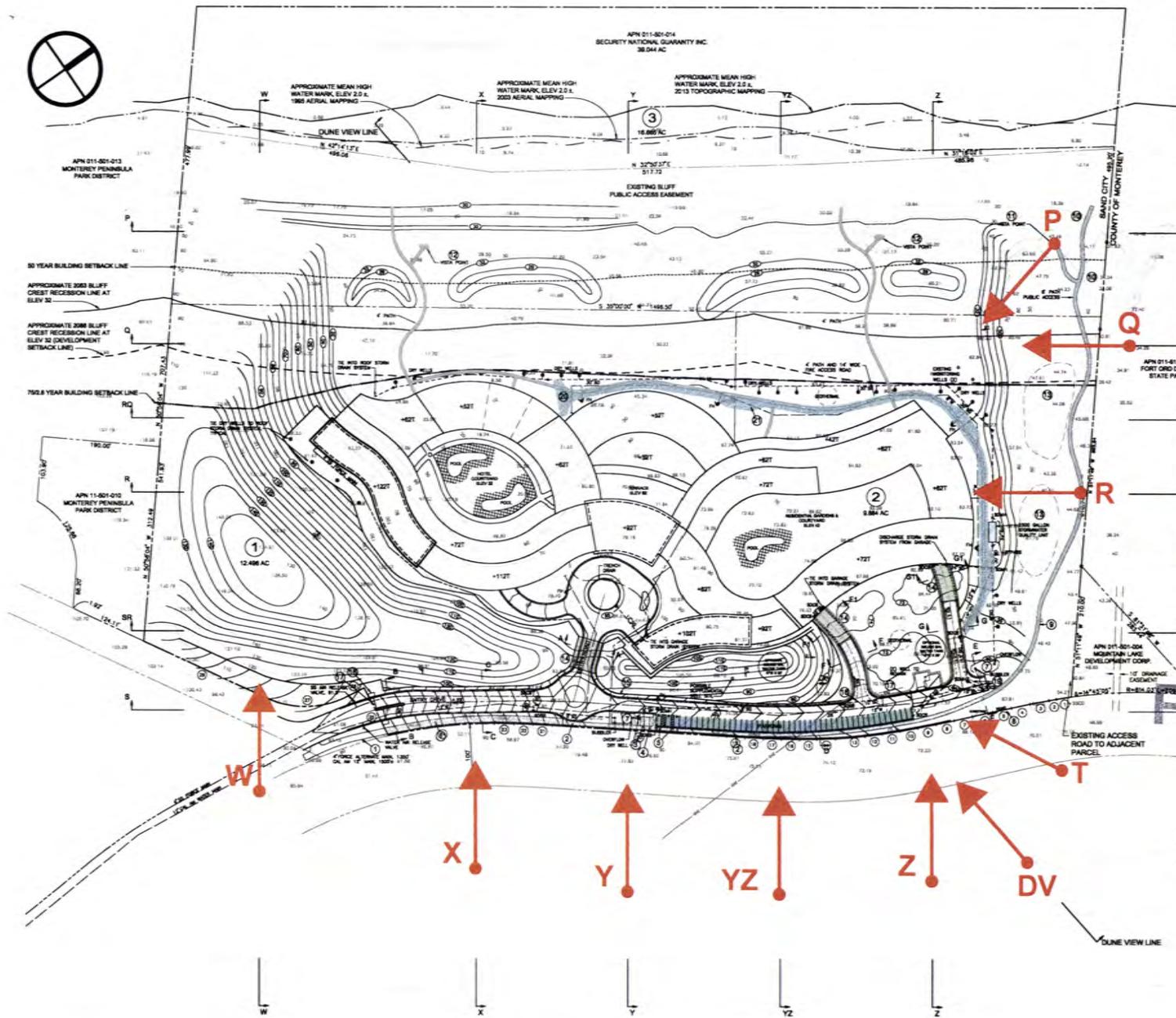
- 20. Deed Restriction.** PRIOR TO ISSUANCE OF THE CDP, the Permittee shall submit to the Executive Director for review and approval documentation demonstrating that the Permittee has executed and recorded against the property governed by this CDP a deed restriction, in a form and content acceptable to the Executive Director: (1) indicating that, pursuant to this CDP, 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 CDP as covenants, conditions and restrictions on the use and enjoyment of the property. The deed restriction shall include a legal description of the legal parcels governed by this CDP. 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 CDP shall continue to restrict the use and enjoyment of the property so long as either this CDP or the development it authorizes, or any part, modification, or amendment thereof, remains in existence on or with respect to the property.
- 21. Expiration.** Notwithstanding Standard Condition 2, above, if development has not commenced, this CDP shall expire five 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. An application for extension of this CDP must be made prior to the expiration date.
- 22. Indemnification for any Civil Liability.** The Permittee agrees to reimburse the Commission for any civil liability imposed by any court for the approval or issuance of this CDP.





GENERAL NOTES

- All model views are generated at the locations shown, taken at +5' elevation, and provide 90° field of view toward the directions indicated.
- Existing vegetation, and existing built elements such as fences, signs, and streetlights are not represented. (See attached samples of existing views Sections Z and Dune View Line (DV))



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CENTRAL COAST AREA

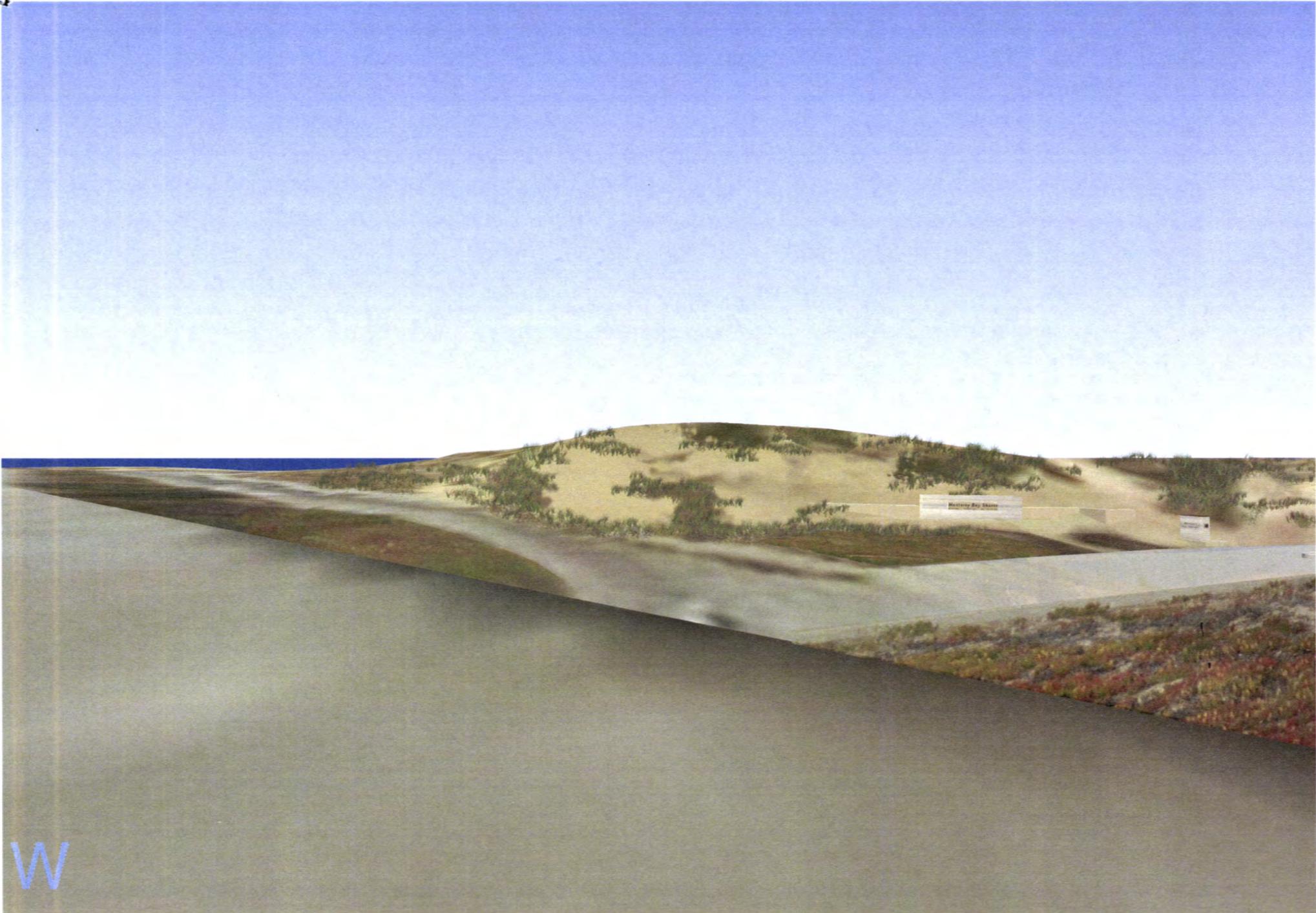
VIEW KEY PLAN

MODEL VIEWS

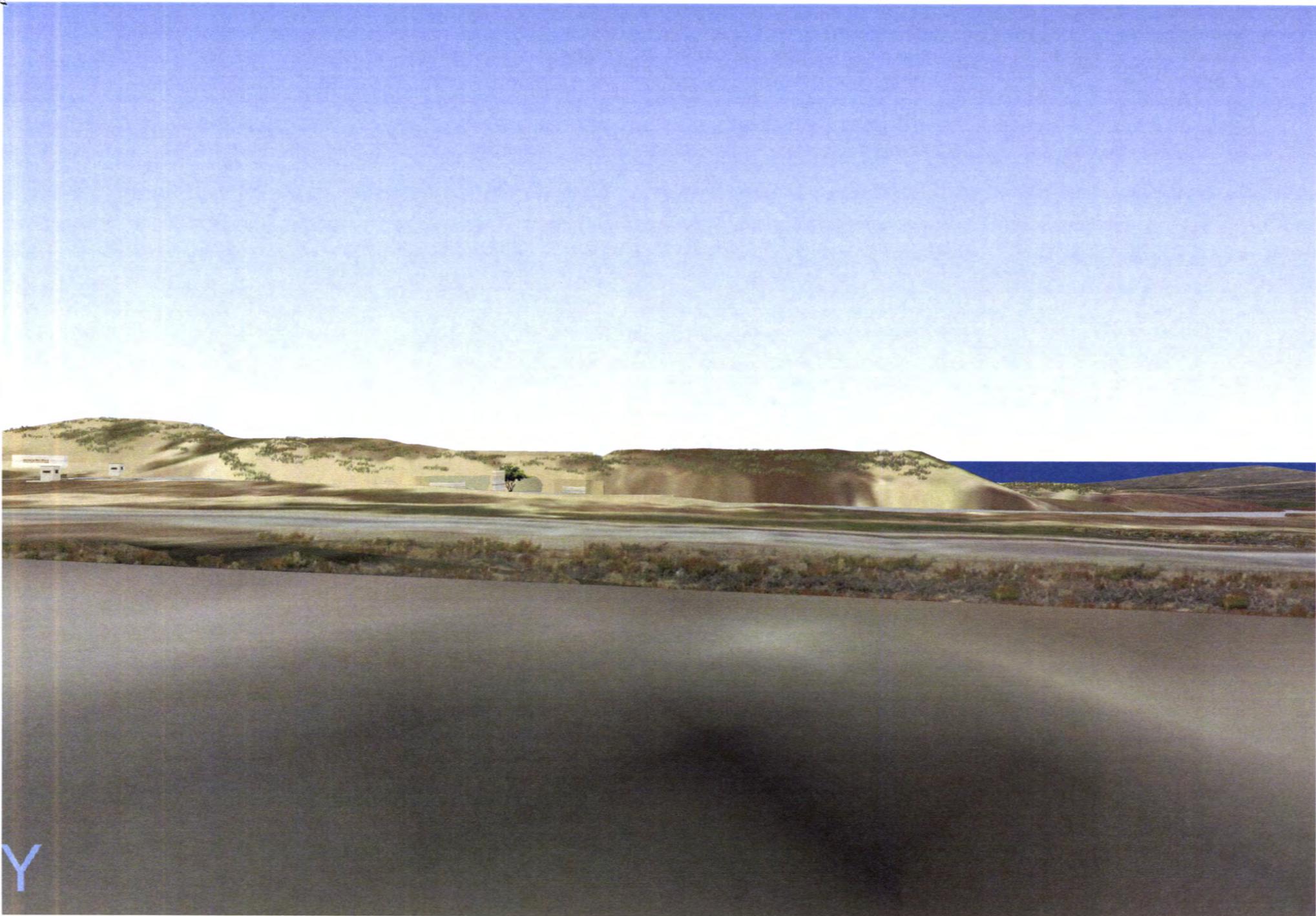
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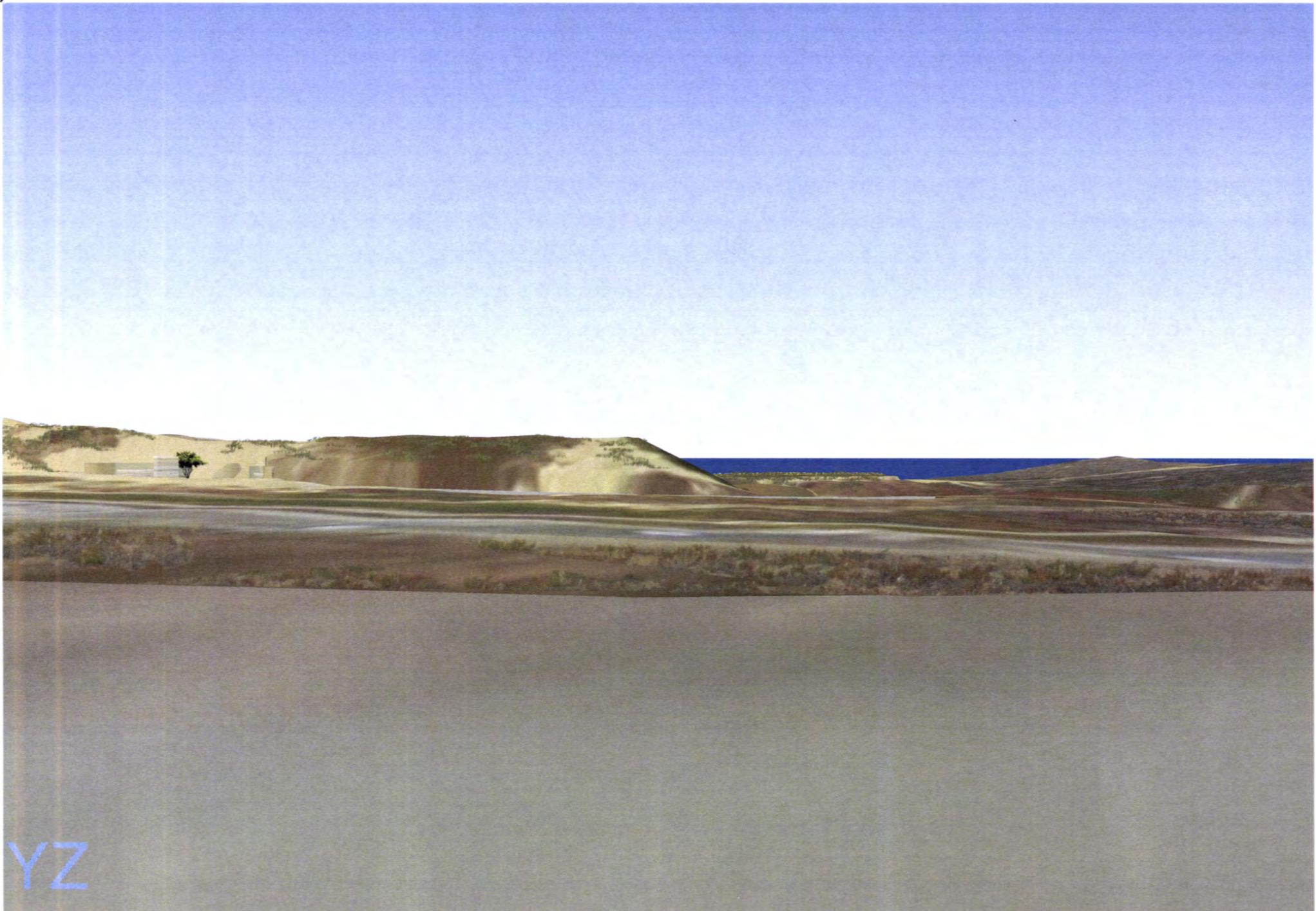
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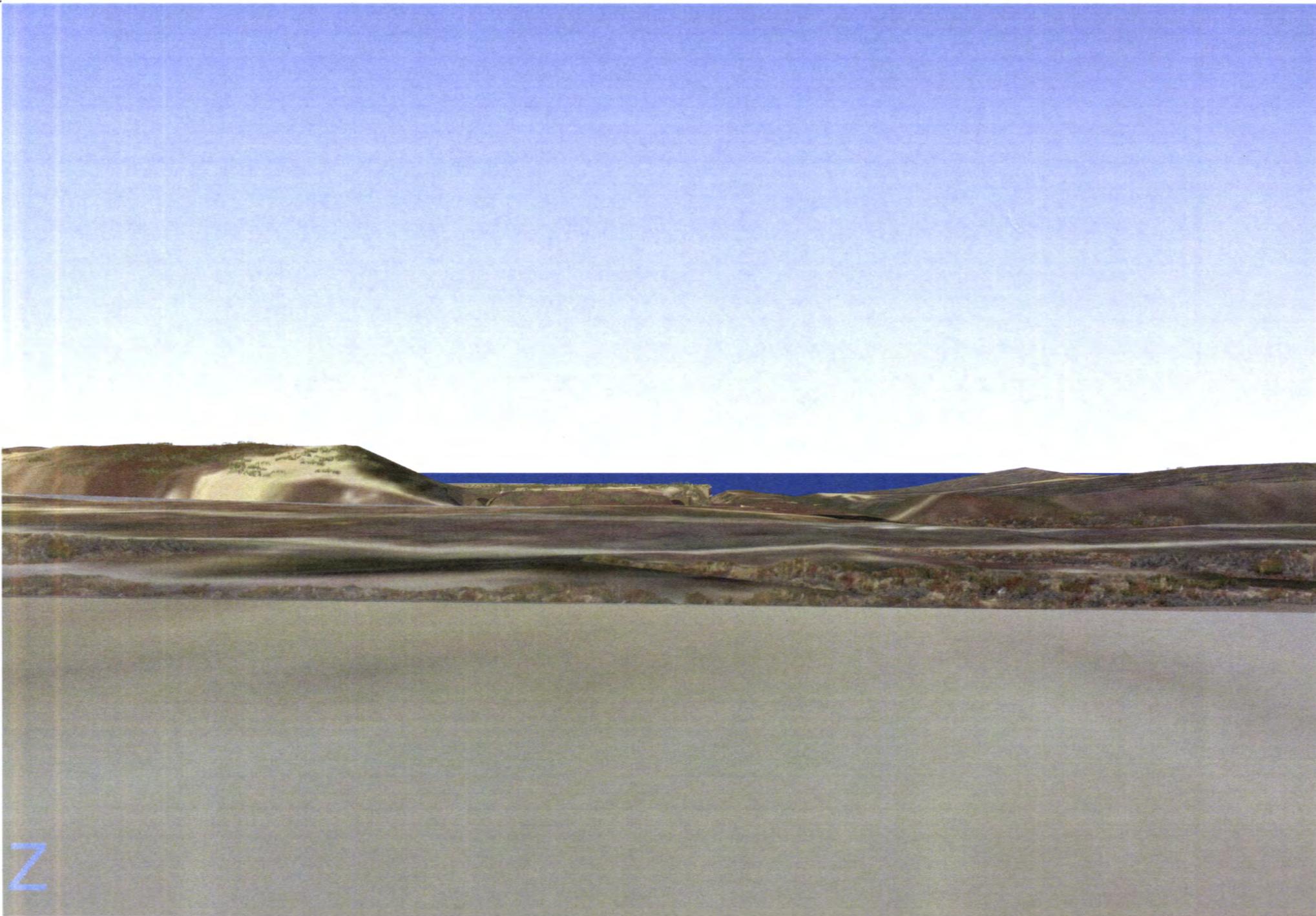




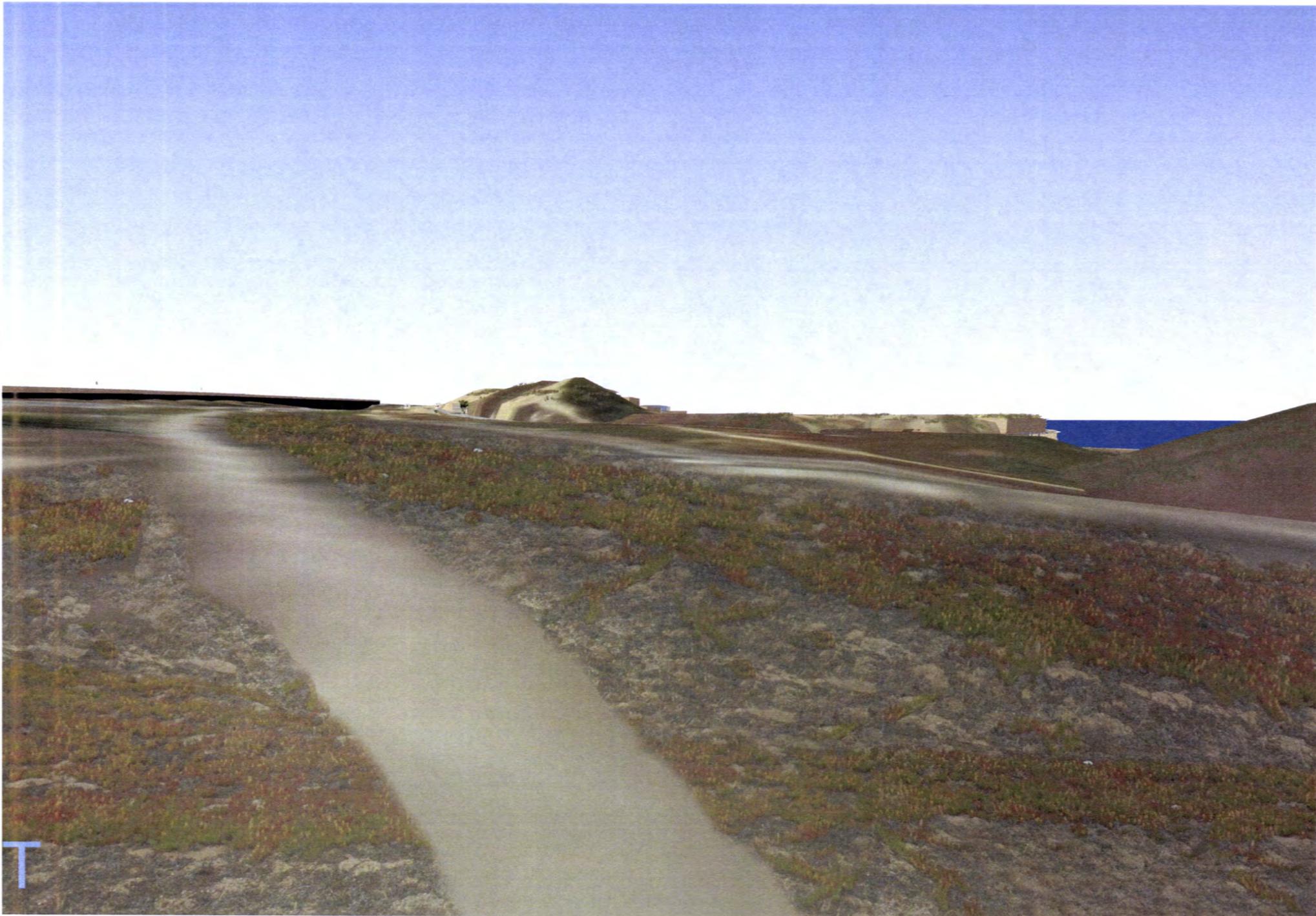




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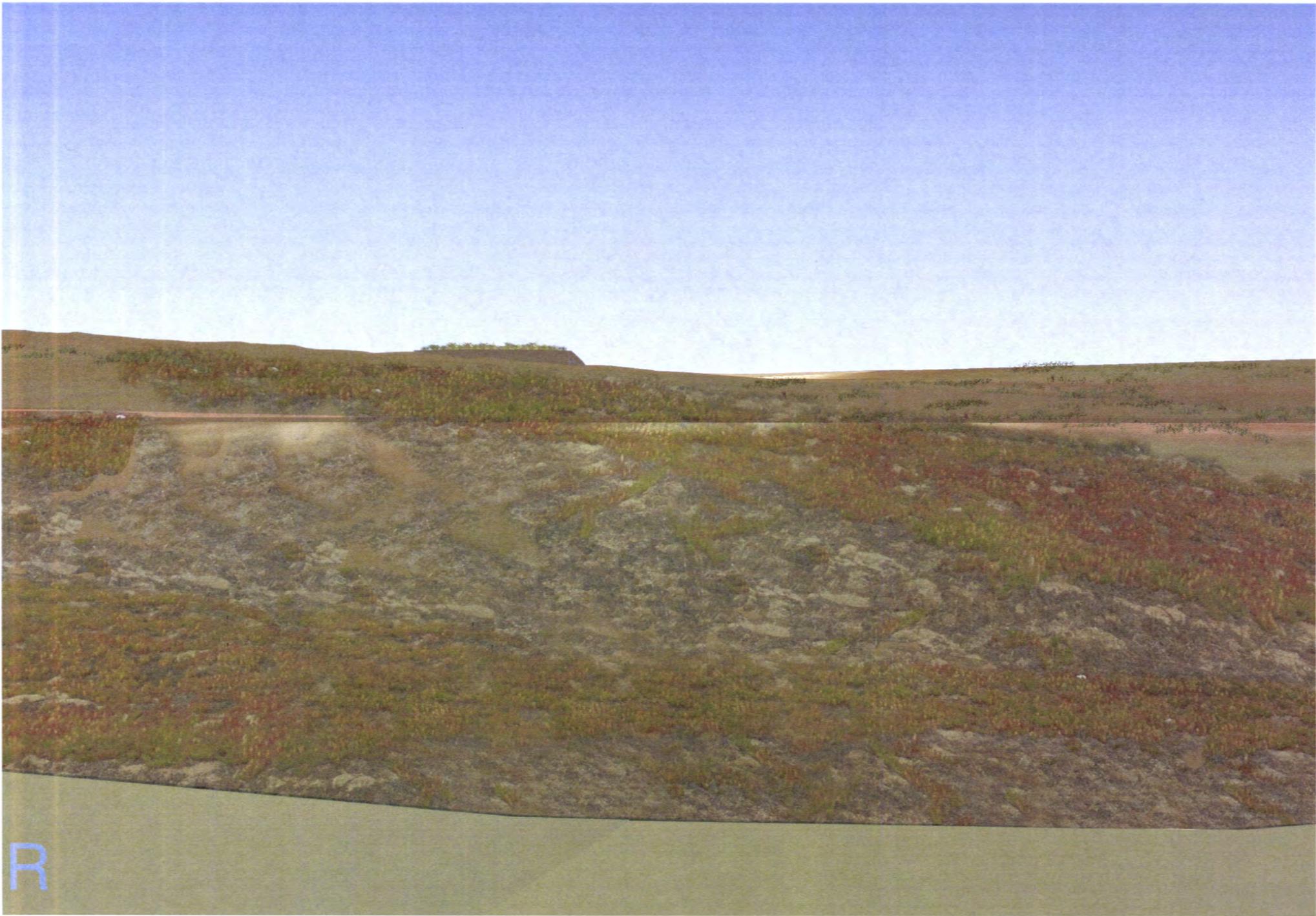
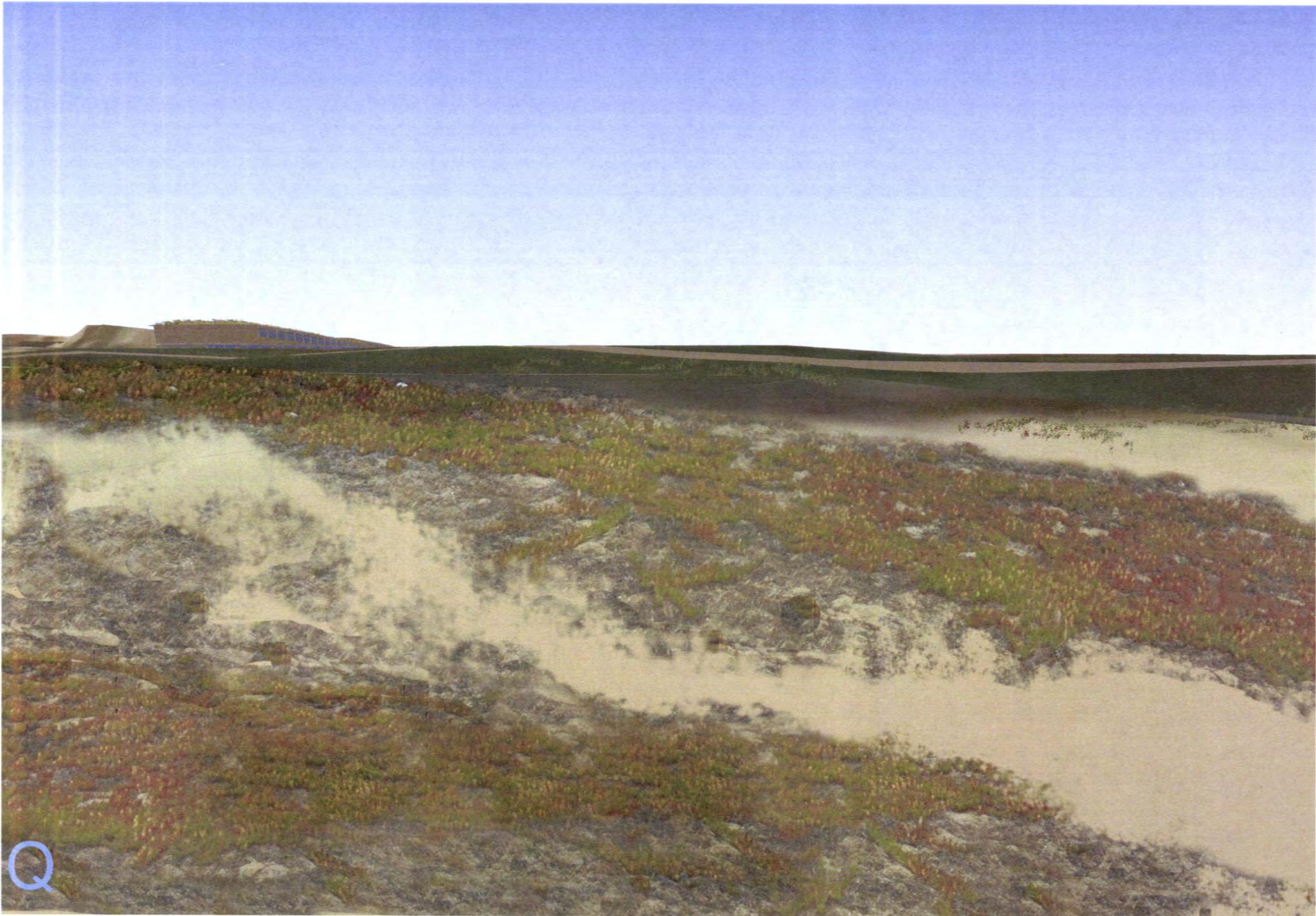
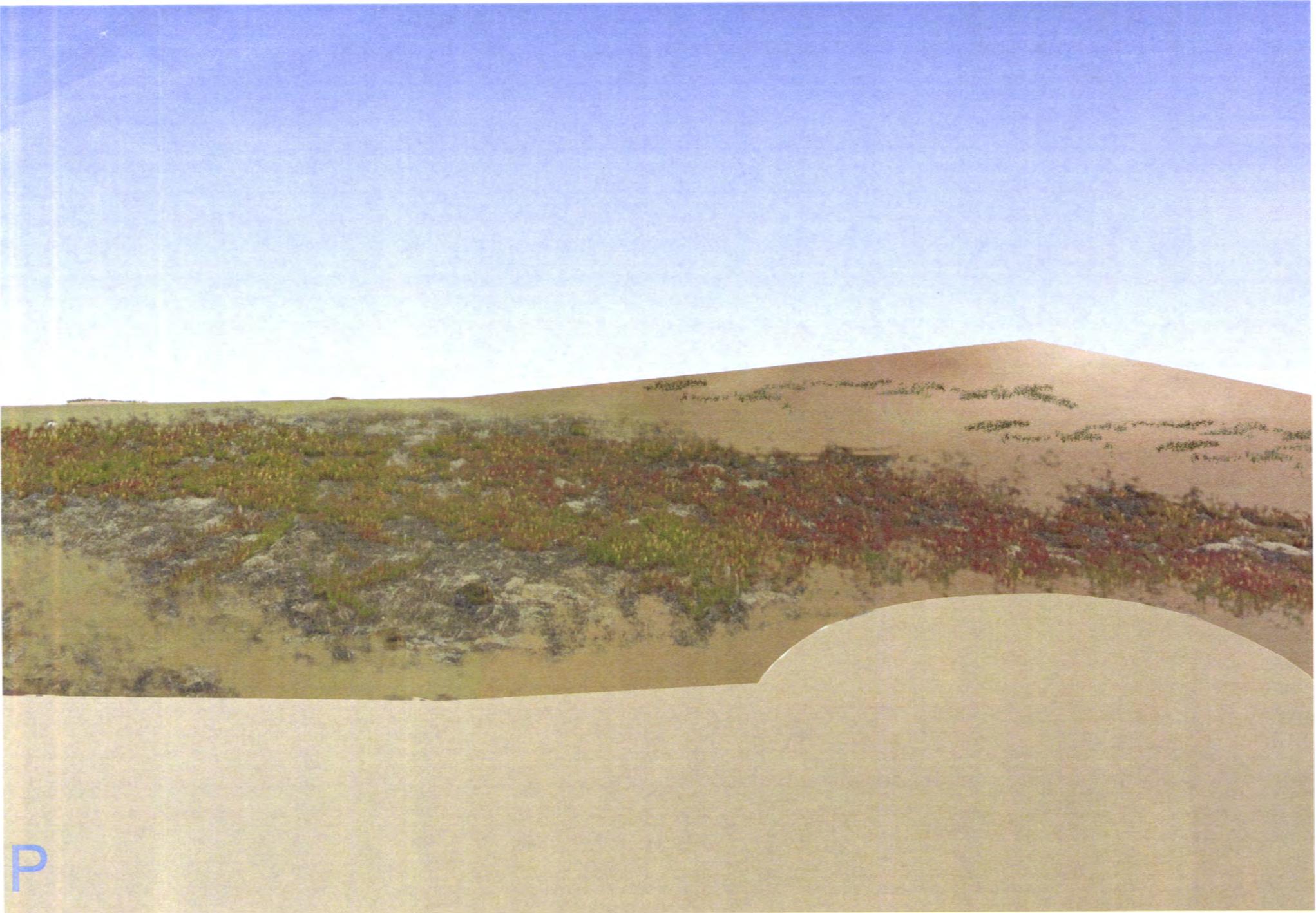
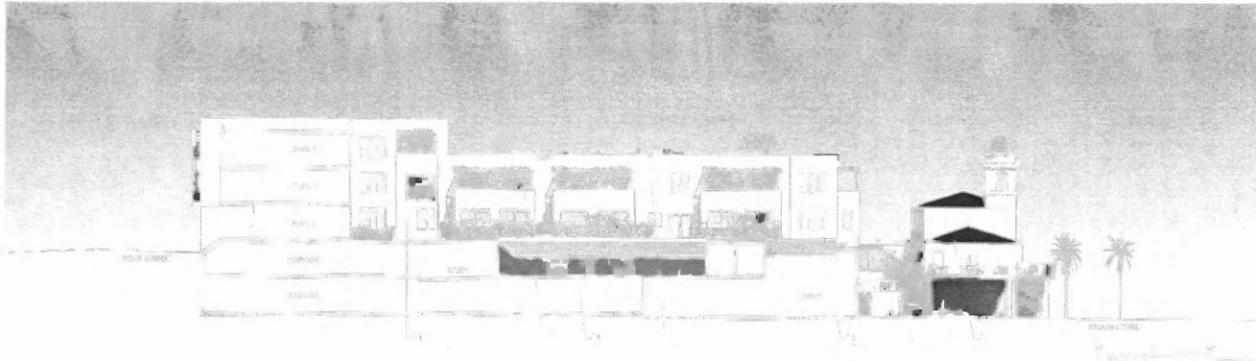


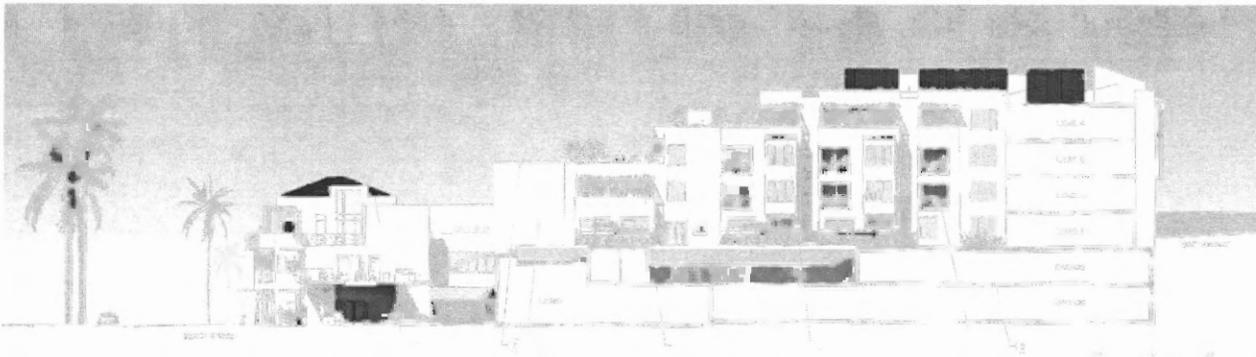
Exhibit 6: Examples of Project Elevations and Simulations
A-3-SNC-98-114 SNG Dispute Resolution
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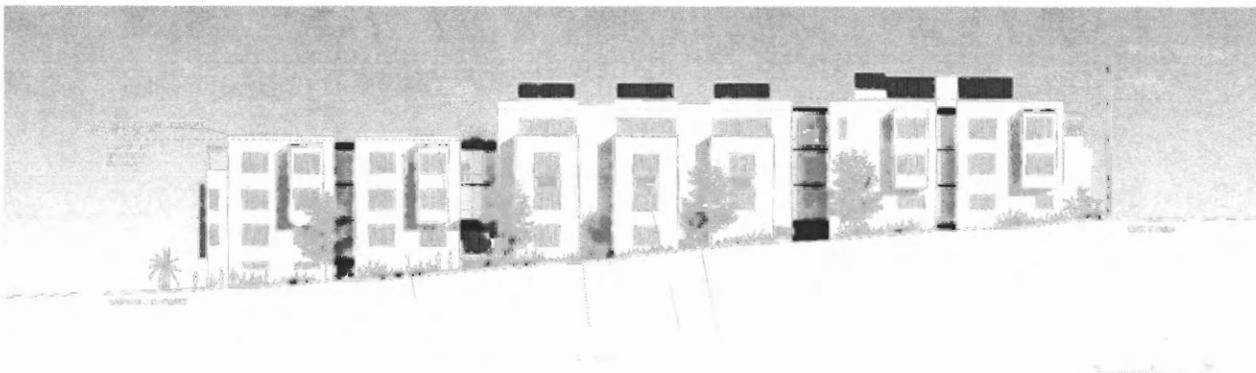




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Exhibit 3: Development of the Park
 A-3-SNC-98-114 SNG Dispute Resolution
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VIEW E

ORIGINAL



VIEW F

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Page 1 of 8



VIEW 1

ORIGINAL



VIEW 2

AFTER

ERIC S. PUGH SPA PHOTO & VISUAL SIMULATIONS

LMS

LA BAHIA HOTEL

LEDDY MAY TON STACY

Page 2 of 9



VIEWG

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AFTER

Exhibit 2: Project Site Photos & Visual Simulations

LMS

LA BAHIA HOTEL

4-3-STC-11-0049-4 (28 vacated)
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Page 3 of 8

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



August 29, 2014

Ed Ghandour
Security National Guaranty
505 Montgomery Street, Suite 1140
San Francisco, CA 94111

**Subject: Prior to Issuance Condition Compliance Review for Coastal Development Permit
Number A-3-SNC-98-114 (Monterey Bay Shores Resort)**

Dear Mr. ^{Ed}Ghandour:

Thank you for your recent submittal of materials intended to address the prior to issuance (PTI) requirements of conditionally approved coastal development permit (CDP) number A-3-98-SNC-98-114. The purpose of this letter is to respond to your submittal, including to identify areas where your submittal does not meet the PTI condition requirements. We note that we received the materials on July 31, 2014, and are providing you this response on August 29, 2014, within the 30 days allowed by the settlement agreement. You will find more detail below, but please note that we cannot issue the CDP until the deficiencies identified below are corrected.

- 1. Topo.** Special Condition 1 requires the revised plans to be based on current professionally surveyed and certified topographic elevations of the site. As submitted, the site plans (see for example sheet TM-2) and several of the cross sections (see for example sheets TM-3 and TM-4) appear to be based on old topographic surveys from 1995. Please note that the required topographic survey update is essential to analyzing the project and the required supporting materials for conformance with a host of conditions, including Special Conditions 1(a), 1(b), 1(c), 1(e), 1(h), 1(i), 1(l), 1(p), 1(u), 1(v), and others. Although this letter provides you specific feedback related to compliance with the conditions (see below), that feedback is hampered by the lack of current topographic information and thus you should not consider such response final. We reserve our right to make any final conclusions as to conformance with the underlying conditions until after the requisite site plans, elevations, and cross-sections have been provided on a current topographic base.
- 2. Plans.** Special Condition 1 requires a set of comprehensive revised final plans that address each subheading requirement (i.e., Special Conditions 1(a) – 1(v)) via site plans, cross-sections, architectural elevations, additional plan detail, illustrations, etc.. Your submittal instead provides a series of different plan sets and materials, each to different scales and levels of detail, that do not meet the requirement of one set of final revised plans. The condition requirements associated with the revised final plan requirements are all interrelated, and to evaluate compliance with the conditions they all need to be in the same set, where the orientations, scales, and levels of detail match throughout to allow for the verification of compliance. As is, the disparate sets of materials provided mean that we

cannot effectively understand and evaluate compliance under Special Condition 1. As with the topographic issue described above, that means that we will provide as much response as possible to your submittal as a means of facilitating your ability to move forward, but will withhold final conclusions on Special Condition 1 requirements until we have one coherent and comprehensive set of revised final plans submitted for review.

3. **NGVD.** The submitted plans are described in relation to National Geodetic Vertical Datum 29 (NGVD29). NGVD29 has been replaced by the new standard North American Vertical Datum 88 (NAVD88). Please submit revised plans that are described in relation to NAVD88.
4. **Special Condition 1(a).** Together with special conditions 1(b), 1(c) and 1(v), among others, the purpose of special condition 1(a) is to allow dune re-contouring and dune building to help avoid and minimize public view impacts, and limits dune manipulation such that finished elevations are within 3 feet of current topography. Bracketing the lack of current topo information (as discussed above), the submitted plans show dune changes north and northwest of the dune view line that lead to dune elevations substantially different from baseline elevations, inconsistent with this requirement. In addition, the plans show a fairly linear dune manipulation, for example along the north of the site, that does not replicate nor integrate with surrounding dune landscapes. Please revise the plans to show finished elevations north and northwest of the dune view line generally equal to existing grade (within 3 feet), and contoured to mimic natural dune landforms.
5. **Special Condition 1(b).** The provided cross-sections are inadequate to document compliance with the requirements of special condition 1(b). The cross-sections provide an incomplete picture of the approved development as viewed from Highway One and thus we are unable to conclude that the condition's requirements have been met. In addition, based on the cross-sections provided, it appears that buildings will be visible in this protected view, inconsistent with special condition 1(b). Please submit along with the other requested materials a comprehensive set of architectural elevations and cross-sections demonstrating compliance with the requirements of special condition 1(b). In addition, please provide visual simulations from both north and south Highway One, at approximately 200 foot intervals starting from approaching the site from the south at approximately ¼ mile, and from the north from the road crest where the site first comes into view, and one extra simulation along the dune view line. Visual simulations need to show all development (including but not limited to dune manipulation, fences and roads (including with vehicles driving and parked), lighting, retaining walls, tunnel, and signs). In addition, we need all the same visual simulations from a nighttime perspective which accurately depicts light throw and glare. The visual simulation must be accompanied by a methods sheet that clearly describes the way in which the simulations were developed (distance, lens, etc.). Please provide visual simulations in hard copy full size, and in jpg/pdf format. Additionally, the submitted plans do not include a rooftop plan with rooftop equipment detail. All such detail must be clearly identified on the plans.

6. **Special Condition 1(c).** This condition requires that all development located inland of the buildings and related development (e.g., road, access tunnels, parking areas, pathways, etc.), be sited, designed, and screened to minimize its visibility in Highway One views to the maximum extent feasible. The submitted plans identify three resort tunnel access points and retaining walls up to 25 feet in height at several locations to support development of the resort. These features are shown in site plan view on the submitted plans. Site plan view does not provide the appropriate perspective to analyze the visual impact of the project features and for conformance with the approved condition. In addition, the plans do not provide detail on how visible development is to be sited and designed to blend into the dune aesthetic as required. Absent such detail, we cannot evaluate compliance with this condition. The plans further do not indicate how the tunnel access will be constructed underground and buried in sand in order to comply with this condition.
7. **Special condition 1(d).** Per this condition, no further roadway development beyond what is necessary for the project is authorized. The submitted plans include a driveway spur beyond the condominium tunnel access point. The extra road development past the northern access road must be eliminated as it is not part of the approved resort project.
8. **Special Condition 1(e).** Similar to comments made above, the submitted plans do not provide enough detail to conclude that the approved development complies with the 45-foot (hotel and condominium hotel) and 36-foot (all other development) height limits. Site plan view does not provide the appropriate perspective to analyze the project for compliance with the condition. The provided cross-sections illustrate a slice along a single line through the development but are similarly inadequate to ensure compliance across the entire site and elevation. Per the special condition, please provide architectural elevations that identify the two types of development (including evidence on why development fits into either category).
9. **Special Condition 1(g).** The condition of approval limits foredune grading seaward of the buildings down to 32 feet and only where such grading is designed to replicate natural dune landforms and to integrate into the surrounding dunes to the maximum extent feasible. The submitted plans conflict with this requirement as they illustrate grading of the bluff edge down to approximately 20 feet (see Sheet TM-2) along the entire frontage of the site, including in areas not seaward of buildings where this is not allowed. Grading along parallel lines to the northern edge of the property also appears unnatural and does not replicate natural dune landforms. It is also not clear whether this grading meets the tests of special conditions 1(a), 1(b), and 1(c). The final revised plans must be revised to eliminate foredune grading that is not seaward of buildings, to eliminate allowable areas of foredune grading to no lower than 32 feet, and to create a more natural dune landform along the northern and seaward portions of the site.
10. **Special Condition 1(h).** The submitted plans do not provide any plan detail beyond a site plan illustrating the approximate location of the approved pathway system and overlooks (i.e., benches, railings, etc.). This is insufficient to allow for an evaluation of condition

compliance. Please provide complete plan detail for each element of the required resort pathway and overlook system including size, location, orientation, materials, etc. In addition, please eliminate any notations on the plans indicating future potential temporary events or possible infrastructure expansion, as none of this is authorized by the CDP.

- 11. Special Condition 1(i).** The submitted plans do not provide any plan detail beyond a site plan illustrating the location of the public access amenities at a fairly gross level scale, and some illustrations (in a separate package of materials not in the plans – see also comments above on this point) of potential design features. We need site plans, cross-sections, and detail sheets that provide significantly more detail than the general locations and illustrations provided thus far to even begin evaluating compliance with this condition. We note in advance that plan notes do not and cannot take the place of actual plan details at a scale that allows us to understand what is going to be constructed and installed.
- 12. Special Condition 1(k).** The landscape plan was not provided in the revised plan set, but rather was provided in a separate submittal. The landscape plan needs to be provided for in the revised final plan set (see also comments above). In addition, the plan includes a series of plants that are not non-invasive dune species native to the dunes in this area, and these must be eliminated from all planting palettes except for the hotel and residential landscape category. In addition, the hotel and residential landscape area must be modified so that it is limited to areas fully contained within the confines of the hotel and residential courtyards, holistic garden, rooftop workout deck, and port cochere. In addition, the plans need to provide for all non-native and/or invasive plants to be removed to set the baseline for site planting and restoration efforts. Please revise the plan sheets accordingly to ensure that such removal (initial and ongoing) is accounted for as required. The revised landscape plan plant palette must also be certified from a licensed professional indicating that all plant species to be used are non-invasive dune species native to Sand City and the southern Monterey dune system.
- 13. Special Condition 1(l).** The submitted plans do not include lighting plans for the buildings and the three tunnel access points. Thus, we are not able to analyze the submittal for conformance with the condition in respect to those elements. Please provide lighting plan sheets and information on lighting (exterior and interior). Additionally, the proposed pathway lighting scheme provided needs to be included on the revised plan sheets, and not in other materials. In addition, no materials have been provided on it (or other lighting) that demonstrates compliance with the conditions (i.e., evidence that it is the minimum necessary for safety purposes, evidence that the light wash and glare has been limited to the maximum extent feasible, etc.). We need plan sheets that identify all lights, including by location, type, luminosity, manufacturers specifications, etc, and plan sheets that identify the manner in which the lights will wash the area and/or be visible. As described above, visual simulations at night with lighting shown need to be provided as well.
- 14. Special Condition 1(m).** The submitted plans do not include details (i.e., architectural

elevations, written narrative, manufacturers specifications, or similar) to show how windows and other surfaces will be treated to avoid reflecting light and to protect against bird strikes. Please provide information on all planned window and other surface treatments.

- 15. Special Condition 1(n).** Water, sewer, and storm water infrastructure are shown on the project plans, but the storm water portion is lacking detail necessary to evaluate compliance with the condition (and special condition 1(o), see also below). Please revise the plans to include a storm water detail indicating the unit, size, and capacity of all storm water infrastructure along with additional specifics about the proposed dry wells and any connections to the City's storm water system east of Highway One.

The plans do not appear to include detail on electrical, natural gas, cable, phone/data service, solar, wind, or other renewable energy sources. Please either confirm that these services will not be provided on site, or please provide complete plan detail on the provision of these services.

The plans also appear to include overhead equipment near the resort service entrance tunnel and other areas along the Highway. As required by the condition, the plan must provide for removal or undergrounding of all existing overhead utilities on the site and in areas between the site and Highway One. Please revise the plans accordingly. There also appears to be additional utility development in the dunes between the northerly two tunnel access points. Development in this area was not authorized past dune manipulation to address viewshed impacts, and thus utility infrastructure should not be present in these areas.

The Monterey Fire Department in its January 2, 2014 letter indicates that final approval of the fire access will be considered at a future date when building plans have been submitted for review. The letter further indicates that alternative methods of providing fire protection for the building will be required as an alternative to the revised ocean side access. As such, the fire sign-off is not yet complete, and it appears that alternative measures may be required. We need to know what fire safety requirements are going to be required before we can measure compliance on this point, including to evaluate whether they may necessitate changes to the approved project. If alternative fire protection methods to the proposed fire access road are considered, please keep in mind that the fire access road presents significant public viewshed issues and changes to it need to be understood in that context, including in terms of the requirements of Special Conditions 1(a), 1(b), and 1(v).

- 16. Special Condition 1(o).** The submitted plans illustrate the storm water system in site plan view but do not clearly identify all storm water and drainage infrastructure including the proposed unit, size, capacity of the primary engineered filtration system or the identified dry wells and related infrastructure in order to assess the system's ability to filter, treat, and infiltrate storm water in accordance with the performance standards of the condition. Please submit additional detail.

17. Special Condition 1(p). As noted above, the proposed resort signage is not identified on the project plans. However, information provided in the separate Access, Signage, and Lighting Plan identifies several signs at the resort entrance (i.e., in front of the retaining wall beneath the large dune feature, at the resort property entrance, and one sign at the resort turn-about) all of which are within the public viewshed. As currently proposed the signs do not comply with the minimization requirement of this condition. The entrance sign at the foot of the large dune feature is 15 feet tall by 40 feet wide – or 600 square feet in size. It is also located in an area where only dune restoration is allowed, and not resort signage. Other proposed signs are similarly oversized, and have not been sited or designed to meet the requirements of this and related conditions designed to avoid and limit public view issues. Prior to resubmitting revised sign details, we would be happy to discuss options that would be consistent with the conditions and meet your needs as much as possible.

With respect to other signs, the separate Access, Signage, and Lighting document includes additional signage with text that needs modification. For example, we recommend signage that interprets dune habitat and its inhabitants as opposed to language that states “dune restoration area...keep out.” Similarly, if some number of property boundary signs are allowed consistent with the standards of the condition, we recommend text that simply indicates the location of the property: “Property of Monterey Bay Shores Resort” or similar as opposed to “No Trespassing.” All signs must be sited and designed to integrate into the dune aesthetic (i.e., natural materials, muted colors, diminutive in size, etc.) and placed in areas that minimize impacts on public views, including from Highway One and the pathway system itself. Please provide revised sign sheets with the minimum number of signs necessary to achieve the desired goal.

18. Special Condition 1(q). The submitted plans are significantly incomplete with respect to foundation and retaining wall details, and thus the submittal does not comply with the condition requirements. As you are aware, a primary objective of the condition is to ensure that foundation and retaining wall development best meets the objectives and performance standards of the CDP conditions, including to minimize visual incompatibility and to facilitate removal. One of the primary means of accomplishing this is through ensuring that the foundations are the least environmentally damaging feasible alternative. The plans were submitted with inadequate documentation to allow evaluation on these points. The HKA June 2014 report appears to indicate that shallow to moderate foundations could be used for at least some of the development. That report also indicates that deep piles are preferable but does not indicate why, and there is no analysis of the environmental impacts or benefits from the two options. Accordingly, please provide a comparison between the two foundation types (shallow vs. deep) based on construction impacts and ease of removal. Please also provide an analysis of the hybrid foundation that we have suggested (i.e., shallow piles forward and a deeper foundation system beneath the larger and more inland development features). Please also provide all supporting analyses.

In terms of the detail that was provided, it is inadequate. There is a small 5” x 8” preliminary

pile layout for the Magnusson Klemencic Association June 30, 2014 report indicating that the piles to be used are apparently all 2-feet in diameter and 55-feet long, some are 6-feet on center, and some are 8-feet on center. However, even if piles are deemed to be appropriate to meet the condition requirements, in order to comply with the revised plans requirements, we need to have a large scale plan indicating the location, size, and numbers of piles proposed and a narrative about the foundation for the areas that have no identified pile support. Since the condition prohibits the foundation from acting as a shoreline protection device, we also need a plan detail with the pile design and design for the reinforcing along the pile length together with a diagram of the forces that were used to design the reinforcing. Please provide this information for each alternative identified in the paragraph above.

The HKA June 2014 Geotechnical Report indicates little to no potential for landslides, liquefaction, or flooding, though some settlement and lateral spreading could occur during earthquakes. As such, HKA indicates that shallow to moderate foundations are possible if the pads are supported on compacted engineered fill. It would seem likely that the shallow to moderate foundation would be easier to remove than deep piles that would extend some 23 feet below existing ground water. If true, a shallow to moderate foundation might prove to be the least environmentally damaging feasible alternative. If not true, please provide evidence from the project geotechnical engineer demonstrating why it is not true.

19. **Special Condition 1(s).** The revised plans do not include geotechnical signoff in the manner described in special condition 1(o). It may be prudent to wait until foundation and retaining wall details consistent with special condition 1(q) have been agreed upon before pursuing the requisite sign offs, or it may be that the various alternatives identified above could each be evaluated and signed off in this manner. Either way, a geotechnical sign off for the approved project will be required before this condition can be considered met.
20. **Special Condition 1(t).** The plan note on the submitted plans is too broad and does not clearly identify the manner in which excavated sand will be disposed and/or reused. Please submit revised plans that identify the amount of sand to be disposed based on the plans and the updated topographic survey. The plan revisions must also include any sand stockpiling locations, truck and material staging locations, disposal locations, and all related details on sand disposal (such as extent and duration of sand moving activities).
21. **Special Condition 1(u).** The submitted plans do not include or indicate fencing on the plans. Elsewhere, on separate landscape sheets not associated with the revised plans, there are a variety of fencing alternatives proposed, including a 6-foot tall redwood fence with 6" planks which is incompatible with the minimization requirements of the condition. Additional split rail fencing and more symbolic post and cable are identified but there does not appear to be any justification for either form of fencing. Per the condition requirement, the starting point is that all site fencing first be removed, and then it can be replaced by the minimum necessary to meet project objectives where such fencing is sited and designed to be compatible with the dune landscape and to minimize public view impacts to the maximum

extent feasible. Please submit fencing details in the revised plan sheets that identify a fencing removal plan (the starting point), and then details on all proposed fencing, including demonstration of need given the premise of the condition is to strictly limit fencing.

22. Special Condition 1(v). The requirements of special condition 1(v) are overarching, and affect most if not all of the issues discussed above. Thus, the inconsistencies and issues described above must also be understood in terms of special condition 1(v) as well. Overall, the submittal is fairly incomplete at this time, does not include critical plan elements such as architectural elevations, visual simulations, or other means for adequately assessing the project's compliance with the condition. Although we have identified project elements that conflict with the visual protection standards identified in the special conditions and need to change, there may be other changes necessary when more complete detail has been provided in response to these comments.

23. Special Condition 2. A significant portion of the proposed construction staging is located on the foredune north of the dune view line and within the public viewshed. Similarly, more than a third of the area identified for stockpiling sand is located north of the dune view line within the public viewshed. This appears to be inconsistent with Special Condition 2(a) which requires the identified construction staging and stockpiling areas be minimized to the maximum extent feasible in order to have the least impact on dunes, public access, and public views. Please reduce the size of the identified construction staging and stockpiling areas consistent with the condition and identify other areas (on-site or off-site) where construction staging can occur without the associated view impacts. In addition, the optional staging area identified on the adjacent property northwest of the project site is located in an uncertified segment of Monterey County, outside of Sand City and beyond the scope of this permit, so a separate CDP from the Commission would be necessary to use this area for staging or stockpiling. The sand dunes in this area are also likely an environmentally sensitive habitat area, and therefore unsuitable for construction staging or stockpiling of materials. We would suggest that this area be eliminated from consideration on the revised plans.

The construction plan indicates that sand excavation and export will be conducted 24 hours a day, 7 days per week. However, work (other than interior work under certain circumstances) is limited to daylight hours. Please revise the construction plan accordingly, including adjusting the schedule for sand moving to account for less than 24 hour work days.

The submitted materials do not include an identification of your proposed biological monitor. Please provide the name(s) of all proposed biological monitors for Executive Director review and approval.

24. Special Condition 3. Figure 2 of the dune restoration plan includes exhibits related to habitat restoration (shown in green) and the Dune Conservation Easement area (shown in purple). The dune conservation easement does not comport with Commission adopted Exhibit 11a

and must be revised to include all areas of the property landward of the bluff excluding roads and buildings.

Figure 2 also includes an exhibit illustrating the Public Access Easement area (shown in orange). However, this area does not match to Commission adopted Exhibit 11b and therefore must be revised as well.

The dune restoration plan also references other plans (Landscape Plan and Access, Lighting, and Signage Plan) to incorporate elements of those plans. Please note that the Dune Restoration Plan is a stand-alone document and any proposed elements of it need to be integrated into it in a way that it can clearly guide dune restoration activity and evaluation consistent with the terms and conditions of the CDP. Please incorporate any proposed other elements of other plans or materials into a revised dune restoration plan.

Please clarify that all non-native plant removal along the northern boundary of the project site will be completed by hand. No herbicides may be used north of the Z – Z cross-section as shown on VTM Sheet TM-2.

The dune restoration plan must be modified to eliminate exotic species shown in the “transitional” areas (see also landscape comments above that apply here in a similar way). Likewise all “hotel and residential landscape” must be limited to areas fully contained within the confines of the hotel and residential courtyards, holistic garden, rooftop workout deck, and port cochere. The large dune feature near the resort entrance is a protected dune stabilization and restoration area and must be restored with native dune plants within the Monterey dune complex.

The revised landscape plan plant palette must also be certified from a licensed professional indicating that all plant species to be used are non-invasive dune species native to Sand City and the Monterey dune complex.

Bio-filtration areas are proposed in two locations in areas reserved for native dune restoration, and this is not authorized. Please remove these areas from the dune restoration area.

The plan does not include specific provisions that enhance sensitive species habitats, including at a minimum snowy plover and Smith’s blue butterfly habitats, as part of dune restoration activities. Please provide details on the provisions to enhance such habitats as required.

Performance standards (success criteria) for biodiversity and vegetative cover must be provided for each vegetation type (as characterized by a specific plant palette and planting plan and modifications based on slope and aspect) rather than on management areas. Biodiversity and vegetative cover similar to natural reference areas in the vicinity must be achieved. Please revise the dune restoration plan accordingly.

Grading along parallel lines to the northern edge of the property appears unnatural and is inconsistent with this condition. The dune restoration plan must be revised to create a more natural dune landform along the northern edge of the property.

25. Special Conditions 4 and 6 (Dune Area Conservation and Public Access Easements). We have received the initial drafts of the Irrevocable Offer of Dedication for the Public Access Easement (Public Access OTD) (required pursuant to special condition 6) and Dune Area Conservation Easement (Dune Conservation OTD) (required pursuant to special condition 4). While we appreciate you providing us with these drafts, we cannot fully review and comment on them because they must incorporate information from the Public Access Plan (special condition 5) and the Dune Restoration Plans (special condition 3), neither of which have been approved.

However, we will provide a few initial observations. First and foremost, as noted above, the Dune Conservation area described and depicted in Exhibit C and C-1 of the Dune Conservation OTD is not consistent in size or orientation with the approved area as shown on Exhibit 11a. The same is true for the Public Access Area described and depicted in Exhibit C and C-1 of the Public Access OTD. For example, as stated in Special Condition 5(b)5, the beach and offshore area, called Parcel 5 in Exhibit C and C-1, should extend “from the seaward-most property line to the toe of the dune bluff...” but in Exhibit C and C-1 of the Public Access OTD, this runs from the mean high line landward, even though the property boundary of Parcel 1 is shown seaward of that line.

Additionally, these Offers to Dedicate must be recorded free of all prior liens and encumbrances that may affect the interests being conveyed. Therefore, please provide a current preliminary title report, so that we may determine if this requirement is satisfied or if subordination agreements will be necessary.

Please note that these comments represent preliminary observations which are not based on a full review of the documents for the reasons stated above. Once the Dune Restoration Plan and Public Access Plan are final, we will have a complete understanding of how the areas subject to the easements must be restricted, so we will draft the precise language of the OTDs at that time. This is why we have no current comments on the draft language you submitted, and our lack of comment on the precise wording of the documents should not be understood as implicit approval of the drafts you submitted. We reserve the right to provide any additional comments and make any additional revisions to the documents that are necessary once these plans are finalized.

26. Special Condition 5 (Public Access Management Plan). The Public Access Management Plan is intended to be a stand-alone document that guides development and use of all public access amenities on the site. As currently structured, it appears to reference materials from a series of separate and disparate documents (i.e., Access, Signage, and Lighting Plan: EMC Planning Group 2014; and the Legal Description, Public Access Easement: Bestor Engineers

2014). As such, the Public Access Management Plan does not contain the necessary detail to analyze it for compliance with the terms of the condition. Please clearly identify and detail all of the requirements of the condition within the context of a single stand-alone Public Access Management Plan. As with Special Conditions 1, 4, and 6 above, we cannot fully evaluate the submitted plan for this reason, but we will provide comments and/or observations where possible. All comments on the public access amenities and areas discussed above apply to the Public Access Management Plan, and must be addressed here as well.

Public access amenities are generally depicted on Figure 1 of the submitted Public Access Management Plan, but the plan lacks details on the siting and design of such amenities. It may be prudent to wait until such amenities and their configuration are approved under special condition 1 prior to incorporating those approved amenities into the Public Access Management Plan.

Regarding use of the public parking lot after midnight, the plan suggests that signs will be posted informing employees, guests, and residents of the use restrictions, but there is no detail on the number, content, or location of the proposed signs, and signage alone will not ensure that the parking area is reserved for the public. Additional measures are needed and available, such as requiring residents to have a resident sticker on their bumpers and requiring hotel guests to hang a temporary rear view mirror hanger so that they are easily identifiable and can be cited or towed if needed. Please identify all measures that will be applied to keep the parking lot available for public access use per the terms and conditions of the CDP.

At six feet in width, the proposed pathway from the Monterey Bay Sanctuary Scenic Trail (MBSST) to the public parking lot is too narrow and cannot be considered similar in width as the inland recreational trail which is roughly 12 feet in width. Please revise the plans accordingly. The submitted Public Access Management Plan currently omits (and must also provide) detail on path connectivity with the MBSST, including striping as necessary for road or driveway crossings.

The submitted Public Access Management Plan states that the overlook will be “approximately 300 square feet” in size, designed to eliminate the need for railings “to the maximum extent feasible”, and setback a “sufficient distance” from the blufftop edge. However, as with all of the other amenities (e.g., parking lot, pathway system, beach stairway/pathway, etc.), there is not actual detail that can be referred to evaluate compliance with the condition. Restating the requirement of the condition is not the same as clearly showing what will be constructed for public use. The Plan needs to be revised accordingly.

The submitted Plan lacks sign details. Please provide the sign details as identified in the special condition, including showing the number, location, materials, design and text of all signs, and including the California Coastal Trail and California Coastal Commission

emblems and recognition of the Coastal Commission's role in providing public access at this location.

The submitted Public Access Management Plan does not provide for off-site parking as required. Please revise the Plan accordingly.

- 27. Special Condition 9 (Coastal Hazards Response).** The submitted blufftop edge monitoring materials largely respond to the conditions of approval, except that it needs to be supplemented with the following definition as found in the Commission's regulations:

Bluff line or edge shall be defined as the upper termination of a bluff, cliff, or seacliff. In cases where the top edge of the cliff is rounded away from the face of the cliff as a result of erosional processes related to the presence of the steep cliff face, the bluff line or edge shall be defined as that point nearest the cliff beyond which the downward gradient of the surface increases more or less continuously until it reaches the general gradient of the cliff. In a case where there is a step-like feature at the top of the cliff face, the landward edge of the topmost riser shall be taken to be the cliff edge. The termini of the bluff line, or edge along the seaward face of the bluff, shall be defined as a point reached by bisecting the angle formed by a line coinciding with the general trend of the bluff line along the seaward face of the bluff, and a line coinciding with the general trend of the bluff line along the inland facing portion of the bluff. Five hundred feet shall be the minimum length of bluff line or edge to be used in making these determinations.

- 28. Special Condition 20 (Deed Restriction).** Attached is a copy of the Commission's deed restriction necessary to comply with special condition 20. Instructions for completing the document are found on pages 1 - 4. The deed restriction must be completed, signed, and notarized prior to recordation at the County Recorder's office. We strongly recommend that you submit the final completed deed restriction to us for review before recording it, however, so that we can identify any potential errors before it has been recorded.

Finally, although not a condition that must be met before the CDP is issued, it is important to note that special condition 15 requires confirmation of other agency approvals subject to certain criteria, and requires a modified Habitat Protection Plan (HPP) that incorporates standards to address certain U.S. Fish & Wildlife Service concerns. Special condition 15 also requires submittal of any changes to the plans for the project that may be necessary to comply with the approved modified HPP and/or agency requirements. It seems possible if not likely that other agency consultations and revisions to the HPP may require material changes to the project that will affect many of the materials you have just submitted, perhaps most clearly the case with the revised final plans pursuant to special condition 1. Although we are happy to work with you on the materials discussed herein, we note that even when approved, they may need to be modified later prior to construction if those HPP or agency changes dictate. That will mean a whole new round of submittals and revisions. Although not required, it would appear to us to be a more prudent use of time and resources to resolve the agency and HPP issues now so that they can inform the sign off of the plans that must be

approved prior to issuance of the permit, thus ensuring that the current materials don't end up needing to all be revised at a later date at additional cost and time. We strongly suggest that the revised HPP be prepared and submitted, and that agency consultations be pursued as needed consistent with special condition 15, as soon as possible.

In closing, we request that all revised materials that must be submitted prior to issuance of the CDP be submitted for review at the same time on the same date, unless you would prefer to address a subset in one submittal and defer submittal of other materials until that is resolved (e.g., resolving the special condition 1, 2, 3, and 5 requirements before resolving the special condition 4 and 6 legal document requirements). Please note that there may be additional changes and/or materials necessary to comply with the terms and conditions of approval depending upon the nature of the materials you provide in response to this letter, particularly regarding submittal of a complete set of revised plans. Further, we note that your submittal and this response is limited to the requirements of the CDP that must be met prior to issuance of the permit, and that there are other terms and conditions, including other necessary submittals and events that also must be complied with, including in terms of certain prior to construction and occupancy requirements, that also apply but are not addressed here. We look forward to working with you on both the materials that must be submitted prior to issuance of the permit and the other conditions of approval moving forward. Please note that once we have arrived at an approvable submittal pursuant to the terms and conditions of the CDP (for example, an approved revised final plan set), we will need two complete clean copies of each such submittal, one for your records and one for ours. Finally, we would suggest that we schedule a time to discuss your next submittal package in response to this letter before you spend time in developing the revised materials so that we are all clear on the expectations and needs associated with the PTI conditions.

If you have any questions regarding the above, please contact me (831) 427 4863 or via email at Michael.Watson@coastal.ca.gov.

Regards,



Mike Watson
Coastal Planner
Central Coast District



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September 8, 2014

VIA ELECTRONIC MAIL

Mr. Michael Watson
Coastal Planner
Central Coast Area District Office
California Coast Commission
725 Front Street, Ste. 300
Santa Cruz, CA 95060

Re: **CDP A-3-SNC-98-114 (Monterey Bay Shores Resort/SNG)**
Response to August 29, 2014 Letter Re: Prior to Issuance Condition
Compliance Review

Dear Mike:

This letter responds to your letter of August 29, 2014 regarding prior to issuance Condition Compliance review for the Commission’s approval of the Monterey Bay Shores Resort (MBS) Project.

I have set out below our response to each of the items in your 13-page letter which purport to identify “deficiencies.” Although we have noted a couple of instances where SNG is prepared to provide additional information, on the whole we fully disagree with your letter. SNG’s submittal package complies with the Commission’s decision and the Special Conditions imposed and agreed to by SNG.

Paragraph 6 of the Settlement Agreement between the Commission and SNG addresses “Mutual Cooperation Commitment” by the parties. Staff’s letter, however, is exactly the opposite, and frankly seems intended to delay, create endless machinations to “planning” and otherwise interfere in the process and the Commission’s action to approve the Project. In our view, it represents bad faith on Staff’s part, a violation of the covenants of the Settlement Agreement. Paragraph 6 provides in part: “In determining compliance with prior to issuance permit conditions, Commission staff will respond to all submissions by SNG within 30 days.” As discussed below, there are fundamental errors in Staff’s response which render the response tantamount to no response at all, and thus a violation of the Settlement Agreement. SNG submitted its condition compliance materials on July 31, 2014. It then made multiple requests to meet with Staff to discuss the materials. Looking at the e-mail exchanges, on August 8, 2014, you indicated that you would

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check with Dan regarding such a meeting. Later, on August 13th you indicated a meeting for the following week. No meeting occurred despite SNG's numerous requests. Staff chose instead to proceed with the responses and then to meet. While we appreciate that you have set aside two hours on September 10 to meet and discuss condition compliance, an early meeting would have obviated the fundamental errors noted below.

In general, your first item, carried over in several other items, erroneously assumed that site plans and cross-sections submitted were based on old topographic surveys from 1995. In fact, the Revised Plans submitted were done after a current survey as reflected on the plans, and all cross-sections correspond to the new topo and reflect the cross-sections of the revised topo and siting.

Staff's comments as to a number of items would improperly add standards or specifications that were not included as part of the Special Conditions adopted by the Commission and agreed to by SNG. You claim that "a series of different plan sets and materials" were submitted and are inconsistent, yet, nowhere in the Special Conditions is there a requirement to standardize the sets and scale. Neither the Commission nor the Special Conditions adopted and agreed to include design guidelines or format, scale, or engineering requirements. SNG's submittals, though, are entirely consistent with the type of expert, professional submissions and standards that the Commission has routinely accepted for other projects. Staff's letter, therefore, is in many respects non-responsive to what was submitted, and more importantly, is an attempt to put the Project in a never ending "orbit." Again, this is contrary to the terms of the Settlement Agreement, which was agreed to, among other reasons, in order to bring finality and certainty to issuance of the CDP. As such, it is our view that Staff has waived its right to respond having now missed the 30-day deadline and further has fallen out of compliance with the terms of the Settlement Agreement.

Many of Staff's additional requests overreach and are inconsistent with the Commission's action to approve the Project and Special Conditions. In some instances, your letter fails to identify what specifically Staff is suggesting is missing – for example, what plants do you contend are "invasive"? The bare statement is meaningless.

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In many respects, Staff's letter treats SNG's submission as though it were the initial exploration of a new project application, subject to early stages of planning, review, and project changes, which again violates and indeed undermines the Commission's decision to approve the Project. Once the permit is issued, and as with any approved Project, SNG's almost 40 consultants and engineers will proceed with the next stage which will include the final design drawings and construction drawings (CDs) for the project. This is a very project management intensive phase that requires proper sequencing, timing and quality control. That includes anything from (to mention only few) architectural, structural, civil, geotechnical, water strategies, mechanical, electrical, plumbing, audio visual, wind, food service design, sustainability, LEED, environmental, fire code and life safety protection, spa, parking and many other disciplines required to manage such a large project. The CDs phase will be a very costly process, must be reached as soon as possible, cannot be delayed further, and is not required prior to issuance of the CDP.

Lastly, one very disturbing aspect of the letter is Staff's attempt again to bring Special Condition 15 back into the prior to issuance conditions. That violates the Commission's decision and Condition 15. Most importantly, Staff's assertion that it is likely that revisions to the HPP will require "material changes to the project" is a completely inappropriate prejudgment and unwarranted assumption at this point.

SNG, its engineers and consultants have put significant effort in to fully complying with the prior to issuance conditions. They have taken great and extraordinary care to submit the most responsive professional materials required for condition compliance.

With those general comments, our specific response to each item is set forth below:

RESPONSES BY ITEM NUMBER:

1. TOPO: The Revised Plans were done after a current survey as shown in the plans. All cross-sections comport to the new topo and reflect the cross sections of the revised topo and siting. This is a fundamental error in the analysis and observations in the August 29, 2014 letter, and it carries throughout the comments in most Special Conditions – 1(a), 1(b), 1(c), 1(e), 1(h), 1(i), 1(l), 1(p), 1(u), 1(v), and others. The requirement in Special Condition 1 for Revised Plans has been fully complied with by

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the submission of the Revised Plans. Consequently, Staff erroneously asserts that its ability to review the condition compliance materials is “hampered” by the “lack of current topographic information.” This failure, as noted, means that the condition compliance review required by the Settlement Agreement was not complied with by the Commission, and the August 29, 2014 letter is tantamount to no review at all.

Conclusion: SNG submission fully complied.

2. PLANS: SNG submitted fully compliant Revised Plans as required by Special Condition 1 and the Commission’s actions in approving the Project. Despite Staff’s gross error in its conclusion in Item #1, which undermines its ability to properly respond to this Item, Staff erroneously argues that what was submitted was “differential plan sets and materials.” No standards or formats have been outlined in the Special Conditions approved by the Commission, and SNG submitted the items to the same standards that have been applied previously on this Project. Evaluation of the submitted Revised Plans could therefore have been evaluated as submitted. Nothing requires all plans to be on the same scale or to the same specifications, although it bears emphasis that all were generated using baseline autocad drawings. The Vesting Tentative Map TM-1 thru TM-6 have been submitted on the same scale, format and specifications, and those are the key plans and demonstrate full compliance with Special Condition 1, including Special Conditions 1(a) thru 1(v). The VTM is submitted at this stage as a *tentative map*, not at the level of construction drawings or documents and it is unrealistic and unreasonable to expect all items required by the Special Conditions to have same orientation and same scale for a project the size of the Monterey Bay Shores Resort Project. Clearly a comprehensive set of final plans cannot be finalized at this stage and only until Construction Drawings (CDs) are completed. These comments apply to all responses itemized below.

Conclusion: SNG submission fully complied.

3. NGVD: The project plans have always been based in relation to NGVD29. There is no Special Condition requirement to change that.

Conclusion: SNG submission fully complied.

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4. SC 1(a): The Project is being graded to 32' in front of the resort to the bluff, as approved by the CDP. As a result, on the north end, "lineal dune" manipulation is required to also transition to the north. Further erosion has occurred especially on the large dune and therefore replicating the dune with maximum 3' is extremely difficult. The civil engineers have complied with SC 1(a), and manipulation of the dune where required has been designed in such a way as to replicate natural dune landforms and integrate into the surrounding dunes to the maximum extent feasible, as required by SC 1(a). Despite Staff's gross error in its conclusion in Item #1, which undermines its ability to properly respond to this Item, there is substantial conformance to the maximum extent feasible with the undulations from existing grade, except in the transition area in the north going from the finished grade of 32' to existing grade.

Conclusion: SNG submission fully complied.

5. SC 1(b): The Revised Plans submitted provide full set of cross sections that include sections from 5' height above the roadway. This documentation demonstrates full compliance with the requirement of SC 1(b). In fact, the building's footprint was moved south and slightly rotated to provide additional screening as less of the building's footprint is now north of the dune view line. This exceeds the requirements of SC 1(b). Further, this is an approved CDP, and it is unrealistic and improper now to require visual simulations, architectural elevations and new schematic drawings and cross sections as though the MBS Project were in its early planning, pre-approval stage. All fences and roads, lighting, tunnels and signs are contained in the full set of submittals. Other submissions are not required by the CDP Special Conditions. For example, Staff requests our lighting consultant to provide the kind of design input that requires us to develop elevator machine rooms and roof top equipment, which requires the development of space plans and rooftop equipment layout. This is always done at the CD stage, not as a part of condition compliance. Simply put, Staff's request would improperly add requirements that the Commission did not require and change the Project after CDP approval.

Conclusion: SNG submission fully complied.

6. SC 1(c): The Revised Plans comply with this requirement to the maximum extent feasible and elements. Retaining walls are textured and colored to blend into the surrounding dunes to the maximum extent feasible. The tunnel access is constructed by excavation, then using a shell structure constructed from poured

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concrete, which is then restored above to dune finish grade. This is properly a part of the CDs. SNG can provide a number of additional cross-sections to facilitate better views in the areas in question so that Staff can understand the compliance, but, in general, SC 1(c) has been complied with.

Conclusion: SNG submission fully complied.

7. SC 1(d): The roads have been designed to comply with SC 1(d). The spur at the end is necessary as this is a dead end road. It has been minimized consistent with the condition. The curb is provided to be consistent with the entire road system.

Conclusion: SNG submission fully complied.

8. SC 1(e): The Revised Plans as submitted fully comply with the height requirements of this condition. If it helps Staff, we can provide an “envelope” that shows compliance at every single location of the buildings and use type.

Conclusion: SNG submission fully complied.

9. SC 1(g): The Revised Plans do not conflict with SC 1(g). Areas seaward of the buildings and fire access road can be graded to 32' elevation all the way to the bluff top. Finished grade has been designed to undulate and integrate into the natural landforms to the maximum extent feasible while meeting the terms of other CDP conditions. Grading of the bluff along the north will be required in order to bring the fore dune seaward of the buildings down to an elevation of 32'. In the southeast section of the bluff top, there is some fill of grade to create uniform 32' bluff top.

Conclusion: SNG submission fully complied.

10. SC 1(h): SC 1(h) deals primarily with resort pathways. The Revised Plans submitted comply entirely with the condition. Additional detail on the Vista Points (not required as part of SC 1(h)) are provided in the Public Access Management Plan and Access, Signage and Lighting Plan (ASLP). The notation of temporary events on the resort vista points will be removed. Complete plan details for resort pathway will be provided as part of the CDs.

Conclusion: SNG submission fully complied.

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11. SC 1(i): Public Access Amenities are detailed in the Public Access Management Plan and the ASLP referred to above. Full details on all the elements of what is included in each location is provided – the parking lot, pathway system, overlook and vista points, beach stairways and signs, including illustrations and photos of what design elements are included. Does Staff want a cross-section of a bench? We have illustrated the interpretational signage and intend to place the appropriate signs where required, at locations that connect resort to public trails, and even on Highway One by working with Caltrans.

Conclusion: SNG submission fully complied.

12. SC 1(k): The Landscape Plans were provided at submittal. There was no design format or specifications noted in the Special Condition with which SNG was required to comply. As such, plans were submitted in the format submitted at pre-CDP review stage. SNG will ask Rana Creek to certify that the plant species comply with the condition requiring non-invasive dune species native to Sand City and southern Monterey Bay outside of the resort building areas. The Landscape Plan will note that non-native and invasive plants will be removed per the condition. This is already addressed in the Restoration Plan submitted and will also be addressed in the HPP.

Conclusion: SNG submission substantially complies with the condition. The 2 noted items will be addressed.

13. SC 1(l): The Revised Plans submitted, including the ASLP, fully address the items called for in this condition. They are not “other material,” as referred to in the letter, but rather part of the Revised Plans. The ASLP shows the location of lighting, type, and height, and includes a full description of the design intended to limit the amount of light and glare that is visible from the public viewing areas to the maximum extent feasible. The precise bulbs and specs will be called out in the CDs by the electrical and lighting engineers consistent with this condition. However, to ask now for manufacturer specifications and visual simulations when final specs have not been called out by the CDs is not required. The ASLP contains the requirements of this condition in the body of the document, which is part of the Revised Plans.

Conclusion: SNG submission fully complied.

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14. SC 1(m): Specifications of windows consistent with this condition, including glazing and window specs, will be provided as part of the CDs. Title 24 requirements addressed later in the pre-development stages may also impact the glazing selection.

Conclusion: SNG submission fully complied.

15. SC 1(n): Condition 1(n) addresses utilities and the Will Serve. All required Will Serve approvals have been submitted. Beyond that, most of what Staff is asking for will be a part of the complete plan details provided as part of the CDs. If Staff wishes, SNG's civil engineers can supplement the drainage information with additional input regarding sizing and calculations for the storm drain system. The civil engineers have determined that connection to the City's storm water system is not required and all drainage, including the 85th percentile 24-hour runoff events can be handled on site with the drainage system identified in the Revised Plans. Detail drawings and red-lines of utilities is done at the CDs stage, not in the tentative stage for CDP issuance. For example, the routine PG&E electricity red-line trenching drawings will be completed with the CDs. Solar panels and wind turbines are not included as part of the plans. The well head remains on grade per MPWMD permit and is required as backup well. The Revised Plans are consistent with those approved by the Commission. All other equipment is underground, per the Commission's approval. Geothermal and the water tank were in original plans and have been placed underground as part of the approved utilities equipment. The Revised Plans show that SNG has shortened the fire access road west of the buildings to reduce impact. By not extending the fire road as far to the south as originally planned, the Fire Department indicated that alternative measures will be required, and those are on the interior plumbing and hydrants. They have no impact on the project, design, views, or environmental, but rather are only mechanical/plumbing in nature and interior to the buildings and can only be finalized at a future date when CDs have been completed. There are no changes or impacts to Special Conditions 1(a), 1(b) and 1(v) regarding views.

Conclusion: SNG submission fully complied.

16. SC 1(o): The requested details are part of the CDs. We will supplement as noted above in 1(n) regarding additional sizing calculations.

Conclusion: SNG submission fully complied.

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17. SC 1(p): All the signage has been included in the submittals, which include the Revised Plans, the ASLP, the Landscape Plans, and the Signage Plans. Their location and size are in conformance with the standards approved by the Commission. Staff takes issue with the resort signage on the approved retaining wall, when in fact Staff cites the area rather than the *lettering size* of the signage. Likewise, at the tunnel entry and roundabout, the ASLP incorporates the entry signage and tunnel signage as submitted by the architects WATG. None of the signs effect viewshed into the Bay and have been incorporated into the dune landform to the maximum extent feasible using natural materials, colors and down-lighting as shown in the plans submitted. At the Commission hearing in April when the CDP was approved, there was specific consensus that resort signage must be seen. SNG has gone to considerable effort to ensure that signage is not located in the view corridor towards the Bay and is subordinate to the dunes in the background. With the landscaping and textured dune-like retaining walls, the signage becomes subordinate to the larger dunes in the background. The signage as submitted is fully compliant with the condition and is in conformance with the VTM as noted in Special Condition 1. Staff states that some of the wording of the signs ought to be changed. That can easily be done with interpretational signage to accommodate the dune habitat interpretation. However, security signage on the perimeter of the property, away from the beach toe of the bluff area, has been approved previously by a CDP for the site and the current CDP. No trespassing signs have been installed in a number locations for over 25 years and have been approved specifically under a separate CDP for additional signage in February 2013.

Conclusion: SNG submission fully complied.

18. SC 1(q): Staff is asking for a foundation package that would typically be produced somewhere between 50% design drawings and 50% CDs. That cannot be applicable now. Detailed foundation and retaining wall will be implemented later in the DD and CDs stage and cannot be developed from a feasibility level geotechnical investigation. Geologic and geotechnical hazards can be identified and mitigation measures determined to insure that the project is feasible. Significantly more exploration, lab testing and geotechnical analysis will be necessary later on to allow proper interaction with the structural and civil engineer so that design and construction details can be produced. HKA indicated that shallow to moderate foundations may be feasible but that differential settlement across the highly irregular building will be difficult to design for with shallow mat foundations. HKA indicated

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that a deep foundation system uniformly embedded into very dense sands and gravels would result in significantly less differential settlement across the building and is therefore the preferred foundation type. The structural engineers MKA has confirmed that in their Structural Narrative which was submitted as part of the Revised Plans. They state that, "given the variability of the site founding layers across the site, and the deflection-sensitive nature of this project (both for below-grade buried concrete structure water protection, and for brittle finishes of public and hotel room spaces), a deep foundation solution that involves piles will be used for the base building. With pile foundations, slabs on grade would be designed to span between the piles as an elevated structural slab. This approach also allows for the minimizing of ground drainage systems and other site soil preparation prior to building the slab on grade. In our review, we have not considered any wave action or other ocean-related site impacts from water." MKA goes on to provide preliminary Pile Layout for the project differentiating between areas requiring foundation piles at 6' O.C. on average and those requiring foundation piles at 8' O.C. on average. In a way, that is similar to the "hybrid" foundation that Staff has suggested. The report, analysis and design submitted have been recommended by licensed structural, civil and geotechnical engineers consistent with standard engineering and construction practices and have been proposed to meet the performance standards of Special Condition 1(q) and to be the least damaging environmentally alternative. Comparison of different types of foundations deep versus shallow is not a requirement of this condition. The details provided to Staff with the submission are more than adequate.

Conclusion: SNG submission fully complied.

19. SC 1(s): The Revised Plans have been submitted with evidence that they have been reviewed and written by a licensed geotechnical engineer. The submittal is consistent with and compliant with the condition. It is impossible to sign off on preliminary plans. Final plans developed and approved for construction as part of the CDs will be reviewed by the geotechnical engineers and then signed off. Similarly, with respect to the entire foundation package that will be produced and signed off at time of CDs.

Conclusion: SNG submission fully complied.

20. SC 1(t): The excavated sand plan is identified on the VTM submitted as part of the Revised Plans and in the Construction Plan and is based on the updated current

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topographic survey. The amount, haul route, timing and staging areas are identified in the Construction Plan. At Staff's request, we will remove the Optional staging area to the north.

Conclusion: SNG submission fully complied.

21. SC 1(u): All fencing details have been submitted as part of the Revised Plans consistent with the condition. They are identified in the submittals that include the Landscape Plan and the ASLP and have been selected to meet the project objectives and to be compatible with the dune landscape. Fencing identified in the Revised Plans is similar to that approved and even encouraged by Staff and the Commission in other local projects along the coast. In the potential blue water viewshed, where view impacts might be greatest, the Revised Plans have minimized the impact of fencing by installing split rail fence, instead of a 6' redwood fence, which might be more appropriate for security reasons.

Conclusion: SNG submission fully complied.

22. SC 1(v): The resort elements and Revised Plans as submitted are fully compliant with this condition. Colors, screens, design, curvatures of buildings and trails are all intended to camouflage the resort to the maximum extent possible and be compatible with the dune landscape. Please see the entire comments above and Revised Plans.

Conclusion: SNG submission fully complied.

23. SC 2: SNG agrees to remove the optional staging area from its Construction Plan. Staging has been designed to minimize impacts and chosen to be located below the view line as see from the roadway. For example, staging has been identified in three main areas. The area in front of the resort is at elevation 32' after grading has been completed, well below the line of site and ultimately completely hidden by the buildings. There are no impacts in that entire strip throughout the building construction stage. Because of that, it is an ideal location. The staging in the NE corner of the site is at elevations 40' to 60' and well below the view line from the roadway. The NE view corridor towards the Bay has been preserved. The area along the southerly property boundary line and entry lies against the dunes in the background that rise from elevation 70'-80' to 120', and hence no staging in this area

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blocks any viewshed to the Bay. The area interior to the resort in the center is mostly screened. This is temporary while construction is undergoing. Construction areas, method and timing and biological monitoring are all identified in the Construction Plan. We will revise the Construction Plan to allow for excavation only during daylight hours. The proposed biological monitors have been identified in the Construction Plan, cover page. Currently there are no off-site locations available to augment any of the project staging areas.

Conclusion: SNG submission fully complied.

24. SC 3: With respect to the Conservation Easement, SNG will make the adjustment to be consistent with the October 2013 HPP Land Use Easements and Open Space which shows the Conservation Easement adopted by the Commission. SNG will make an adjustment on the Public Access Easement as well to reflect consistency with that shown in the October 2013 HPP Land Use Easements and Open Space. SNG will revise the Dune Restoration Plan to include more detail including additional performance standards. The Landscape Plan and ASLP are referenced in the DRP and elements will be incorporated into the Plan. SNG will clarify the plant removal process as well. The LP will be updated to address the transitional areas. Certification by a biologist will be provided regarding plant species. Biofiltration are native to the site and are part of the dune restoration plan. If Staff recommends removal, Staff should also provide an alternative location it recommends. The Dune Restoration Plan will add language from the HPP regarding habitat enhancement for the Smith's blue butterfly and snowy plover. These will be fully addressed in detail in the upcoming HPP. The grading permitted under the CDP allows grading in front of the buildings and the fire access road. That creates "lineal" contours to the bluff top. In order to curve the slopes and lines, we will need to curve the grade and go further north, undulating the lateral lines. We will add that feature in the Revised Plans.

Conclusion: Modifications needed as noted

25. SC 4&6: The Dune Restoration Plan and Public Access Plans will be modified to reflect the above changes and those will be incorporated into the Offers of Dedication. We will examine Staff comments as noted, but we believe that other than adjustments to the Conservation Easement and Public Access Easement as noted above, the OTDs, which I prepared, fully comply with the conditions of the CDP as approved by the Commission. SNG will provide Staff with recent Preliminary Title

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Report for the property. Subordination agreements will be required from the lenders and that should not be an issue and, as you know, is typical for OTDs.

Conclusion: Modifications needed as noted

26. SC 5: The Public Access Management Plan contains all aspects identified in the condition itself. Staff argues that the details are not contained within *one single* document and reference is made to parts of the Revised Plans, such as Landscape Plan, ASLP, and the Public Access Easements. SNG will try to consolidate further the documents and references to the extent possible and if it is required by Special Condition 5. The public use of the public parking area is restricted to the hours approved by the Commission. Measures have been provided to insure that employees or guests do not use that area during hours available to the public. The condition does not make any further requirements for “extra” measures now suggested by Staff. The 6’ wide trail provided the public is consistent with the VTM and site plans dated October 2013 as updated and approved by the Commission. This pathway deadends in the parking area for cyclists, while pedestrians and the public can continue beyond that point to the beach and vista point. The current design does not allow for a 12’ wide pathway to the parking lot without shifting the roadway and reducing dune restoration areas or impacting protected dune areas. The original pathway was 5’, which under the Revised Plans was widened to 6’ with concrete curbs or bumpers for separation. The overlook design, size and elements are all consistent with Special Condition 5. All signs on the site have been identifies in the ASLP and LP. Offsite signs, such as Coastal Commission signage on roadways, will be installed with Caltrans approval using Commission design that has not been provided by Staff as yet.

Conclusion: SNG submission fully complied.

27. SC 9: This language is not required by the Condition. However, we will attempt to incorporate it into the bluff top edge monitoring language.

Conclusion: SNG submission fully complied.

28. SC 20: The deed restriction was not included with the letter. Following a request by SNG, staff submitted the deed restriction form to us.

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Staff Remarks (No item No.), Page 12, Bottom: This is not part of the required Special Conditions and thus violates the conditions and timing as approved by the Commission. This also violates the terms of the Settlement Agreement. It is not within the purview of Staff to demand and suggest that “material changes to the project” will be required, a completely unwarranted assumption at this point. Not only does that contravene CDP approved by the Commission, but it violates the Settlement Agreement and raises a serious flag regarding Staff’s intentions to derail issuance of the CDP. I want to bring this to your attention now so that you understand that by remarks such as this, Staff is again attempting to rewrite Condition 15, and do what the Commission did not approve earlier simply because Staff did not like the result.

We look forward to meeting with you on the 10th so that the CDP for the approved MBS Project can be expeditiously issued.

Very truly yours,



Steven H. Kaufmann

SHK/mg

cc: Dr. Charles Lester
Hope Schmeltzer, Esq.
Mr. Dan Carl
Joel Jacobs, Esq.
Dr. Edmond Ghandour
Tom Roth, Esq.

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Watson, Michael@Coastal

From: Ed Ghandour_SNG <edg.sng@equus-capital.com>
Sent: Monday, September 15, 2014 9:18 AM
To: Watson, Michael@Coastal; Carl, Dan@Coastal
Cc: Lester, Charles@Coastal; 'Steven H. Kaufmann'; 'Tom Roth'
Subject: MBS Dissemination of Information

Mike and Dan Hi- Just to give you heads up.

It was brought to our attention by an email that is circulating and reached us this weekend that certain information relating to communications between SNG and Staff (your Aug 29th letter to me and our meeting last Wednesday Sept 10th) is being disseminated into Sierra Club Ventana chapter individuals and/or others who oppose the MBS Resort project Approved by the Commission. I don't know how the leakage is happening. It would seem that in order to move the PTI conditions process along consistent with the Commission approvals and NOI Conditions, SNG and staff should work cooperatively per the the Settlement Agreement without intervention by others "into the process" who seek to undermine the Commission approval. Anything you can do to assist in this regard would be appreciated.

Thank you.

Ed

Ed Ghandour
SNG
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Watson, Michael@Coastal

From: Carl, Dan@Coastal
Sent: Wednesday, September 24, 2014 5:04 PM
To: 'Ed Ghandour_SNG'
Cc: Lester, Charles@Coastal; 'Steven H. Kaufmann'; 'Tom Roth'; Watson, Michael@Coastal
Subject: RE: MBS Meeting

To be clear for the record, the meeting tomorrow is to help your consultants understand what would be the type of information we need developed and submitted to be able to evaluate the foundation and retaining wall portion of the revised plan condition requirements. The intent was to make sure we agreed on that scope, and to save everyone's time and resources, including to avoid a situation where your consultants did what they thought was appropriate and we did not agree. On geotechnical signoff, we suggested that it wait until we have a better sense of what is approvable for the revised plans. You take your own counsel on whether you want your geotechnical consultants to sign off each submittal, but we felt it would be prudent to wait until the revised plans are closer to being approved, again to save time and resources.

On whether this is within the scope of the PTI conditions, I don't understand your point. Again, we are offering to facilitate and save time and resources, including yours. Past that, all of it, including what we identified in our letter, is part of the scope of the PTI conditions.

On 'construction designs' versus revised plans, we discussed this at some length at the September 10 meeting. We need to be able to have enough information to sign off the revised plans consistent with the Commission's approval. If that requires preparation of some plans that to you seem to be 'construction design' plans, than that is what it is going to take. The Commission's conditions do not, as we discussed, have any kind of second set of construction design submittals, and thus the distinction is, to the conditions, immaterial.

I hope that helps clarify. We'll see you tomorrow.

From: Ed Ghandour_SNG [<mailto:edg.sng@equus-capital.com>]
Sent: Wednesday, September 24, 2014 4:06 PM
To: Watson, Michael@Coastal; Carl, Dan@Coastal
Cc: Lester, Charles@Coastal; 'Steven H. Kaufmann'; 'Tom Roth'
Subject: MBS Meeting

Mike and Dan Hello,

Since the meeting tomorrow is being held to discuss foundation questions that we all agreed to in our September 10th meeting, it's important that we focus on them.

Both Steven and I memorialized in writing the entire Sept 10th meeting, and with respect to the foundations, we all agreed as follows:

1(q):

1. Set up a conference call with Lesley Ewing and HKA and MKA.
2. Address if shallow piers can be used
3. Address why the proposal is least environmentally damaging feasible solution.

1(s):

1. Geotech signoff needed as soon as 1(q) is finalized.

SNG noted that this is outside the scope of the PTI Conditions, and not required, but SNG will accommodate staff with a meeting to address those questions as those are recommendations of the structural, civil and geotech engineers in full compliance with the Conditions approved by the Commission as noted in our Sept 8th letter. We also noted that full foundation designs are part of the CD's phase, not CDP Issuance.

Thanks, and

See you tomorrow.

Ed

Ed Ghandour

SNG

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CALIFORNIA COASTAL COMMISSION

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September 24, 2014

Ed Ghandour
Security National Guaranty
505 Montgomery Street, Suite 1140
San Francisco, CA 94111

**Subject: Prior to Issuance Condition Compliance Review for Coastal Development Permit
Number A-3-SNC-98-114 (Monterey Bay Shores Resort)**

Dear Mr. Ghandour:

The main purpose of this letter is to summarize the general outcome of our prior to issuance (PTI) condition compliance meeting on September 10, 2014, including as it relates to staff's August 29, 2014 PTI condition compliance status letter sent to Security National Guaranty (SNG) and Steve Kaufmann's response on behalf of SNG dated September 8, 2014. In addition, another purpose of this letter is to respond to certain allegations made in SNG's letter, by you at the September 10 meeting, as well as by you subsequently in email dated September 15, 2014 specific to staff conduct and the role of the public in condition compliance.

With respect to the meeting outcome, nothing in the September 10, 2014 meeting altered our view about the identified deficiencies, and SNG agreed to supplement nearly its entire PTI submittal to address the issues identified in the August 29, 2014 letter (see summary at the end of this letter for more detail on that point). We appreciate SNG's willingness to discuss the relevant issues and to provide the additional materials and details requested so as to allow the Executive Director enough information to appropriately evaluate the submittals for compliance with the terms and conditions of the Commission's approval. As we discussed, it is critical to that evaluation that the PTI submittal be significantly more detailed. SNG observed that that kind of detail is to be developed during the 'construction drawing' phase, but as we noted there is no construction drawing phase submittal per the Commission's approval, and we need enough detail now to be able to evaluate and eventually approve the plans pursuant to the requirements of the conditions. We spent some time discussing the appropriate balance between concept and construction level plans, and appreciate SNG's willingness to provide substantially greater detail in the form described in our letter. We look forward to reviewing your next PTI submittal.

With respect to SNG's allegations, they fall into three categories: 1) your ongoing assertions that we are in violation of the settlement agreement; 2) your assertion at the meeting that staff was holding SNG's project to different standards than normal, including that staff was trying to undermine the project; and 3) your assertion that staff is inappropriately 'leaking' information to the public regarding condition compliance. With respect to the settlement agreement, staff has complied with every aspect of it, including in terms of prioritizing condition compliance review and all of the deadlines pertaining thereto. As we discussed in our meeting, we don't agree with

SNG's continued allegations of our non-compliance with the settlement agreement, and can see no basis for such claims.

In terms of your assertion that staff is holding SNG to different standards than other permittees, and that staff is somehow trying to undermine the project through condition compliance review, all of that is false. As we described at the meeting, staff is doing its job to implement the Commission's approval of the coastal permit subject to conditions, and we are not holding you to a different standard than other projects. On the contrary, SNG's condition compliance is being conducted professionally the same way we would conduct any other condition compliance review, with the exception that this project has been prioritized per the terms of the settlement agreement. Please work with us professionally in that capacity, including avoiding the type of profane language with which you started the September 10 meeting.

Finally, your allegation that staff is inappropriately 'leaking' information to others, and that we should somehow work without 'intervention' by other interested parties reflects a fundamental misunderstanding of our process and the law in California. The Commission is a governmental agency, the business of which is an on-going public concern, except for limited exceptions (such as attorney-client or personnel matters). The public nature of business includes our condition compliance responsibilities. The Commission is also subject to the California's Public Records Act, which requires that public records, such as correspondence between permittees and staff, are subject to disclosure upon request. The settlement agreement does not and cannot change any of that. We were asked by interested parties for a copy of our August 29, 2014 letter and whether we had a meeting with SNG, and in response we provided a copy of our letter and indicated that we had indeed had our September 10, 2014 meeting. We will continue to process condition compliance materials consistent with our public law obligations and commitments, including providing the public with information when requested.

In closing, thank you for a productive meeting on September 10, 2014, and thank you for agreeing to provide the necessary materials for the Executive Director to appropriately measure PTI condition compliance. We look forward to working together in a professional and mutually respectful manner moving forward, and appreciate your commitment to same. If you have any questions regarding the above, please contact me (831) 427 4863 or via email at Michael.Watson@coastal.ca.gov.

Regards,

Mike Watson
Coastal Planner
Central Coast District

Summary of next steps for PTI Conditions

Special Condition 1

- Topo. SNG will review all site plans, cross-sections, and other materials and will revise as necessary to confirm that a current topographical survey is used throughout.
- Plans. SNG will provide all required elements of Special Condition (SC) 1 on large scale plans, in relative scale, and as one comprehensive plan set, including related to the primary structure and building, foredune grading, resort pathways, all public access amenities, landscaping, lighting, windows, utilities, stormwater facilities, signage, foundation and retaining walls, subsurface elements, sand excavation and disposal, fencing, etc..
- NGVD. SNG will check with its engineers regarding ensuring that the plans provide a means of converting elevations to NAVD88.
- Dune Manipulation/Screening from Highway 1/Views (SC1a – SC1c, SC1v). SNG will provide a number of additional deliverables to address resort integration into the dunes and screening from Highway 1 views including additional cross-sections parallel to and north of the dune view line, architectural elevations (north and east elevations) as seen from Highway 1 at each cross section heading, computer renderings, and height simulations. SNG will also modify grading along the northern portion of site and along the bluff edge to better mimic natural dune landscape, to avoid grading below the 32' elevation, and to best screen development in the Highway 1 view. SNG agrees to submit specific plan detail, in addition to that noted above, on all development located inland of the primary buildings/development (including access amenities, parking, signing, tunnel access, lighting, retaining walls, etc.), and the manner in which it has been sited, designed, and screened to minimize its visibility in the Highway 1 viewshed, and otherwise to blend into the dune aesthetic to the maximum extent feasible.
- Road Development Minimized (SC1d). SNG will provide additional clarification and information pertaining to the proposed road stub nearest the residential condominium access tunnel.
- Height Limits (SC1e). SNG will provide 3D computer simulation on height details by project components (i.e., hotel and condominium hotel versus other components), and evidence on why any one component fits into one category or the other, in order to assess conformance with height requirements.
- Foredune Grading (SC1g). SNG will revise grading plans to avoid linear dune manipulation to create a more natural looking foredune and to avoid grading the bluff edge below the 32' elevation.

- Resort Pathways (SC1h). SNG will provide plan and plan detail sheets regarding the location, size, orientation, and materials of all resort pathway and overlook facilities at a level of detail to be able to understand what will be constructed.
- Public Access Amenities (SC1i). SNG will likewise provide additional detail for all access amenities identified in SC1i (i.e., parking lot, pathway system, overlook, beach stairway/pathway, signs, and related development). Content on directional signage will be provided; location and nature of interpretive signage will be identified, but specific language will be deferred to later date for review and approval.
- Landscaping (SC1k). SNG will provide all landscaping plan details within context of revised plans along with biologist certification of plant palette.
- Lighting Minimized (SC1l). SNG will provide expanded lighting plan detail per the condition requirements, including in terms of providing relevant information from the proposed Access Signage Lighting Plan within the context of the revised plans.
- Windows and Other Surfaces (SC1m). SNG will provide detail on the ways in which windows and other surfaces will be treated to avoid reflecting light and bird strikes per the condition requirements.
- Utilities (SC1n). SNG will include additional plan detail on all utilities consistent with the condition requirements.
- Stormwater and Drainage (SC1o). SNG will submit details on both the engineered stormwater system and proposed bio-swales within the context of the revised plans.
- Signage (SC1p). SNG will provide plans and plan details on the number, location, content, materials, etc., of all proposed signs.
- Foundations and Retaining Walls (SC1q). SNG will have its geotechnical consultants address the deficiencies identified in staff's August 29, 2014 letter, including regarding providing an analysis across similar evaluation criteria adequate to make a determination of the least environmentally damaging feasible alternative foundation method. SNG's geotechnical consultants and staff, including staff's senior coastal engineer, will meet to discuss the parameters of SNG's response in a meeting tentatively scheduled for September 25, 2014.
- Excess Sand (SC1t). SNG agrees to provide the final disposal and storage location, trucking route, timing, etc., for all excess sand to be excavated from the site.

- Fencing (SC1u). SNG agrees to provide a fencing plan and plan detail on large scale plans and within the context of the condition requirements, including the baseline starting point of removal of all existing site fencing.

Special Condition 2

- Construction Plans. SNG will modify the construction plans to eliminate the optional off-site staging location in Monterey County and to relocate sand stockpiling outside the primary views north of the dune view line. Truck hauls will also be revised to occur during daylight hours.

Special Condition 3

- Dune Restoration Plans. SNG will revise both the dune conservation and public access easement areas consistent with Exhibits 11a and 11b of the Commission's approval. SNG will revise the dune restoration plan to include detail on performance standards and to clarify the exotic plant removal process. Additional modifications agreed to by SNG include incorporation of detail from other referenced documents, elimination of exotics in "transitional" areas, revisions to the extent/limits of "hotel and residential landscapes", specific provisions to enhance sensitive species habitats, including at a minimum snowy plover and Smith's blue butterfly habitats, certification of plant palette, detail on bio-filtration basins, and changes to grading contours.

Special Conditions 4 and 6

- Dune Area Conservation and Public Access Easements. As noted above, SNG will revise both the dune conservation and public access easement areas consistent with Exhibits 11a and 11b of the Commission's approval. With regard to these easement areas, SNG will request staff concurrence with the extent/limits of the easement areas including by illustrating them on scaled plans that can be verified for conformance with the Commission's approval. Once concurrence is obtained, SNG will have a metes and bounds survey prepared to accurately define the location of the easements prior to completion and recordation of the Irrevocable Offer of Dedications (OTD) for Public Access and Dune Area Conservation. SNG notes that it will provide additional detail regarding the need for subordination of the offers, and understands that there will be additional review beyond the preliminary comments identified by staff's August 29, 2014 letter.

Special Condition 5

- Public Access Management Plan. SNG will consolidate all necessary materials from the Access, Signing, and Lighting plan, Landscape Plan, and other relevant documents into the required standalone Public Access Management Plan, consistent with condition requirements. SNG will provide additional detail as recognized in the comments on SC1i above, and will further embellish the plan to include measures to ensure the public parking lot is available for exclusive use by the public, ensure that the width of the multi-modal path

connection from the Monterey Bay Sanctuary Scenic Trail matches the existing trail, access signing, and siting and design of all access amenities.

Special Condition 9

- Hazard Response. SNG will include the definition of the bluff edge per the Commission's regulations in the blufftop edge monitoring materials.

Special Condition 20

- Deed Restriction (SC9). SNG will provide a copy of the deed restriction prior to its recordation for staff's review and concurrence on it.

Overall

- SNG recognizes that additional detail on each of these points can be found in the special conditions themselves and in staff's August 29, 2014 letter, and anything not referenced herein is not an indication that there aren't issues with it. This is a summary of next steps, and it must be understood in terms of that overall detail and context. In addition, because the next PTI submittal will include significant additional detail on each of the points identified above, and because there is significant overlap between all of the points, there may be additional requirements based upon the review of the upcoming PTI submittal, and SNG recognizes that.

Watson, Michael@Coastal

From: Ed Ghandour_SNG <edg.sng@equus-capital.com>
Sent: Monday, September 29, 2014 3:10 PM
To: Watson, Michael@Coastal; "Steven H. Kaufmann"
Cc: Carl, Dan@Coastal; Ewing, Lesley@Coastal; 'Tom Roth'; Lester, Charles@Coastal
Subject: RE: Meeting w/ SNG regarding compliance with SC 1(q): Foundation Plan requirements

Mike-Thanks for your email which I am only able to respond to now due to the Rosh Hashanah holiday.

Thanks also for a productive meeting Thursday which we believe narrowed the issues very substantially.

I'll also respond to your Wednesday email and Dan's Thursday email as soon as my time permits.

Again apologies for the delay.

Our engineers, as discussed by Don Davies of MKA, John Kasunich of HaroKasunich and myself will follow thru on what was agreed to: providing you with additional or expanded narrative and explanation on why the foundations recommended by the engineers are appropriate solution and why they are the least environmentally damaging feasible solution, based on all the technical analysis and information available to date, including recent geotech analysis, which is voluminous!. Lesley Ewing, whose presence was helpful and appreciated, has indicated that differential settlements are a valid basis of consideration and are accepted, and that pile length is not an issue. SNG has engaged world class engineers and architects in MKA, ARUP Kasunich and WATG and others to assist SNG in the pre-development work and finalizations of the conditions compliance so the CDP can be issued.

We believe that our letter of September 8th provides full explanation for our position regarding Special Condition 1(q). Our submission of additional narrative to assist you and Lesley are made in the hope that this matter can be resolved forthwith without delay. This should help you in your final evaluations. Construction level drawings are not part of this special condition, and as you readily admitted, the Special Conditions approved by the Commission do not require construction plans submittal.

As a general comment, I would appreciate it if your review was focused on the mandate issued by the Commission, and not subject SNG in its PTI Conditions compliance to what obviously appears to be overreaching conclusions or actions and demands that are personal views of staff but invoked under the color of state. After the CDP was approved, I was hoping to get beyond this point and not revisit it continuously. I look forward to your cooperation in the future in that regard.

Once our engineers complete their latest work on 1(q), SNG will submit those for your review.

Best,
Ed

Ed Ghandour
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www.MontereyBayShores.com



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From: Watson, Michael@Coastal [mailto:Michael.Watson@coastal.ca.gov]
Sent: Friday, September 26, 2014 1:42 PM
To: 'Ed Ghandour_SNG'; 'Steven H. Kaufmann' (SKaufmann@rwglaw.com)
Cc: Carl, Dan@Coastal; Watson, Michael@Coastal; Ewing, Lesley@Coastal
Subject: Meeting w/ SNG regarding compliance with SC 1(q): Foundation Plan requirements

Thanks Ed, for a productive meeting yesterday with Lesley Ewing, myself and your consultants from HKA and MKA, John Kasunich and Don Davies, regarding compliance with Special Condition 1(q): Foundation and Retaining Wall Plan requirements. The purpose of the meeting was to make sure that we agreed on the scope of information we need developed and submitted to be able to evaluate the foundation and retaining segment of the revised plan condition requirements. As we indicated in our August 29th condition compliance letter, the materials submitted to date do not contain enough information to allow the Executive Director to appropriately evaluate the foundation and retaining wall plans for compliance with the requirements of Special Condition 1(q). With respect to the condition requirements, it is clear that a thorough evaluation of feasible foundation alternatives (e.g., deep piles, shallow matt, hybrid, etc.) and a demonstration via plans, written narrative, technical analysis, etc that the preferred foundation system is the least damaging feasible alternative, must be provided. Said analysis must also include a clear explanation of all methods, models, and assumptions used to derive any conclusions, and a comparison of the environmental benefits and impacts of the options evaluated including with respect to the ease of construction and removal. You indicated that some of the foundation plan specifics (e.g., regarding the numbers, spacing, and depth of foundation pile or pier elements) might not be available until after further geotechnical investigation occurs. As we discussed at our September 10, 2014 meeting, we need enough information to sign off the revised plans consistent with the Commission's approval. If that requires preparation of plans that you believe to be "construction level", then that is what will be required. As we explained, the Commission's approval does not have a "construction level" plan submittal requirement.

Mike

From: Ed Ghandour_SNG [mailto:edg.sng@equus-capital.com]
Sent: Thursday, September 25, 2014 10:24 AM
To: Carl, Dan@Coastal; Watson, Michael@Coastal
Subject: MBS Meeting

John Kasunich spoke with Lesley and we'll be at your office for the 11AM meeting with Lesley.
We are outside having coffee until then, but we are here.
Regards
Ed

Watson, Michael@Coastal

From: Ed Ghandour_SNG <edg.sng@equus-capital.com>
Sent: Thursday, October 02, 2014 11:28 AM
To: Watson, Michael@Coastal; Carl, Dan@Coastal
Cc: Lester, Charles@Coastal; 'Steven H. Kaufmann'; 'Tom Roth'
Subject: PTI Conditions Compliance
Attachments: PTI Revisions CCC Mtg 9-10-14 Punchlist .pdf; Preliminary Rpt-2006 - B-1403883096209 6-26-14.pdf

Mike-

Sorry for the delay, but as I indicated to you due to the Jewish holidays I could not get back and respond immediately to your September 24th letter. I'll be out tomorrow due to Yom Kippur and out of town most of next week returning Friday.

SNG's response and what it agreed to is reflected in its September 8th letter and the attached summary [PTI Revisions CCC Mtg 9-10-14 Punchlist] of what was agreed to between SNG and Staff at the September 10th meeting in your office. The attached punch list memorializes the notes taken by both Steven and myself in the meeting. In your letter of September 24th you inaccurately use expressions like "SNG agrees to" or "SNG recognizes". Such statements are over reaching when they are not accurate. Our understanding and agreement is reflected only in the September 8th letter and the attached punch list. There is some overlap with your letter, and so I don't find it necessary to go item by item.

Of course, SNG will do its best to assist you and staff and accommodate you to further an expeditious review and signoff where possible, as it did by facilitating a meeting with our structural and geotech engineers last week [on Rosh Hashanah] in your office. We are working on what was agreed to last Thursday regarding the foundations and wish to be responsive to all questions consistent with the Commissions approved conditions.

By this transmittal I am also attaching our most recent Preliminary Title Report issued by Chicago Title Insurance and dated June 26, 2014 so that you can commence to prepare the Subordinations Agreements prepared by Coastal Commission for the purpose of recording the Deed Restriction (SC 20). We will be submitting the Deed Restriction per your CCC sample form.

Thanks,
Ed

Ed Ghandour
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p 415.874.3121
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Prior to Issuance Conditions

Punch List of items agreed with Staff in meeting with Coastal Staff Wed September 10, 2014

1. Topo June 14' identify and verify. Verify Note 12, TM1 and NGVG29 or NAVD88 being used. Remove "1995" notation in cross section TM3 (error).
2. Plans: standardize Revised Plans submission for all materials submitted. 30"X42" size, 1":60' Scale is what EG recommends consistent with VTM.
Integrate graphics and details into plans:
Example: Lighting Plan on above scale with detailed callouts for all information related(include details from Access Signage and Lighting Plan)
Interpretive Signage: provide generic typical text and graphics in Signage Plan.
In cases where language is not final, Staff likely will condition the approval on this item for future Exec Dir (ED) approval prior to installation.
3. NGVD: Lets clarify the datum used NAVD88 or NGVD29. I believe either works.
4. 1(a): meander or undulate lineal dune west of fire access road. Fill and contour only portion of fill bluff top to 32' grade
5. 1(b) : Provide elevations from cad from Hyw 1 on the following locations:
Dune View Line; Z; YZ,Y; X; W [by construction this will not include current vegetation and details beyond topo detail, and so, is not the full detail].
6. 1(c): Provide details of tunnels and construction detail by call outs on plans.
7. 1(d): Provide details for spur at end of road .
8. 1(e): generate skin surface plan for 45' off existing grade and 36' off existing grade to demonstrate that height criterias are satisfied. Identify Hotel areas for the 45' and res condos for the 36'.
9. 1g): Correct blufftop grading and undulate lineal section as shown.
10. 1(h): Provide full details of public access amenities and resort pathways. For example, for Vista Point, provide on plans all details and illustrations of what and how included in that area. List&photos. Same for other areas, such as trails, interpretive signage, etc. Enlarge trail access to match what the trail is outside entry to resort.
11. 1(i): More details and callouts on public access amenities and each feature. We need to "pluck" from ASLP , signage plans, Landscape Plan and incorporate into the Revised Plans.
12. 1(k): standardize LP. Certify that plants are non invasive to the dunes. Verify that transitional landscape uses native to Sand City and the southern Monterey bay dune system. Certification by professional of non invasive plants.
13. 1(l): Lighting Plans to scale as above with details and features of elements.
14. 1(k): Specifications of windows in plans as per condition 1(m).
15. 1(n): Fire-details on what is meant by their letter "alternative methods...to the revised ocean side access". Well Head-adjust retaining wall if possible.
16. 1(o): Additional details on sizing the storm water drainage infrastructure, including the bio-filtration, dry wells etc.. More details on storm water quality unit.

17. 17. 1(p): Provide Signage Plan as part of the Revised Plans to scale above. Details of the signs, size, language, color etc.
18. 1(q): Set up a conference call with Leslie Ewing and HKA and MKA. Address if shallow piers can be used, and why the proposal is least environmentally damaging feasible solution.
19. 1(s): geotech signoff upon 1(q). [it is certified now, but staff wants it done after 1(q) has been finalized].
20. 1(t): Excavated Sand-indicate where it is going. Identify sites/port outside coastal zone.
21. 1(u): Identify the Fencing Plan , with details of types, measurements etc.. (in LP now). Identify on the fencing plan that existing fences will be removed.
22. 1(v): see all comments above.
23. 2: Separate Plans for Excavation and Construction Staging. Remove use of adjacent site as optional. Limit to Daylight the excavation, unless authorized by ED. On the Plans identify Biological Monitors.
24. 3: Dune Restoration Plan to scale as a Stand Alone Plan.. Identify whether we are complying with Exh 11a or 20 which replaced it? Check to insure correct map description applies. Biofiltration ok. Details of storm water quality unit construction and filters. Embellish with more documentation for enhancement of Buckwheat, Plover and Spineflower.
25. 4 & 6: Check public access easement from Property line to MHWL toe of the bluff, vs LWL to MHWL(as is currently). Check Dune Conservation areas and Beach public access areas. Adjust Trail width as indicated above. Provide Preliminary Title Report so subordinations can be prepared.
26. 5: More details on Public Access Plan with details from ASLP. Incorporate other materials, including legal description, signage, easement into the Plan. Incorporate more language that "prevents" employees and guests from using Public Parking area (e.g. educational, stickers, additional signage). Expand the schematics and details for the Vista Points as noted above.
27. 27. 9: Incorporate language upon HKA approval into Blufftop Management Plan.
28. 20: Prepare the Deed Restriction received from staff.

Final Comments by Staff: not appropriate at this stage as Condition 15 need be complied with prior to Construction.

Watson, Michael@Coastal

From: Steven H. Kaufmann <SKaufmann@rwglaw.com>
Sent: Tuesday, October 07, 2014 12:26 PM
To: Carl, Dan@Coastal
Cc: Lester, Charles@Coastal; Watson, Michael@Coastal; Pederson, Chris@Coastal; 'Joel Jacobs'; 'Ed Ghandour_SNG'; 'Tom Roth'
Subject: RE: PTI Conditions Compliance

Dan,

Thanks. It's not often that I get lit up, but what was described in that e-mail has never been the announced process for review of OTDs. I've done this since 1977 on both sides and this is the first time I've ever heard that Staff is doing the drafting of all OTDs.

Can you point me to anything – anything – that states that this is now the process uniformly followed?

How is a Commission decision and OTD or deed restriction requirement brought to the attention of legal staff or the paralegal so as to commence the drafting? What is the process and what controls do you have in place to ensure that it functions properly, in a timely manner, or at all?

How many people are actively doing the drafting? One?

My Shea OTDs in Huntington Beach, using the exact template approved by staff for the recorded next-door Brightwater OTDs, was submitted in May of 2013. The two-year expiration would have run in October but for a quirky extension provision in the Map Act. Still no comments on the drafts submitted, no revised draft, no newly created draft.

So, is this the new norm?

I apologize to all of you. Not the usual the e-mail you get from me, but since Charles, Chris, you, Mike, and Joel were lucky enough to all be included, I wanted to pass on my frustration and, frankly, disbelief in what I read.

And thanks, Dan, for your comments regarding the SNG OTDs. Those were fairly simple and straight-forward OTDs. There should be no need for a wholesale rewrite of the text of the OTDs, especially under the circumstances presented here. In any case, we are doing our part to work with you to get this done.

~ Steve

*Steven H. Kaufmann
Richards, Watson & Gershon
355 S. Grand Avenue, 40th Floor
Los Angeles, CA 90071-3101
Tel: (213) 626-8484
Fax: (213) 626-0078
E-mail: skaufmann@rwglaw.com*

From: Carl, Dan@Coastal [mailto:Dan.Carl@coastal.ca.gov]
Sent: Tuesday, October 07, 2014 11:49 AM
To: Steven H. Kaufmann
Cc: Lester, Charles@Coastal; Watson, Michael@Coastal; Pederson, Chris@Coastal; 'Joel Jacobs'; 'Ed Ghandour_SNG';

'Tom Roth'

Subject: RE: PTI Conditions Compliance

Hi Steve,

We can appreciate that you have concerns with our OTD process generally. Duly noted. However, this is the process that we have in place for OTDs, and we intend to apply it to SNG just as we would to any other project, with the added benefit to SNG that it will be expedited per the settlement agreement. With respect to your other comment, we are not piecemealing anything, and have, in fact, reviewed and responded to SNG within the allowed 30 days regarding the deficiencies we noted in the submitted OTDs, as per the settlement agreement. The fact that there are certain sequential steps necessary is simply a fact of the way in which the conditions interact. We have laid out the next steps in that regard, and, rest assured, we will continue to expeditiously review OTD and other submittals against the terms and conditions of the coastal permit moving forward.

Dan

From: Steven H. Kaufmann [<mailto:SKaufmann@rwglaw.com>]
Sent: Tuesday, October 07, 2014 11:37 AM
To: Watson, Michael@Coastal; 'Ed Ghandour_SNG'; Carl, Dan@Coastal
Cc: Lester, Charles@Coastal; 'Tom Roth'; Pederson, Chris@Coastal; 'Joel Jacobs'
Subject: RE: PTI Conditions Compliance

Thanks Mike.

Your e-mail has hit a raw nerve.

You have described perhaps the most dysfunctional part of the Coastal program. I know how to draft an OTD. There is nothing in the Act, the regs, the conditions, the findings on any project that says that an OTD required by condition will be drafted by staff. The notion that staff (probably one person) is doing all of the drafting for all of the OTDs and deed restrictions in the coastal zone in the State of California is simply absurd. If this is announcement of how staff is proceeding with OTDs and deed restrictions, it's broken and needs to be fixed.

But SNG is different. I hate to harp on the settlement agreement, but there is an obligation to review these OTDs within 30 days of their submittal, and not to piecemeal it, and that is what staff is now doing. We'll do our part, but surely there is a more rational and convincing way to get these documents reviewed.

~ Steve

*Steven H. Kaufmann
Richards, Watson & Gershon
355 S. Grand Avenue, 40th Floor
Los Angeles, CA 90071-3101
Tel: (213) 626-8484
Fax: (213) 626-0078
E-mail: skaufmann@rwglaw.com*

From: Watson, Michael@Coastal [<mailto:Michael.Watson@coastal.ca.gov>]
Sent: Tuesday, October 07, 2014 11:16 AM
To: Steven H. Kaufmann; 'Ed Ghandour_SNG'; Carl, Dan@Coastal
Cc: Lester, Charles@Coastal; 'Tom Roth'; Pederson, Chris@Coastal; 'Joel Jacobs'
Subject: RE: PTI Conditions Compliance

Steve,

As you know, we have a policy of drafting OTDs internally, rather than working with OTDs drafted by applicants. This allows for consistency among OTDs recorded statewide and allows for faster processing, since we do not need to comb through each applicant's individual draft to see if it contains each of the elements of an OTD that we have found over the years to be necessary. It would take more time to use your draft OTDs than to start with our own versions and tailor them to the requirements of these conditions. In this case, however, we cannot yet start that process. The required OTDs include restrictions that are laid out in the Public Access Plan and the Dune Restoration Plan. As you know, those plans have not yet been approved. It is therefore impossible to draft OTDs when the restrictions included in the OTDs are not yet fully defined, and the plans that must be attached as exhibits are not yet final. In addition, the boundary of the OTD areas coincide with the development envelope, and the revised plans which will circumscribe that envelope have not yet been approved by the Executive Director. The development envelope changes may potentially be minor, but they affect the OTD boundaries nonetheless. Related, we also noted the need for revised graphic depictions and legal descriptions, as the exhibits SNG submitted were not consistent with the exhibits attached to the staff report, and they also depend on the revised plans' development envelope. Once we have approved the revised plans and the Public Access and Dune Restoration Plans, and have received accurate, we will provide you with draft OTDs for comment that incorporate the correct boundaries and the appropriate restrictions from these plans, as required by special conditions 1, 4 and 6. Thus, you need not spend time drafting those documents.

Mike

From: Steven H. Kaufmann [<mailto:SKaufmann@rwglaw.com>]
Sent: Friday, October 03, 2014 11:52 AM
To: Watson, Michael@Coastal; 'Ed Ghandour_SNG'; Carl, Dan@Coastal
Cc: Lester, Charles@Coastal; 'Tom Roth'; Pederson, Chris@Coastal; 'Joel Jacobs'
Subject: RE: PTI Conditions Compliance

Hi Mike,

I just want to weigh in on one matter that has perpetually plagued me in dealing with condition compliance. No matter what form of OTD I submit, it takes way, way too long to review and invariably it is changed but, in my view, without any really good reason except that whomever is reviewing it has determined it would be better if changed. Regardless, the 30 days was crafted to avoid exactly the black hole into which Commission legal documents seem to disappear, and this, by the way, is not a knock on legal staff. So, we prepared the OTDs. They look good to me, and if changes are desired and make sense, they should be minor and not require significant time to turnaround. Sorry to raise the issue but these OTDs require a different treatment, given the settlement agreement. If we've received the sum total of the comments on those documents that were originally submitted, great. If not, I do not expect to receive additional or different comments at this point. No need to respond, but I want everyone to keep it in mind. Thanks and have a good weekend!

~ Steve

*Steven H. Kaufmann
Richards, Watson & Gershon
355 S. Grand Avenue, 40th Floor
Los Angeles, CA 90071-3101
Tel: (213) 626-8484
Fax: (213) 626-0078
E-mail: skaufmann@rwglaw.com*

From: Watson, Michael@Coastal [<mailto:Michael.Watson@coastal.ca.gov>]
Sent: Friday, October 03, 2014 11:32 AM

To: 'Ed Ghandour_SNG'; Carl, Dan@Coastal
Cc: Lester, Charles@Coastal; Steven H. Kaufmann; 'Tom Roth'; Pederson, Chris@Coastal
Subject: RE: PTI Conditions Compliance

Ed,

A couple things. First off, thanks for your notes. However, we have completely and accurately provided to you in our letters of August 29, 2014 and September 14, 2014, a detailed compilation of submittal deficiencies and a summary of the supplemental items needed to evaluate your submittal for compliance with the terms and conditions of the coastal permit. I strongly recommend that you refer to the above mentioned letters and my email correspondence regarding foundation plan requirements (see September 26, 2014 and September 30, 2014) prior to the submittal of any additional materials. As we have noted, it is critical to our evaluation that the PTI submittal be significantly more detailed as prescribed in the above correspondence. Incomplete or omitted plans and/or details will only delay the review and approval of the submittal.

Secondly, with regard to the Deed Restriction (DR) and Subordination Agreements (SA), the special conditions on the permit require recordation of a "generic" deed restriction (SC 20) that may be recorded w/o subordination. I provided you with a copy of the DR and instruction sheet on September 3, 2014 and suggest that you complete and submit an advance copy for our review prior to recordation.

Special Conditions 4 and 6 require recordation of Dune Area and Public Access Easements which must be recorded free of prior liens and thus require subordination. Both of these areas must also be defined by a metes and bounds description approved by the ED prior to recordation. The language of the easement will be drafted by Commission staff and provided to you for recordation after we have approved the location and extent of the easement area. Submittal of the revised plans will inform the location of the easement area to be described.

So in a nutshell, we can review and complete the generic DR per SC 20, and I will forward the title report to legal for its review of the dune and access easements in the future.

Mike

From: Ed Ghandour_SNG [<mailto:edg.sng@equus-capital.com>]
Sent: Thursday, October 02, 2014 11:28 AM
To: Watson, Michael@Coastal; Carl, Dan@Coastal
Cc: Lester, Charles@Coastal; 'Steven H. Kaufmann'; 'Tom Roth'
Subject: PTI Conditions Compliance

Mike-

Sorry for the delay, but as I indicated to you due to the Jewish holidays I could not get back and respond immediately to your September 24th letter. I'll be out tomorrow due to Yom Kippur and out of town most of next week returning Friday.

SNG's response and what it agreed to is reflected in its September 8th letter and the attached summary [PTI Revisions CCC Mtg 9-10-14 Punchlist] of what was agreed to between SNG and Staff at the September 10th meeting in your office. The attached punch list memorializes the notes taken by both Steven and myself in the meeting. In your letter of September 24th you inaccurately use expressions like "SNG agrees to" or "SNG recognizes". Such statements are over reaching when they are not accurate. Our understanding and agreement is reflected only

in the September 8th letter and the attached punch list. There is some overlap with your letter, and so I don't find it necessary to go item by item.

Of course, SNG will do its best to assist you and staff and accommodate you to further an expeditious review and signoff where possible, as it did by facilitating a meeting with our structural and geotech engineers last week [on Rosh Hashanah] in your office. We are working on what was agreed to last Thursday regarding the foundations and wish to be responsive to all questions consistent with the Commissions approved conditions.

By this transmittal I am also attaching our most recent Preliminary Title Report issued by Chicago Title Insurance and dated June 26, 2014 so that you can commence to prepare the Subordinations Agreements prepared by Coastal Commission for the purpose of recording the Deed Restriction (SC 20). We will be submitting the Deed Restriction per your CCC sample form.

Thanks,
Ed

Ed Ghandour
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Watson, Michael@Coastal

From: Ed Ghandour_SNG <edg.sng@equus-capital.com>
Sent: Thursday, October 09, 2014 8:12 AM
To: Carl, Dan@Coastal
Cc: 'Steven H. Kaufmann'; 'Tom Roth'; Lester, Charles@Coastal; Watson, Michael@Coastal
Subject: RE: PTI Conditions Compliance

Dan-

Thank you for your email. I am still travelling, but we'll have to fully disagree with your statement.

Change "zero" to "Full" and we have an understanding of the situation.

SNG is trying to avoid another legal issue here, which we view very seriously, in particular breach of the Settlement Agreement.

I hope that we can mutually agree that the best way to get there "expeditiously" is by cooperation and prioritization of processing SNG's PTI Compliance items. I suggest you review Commissioner Cox's remarks on the record at approval on April 11, 2014 and absolute concurrence and agreement and reaffirmation with what he said by Exec Dir. Charles Lester and your legal counsel Hope Schmelzer. SNG takes those commitments very seriously.

I trust the next submittal will have addressed all your concerns and beyond.

Best,

Ed Ghandour

Sent from my iPhone

From: Carl, Dan@Coastal [mailto:Dan.Carl@coastal.ca.gov]
Sent: Wednesday, October 8, 2014 2:26 PM
To: 'Ed Ghandour_SNG'
Cc: 'Steven H. Kaufmann'; 'Tom Roth'; Lester, Charles@Coastal; Watson, Michael@Coastal
Subject: RE: PTI Conditions Compliance

You seem to misunderstand our objective in the email exchange which, simply put, is to make sure we are clear in communicating what is necessary to meet condition requirements, and how. There is zero hostility, zero delay, zero breaches of the settlement agreement, and zero interest in or manifestation of applying any "personal views and desires" to the case. We have done nothing but a professional job reviewing and providing feedback on submitted materials in the same way we deal with countless condition compliance processes every day, with the benefit to SNG that this one is and will continue to be expedited. We look forward to your next condition compliance submittal. Thanks....Dan

From: Ed Ghandour_SNG [mailto:edg.sng@equus-capital.com]
Sent: Tuesday, October 07, 2014 8:40 PM
To: Watson, Michael@Coastal; Carl, Dan@Coastal
Cc: Lester, Charles@Coastal; 'Steven H. Kaufmann'; 'Tom Roth'
Subject: RE: PTI Conditions Compliance

Mike and Dan-

I am out of town unable to respond currently to your email in detail, but suffice it to say, our Sept 8th and subsequent communications to you addressed staff on these point and SNG's position.

The email exchanges between you and Steven Kaufmann raise significant issues, again and again. I encourage both of you and the rest of staff to refrain from unduly exercising your personal views and desires under the color of a state agency beyond your job duties and authority, and to live up to the terms of the Settlement Agreement. Further delays on staff's part as noted by Mr. Kaufmann are unacceptable. It's hard to imagine that even after CDP approval, and a Settlement, you are demonstrating such hostility at this time.

SNG will attempt to accommodate you as much as it can, but your cooperation would be appreciated.

Thanks

Ed

Sent from my iPhone

From: Watson, Michael@Coastal [<mailto:Michael.Watson@coastal.ca.gov>]
Sent: Friday, October 3, 2014 11:32 AM
To: 'Ed Ghandour_SNG'; Carl, Dan@Coastal
Cc: Lester, Charles@Coastal; 'Steven H. Kaufmann'; 'Tom Roth'; Pederson, Chris@Coastal
Subject: RE: PTI Conditions Compliance

Ed,

A couple things. First off, thanks for your notes. However, we have completely and accurately provided to you in our letters of August 29, 2014 and September 14, 2014, a detailed compilation of submittal deficiencies and a summary of the supplemental items needed to evaluate your submittal for compliance with the terms and conditions of the coastal permit. I strongly recommend that you refer to the above mentioned letters and my email correspondence regarding foundation plan requirements (see September 26, 2014 and September 30, 2014) prior to the submittal of any additional materials. As we have noted, it is critical to our evaluation that the PTI submittal be significantly more detailed as prescribed in the above correspondence. Incomplete or omitted plans and/or details will only delay the review and approval of the submittal.

Secondly, with regard to the Deed Restriction (DR) and Subordination Agreements (SA), the special conditions on the permit require recordation of a "generic" deed restriction (SC 20) that may be recorded w/o subordination. I provided you with a copy of the DR and instruction sheet on September 3, 2014 and suggest that you complete and submit an advance copy for our review prior to recordation.

Special Conditions 4 and 6 require recordation of Dune Area and Public Access Easements which must be recorded free of prior liens and thus require subordination. Both of these areas must also be defined by a metes and bounds description approved by the ED prior to recordation. The language of the easement will be drafted by Commission staff and provided to you for recordation after we have approved the location and extent of the easement area. Submittal of the revised plans will inform the location of the easement area to be described.

So in a nutshell, we can review and complete the generic DR per SC 20, and I will forward the title report to legal for its review of the dune and access easements in the future.

Mike

From: Ed Ghandour_SNG [<mailto:edg.sng@equus-capital.com>]
Sent: Thursday, October 02, 2014 11:28 AM
To: Watson, Michael@Coastal; Carl, Dan@Coastal

Cc: Lester, Charles@Coastal; 'Steven H. Kaufmann'; 'Tom Roth'

Subject: PTI Conditions Compliance

Mike-

Sorry for the delay, but as I indicated to you due to the Jewish holidays I could not get back and respond immediately to your September 24th letter. I'll be out tomorrow due to Yom Kippur and out of town most of next week returning Friday.

SNG's response and what it agreed to is reflected in its September 8th letter and the attached summary [PTI Revisions CCC Mtg 9-10-14 Punchlist] of what was agreed to between SNG and Staff at the September 10th meeting in your office. The attached punch list memorializes the notes taken by both Steven and myself in the meeting. In your letter of September 24th you inaccurately use expressions like "SNG agrees to" or "SNG recognizes". Such statements are over reaching when they are not accurate. Our understanding and agreement is reflected only in the September 8th letter and the attached punch list. There is some overlap with your letter, and so I don't find it necessary to go item by item.

Of course, SNG will do its best to assist you and staff and accommodate you to further an expeditious review and signoff where possible, as it did by facilitating a meeting with our structural and geotech engineers last week [on Rosh Hashanah] in your office. We are working on what was agreed to last Thursday regarding the foundations and wish to be responsive to all questions consistent with the Commissions approved conditions.

By this transmittal I am also attaching our most recent Preliminary Title Report issued by Chicago Title Insurance and dated June 26, 2014 so that you can commence to prepare the Subordinations Agreements prepared by Coastal Commission for the purpose of recording the Deed Restriction (SC 20). We will be submitting the Deed Restriction per your CCC sample form.

Thanks,
Ed

Ed Ghandour
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Save A Tree - please don't print this unless you really need to

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October 16, 2014

Mr. Dan Carl, Deputy Director
Mr. Michael Watson, Coastal Planner
Central Coast District Office
725 Front Street, Suite 300
Santa Cruz, CA 95060

Hand Delivered
4 Packages

REF:CDP A-3-SNC-98-114 NOI Issue Date: May 30, 2014
Prior to Issuance(PTI) Items and Conditions Submittal
Permittee's Fulfillment of PTI Conditions-Revised Submissions No.2
Monterey Bay Shores Resort, Sand City, California

Dear Dan and Mike:

We are pleased to re-submit by this transmittal for your review the "prior to issuance" conditions as identified in CDP A-3-SNC-98-114 (Monterey Bay Shores Resort) which have been revised. Those conditions (reports) which have been submitted previously and on which you had no comments are not being resubmitted, and are deemed approved by the Commission as submitted. Their submission date is noted below under the "Reports" section and in the Plans submitted cover sheet. With this entire and complete re-submittal, we are hopeful that the CDP can be issued by the Commission staff as soon as possible so that we can move this project to the next level of prior to construction conditions, design and construction drawings, so that later construction can commence in the late Fall or Winter 2014-2015.

The current submittal is in response to the numerous communications and meetings between staff and SNG starting with your letter of August 29, 2014, SNG's response letter of September 8, 2014, meetings on September 10th and 25th in your Santa Cruz office with SNG representatives, summary punchlist of the meeting on September 10, 2014 by email transmittal October 2, 2014, your September 24, 2014 letter and numerous emails, the last one of which before this submittal was dated October 9, 2014. In that email, I communicated to you that "I trust the next submission will have addressed all your concerns and beyond." Indeed, this submission goes beyond what is required for PTI Compliance, and as SNG indicated in its September 8th letter, its submittal then complied with the Commission's decision and the Special Conditions imposed and agreed to by SNG. I trust that by SNG going the "extra mile" and accommodating your requests, all the "deficiencies" you identified and the discussions we exchanged have been fully addressed and that now you will be ready to sign-off on the CDP

Issuance. This submittal is also made pursuant to the terms of the Settlement Agreement between the Commission and SNG and the timetables set therein.

We are re-submitting with this transmittal the Revised Plans as modified to achieve full compliance with the PTI conditions along with all other required conditions. We are providing you with 2 sets each of the following plans and documents:

PLANS: 53 Pages on 30”X42” Blue-Print Drawing Sheets

1. VESTING TENTATIVE MAP – Revised Plan (7)
2. GRADING PLAN (1)
3. HEIGHT COMPLIANCE (1)
4. MBS FLOOR LEVEL PLANS (11)
5. LANDSCAPE PLAN (6)
6. CONSTRUCTION PLAN (4)
7. STORMWATER DRAINAGE PLAN (2)
8. PUBLIC ACCESS MANAGEMENT PLAN (3)
9. LIGHTING PLAN (2)
10. SIGNAGE PLAN (3)
11. DUNE RESTORATION PLAN (8)
12. PRELIMINARY FOUNDATION PILE LAYOUT (4)

REPORTS: Some of which have been Previously Submitted

1. ACCESS, SIGNAGE AND LIGHTING PLAN
2. TYPICAL HOTEL CONDO UNITS (Submitted 7/31/14)
3. CONDOMINIUM HOTEL PLAN (Submitted 7/31/14)
4. MBS VIEWS & EXISTING VIEWS
5. IRREVOCABLE OFFER OF DEDICATION – DUNE AREA CONSERVATION
6. IRREVOCABLE OFFER OF DEDICATION – PUBLIC ACCESS EASEMENT
7. GEOTECHNICAL ANALYSIS (Submitted 7/31/14)
8. BLUFFTOP EDGE MONITOR PLAN
9. STORM WATER POLLUTION PREVENTION PLAN (Submitted 7/31/14)
10. UTILITIES – WILL SERVE LETTERS [CABLE,SANITATION,ELECTRICAL/GAS] (Submitted 7/31/14)
11. FIRE WILL SERVE
12. LANDSCAPE PLAN CERTIFICATION
13. GEOTECHNICAL CERTIFICATION
14. MPWMD – WDS PERMIT (Submitted 7/31/14)
15. DEED RESTRICTION
16. PRELIMINARY TITLE REPORT (Submitted 10/2/14)

COLOR COPIES: We are also providing color copies of some of the Plans to assist in your review

1. DUNE RESTORATION PLAN
2. LANDSCAPE PLAN
3. CONSTRUCTION PLAN
4. PUBLIC ACCESS MANAGEMENT PLAN
5. LIGHTING PLAN
6. SIGNAGE PLAN

7. HEIGHT COMPLIANCE

Pursuant to the terms of the Settlement Agreement, Commission staff is to *prioritize and expedite* the processing of this submittal. That was further affirmed by the Commission and Staff on April 11, 2014. Additionally, the Settlement Agreement calls for *Mutual Cooperation Commitment*. It further states, “the parties commit to exercise their respective best efforts in a timely manner to cooperatively implement this Agreement. In determining compliance with prior to issuance permit conditions, Commission staff will respond to all submissions by SNG within 30 days.” This is our second PTI Compliance submission, and addresses revisions and response to your requests, so I hope we can move this in a timely manner.

This submission includes revisions to the Offers to Dedicate the Conservation Area Easement and the Public Access Easements. We request that you have the proper staff personnel review these documents expeditiously so that they can be approved and recorded in a timely manner.

We are looking forward to your mutual cooperation and issuance of the CDP. Please don't hesitate to contact me or Steven Kaufmann with any questions you may have or set a time to meet and discuss the submission.

Sincerely yours,

Ed Ghandour
President

cc. Steven Kaufmann
Tom Roth

Enc.

CALIFORNIA COASTAL COMMISSION

CENTRAL COAST DISTRICT OFFICE
725 FRONT STREET, SUITE 300
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November 14, 2014

Ed Ghandour
Security National Guaranty
505 Montgomery Street, Suite 1140
San Francisco, CA 94111

**Subject: Prior to Issuance Condition Compliance Review for Coastal Development Permit
Number A-3-SNC-98-114 (Monterey Bay Shores Resort)**

Dear Mr. Ghandour:

Thank you for your submittal of supplemental materials intended to address the prior to issuance (PTI) requirements of conditionally approved coastal development permit (CDP) number A-3-98-SNC-98-114. While the supplemental plans and documents are an improvement over the initial submittal, there continue to be deficiencies that will need to be addressed in order to satisfy the terms and conditions of the CDP. The purpose of this letter is to identify areas where your submittal does not meet the PTI condition requirements. We note that we received the materials on October 16, 2014, and are providing you this response on November 14, 2014, within the 30 days allowed by the settlement agreement. You will find more detail below, but please note that we cannot issue the CDP until the deficiencies identified below are corrected.

- 1. Topo.** In our August 29, 2014 condition compliance letter, we noted that Special Condition 1 requires the revised plans to be based on current professionally surveyed and certified topographic elevations of the site. As submitted, the site plans appeared to be based on old topographic surveys from 1995. The revised plans submitted with this most recent package dated received on October 16, 2014 have removed all notations referencing the use of 1995 data but did not include an explanation as to whether the actual topographical survey points were in error or simply the result of improper notation on the plans. As far as we could tell from the revised submittal, the only thing that changed was that the reference to the 1995 survey was removed, but none of the topo actually changed. We are hard pressed to believe that the topographic features from 1995 are identical to the features in 2014. We note that the plans indicate that Bestor Engineers performed a topographic survey in June 2014. Please provide their June 2014 final topographical survey, along with verification from Bestor Engineers (including having the survey stamped by a licensed surveyor) that the survey is accurate, and that the topographic features shown on the submitted plans are based on their 2014 survey. Please note that although this letter provides you specific feedback related to compliance with the conditions, including here related to current topo, as before we reserve our right to make any final conclusions as to conformance with the underlying conditions until after the requisite site plans, elevations, and cross-sections have been provided on a current topographic base.

2. **Plans.** Special Condition 1 requires a set of comprehensive revised final plans that address each subheading requirement (i.e., Special Conditions 1(a) – 1(v)) via site plans, cross-sections, architectural elevations, additional plan detail, illustrations, etc. We note that you have provided supplemental plans related to construction, landscaping, stormwater, public access management, lighting, signage, dune restoration, and pile layout that were not previously provided. We are still awaiting the architectural elevations, additional cross-sections, engineered computer renderings, and detail sheets related to public access improvements (overlook and parking amenities), rooftop equipment, etc. that we requested in our August 29, 2014 letter. Please submit these as soon as possible. As with the topographic issue described above, we will provide as much response as possible to your submittal as a means of facilitating your ability to move forward, but will withhold final conclusions on Special Condition 1 requirements until you have submitted and we have reviewed a coherent and comprehensive set of revised final plans that include all requested elements necessary for evaluating compliance with the terms and conditions of the CDP.
3. **NGVD.** You indicated in our September 10, 2014 meeting that you would check with the engineers regarding what it would take to convert plan elevations from National Geodetic Vertical Datum 29 (NGVD29) to the new standard North American Vertical Datum 88 (NAVD88), but your submittal continues to show NGVD29 references without any explanation. Please provide a written response regarding the findings of the engineers as to what it would take to convert the plans to NAVD88.
4. **Special Condition 1(a).** Together with Special Conditions 1(b), 1(c) and 1(v), among others, the purpose of Special Condition 1(a) is to allow dune manipulation to help avoid and minimize public view impacts, and limits dune manipulation such that finished elevations must be generally equal to existing grade, with an allowance for dune landscaping elements to extend within 3 feet of existing grade. Bracketing the lack of current topo information (as discussed above), the submitted plans show dune changes north and northwest of the dune view line that lead to dune elevations substantially different from baseline elevations, inconsistent with this requirement. Please revise the plans to show finished elevations north and northwest of the dune view line generally equal to existing grade as required, and contoured to mimic natural dune landforms.
5. **Special Condition 1(b).** As noted in our August 29, 2014 letter, the materials provided thus far are inadequate to document compliance with the requirements of Special Condition 1(b), and in fact, appear to illustrate that buildings will be visible within the protected view. We previously requested (see our August 29, 2014 letter, item number 5), and you indicated in our September 10, 2014 meeting that you would provide, a comprehensive set of architectural elevations and supplemental cross-sections to satisfactorily demonstrate compliance with Special Condition 1(b). We are still awaiting submittal of these items. We also requested that you provide visual simulations from both north and south Highway One, at approximately 200 foot intervals starting from approaching the site from the south at approximately ¼ mile, and from the north from the road crest where the site first comes into

view, and one extra simulation along the dune view line. While we did receive your “model views,” the analysis is of poor visual quality, does not accurately reflect the visual scale of the development as seen from the naked eye, does not provide the requested Highway One views including those north of the dune view line, does not include the requested nighttime simulations, and does not include an adequate description of how the simulations were developed. The “model views” were not provided in large scale format (see item 2 above), and were not accompanied by a CD of the views in electronic format (i.e., jpg/pdf format). In short, these “model views” do not provide adequate information with which to determine compliance. Please submit the requested elevations and cross-sections as soon as possible.

Finally, additional clarification/detail is needed on the submitted rooftop elements with regard to with rooftop elements and detail. Sheet LP-05 indicates the roof will be comprised of living elements and metal, tile and/or shingle roof. The living elements rooftop must include dimensions and scale such that the various elements can be measured and the final roof elevation obtained. Similarly, the non-living elements must be clearly identified on the plans, such as roofing material (i.e., metal, tile or shingles), and all roof equipment (vents, solar panels, other eco-resort elements, etc.), so we can understand their relationship to building heights and related impacts, including view impacts, in relation to the terms and conditions of the CDP. In addition, all plan sheets showing elevations of the buildings need to reflect the actual elevation of the roofs. For example, plan sheet TM-2 purports to show the roof elevations, but appears not to take into account the fact that the roof includes the components necessary to contain the living roofs. These components would appear to add several feet or more to the actual height of the buildings, and all plan sheets need to account for this. Please ensure that all future submittals clearly measure to the highest point of the roofs, including all components necessary to contain the living roofs and all other rooftop elements.

6. **Special Condition 1(c).** This condition requires that all development located inland of the buildings and related development (e.g., road, access tunnels, parking areas, pathways, etc.), be sited, designed, and screened to minimize its visibility in Highway One views to the maximum extent feasible. The October 16, 2014 plan revisions identify three resort tunnel access points and retaining walls up to 25 feet in height at several locations to support development of the resort. These features are shown in site plan and elevation view on the submitted plans, but the plans do not provide the appropriate perspective to analyze the visual impact of the project features and for conformance with the approved condition. As noted in item 5 above, we have requested a comprehensive set of architectural elements and are still awaiting the submittal of these plans, which must necessarily include such features. Absent such detail, we cannot evaluate compliance with this condition. In addition, the plans continue to include large monument-style resort signs clearly visible within the Highway One viewshed in contradiction to condition requirements that development is to be sited and designed to blend into the dune aesthetic, as we previously informed you was inappropriate via our August 29, 2014 letter. These signs need to be re-sited and re-designed so as to meet

these requirements, and need to be shown in all requested materials (e.g., elevations, cross sections, visual simulations, etc.) to be able to evaluate compliance.

7. **Special condition 1(d).** Per this condition, no further roadway development beyond what is necessary for the project is authorized. The submitted plans include a driveway spur beyond the condominium tunnel access point. You indicated in our September 10, 2014 meeting that additional clarification and information pertaining to the road stub would be provided. We are still awaiting this information. Absent information indicating that this stub meets the terms and conditions of the CDP, the extra road development past the northern access road must be eliminated as it is not part of the approved resort project.
8. **Special Condition 1(e).** Similar to comments made above, the October 16, 2014 plans including Height Compliance sheet HC-1, but this sheet does not provide enough detail to conclude that the approved development complies with the 45-foot (hotel and condominium hotel) and 36-foot (all other development) height limits. As noted in item 1 above, the underlying topographic survey upon which the analysis is based hasn't been verified (including signed and stamped by a licensed surveyor) and thus we cannot confirm the validity of the topographic elevations. Additionally, there is not enough information in the submitted rooftop elements plan for us to understand the visibility of these elements, and the building heights appear not to account for the portions of the roof utilized to contain the living roofs, making it impossible to conclude on the overall rooftop elevations and their effect on visibility and compliance with the CDP (see also item 5 above). Accordingly, we are unable to conclude that the approved development complies with the height limitations of Special Condition 1(e).
9. **Special Condition 1(g).** The terms and conditions of the CDP limit foredune grading seaward of the buildings down to 32 feet and only where such grading is designed to replicate natural dune landforms and to integrate into the surrounding dunes to the maximum extent feasible. The October 16, 2014 plan revisions conflict with these requirements by grading of the foredune below the 32-foot contour including for each of the four depressions near the bluff edge, and to for the proposed fill area along the bluff edge seaward of the former borrow pit (see Sheet TM-2). Grading along the northern edge of the property, although no longer uniform straight lines, still appears unnatural and would encroach right up to the area containing the greatest number and density of seacliff buckwheat plants on the site. Further, it is also not clear whether this grading meets the tests of Special Conditions 1(a), 1(b), and 1(c) which is intended to block views of buildings and related development seaward (north) of the dune view line. The final revised plans must be revised to eliminate foredune grading that is not seaward of buildings, to eliminate areas of foredune grading lower than 32 feet, and to create a more natural dune landform along the northern and seaward portions of the site.
10. **Special Condition 1(h).** The October 16, 2014 plan revisions provide roughly the same level of detail as shown in the prior Resort Pathway submittal except that it has now been provided

on large format plans (see Figure 6: Access, Signage, and Lighting Plan). The plans do not provide any plan detail beyond a site plan illustrating the approximate location of the approved pathway system and overlooks (i.e., benches, railings, etc.). This is insufficient to allow for an evaluation of condition compliance. Please provide complete plan detail (site plan and cross-section views) for each element of the required resort pathway and overlook system including size, location, orientation, materials, etc. In addition, please eliminate any notations on the plans indicating future potential temporary events or possible infrastructure expansion, as none of this is authorized by the CDP (e.g., see also Conceptual Lighting Plan).

11. Special Condition 1(i). Similar to item 10 above, the October 16, 2014 plan revisions do not provide sufficient plan detail beyond a site plan illustrating the location of the public access amenities at a fairly gross level scale, and some illustrations of potential design features. We need site plans, cross-sections, and detail sheets that provide significantly more detail than the general locations and illustrations provided thus far to evaluate compliance with this condition. As noted in our August 29, 2014 compliance letter and as we discussed at our September 10, 2014 meeting, plan notes do not and cannot take the place of actual plan details at a scale that allows us to understand what is going to be constructed and installed.

12. Special Condition 1(k). The October 16, 2014 plan revisions (Sheet LP-02: Plant Communities) includes a series of plants that are invasive dune species and/or not native to the dunes in this area, and these must be eliminated from all planting palettes except for the hotel and residential landscape category. In addition, the hotel and residential landscape area must be modified so that it is limited to areas fully contained within the confines of the hotel and residential courtyards, holistic garden, rooftop workout deck, and port cochere (i.e., the large dune at the entrance to the resort is an LCP-protected dune feature that may only be restored with native, non-invasive dune plant species endemic to Sand City and the southern Monterey Bay dune complex). Please revise the plan sheets accordingly.

13. Special Condition 1(l). The October 16, 2014 plan revisions do not include lighting plans for the buildings and thus, we are not able to analyze the submittal for conformance with the condition in respect to those elements. Please provide lighting plan sheets and information on lighting (exterior and interior). Additionally, the revised resort pathway lighting scheme appears excessive – in some cases there are lights every 15- 20 feet on center. The same is true for lighting along the resort entry and public parking area where there are 36 lights of various sizes and lumens within this area and all within the Highway One viewshed. We have not received a visual analysis of the effects of the lighting on Highway One views or the nighttime sky, and no materials have been provided that demonstrate compliance with the terms and conditions of the CDP (i.e., evidence that it is the minimum necessary for safety purposes, evidence that the light wash and glare has been limited to the maximum extent feasible, etc.). Please supplement the lighting plan with a nighttime visual simulation and information (e.g., lightwash analysis) confirming the lighting plan minimizes the amount of light or glare visible from public viewing areas including Highway One, Fort Ord Dunes State Park, the Monterey Bay Sanctuary Scenic Trail, the public access amenities, the beach

and from areas across the bay (i.e., Cannery Row, Fishermen's wharf, Lover's Point, etc.), as required by terms and conditions of the CDP.

14. Special Condition 1(m). The submitted plans do not include details (i.e., architectural elevations, written narrative, manufacturers specifications, or similar) to show the numbers, locations, or orientation of all exterior windows, or how windows and other surfaces will be treated to avoid reflecting light and to protect against bird strikes. Please provide information on all planned window and other surface treatments.

15. Special Condition 1(n). Water, sewer, and storm water infrastructure are shown on the project plans. The plans do not appear to include detail on electrical, natural gas, cable, phone/data service, solar, wind, or other renewable energy sources. Please provide a complete utility plan sheet with detail on the provision of these services.

The plans also appear to include overhead equipment near the resort service entrance tunnel and other areas along the Highway. As required by the CDP, the plan must provide for removal or undergrounding of all existing overhead utilities on the site and in areas between the site and Highway One. Please revise the plans accordingly. There also appears to be additional utility development in the dunes between the northerly two tunnel access points. Development in this area was not authorized past dune manipulation to address viewshed impacts and dune restoration, and thus utility infrastructure should not be present in these areas. Please modify the plans in future submittals.

The Monterey Fire Department in its January 2, 2014 letter indicates that final approval of the fire access will be considered at a future date when building plans have been submitted for review. A letter from the Monterey Fire Department dated September 30, 2014 further indicates that alternative methods of providing fire protection for the building will be required as an alternative to the revised ocean side access. As such, the fire sign-off is not yet complete, and it appears that alternative measures may be required. We need to know what fire safety requirements are going to be required before we can measure compliance on this point, including to evaluate whether they may necessitate changes to the approved project. If alternative fire protection methods to the proposed fire access road are considered, please keep in mind that the fire access road presents significant public viewshed issues and changes to it need to be understood in that context, including in terms of the requirements of Special Conditions 1(a), 1(b), and 1(v).

16. Special Condition 1(o). The October 16, 2014 plan revisions include additional detail on the storm water system including with respect to the use of bio-infiltration basins, bubblers, and other storm water features. Of primary concern is the use of bio-infiltration basins within the protected dune areas of the site. Special Conditions 1(k) and 3 prohibit the use of non-native plant species within dune restoration areas, and Special Condition 3 requires this area to be used for dune restoration only. These storm water measures need to be accommodated within the allowed development areas of the site, and not within the protected dune areas. Please

revise the plans accordingly. Additionally, we are concerned that bio-infiltration basins and bubblers may fail over time, particularly in conditions where blowing and drifting sand fill the basin. If the infiltration basins fill with sand, the certain plant species will not be able to grow and the efficacy of the basin to remove pollutants may be lost. Please also provide information showing how such systems are intended to be maintained to ensure their operational efficiency and utility.

The plan revisions also illustrate a series of storm drain collection boxes (SDCB) at the residential and service garage entrances, but provide no detail on them (e.g., size, capacity, media for water quality purposes, etc.). It is not clear whether these features will be adequate to collect, filter, and treat stormwater runoff generating from the roadway surface outside the access tunnels as required. Given the slope and potential water velocities, it may be necessary for trench drains to be installed instead of the SDCB's to direct runoff to the main storm water quality units and ultimately the dry wells.

Lastly, the engineered stormwater system can be expected to address the infiltration and some of filtration requirements of the site, but not all of them. Post-construction BMPs must therefore be developed to adequately handle the volume and variety of pollutants that might be expected to occur in runoff on site. Those BMPs should include regularly vacuuming of the resort access driveway and public access parking areas, periodic cleaning of oils and grease in the covered parking garage as well as the uncovered access parking, appropriate siting and containment of resort trash dumpsters, cleaning of restaurant grease traps, and regular maintenance of the resort delivery bay. Please submit additional detail on the post-construction BMPs that will be implemented after construction to ensure that stormwater and drainage have been adequately addressed per Special Condition 1(o).

17. Special Condition 1(p). As noted in our compliance letter of August 29, 2014, the proposed resort identity signage (i.e., in front of the retaining wall beneath the large dune feature, at the resort property entrance, and three signs in the vicinity at the resort turn-about) all are within the public viewshed and all do not comply with the minimization requirement of Special Condition 1(p) (see also comments on signs above). The entrance sign at the foot of the large dune feature is 15 feet tall by 40 feet wide – or 600 square feet in size. It is also located in an area where only dune restoration is allowed, and not resort signage. The signage at the resort roundabout appears to be a large trapezoidal cube, and the sign plans do not provide complete detail on all the dimensions. Other proposed signs are similarly oversized, and have not been sited or designed to meet the requirements of this and related conditions designed to avoid and limit public view issues. You indicated in our September 10, 2014 meeting that you would submit additional detail on the proposed resort identity signage, but we still have not received any new materials that would allow us to conclude that the sign plan complies with the terms and conditions of the CDP.

With respect to other general resort and access signs, the plan revisions includes additional signage with text that needs modification. For example, we believe that signage that

interprets dune habitat and its inhabitants as opposed to language that states “dune restoration area...keep out” is required. Similarly, if property boundary signs are allowed consistent with the standards of the condition, we believe that text that simply indicates the location of the property: “Property of Monterey Bay Shores Resort” or similar as opposed to “No Trespassing” is what is necessary to meet the terms and conditions of the CDP. Additional directional access signs are also needed along the public access parking lot and out to the public overlook and bottom of the public beach access stairs. No information is provided on the “Dune” signs, which appear to be redundant to the Habitat Protection/interpretive type signs and thus they should be eliminated to avoid unnecessary clutter. All signs must be sited and designed to integrate into the dune aesthetic (i.e., natural materials, muted colors, diminutive in size, etc.) and placed in areas that minimize impacts on public views, including from Highway One and the pathway system itself. Please provide revised sign sheets with the minimum number of signs necessary to achieve the desired goal.

18. Special Condition 1(q). The October 16, 2014 plan revisions includes an analysis of a series of potential foundation and retaining wall alternatives including a mat foundation with over-excavation, mat foundation with ground improvement, auger cast piles, a hybrid of mat foundation with over-excavation and auger piles, and finally drilled pile with pressure grouted tip. It is clear from the materials that the mat foundation with ground improvements and traditional auger-style pilings present some of the more significant coastal resource issues commonly associated with shoreline armoring and their removal. Both are difficult to install, cause lots of disturbance during removal, and both act as shoreline armoring. The hybrid alternative of the two options is similarly flawed. As such, these three options do not appear to represent the least damaging feasible alternative. The mat foundation with over-excavation results in significant ground disturbance during construction and substantial sawcutting for removal of all but the lower load elements forward of the main hotel and residential towers. There is potential for less excavation and easier removal for the lighter elements, but this was not analyzed. The drilled pile with pressure grouted tip is narrower than a traditional pile, can be spaced at greater intervals, and is comparatively easier to extract than traditional piles. However, the Commission has typically considered these types of deep pile systems to be a form of shoreline protection and have looked to other less permanent options when approving foundations near the shoreline. As you know, the primary objective of the condition is to ensure that foundation and retaining wall development best meets the objectives and performance standards of the terms and conditions of the CDP, including to minimize visual incompatibility and to facilitate removal. One of the primary means of accomplishing this is through ensuring that the foundations are the least environmentally damaging feasible alternative. To complete the analysis and definitively conclude regarding the least environmentally damaging feasible alternative, you will need to examine a hybrid option that includes a drilled in place pipe pile with pressure grout tip for the higher load condition elements of the development as shown on Sheet S1-02 (i.e., the 9-story building elements) and the mat foundation with over-excavation for the lower load condition elements. Please do not analyze the mat foundation with over-excavation option as if all the buildings will have the heavy loads of the 9-story building. Please identify the

location, numbers of piles, and spacing requirements for this alternative.

- 19. Special Condition 1(s).** Should the alternatives analysis required in item 18 above result in an environmentally superior foundation alternative, geotechnical signoff for the approved project will be required before this condition can be considered met.
- 20. Special Condition 1(t).** The plan note on the October 16, 2014 plan revisions indicates that SNG has designated the Monterey Regional Waste Management District (MRWMD) in Marina and its sand operation (as operated by Don Chapin Company) for stockpiling and commercial use. Please clarify what this means. Please provide copies of any authorizations, approvals, and/or agreements provided by MRWMD for stockpiling and/or disposal of excess sand. Please also indicate the amount of sand MRWMD is able to receive, store, and/or dispose. Please also provide copies of any agreements entered into with Don Chapin, Monterey Peninsula Engineering, Granite Rock, or any other relevant party for the excavation, transport, and/or use of sand originating from the project site, and include the final destination of all sand.
- 21. Special Condition 1(u).** As noted in our August 29, 2014 compliance letter, the proposed 6-foot tall redwood perimeter fence with 6" planks is incompatible with the minimization requirements of the terms and conditions of the CDP. Additional split rail fencing and more symbolic post and cable are identified, but there does not appear to be any justification for either form of fencing. Per the condition requirement, the starting point is that all site fencing first be removed, and then it can be replaced by the minimum necessary to meet project objectives where such fencing is sited and designed to be compatible with the dune landscape and to minimize public view impacts to the maximum extent feasible. Please submit fencing details in the revised plan sheets that identify a fencing removal plan (the starting point), and then details on any proposed fencing, including demonstration of need.
- 22. Special Condition 1(v).** The requirements of Special Condition 1(v) are overarching, and affect most if not all of the issues discussed above. Thus, the inconsistencies and issues described above must also be understood in terms of Special Condition 1(v) as well. Overall, the submittal remains incomplete at this time, does not include critical plan elements such as architectural elevations, cross-sections, visual simulations, or other means for adequately assessing the project's compliance with the terms and conditions of the CDP. Although we have identified project elements that conflict with the visual protection standards identified in the special conditions and need to change, there may be other changes necessary when more complete detail has been provided in response to these comments.
- 23. Special Condition 2.** It does not appear that the construction staging/stockpiling areas as shown in the October 16, 2014 plan revisions have been minimized to the maximum extent feasible as required by Special Condition 2(a). In order to have the least impacts on dunes, public access, and public views, please reduce the size of the staging and stockpiling areas including by relocating sand stockpiling outside the primary views north of the dune view

line and identify other areas (on-site or off-site) where construction staging can occur without the associated view impacts.

The submitted construction plans also illustrate Environmentally Sensitive Area (ESA) fencing that will be installed around areas that contain significant populations of seacliff buckwheat in order to prevent construction activities from occurring within those areas. From what we can tell, the identified areas are general in nature and don't appear to have a buffer. Please provide a copy of a recent (within the past year) protocol level survey of the ESA prepared by the project biologist that indicates the location and extent of these sensitive plant species and the project biologist's recommended buffer from the construction activities.

The construction plan indicates that the excavation and off-haul of excess sands will occur from sunrise to sunset, 7 days a week and in a manner that avoids the traffic rush hour. Please identify the specific hours of truck off-haul that avoid the traffic rush hour including morning and evening commute times, weekend peak periods during prime visitor serving months, and busy holiday periods.

The submitted materials do not include an identification of your proposed biological monitor. Please provide the name(s) and qualifications of all proposed biological monitors for Executive Director review and approval.

24. Special Condition 3. Figure 4 of the dune restoration plan is an exhibit illustrating areas subject to the dune restoration requirements of Special Condition 3. This condition provides that dune habitat restoration and stabilization shall occur for all dune areas of the site outside of development areas, as well as for all dune extension and screening areas. As currently proposed, the restoration plan does not comport with the requirements of Special Condition 3. The dune restoration plan must apply to all areas outside of the development footprint including the entire areas between the tunnel access points, the sand dune areas between the roadway and public path, the path and property line, and essentially all sandy areas not covered by approved development. Please revise Figure 4 accordingly.

Secondly, Special Condition 4 specifically states that the dune conservation easement shall apply to the dune restoration area described in Special Condition 3 and generally depicted in Exhibit 11a. As currently illustrated in Figure 3: Conservation Easement, the easement area does not comport with the dune restoration area or the requirements of Special Condition 4 and must be revised accordingly.

The dune restoration plan also includes Figure 2: Public Access Easement illustrating the Public Access Easement area (shown in orange). However, this area does not match the requirements of Special Condition 6 which states that the public access easement shall apply to all public access areas described in Special Condition 5 and generally depicted in Exhibit 11b. Special Condition 5(b)5 states in relevant part, "the beach and offshore area (i.e., extending from the seawardmost property line to the toe of the dune bluff, including as the

toe of the dune bluff migrates inland) shall be publicly available for general public pedestrian and beach access...”. As currently depicted in Figure 2, the public access easement excludes that portion of the property from the mean high tide seaward to the western property line in contradiction to the permit requirements. Please revise Figure 2 of the plan accordingly. Further it appears from the large scale plan that the resort pathway system and overlooks are identified and being part of the public access easement. If that is not the intent, another modification will be necessary to Figure 2.

Figure 1 illustrates the property habitat management areas which are parsed into discrete categories including the beach, foredune, backdune, and developed areas. There are a number of areas around the perimeter of the actual physical development on the site that are classified as “developed” but in reality are either foredune or backdune – including but not limited to the dunes between the access tunnels, the area seaward of the fire access road, a triangular shaped area in the very northeast corner of the property, and the dunes between the resort driveway and public access path. Please modify the plans to correctly identify these areas as dune and not developed.

With regard to the dune restoration plan specifics, please modify the plan to eliminate exotic plant species from “transitional” areas, to the correctly identify the extent/limits of “hotel and residential” landscapes (see also item 12 above), and to provide all specific provisions to protect and enhance sensitive species habitats including for Western snowy plover and Smith’s blue butterfly (as none of this information has yet been provided). Please also clarify that all non-native plant removal along the northern boundary of the project site will be completed by hand. No herbicides may be used north of the Z – Z cross-section as shown on VTM Sheet TM-2.

All “hotel and residential landscape” must be limited to areas fully contained within the confines of the hotel and residential courtyards, holistic garden, rooftop workout deck, and port cochere. The large dune feature near the resort entrance is a protected dune stabilization and restoration area and must be restored with native dune plants native to Sand City and the southern Monterey Bay dune complex.

The revised landscape plan plant palette must also be certified from a licensed professional indicating that all plant species to be used are non-invasive dune species native to Sand City and the Monterey dune complex.

Bio-filtration areas are proposed in two locations in areas reserved for native dune restoration, and this is not authorized. Please remove these areas from the dune restoration area.

The plan does not include specific provisions that enhance sensitive species habitats, including at a minimum snowy plover and Smith’s blue butterfly habitats, as part of dune restoration activities. Please provide details on the provisions to enhance such habitats as

required.

Grading along the northern edge of the property still appears unnatural and would encroach upon the area containing the greatest number and density of seacliff buckwheat plants on the site. The dune restoration plan must be revised to create a more natural dune landform along the northern edge of the property and to appropriately protect sensitive plant species.

25. Special Conditions 4 and 6 (Dune Area Conservation and Public Access Easements). We have received the supplemental drafts of the Irrevocable Offer of Dedication for the Public Access Easement (Public Access OTD) (required pursuant to Special Condition 6) and Dune Area Conservation Easement (Dune Conservation OTD) (required pursuant to Special Condition 4). As with the prior submittal, we cannot fully review and comment on them because they must incorporate information from the Public Access Plan (Special Condition 5) and the Dune Restoration Plans (Special Condition 3), neither of which currently reflect the terms of the underlying conditions and neither of which have been approved.

Nevertheless, we would like to provide a few observations. First and foremost, as noted above, the Dune Conservation area described and depicted in Exhibit C and C-1 of the Dune Conservation OTD is not consistent in size or orientation with the requirements of Special Condition 4 as generally depicted on Exhibit 11a. The same is true for the Public Access Area described and depicted in Exhibit C and C-1 of the Public Access OTD. For example, as stated in Special Condition 5(b)5, the beach and offshore area, called Parcel 5 in Exhibit C and C-1, should extend “from the seaward-most property line to the toe of the dune bluff...,” but as illustrated in Exhibit C and C-1 of the Public Access OTD, the easement runs from the mean high line landward, even though the property boundary is shown seaward of that line.

With regard to the depictions of the easement area maps, the maps must accurately reflect the area subject to the easement. The map must have a legend, a table of courses for both lines and curves (i.e., a line chart and a curve chart) that correspond to both the written metes and bounds description and the various lines and curves on the map. The map must include a north arrow, scale, and date stamp and signature of a licensed surveyor. The written metes and bounds must also be certified by a licensed surveyor. We recommend Executive Director approval of the map and written description prior to obtaining certification from the surveyor. For easements with multiple sections like the public access easement, please provide an index sheet map that refers to each access component and a specific or detail sheet with the line and curve table clearly identified. Additionally, rather than describing these areas as easement “parcels”, please use the term “area” (e.g., Easement Area 1: Parking Lot, Easement Area 2: Pathway System, etc.). Each easement area map should correspond to a separate written metes and bounds beginning with course 1. Finally, the public access map must also indicate that the inland extent of the beach area (i.e., toe of the bluff) is ambulatory.

Some additional recommendations: all maps must be clear and legible for reproduction - no line or curve identifiers within shaded areas. Use cross-hatching or similar as necessary. Type font of all exhibits must be legible and large enough to be readable. Please check the spelling of the primary signatory's name (see public access easement).

Additionally, these Offers to Dedicate must be recorded free of all prior liens and there appear to be encumbrances that affect the interests being conveyed. Therefore, subordination agreements will be necessary for sign off.

Please note that these comments represent preliminary observations which are not based on a full review of the documents for the reasons stated above. Once the Dune Restoration Plan and Public Access Plan are final, we will have a complete understanding of how the areas subject to the easements must be restricted, so we will draft the precise language of the OTDs at that time. This is why we have no current comments on the other draft language you submitted, and our lack of comment on the precise wording of the documents should not be understood as implicit approval of the drafts you submitted. We reserve the right to provide any additional comments and make any additional revisions to the documents that are necessary once these plans are finalized.

26. Special Condition 5 (Public Access Management Plan). Please clearly identify and detail all of the requirements of the condition within the context of the Public Access Management Plan. As with Special Conditions 1, 4, and 6 above, we cannot fully evaluate the submitted plan for this reason, but we will provide comments and/or observations where possible. All comments on the public access amenities and areas discussed above apply to the Public Access Management Plan, and must be addressed here as well.

Public access amenities are generally depicted on Page 1 of the submitted Public Access Management Plan, but the plan continues to lack specific details on the siting, size, orientation, and design of such amenities. We need to know exactly what is going to be constructed, the width, length, height, materials, location, orientation, etc. Simply restating the condition is not the same as depicting it site plan and cross-section detail at a level that can be confirmed.

Regarding use of the public parking lot after midnight, the plan suggests that signs will be posted informing employees, guests, and residents of the use restrictions, but there does not appear to be detail on the number, content, or location of the proposed signs, and signage alone will not ensure that the parking area is reserved for the public. Presuming that residents and hotel guest vehicles can be identified, please identify the additional measures that will be taken to ensure that the parking lot remains available for public access use per the terms and conditions of the CDP.

As we understand it, the proposed pathway from the Monterey Bay Sanctuary Scenic Trail (MBSST) to the public parking lot would be widened to 10 feet in which is similar in width

as the inland recreational trail, though this is not reflected in the Public Access Management Plan. Please revise the plans accordingly. The Plan also omits (and must provide) detail on path connectivity with the MBSST, including striping as necessary for road or driveway crossings.

The submitted Public Access Management Plan states that the overlook will be “approximately 300 square feet” in size, designed to eliminate the need for railings “to the maximum extent feasible”, and setback a “sufficient distance” from the blufftop edge. However, as with all of the other amenities (e.g., parking lot, pathway system, beach stairway/pathway, etc.), there is not actual detail that can be referred to evaluate compliance with the condition. Restating the requirement of the condition is not the same as clearly showing what will be constructed for public use. The Plan needs to be revised accordingly.

The submitted Plan lacks sign details. Please provide the sign details as identified in the special condition, including showing the number, location, materials, design and text of all signs, and including the California Coastal Trail and California Coastal Commission emblems and recognition of the Coastal Commission’s role in providing public access at this location.

The submitted Public Access Management Plan does not provide for off-site parking as required. Please revise the Plan accordingly.

27. Special Condition 20 (Deed Restriction). We received and reviewed the draft Deed Restriction. Please note that all appears in order with the exception that the Notice of Intent (Exhibit B) must include your signature.

Finally, as identified in our August 29, 2014 letter and as we discussed in our meeting of September 10, 2014, although not a condition that must be met before the CDP is issued, it is important to note that Special Condition 15 requires confirmation of other agency approvals subject to certain criteria, and requires a modified Habitat Protection Plan (HPP) that incorporates standards to address certain U.S. Fish & Wildlife Service concerns. Special Condition 15 also requires submittal of any changes to the plans for the project that may be necessary to comply with the approved modified HPP and/or agency requirements. It seems possible if not likely that other agency consultations and revisions to the HPP may require material changes to the project that will affect many of the materials you have just submitted, perhaps most clearly the case with the revised final plans pursuant to Special Condition 1. Although we are happy to work with you on the materials discussed herein, we note that even when approved, they may need to be modified later prior to construction if those HPP or agency changes dictate. That will mean a whole new round of submittals and revisions. Although not required, it would appear to us to be a more prudent use of time and resources to resolve the agency and HPP issues now so that they can inform the sign off of the plans that must be approved prior to issuance of the permit, thus ensuring that the current materials don’t end up needing to all be revised at a later date at additional cost and time. We strongly

suggest that the revised HPP be prepared and submitted, and that agency consultations be pursued as needed consistent with Special Condition 15, as soon as possible.

In closing, we request that all revised materials that must be submitted prior to issuance of the CDP be submitted for review at the same time on the same date, unless you would prefer to address a subset in one submittal and defer submittal of other materials until that is resolved (e.g., resolving the Special Condition 1, 2, 3, and 5 requirements before resolving the Special Condition 4 and 6 legal document requirements). Please note that there may be additional changes and/or materials necessary to comply with the terms and conditions of approval depending upon the nature of the materials you provide in response to this letter, particularly regarding submittal of a complete set of revised plans with all necessary components (e.g., including the requested elevations and cross-sections). Further, we note that your submittal and this response is limited to the requirements of the CDP that must be met prior to issuance of the permit, and that there are other terms and conditions, including other necessary submittals and events that also must be complied with, including in terms of certain prior to construction and occupancy requirements, that also apply but are not addressed here. We look forward to working with you on both the materials that must be submitted prior to issuance of the permit and the other conditions of approval moving forward. Please note that once we have arrived at an approvable submittal pursuant to the terms and conditions of the CDP (for example, an approved revised final plan set), we will need two complete clean copies of each such submittal, one for your records and one for ours. Finally, we would suggest that we schedule a time to discuss your next submittal package in response to this letter before you spend time in developing the revised materials so that we are all clear on the expectations and needs associated with the PTI conditions.

If you have any questions regarding the above, please contact me (831) 427 4863 or via email at Michael.Watson@coastal.ca.gov.

Regards,

Mike Watson
Coastal Planner
Central Coast District

Watson, Michael@Coastal

From: Watson, Michael@Coastal
Sent: Monday, November 17, 2014 9:36 AM
To: 'Ed Ghandour_SNG'; Carl, Dan@Coastal
Cc: Lester, Charles@Coastal; 'Steven H. Kaufmann'; Pederson, Chris@Coastal
Subject: RE: Monterey Bay Shores

Ed,

I apologize for any misunderstandings, but the electronic version of the letter sent over to you *is* the final version of our compliance letter. There is nothing unofficial about it. I sent it to you as a courtesy as I thought you would want to have it as soon as it was available. The very same letter with my signature was placed into the mail on Friday afternoon.

With regard to the submittal itself, we recognize that it is an improvement over the initial submittal, but it does not contain the detail that is needed to satisfy the terms and conditions of the CDP. We tried to narrow the focus of our comments to those areas where your submittal does not meet the PTI condition requirements and certainly will again sit down with you to explain how those conditions can be met. However, we take exception to your continued grouching about staff and the Commission's review process. As we noted several times now, staff is simply doing its job to implement the Commission's approval of the coastal development permit subject to the approved conditions. We have conducted our review in a professional manner and in the same way that we would conduct any compliance review.

As to your request for a meeting, I will check with others to see when they are available to get back to you with some dates.

Mike

From: Ed Ghandour_SNG [mailto:edg.sng@equus-capital.com]
Sent: Sunday, November 16, 2014 6:17 PM
To: Watson, Michael@Coastal; Carl, Dan@Coastal
Cc: Lester, Charles@Coastal; 'Steven H. Kaufmann'
Subject: RE: Monterey Bay Shores

Mike-
Thanks.

I just got back from Lake Tahoe and had a brief chance to review your compliance letter. Since you indicated that you'll be sending the hardcopy with signature on Monday, it maybe worth the time before hand [before sending your final letter] to sit down and discuss a number of your comments and observations, in particular because they are incorrect or misunderstood. It appears like "here we go again". As I told you when I delivered the compliance items on October 16th, and as stated in the accompanying cover letter, SNG went overboard to satisfy staff, way beyond on overreaching demands in order to get the CDP issued.

Had we met as we suggested numerous times before the end of the 30 days period, many of these misunderstandings could have been avoided, and time saved. For example, your opening statements regarding the Topo survey, which was done in the summer following the CDP approval is totally wrong. How on earth you or anybody can arrive at the conclusions you stated, is beyond any reason? It raises many questions [delay tactics are very costly, and staff

knows that]. You are wrong on Topo. We advised you on Sept 8th and Sept 10th that the Revised Plans are based on new survey in full compliance on the approved conditions. It is so documented by Bestor Engineers on TM-1, sheet 1 of the VTM and shows many changes that occurred on the site since 1995. If you corrected only this “mistake”, many subsequent conclusions would be reversed.

I find it incredible that staff would try to unhinge what the Commissioners approved and the terms of the Settlement Agreement. It certainly looks like that’s what’s at play here. This goes beyond a mere planners, deputy director or executive director’s compliance review of an approved CDP or a casual error. It feels like *deja vu* all over again trying to undo what has been approved and work against us. We would like to see that course of action changed.

Because of that, we would like to give you the opportunity before you finalize your letter to sit with SNG, this week or following, so that we can go over all comments and discuss all misunderstandings. This would go a long way to resolving some of the matters introduced by your compliance letter and prevent further complications. Your unofficial (unsigned) letter warrants a long detailed response by SNG, but let’s hope that a meeting can resolve many of the issues and save time.

Please let us know if this works for you and when we can meet with you and staff. I am available tomorrow to discuss by phone meeting date.

Ed

Ed Ghandour
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From: Watson, Michael@Coastal [<mailto:Michael.Watson@coastal.ca.gov>]
Sent: Friday, November 14, 2014 4:28 PM
To: Ed Ghandour_SNG; Carl, Dan@Coastal
Cc: Lester, Charles@Coastal; Steven H. Kaufmann
Subject: RE: Monterey Bay Shores

Ed,

Here’s a copy of the compliance letter. The hardcopy with signature to follow via snail mail. Mike

From: Ed Ghandour_SNG [<mailto:edg.sng@equus-capital.com>]
Sent: Thursday, October 30, 2014 9:22 AM
To: Watson, Michael@Coastal; Carl, Dan@Coastal

Cc: Lester, Charles@Coastal; Steven H. Kaufmann
Subject: Monterey Bay Shores

Mike and Dan Hi-
Hope all is well.

We are following on the SNG submission two weeks ago Oct 16th with the complete PTI compliance with conditions for CDP Issuance.

Given that you have 30 days to respond, I wanted to check if you wanted to meet and discuss any questions or needed further clarifications from SNG. Previously we asked to meet and talk and since we did not on the first submission, that led to misunderstandings. Subsequently when we met with you , many issues were indeed clarified and it proved to be productive.

Please let me know if we can be of assistance or you wish to get together and discuss.

We are available next week.

Regards,
Ed

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November 24, 2014

Mr. Michael Watson, Coastal Planner
Mr. Dan Carl, Deputy Director
Central Coast District Office
California Coastal Commission
725 Front Street, Ste 300
Santa Cruz, CA 95060

By: Federal Express & Email

REF: Correction of Errors by Staff Regarding Prior to Issuance Condition Compliance for
CDP
CDP A-3-SNC-98-114 Monterey Bay Shores Resort

Dear Mike and Dan:

This letter submission is a follow-up to your November 14th letter, my e-mail dated November 16th and the follow-up email by you November 17th in which you assured us you are seeking dates to meet with us and to discuss your letter and my email so as to clear up any misunderstandings regarding the PTI Conditions. It's been a week and we are still awaiting dates to meet soon. It would be productive to do that very soon.

As I already indicated in my email, I am particularly concerned that Staff is attempting to undermine the Commission's April 2014 CDP approval and the Settlement Agreement. Most of the issues that you raise mischaracterize or change the actual condition of approval issued by the full Commission, and it appears that staff is doing so in an effort to delay the condition compliance review process. I hope that in our upcoming meeting the "gross errors" reflected in your letter of November 14th can be corrected.

This letter addresses the first issue you raised in your letter, namely, Topo. I focus on this issue because the error in staff's position carries through the balance of staff's letter thus causing staff to reach erroneous conclusions. It *illustrates* the problems with staff's over-reaching.

I am preparing a separate detailed letter that will address other issues raised by staff, but as I indicated in my November 16th email, we would like to give staff an opportunity first to correct staff's erroneous assumptions and misunderstandings. I believe that these could have been avoided if SNG and staff had met in person earlier, as I requested. It is not typical in a permitting process for staff to refuse to meet with an applicant to discuss issues and

differences of opinion regarding project elements. This is the second time staff has refused to meet with SNG prior to responding to SNG's timely submittals. Such refusals are not consistent with the Settlement Agreement or with the intent and wishes of the Commission.

The Notice of Intent to Issue the CDP dated May 30, 2014, Special Condition 1 States: *"The Revised Plans shall be prepared by licensed professional or professionals....and shall be based on current professionally surveyed and certified topographic elevations for the entire site."* On July 31st SNG submitted a complete PTI Conditions package, including the Revised Plans which were fully compliant with the required condition. The Vesting Tentative Map, prepared by Bestor Engineers, stated clearly on TM-01 Cover Page, updated 6-23-14, the following:

12. TOPOGRAPHIC SURVEY WAS CONDUCTED BY BESTOR ENGINEERS INC. ON JUNE 2014 (NGVD29 VERTICAL DATUM). SUPPLEMENTAL AERIAL TOPOGRAPHY BEYOND THE PROJECT LIMITS WAS PREPARED PHOTOGRAMMETRICALLY BY QUANTUM SPATIAL (HJW & ASSOCIATES) USING AERIAL PHOTOGRAPHY DATED 01/18/95 (NGVD29 VERTICAL DATUM).

Your August 29th letter rejected the VTM based on the erroneous determination that it was not based on current survey. You used that rejection throughout the letter to reject the submittal. SNG detailed on September 8th thru a letter from Steven Kaufmann that your determination was wrong and not factual. We met on September 10th and advised you of same and that the VTM and Revised Plans are in fact based on current survey done early summer 2014.

On October 16th we resubmitted the entire PTI Conditions Compliance package again and stated: *"Indeed, this submission goes beyond what is required for PTI Compliance..."*. In it SNG included the Revised Plans, as amended and dated 9-30-14, and on TM-1 Cover Page it stated in the Notes:

12. TOPOGRAPHIC SURVEY WAS CONDUCTED BY BESTOR ENGINEERS INC. ON JUNE 2014 (NGVD29 VERTICAL DATUM). CURRENT VTM ELEVATIONS ARE BASED ON 2014 SURVEY. SUPPLEMENTAL AERIAL TOPOGRAPHY BEYOND THE PROJECT LIMITS WAS PREPARED PHOTOGRAMMETRICALLY BY HJW & ASSOCIATES (QUANTUM SPATIAL) USING AERIAL PHOTOGRAPHY DATED JANUARY 1995 (NGVD29 VERTICAL DATUM).

This again clearly indicated SNG complied with the Special Condition 1. However, on November 14th, you sent a letter once again challenging again the current survey!!! On three(3) occasions now you have rejected the Revised Plans by not accepting them because of the current 2014 Topo, contrary to all the facts. This raises enormous issues, and we are tackling only the Topo issue in this transmittal.

This repetitive *serial* rejection not supported by the facts is causing SNG significant delays and carry costs exceeding \$22,000 per day, notwithstanding additional costs associated with delays, the possibility of great delay in the pre-development work (involving more than 30 engineers and consultants), and substantial consequential damages. The delays caused by staff is not consistent with the Settlement Agreement terms which state: *"The parties commit to exercise their best efforts in a timely manner to cooperatively implement this Agreement."*

Staff's refusal to acknowledge that the Revised Plans are based on a current survey (and corresponding issues based on that erroneous assumption) is a breach of the Settlement Agreement. In fact, it appears that staff is continuing to be engaged in what the Judge of the Superior Court of California, County of San Francisco, (in his opinion in favor of SNG (June 10, 2013, Case 320574) described as outright hostility toward any development: "*I agree with SNG that the Commission's denial of the permit appears to be based in part on apparent hostility by some Commission members and staff to development of any kind at the Sand City site owned by SNG... .*"

SNG believes that Staff is now engaging in exactly the conduct that the Court said the the Commission staff should not do -- act with hostility, rather than engaging in a constructive, good-faith effort to implement the Commission's April 11, 2014 approval and the corresponding Settlement Agreement. Commissioner Cox in his comments on April 11, 2014 [CDP approval date] made it clear that staff has an obligation post approval to get the CDP done, pursuant to the Settlement Agreement, to which Exec. Director Charles Lester responded by a "yes," as did legal counsel Hope Schmelzer.

In an effort to finalize the CDP Issuance and to address *again* and once and for all, the erroneous Topo issue, I am attaching herewith a stamped and Certified Topo Survey dated June 9, 2014. Contrary to the unsupported allegations of staff, all prior Revised Plans have been engineered and submitted based on this survey.

While the attached submittal is not required by Special Condition 1, SNG is submitting this in the hope that this will resolve this and compel staff to correct wrong conclusions and the over-reaching demands on other items in your letter of Nov. 14th. Please confirm prior to our meeting and ASAP that this Topo item Special Condition 1 has been fully satisfied as well as the height conditions directly derived from the Topo survey. Please also amend and update your November 14th letter to reflect that, and all subsequent items that have relied on your erroneous conclusion. As the Settlement Agreement states, time is of the essence on all these matters, especially given the unwarranted delay by staff to date.

Respectfully yours,



Ed Ghandour
President

Cc. Steven Kaufmann
Charles Lester, Executive Director
Thomas Roth
Steve Kinsey, Chairman-California Coastal Commission



Security National Guaranty

December 5, 2014

VIA ELECTRONIC MAIL

Mr. Michael Watson
Coastal Planner
Central Coast Area District Office
California Coast Commission
725 Front Street, Ste. 300
Santa Cruz, CA 95060

Re: **CDP A-3-SNC-98-114 (Monterey Bay Shores Resort/SNG)**
Response to November 14, 2014 Letter Re: Prior to Issuance Condition
Compliance Review – 2nd Submission by SNG

Dear Mike:

This letter responds to your November 14, 2014 and December 3, 2014 letters regarding prior to issuance Condition Compliance review for the Commission's April 2014 approval of the Monterey Bay Shores Resort (MBS) Project. This follows up on SNG's second submission of materials, including the entire set of Plans and Reports submitted on October 16, 2014 and SNG's additional response dated November 24, 2014.

I have set out below our response to each of the items in your most recent 15-page letter which purport to identify "deficiencies." I have identified three instances where SNG, in good faith, will supplement the information previously provided. On the whole, however, SNG disagrees with the points made in your letter.

Contrary to your assertion, SNG's submittal package fully complies with the Commission's approval and the Special Conditions imposed by the Commission and agreed to by SNG as part of the settlement of the litigation. We refer you further to our prior response letter dated September 8th 2014 outlining SNG's response to each of the items raised in your August 29, 2014 letter.

505 Montgomery Street, Suite 1140, San Francisco CA 94111 415.874.3121 sng@equus-capital.com

Paragraph 6 of the Settlement Agreement between the Commission and SNG addresses “Mutual Cooperation Commitment” by the parties. Staff’s letter is not consistent with this obligation.

Staff’s letter again appears to be designed to delay, obstruct and interfere with a reasonable, common sense process and the Commission’s previous approval of the Project. We believe that staff’s letters violates the Settlement Agreement and constitutes a breach.

Specifically, ¶ 6 of the Settlement Agreement provides in part: “In determining compliance with prior to issuance permit conditions, Commission staff will respond to all submissions by SNG within 30 days.” However, staff continues to assert factually incorrect positions that run throughout the letter and that render the response to be no response at all. SNG submitted its complete and full condition compliance materials on October 16, 2014 – for the second time. SNG went substantially beyond what is required in the conditions in an effort to finalize CDP Issuance (based on Staff’s representations made on September 10th).

SNG also has requested multiple times to meet with Staff to discuss the materials. In the e-mail exchanges on November 17, 2014, you indicated that you would set up a meeting. On December 4th, 18 days after that meeting request, we received an email suggesting a meeting on December 8th. Instead of immediately setting a meeting so that staff’s errors can be discussed and corrected, Staff chose instead to delay, and to issue another erroneous letter without any discussion of the issues with SNG. On December 5, 2014, we received your additional response dated December 3, 2014, which is contains many of the same problems as earlier staff letters.

While we appreciate that staff has set aside 90 minutes on December 8th to meet and discuss condition compliance, scheduling the meeting weeks ago (as we requested), prior to your numerous letters, would have brought to light staff’s fundamental misunderstandings and errors and perhaps also given staff time to *properly* address the Topo matter, instead of rehashing the same factually incorrect old story which you have asserted repeatedly.

SNG remains concerned that staff is undertaking a wholesale effort to *rewrite* the Conditions of Approval approved and issued by the full Commission in April and thus to undermine the approved Settlement Agreement.

SNG previously responded to Staff’s first item relating to the Topo.. Staff continues to ignore SNG’s response and carried the issue over in several other items, erroneously concluding that the Revised Plans were based on old topographic surveys from 1995. This is untrue and undermines virtually all of staff’s analysis.

In addition, as noted in our September 8th letter, Staff’s comments improperly add standards or specifications that were not included as part of the Special Conditions adopted and approved by the full Commission and agreed to by SNG. The full Commission never included these additional requirements that are now illegally being imposed by staff.

SNG’s re-submittals on October 16th are fully consistent with the type of expert, professional submissions and standards that the Commission has routinely accepted for other projects. In fact, it was clear that after the meeting between staff and SNG on September 10th that most of the issues were narrowed substantially. In good faith, SNG agreed to provide staff with

additional items not required by the Conditions in order to put this matter to bed and to move forward with permit issuance.

Instead of matching SNG's good faith effort, staff seeks to move the goalposts again and issued an expanded November 24, 2014 letter. The Settlement Agreement does not contemplate nor allow endless requests by staff for information. Because staff failed to request much of this new information in its initial review, under the terms of the Settlement Agreement, staff waived its right to request this information and is in breach of the Settlement Agreement.

Staff's November 14th letter also treats SNG's submission as though it were the initial exploration of a new project application, subject to early stages of planning, review, and project changes, rather than a project which already has been approved by the full Commission some 7 months ago.

Our specific response to each item is set forth below. Prior submissions on July 31st that have not been objected to by Staff (and thus accepted) are incorporated herein by reference as part of the response. The Notice of Intent to Issue Coastal Development Permit, dated May 30, 2014 is attached as an Exhibit for ease of reference:

1. **Topo.**

See SNG's Nov 24th response which is incorporated herein by this reference. As already indicated, the Revised Plans are based on current professionally surveyed and certified topographic elevations for the entire site. Staff's December 3rd letter fails to accept this and provides no substantial evidence to the contrary.

Conclusion: Condition fully compliant.

2. **Plans.**

The Revised Plans submitted by SNG October 16, 2014 provide a comprehensive revised final plans that address each of the subheading requirements, Special Conditions 1(a) – 1(v). SNG has addressed and fully complied with all the subheading items. Additional details requested by Staff are not set forth in Special Condition 1 and therefore exceed staff's authority and fail to comply with the Settlement Agreement. Although not required in Special Condition 1, SNG has attempted to accommodate staff by providing architectural elevations generated on AutoCad by the architects WATG. SNG agreed to do this in a good faith effort to resolve the dispute and staff agreed with this approach at the September 10th meeting between the parties. Overlook and parking amenities have been fully described in the revised Vesting Tentative Map (VTM) as well as the Public Access Management Plan previously submitted. SNG also provided expanded cross-sections, even though Special Condition 1 does not require it. As SNG has explained, rooftop equipment does not exist beyond what is shown on the plans with the heights shown (as maximum heights). Again, the November 24th letter responded to staff on the Topo issue, explaining that current surveyed elevations are being used. Please also note that SNG responded to staff's August 29, 2014 letter on September 8, 2014, and explained how it is complying with respect to each item raised by Staff. Those responses are incorporated herein as part of SNG's response to all questions raised by Staff.

Conclusion: Condition fully compliant.

3. **NGVD.**

TM-1 of Vesting Tentative Map (VTM) states clearly that a topographic survey was conducted by Bestor Engineers on June 2014 (NGVD29 Vertical Datum). Professionally surveyed Topo for the entire site (dated June 9, 2014) has been submitted to Staff. Supplemental aerial topography beyond the project site was prepared in January 1995 with NGVD29 Vertical Datum. Engineers have used NGVD29 as baseline and have chosen to retain that datum baseline. This complies with the Conditions. Staff has failed to explain how these submittals do not comply with the condition, and has failed to provide substantial evidence to the contrary.

Conclusion: Condition fully compliant.

4. **Special Condition 1(a).**

Please see SNG's November 24th letter responding to Topo question. All dune elevations are consistent with Condition 1(a), and in particular, in the transition area on the northend of the site. Recontouring and manipulation north of the extended dune is depicted and will be implemented consistent with Condition 1(a). Likewise, dune manipulation north of the extended dune view line within generally 3 feet of existing grade is consistent with Condition 1(a). All finished grade and dune manipulation is shown and will be implemented to mimic and replicate natural dune landforms, and to integrate the area into the surrounding dunes to *the maximum extent feasible* consistent with this Special Condition. Our engineers, planners, and architects examined carefully the various options for the finished grade and concluded that the finished grade as shown in the Revised Plans is consistent with the Conditions and any other manipulations of dunes and development would violate the Conditions or sacrifice the balance between all elements of the development.

Conclusion: Condition fully compliant.

5. **Special Condition 1(b).**

All building heights and views are compliant with Condition 1(b). All buildings and related development has been sited consistent with the revised VTM, site plans and cross sections sheets TM1-TM6 dated October 21, 2013, as required by Condition 1. SNG presented this information with its October 16th submission, which in addition provides views to the maximum extent feasible of dunes in the Southbound and Northbound directions of Highway 1. The Fire Access road north of the building which was approved by the full Commission allows for the access road in a way that cuts through the finished grade as shown, and will partially expose the north end facia of the building: however, that has minimized interruption of dune screening and has been sited and designed such that views in southbound direction of dunes and habitat are maximized. At the September 10, 2014 meeting, SNG agreed, in good faith, to staff's demand for additional architectural elevations. Those have been provided to staff even though they exceed what is required by Condition 1(b). Condition 1(b) does not require submission of further architectural elevations. It appears by making this demand that staff is seeking to revisit and change the April 2014 Commission approval.

We have provided staff with AutoCAD simulations without inserting existing vegetation, trees, lights and other elements that obstruct the view as was discussed and agreed to at our Sept 10th meeting. Anything beyond that is not required by the PTI Conditions compliance. Model views submitted, are to scale and have been prepared by the

architects WATG. We previously provided simulations that incorporate existing elements. Nighttime simulations are not required by the approved Conditions. In any event, SNG provided Staff with a key view from across the bay which shows relative lighting compared to surrounding area, and shows that surrounding nighttime lights from Highway 1 and the streets of Sand City and Seaside dominate the landscape at night. Additional formats in the Construction Drawings and electronic formats beyond what has been submitted are not required. The project will not have rooftop equipment, and thus elevations shown on the revised VTM are accurate. Detailed green roof construction are shown on the Landscaping Plan LP-06, with structural deck recessed acting as the base for the growing media and plants. In other words, these areas will be recessed. The revised VTM shows actual elevations of the roof. The living material is recessed within the roof structure below maximum grade shown on the revised VTM. Plants will add to the natural habitat compatible with the surrounding area and undulating format, thus visually integrating into the surrounding area. Part of the operations and maintenance will be to maintain the green roofs on a routine basis. Highest point elevations have been shown on VTM. Conclusion: Condition fully compliant.

6. Special Condition 1(c).

The Revised Plans have been submitted in conformity with Condition 1(c) such that development located inland of the buildings and related development, that includes the tunnels, access roads, public parking area and pathways, is sited, designed and screened to minimize its visibility from Highway 1 to the maximum extent possible. No additional changes or manipulations can be made without either violating the Conditions or making changes to the project as approved by the Commission in April 2014. The siting and design achieves a balance that complies with this Condition. SNG provided visuals to show the relationship of the related development, retaining walls and access points and to demonstrate that they have been screened to the maximum extent feasible. The entry road elevation is typically 5'-10' below the berm on the east side of the property line, thus screening traffic and development, including lights. The retaining wall next to the large dune has been designed to prevent the historic problem of sand from the dune migrating onto the highway on-ramp going south. Part of the retaining wall's facade is used for resort signage.

Access points to the resort through the tunnel and two access points to the north demonstrate that their impact has been minimized w.r.t views from Highway 1 and screened in a way to minimize visibility from Hwy 1. By lowering the entry road below the line of sight and covering partly the access roads, significant additional screening has been achieved along with additional dune and habitat. Furthermore, they have been designed through coloration, shaping, surface texture, and contouring to be consistent with the approved Conditions, thus minimizing impacts to views from Hwy 1. In areas near the buildings, both access roads on the north are designed with integrated natural dune scape in a way that blends the natural forms with the adjacent green roofs on the building. In this way, the design helps screen the access roads from Hwy 1 to the maximum extent feasible. Commissioners approved resort signage and no resort can operate fully hidden from view. Again, staff is seeking to change the Commission-approved Conditions after-the-fact, and "hide" the resort in a way that is infeasible and makes locating the resort nearly impossible. The Commission in its pre-approval debate, specifically made it clear that hiding the resort is not practical and is not a condition of

approval. Signage has been placed in accordance with the approved Conditions and has been sited to avoid measurably detracting from blue water views. Conclusion: Condition fully compliant.

7. Special Condition 1(d).

Condition 1(d) requires that all roads shall be minimized consistent with the VTM. The Revised Plans as submitted are in conformity with this Condition. Driveway spur detail has been provided in the October 16th submission, and detail for fire/emergency vehicle turnaround is include per Fire Code. This spur is **required** for fire truck turnaround per the Fire Code. No roads have been added that are not consistent with the VTM of October 21, 2013 as Approved by the Commission. Conclusion: Condition fully compliant.

8. Special Condition 1(e).

The Revised Plans as submitted October 16, 2014 show that the development is consistent with the height requirements for hotel and condominium portions of the resort, and for all other development of the resort. HC-1, submitted as part of the set of Plans, shows that heights are in compliance with the CDP approval for each component type of the resort. HC-1 has demonstrated the full compliance by creating contour lines off the existing grade on top of the site plan. Contour lines are shown in order to validate the heights. Regarding the Topo issue, please see SNG's November 24th letter response. Staff's argument about visibility and compliance of living roofs doesn't make sense and is inconsistent with the requirements of the Conditions. As discussed previously, living roofs are recessed into the roof structure as shown on the LP. The roofs will contain no equipment beyond what has been detailed on the revised VTM and the Floor Plans submitted October 16th. Conclusion: Condition fully compliant.

9. Special Condition 1(g).

Condition 1(g) specifically allows for foredune grading as low as 32 feet above NGVD in areas directly seaward of the buildings and for the fire access road. The Revised Plans as submitted comply fully with this Special Condition. Staff's contention regarding foredune grading makes no sense. Fore dune grading is permitted fully in front of the resort and fire/emergency access road to the bluff top seaward at 32' and has been designed to mimic natural landforms and integrate into surrounding dunes. The 4 depressions have been part of the VTM October 21, 2013 and are fully consistent with all requirements as Approved by the Commission. They have been provided as part of SNG's good faith effort to create more natural dune forms that include depressions or wet lands to promote habitat. They replicate the natural dune landforms and integrate into the surrounding dunes to the maximum extent feasible as required by this Condition. It is inconsistent for staff to now demand their removal when all along staff has demanded undulating and curvilinear forms. Including these is consistent with the VTM the Commission voted and approved. We revised to specs requested by staff on the northern end and provided curvilinear shape in the transition between the 32' grade and northern portion of the property going to the swale and public access pathway. The buckwheat area is totally avoided. Grading meets all requirements of all Special Conditions. Entire grading is fully compliant with the Conditions of Approval. Conclusion: Condition fully compliant.

10. Special Condition 1(h).

Further details are provided in the Public Access Plan and the Notes submitted on October 16th. Staff comments regarding temporary events relates to earlier submission which was eliminated. Conclusion: Condition fully compliant.

11. Special Condition 1(i).

Condition 1(i) requires SNG to "identify all public amenities to be provided," which SNG has done. The Revised Plans (and specifically the resort pathways and public access paths) have been sited and designed to blend into the dune aesthetic as seen from public views to the maximum extent feasible, and have been further designed to minimize landform alteration and to conform to the bluffs to the maximum extent feasible. For example, we went into great effort to site the public resort pathway in a way that does not alter the existing dune natural landforms, while providing the public with a path that screens most of the resort so as to provide a more natural beach access. The Site Plan , along with the VTM and Public Access Plan, provides full details which are consistent with this Condition. The Boardwalk surface is described with all elements of the overlook, like benches and interpretive signs. Full details of elements to be constructed are detailed on Site Plan and Access Plan. Conclusion: Condition fully compliant.

12. Special Condition 1(k).

The Revised Plans and the Landscaping Plan require all non-native and invasive plants to be removed from the site. All landscaping (other than decorative landscaping within the courtyards and similar areas in the resort, such as the port cochere), include non-invasive plants and dune species native to Sand City and the local southern Monterey Bay area. The Landscaping Plan complies with Special Condition 1(k). Staff argues that the LP contains invasive plants, yet, Staff has not identified any such plants or advised us what plants it contends are invasive. We are not aware of any invasive dune species on LP-02. A biologist has certified the plant list. SNG provided a plant list in the Landscaping Plan submitted October 16th, along with biologist certification. All exterior landscaping complies with the Condition. Conclusion: Condition fully compliant.

13. Special Condition 1(l).

All exterior lighting has been designed to be wildlife friendly, and uses lamps that minimize the blue end of the spectrum. The exterior uses the minimum lighting necessary for vehicular and pedestrian safety, as determined by the civil and electrical engineers. The lighting included in the Revised Plans are wholly subordinate to existing overhead street lights that are used on the off-ramp exiting Highway 1 to the Fremont interchange as well as existing, surrounding lights. Glare will be minimized from public viewing areas to the maximum extent feasible through the use of low luminosity and purposefully directed lights to avoid sensitive areas and views. This meets all the Condition requirements. Lighting interior to the building is accomplished at the Construction Drawings stage. Lighting Plans exterior are shown in the Lighting Plan submitted and comply with all conditions. Lights types are clearly identified and described in the Lighting Plan and comply with Condition 1(l).

Pathway ground lights will be used along all resort and public pathways to the beach at a level to satisfy public safety. Overhead lights have been removed. The Lighting Plan depicts the type of lights planned for the resort exterior. This Condition does not require a visual. The Lighting Plan provides full description of the lights, types, heights and luminosity. No further studies as proposed by staff are required or authorized by this Condition. Lights will be below the line of sight from 5' above Highway 1. Currently, the off-ramp has large overhead lights installed by Cal Trans. These existing, off ramp lamps provide light that will outshine the minimum lighting provided by the project. The resort entry, as an example, has bollard lights at minimum average 0.75 foot candle, 48 inches or less in height, well below the line of sight. Conclusion: Condition fully compliant.

14. Special Condition 1(m).

As shown in the Revised Plans, the resort windows are non-glare and will have ultraviolet light reflective coating (or have pigmentations or tints specially designed to reduce bird strikes by reducing reflectivity). Most windows are interior to porches as shown in the architectural renderings submitted prior to CDP approval. As shown on the Revised Plans, coating, pigmentation or tints will be used to ensure compliance with this condition. Additional detail is not possible at this stage, but will be included as part of the Construction Drawings with manufacturer's specifications. Conclusion: Condition fully compliant.

15. Special Condition 1(n).

The Revised Plans identify all utilities required for the project with "will serve" letters from appropriate agencies. Utilities have been designed to be located underground, except for the existing, small well head which will remain. The well head is barely visible, and is part of the MPWMD's approved Water Distribution Permit. Nothing in Condition 1(n) requires infrastructure detail beyond that provided in the October 16th submittal. Electrical/gas/water/cable are underground buried utilities. Geothermal locations are shown on site plan and are underground. As a reminder, staff forced elimination of all solar and wind technology, and as such these are not, and will not be, included. The submission is fully compliant with PTI Conditions. The well was approved as part of the plans and is an existing well head.

The storage water tanks and geothermal are consistent with the Commission's approval of the project per the the VTM dated October 21, 2013, TM1 – TM6, and is required to store harvested water and backup for fire suppression. Everything located within the area between two access roads is consistent with the October 21, 2013 VTM as approved by the Commission. The revised "will serve" letter from the Monterey Fire Department responded to Staff's previous Aug 29th requests. No additional structures or equipment outside the resort is required. All alternatives methods were described in the Sept 30th letter by the Deputy Fire Chief which states that there will be no impacts to public views. The alternatives are interior to the building, such as additional fire hydrants in stairwells and inside the courtyard. The Fire Department has previously advised staff that no changes to the project are required. No changes are provided or suggested for the fire/emergency access road. What has been submitted is fully compliant with Condition 1(n). Staff is attempting to change the approved conditions to the project. Conclusion: Condition fully compliant.

16. Special Condition 1(o).

The Revised Plans identify all stormwater and drainage infrastructure and related water quality measures, with preferences given to natural Best Management Practices (BMPs) such as bioswales. The Revised Plans infrastructure and water quality measures retain on-site runoff from the project. The design does this to the maximum extent feasible through the use of pervious areas, percolation pits, biofiltration basins, engineered storm drain systems, dry wells and other measures shown on the VTM. The entire drainage system has been sized and designed to accommodate runoff from the site produced from storm events including the 85th percentile 24-hour runoff events. The drainage design has taken into account and designed in coordination with the Dune Restoration Plan submitted October 16, 2014.

Staff objects to the locations of the biofiltration basins. The 2 bio filtration basins are not in the protected dune areas. The first basin is next to the entry road just before the public parking area. The second basin is next to the mandatory fire truck turn around at the end of the spur. These are not protected areas. Both basins are required for drainage to support the storm water management system and provide a sustainable green feature consistent with this Special Condition 1(o). The basins have been sited next to the road to minimize impacts, facilitate maintenance with minimal environmental impacts and promote stewardship. Maintaining the basins is subject to routine maintenance by the resort and condominium HOA. Staff's objection to the SDCB's is not well-taken. The SDCB's have been sited and sized by civil engineers to accommodate resort storm water and drainage. It has been designed specifically to be adequate to handle required the expected level of storm water [typically 2'x2']. Trench drains would connect the SDCB's. Watershed has been reduced in the access roads area to only the driveway by additional SDCB's at the Fire Access road and on the main driveway, which is crowned at the centerline so only half of the storm water runoff could possibly head towards the garage entry. Staff is speculating on engineering matters without considering the analysis of SNG's licensed engineers. With respect to the last paragraph regarding runoff and BMP's, staff failed to review the submitted SWPPP and the Construction Plan, and as such Staff has waived its rights under the 30-day review period. Conclusion: Condition fully compliant.

17. Special Condition 1(p).

The Revised Plans which include the Signage Plan, Landscape Plan and Public Access Plan show and identify all signs associated with the project and the site and have been sited to minimize visibility from public views and integrate in to the dune landform to the maximum extent feasible. The signs have been carefully sited and designed in a way that is subordinate to all dune settings. All resort signage complies with Condition 1(p) and are designed to minimize visibility to the maximum extent possible. For example, the entry retaining wall is being used partially to provide resort signage (it is engineered to prevent sand migration), while the roundabout is used to screen the main tunnel and at the same time its artistic screening is being used to provide signage, or, signage is placed subordinate to the dunes in the tunnel entry and built into the façade. Staff objects to the entry resort signage and mischaracterizes its design which is illustrated in the Revised Plans submitted October 16, 2014. The retaining wall near the large dune has been engineered and designed consistent with the October 21, 2013 VTM as approved by the Commission, to stabilize the dune from movement or blowing sand on Hwy 1 on ramp. The signage itself is much smaller than that indicated by Staff, merely 5' by 30' at most,

or 150 sq ft as compared to the incorrect and misleading 600 sq ft asserted by staff. This is the main resort signage at the entrance. The retaining wall is mainly viewed from the Sand City/Seaside traffic coming from the shopping center under Hwy1 from the other side of the Hwy 1.

All signage have been sited and sized to minimize visual impacts. The details of the proposed signage are fully shown on the Signage Plan submitted. Changing property signage language is not required by CDP Conditions, and violates the CDP approved by the Commission in 2013 regarding boundary signage. The proposed signage language by staff would confuse and mislead the public about trespassing on the property at certain boundary locations. The public has been provided a public access easement to the parking, pathway to the beach and overlook areas. The Public Access Plan address access signage and is fully compliant. Signs and materials as well as placements are shown in the Public Access Plan and Signage Plan both submitted October 16th. It appears Staff has ignored both submissions and thus waived its rights on this point. Conclusion: Condition fully compliant.

18. Special Condition 1(q).

The Revised Plans submitted October 16, 2014 which include the foundations and the retaining walls, have been prepared in consultation with the project's licensed civil and structural and geotechnical engineers, and the structures have been sited and designed consistent with standard engineering and construction practices in a way that best meets the objectives and performance standards of the project, the approval and the Special Conditions. The recommended building foundations, on which the engineers have done extensive analysis and provided a Preliminary Foundation Pile Layout, with full details and explanations, have been selected as the least environmentally damaging feasible alternative. They comply with the California Building Code requirements, and have not been designed as seawalls or structures intended to address wave attack or ocean flooding. SNG has taken the extra step of bringing its geotechnical and structural engineers into a meeting in Santa Cruz on September 26th. Substantial details and explanations were provided and SNG engineers followed through with detailed analysis and submission beyond any required at this stage of the project or what was agreed to at the meeting. These are typical Construction Drawing stage issues of design and engineering. Staff insisted on additional details at the September 26th meeting, and in order to cooperate and address any concerns by staff, our engineers complied fully with their submissions and beyond. All aspects have been fully analyzed.

Condition 1(q) calls for licensed civil and structural engineers to design to standard engineering and construction practices ... and come up with a solution that is least environmentally damaging feasible alternative. Contrary to what Staff is disingenuously suggesting, deep piles were not excluded from the foundation types for this resort. Staff has continuously attempted to "force" the project to use "mat foundations" which are totally inappropriate for this type of a project with differential loadings. SNG and its engineers provided this information previously, and, in fact SNG alerted the Commission at the CDP approval hearing. Commissioners themselves discussed the matter in the approval process, and nothing in Condition 1(q) prevents the engineers from recommending the appropriate solution. Piles have routinely been approved by the Commission on other projects. The Engineers recommended two Options that meet the requirements: Option C with Auger Cast Pile and Option E with Drilled in Pipe Pile with

Pressure Grouted tip. They determined, as the Condition requires, that Option E, while much more costly to SNG, is more environmentally superior and meets Condition 1(q), and have recommended this as the solution. Even though Option C is a lower cost alternative, the engineers recommend a more environmentally superior solution at a higher cost while fully complying with Condition 1(q). Staff discussed this with the engineers on September 26th, and they followed the conclusions of the meeting and studied the 5 alternatives and recommended the 1(q) compliant solution.

Staff is insisting on yet another round of analysis on foundations after the least environmentally damaging feasible alternative has been recommended by the engineers. Staff suggestion for another study of the pipe pile with pressure grout tip for the higher load buildings with a mat foundation with over excavation has been effectively already been studied under Option D which looked at hybrid foundation with auger cast piles and a mat foundation and which was deemed inappropriate by the engineers. Your new suggestion is a mere subset of Option D and the same conclusions apply: It doesn't work. That hybrid solution has been eliminated as a viable option, and was discussed on Sept 26th. The final recommendations have been submitted by the engineers. Additional studies are not required nor comply with the Condition 1(q). Staff is not qualified to opine on structural and foundation engineering matters. No expert engineers in this area have reviewed the engineering recommendations nor attended the September 26th meeting. Mat foundations with over excavations, regardless of location, have been excluded by the project engineers under Option A. Staff itself agreed in its November 14th letter that *"It is clear from the materials that the mat foundation with ground improvements and traditional auger-style pilings present some of the more significant coastal resource issues commonly associated with shoreline armoring and their removal."* Staff thus agreed to exclude that type of foundation for the project. Again, it is a breach and a violation of Condition 1(q) for staff to seek new studies when alternatives have been examined and the engineers recommended Option E. SNG has fully complied with Condition 1(q).

Conclusion: Condition fully compliant.

19. Special Condition 1(s).

The Revised Plans have been submitted with evidence that they have been reviewed and approved by a licensed geotechnical engineer as required by this Condition. The Revised Plans have been reviewed and signed off by the geotechnical engineers provided to Staff. No additional changes are required and despite staff's wish that other foundations be studied, staff is speculating that that would lead to new foundations and therefore, the geotechnical sign-off submitted October 16th would have to be redone. There is no lawful basis for these assertions. Conclusion: Condition fully compliant.

20. Special Condition 1(t).

The Revised Plans have clearly identified the manner in which excavated sand not necessary for the project will be disposed of and/or beneficially reused. The Commission in its approval of the CDP made it abundantly clear, that any sand disposal outside the coastal zone does not require a CDP or a CDP amendment. The manner of disposition of the sand has been identified in TM-1 and the Construction Plan. Approvals are not required. The MRWMD assesses a dump fee which is paid to that agency and is open to the public. Excess capacity exists at the MRWMD to stockpile the sand or allow for

dumping. Don Chapin Company has a separate arrangement with the MRWMD which facilitates use of the sand disposed of. MRWMD can receive in excess of 400K cu yds. without any implications. Capacity is not an issue. Contracts or agreement now are not required by the Condition. Contracts will be entered before construction when bidding for excavation and hauling/transport takes place. No contractor will bid on a project at this stage without knowing details of when the job will occur. Conclusion: Condition fully compliant.

21. Special Condition 1(u).

The Revised Plans submitted include the Fencing Plan as part of the Landscape Plan. They indicate that existing fencing will be removed and replaced with the minimum amount of fencing necessary to meet the project objectives, sited and designed to be compatible with dune landscape. The Fencing Plan has been prepared by Rana Creek, which has over the years done numerous projects on the Monterey Peninsula for the Coastal Commission which involved restoration and fencing, such as the ones recommended for the MBS site.

The condition requires that "fencing shall be replaced with the minimum amount of fencing necessary to meet the project objectives" and designed to be "compatible with the dune landscape." Staff intentionally leaves out "to meet the objectives." LP-04 the Site Fencing Plan shows different types of fences, including Split Rail fence, and their locations consistent with Condition 1(t) and necessary to meet the objectives. The fence styles are selected for the following reasons: they utilize natural materials and site appropriate color tones; they do not create solid barriers; they have a low profile; and they have been utilized in previous critical view shed projects approved by the Coastal Commission (such as the Pacific Grove Golf Course and the Asilomar State Beach). Conclusion: Condition fully compliant.

22. Special Condition 1(v).

The Revised Plans have been designed, sited and colored or screened to minimize visual incompatibility with the existing dune landscape and public views, so much so, that the resort is virtually totally screened. The Revised Plans are fully compliant with this condition, and no additional elevations, cross sections or visual simulations are required beyond what has been already submitted as is being sought by staff. No changes are required. Conclusion: Condition fully compliant.

23. Special Condition 2.

The Revised Plans submitted include the Construction Plan. The Construction Plan addresses all the sub-heading items of this Condition 2, which includes: Construction Areas, Construction Methods and Timing, Property Owner Consent, Biological Monitor, Pre-Construction Surveys, BMP's, Construction Site Documents, Construction Coordinator, and Notifications. The Construction Plan is fully compliant with Condition 2. In response to questions raised by staff, construction staging and stockpiling has been minimized to the maximum extent possible, and are *temporary in nature*. The Construction Plan fully identifies all staging areas and access corridors in full compliance with Condition 2 and details all construction methods and timing, if any owner consent is required, biological monitoring and pre-construction surveys and BMP's and along with the SWPPP and all other condition requirement so it will be fully compliant with

Condition 2. *SNG has reduced stockpiling and staging areas as requested by Staff for this submission.* Reduction of staging or stockpiling beyond that already done would be infeasible.

Staff is incorrect about ESHA. In January 2008, the California Court of Appeal held that the Sand City Local Coastal Program Land Use Plan (LCP) does not deem the project site to be environmentally sensitive habitat area (ESHA) and that the Coastal Commission had exceeded its jurisdiction by declaring the site to be ESHA. (*Security National Guaranty, Inc. v. California Coastal Com.* (2008) 159 Cal.App.4th 402.) The Court further held that in reviewing and approving a development project, a local government is not required to demonstrate that “the conclusions in the LCP still ‘relate to current conditions.’” No ESA exists on the project site. In spite of that, the project site plan and Construction Plan includes fencing around the buckwheat which provides ample buffer to the plants. The buckwheat is not a protected species. The Dune Restoration Plan and the Construction Plan fully avoid the buckwheat. The Construction Plan is fully compliant with the CDP Conditions of Approval. The revised HPP (not part of the PTI conditions) will address all matters related to sensitive species and habitat protection. The HPP is not required for Permit Issuance per Condition 15. A traffic study was done and Certified under the Amended EIR certified by Sand City in January 2009. No further delineation, breakdown of hours, etc. is required per this Condition. We have suggested off haul to accommodate the local community as much as is possible consistent with the sustainable and green mission of the MBS Resort. That has been indicated to the maximum extent feasible, while not a required condition. The biological monitors are fully documented in the SWPPP and the Construction Plan all of which have been submitted. Conclusion: Condition fully compliant.

24. Special Condition 3.

The Dune Restoration Plan submitted as part of the Revised Plans is substantially in conformance with the plans submitted to the Coastal Commission, titled Habitat Protection Plan, October 2013, and provide for dune habitat restoration and stabilization for all dune areas of the site outside of development areas, and have been modified to achieve compliance with Condition 3. In addition the Dune Restoration Plan addresses the objective of the plan, removal of non-native and invasive plants, native dune plants, sensitive species, plant maintenance, performance standards, dune contours, implementations, monitoring and maintenance, reporting and contingency, dune restoration before occupancy and maintenance. Staff raises questions about Fig. 4 in the Plan. The Dune Restoration map Fig 4 complies with the Conditions of Approval and depicts fully compliant "dune areas" under the plan. Buffer areas between the access roads have been provided to allow for transition between dune restoration areas and developed areas such as roads, well head, fire access etc.. As for the Easement Area, Fig 3 fully complies with the dune restoration area and provides buffers around the resort as required by the Landscaping Plan and conditions and thus is fully compliant. Fig 2 which depicts the Habitat Management areas is fully compliant.

SNG is willing to make the following change: The submerged portion of the property below the low water mark will be updated and added to the Public Access Plan to the westerly property line.

The resort pathway system is not part of the public access easement and is not shown as such in Fig 2. An enlargement of Fig 2 shows the public access easement in orange, to be distinguished from resort pathways in grey. Again, the beach easement will be expanded to include the submerged portion to the westerly property line. Buffer areas are consistent with the development plans of October 21 2013 and the HPP of 2013, which is a requirement under the Condition. It states "The Dune Restoration Plans shall be substantially in conformance with the plans submitted to the Coastal Commission (titled Habitat Protection Plan, October 2013 and dated received in the Coastal Commission's Offices on October 28, 2013); shall provide for dune habitat restoration and stabilization for all dune areas of the site outside of development areas (as well as for all dune extension and screening areas); and shall be modified to achieve compliance with this condition." These Revised Plans and the Dune Restoration Plan are fully compliant with Condition 3. Exotic plants have been addressed above already. Additional provisions for the western snowy plover and Smith blue butterfly are not a required Condition and are part of the HPP to be submitted after sign off on the PTI conditions compliance. However, the Dune Restoration plan addresses protection to a great degree, transitional areas do not include exotic plant species, and staff has not specifically identified any such plants, inspite of previous requests by SNG (see Sep 8th letter). The Landscape Plan plant list has been certified by a biologist as complying with the Conditions of Approval requirements regarding plants. Under Sensitive Species, the Plan states "Specific monitoring and management activities will be applied to enhance habitat for sensitive species, including habitat for western snowy plover and Smith's blue butterfly. Measures will be undertaken prior to, and during, grading and construction, as part of dune restoration activities, and during long-term protection, maintenance, and monitoring tasks. These provisions are consistent with known and accepted applicable state and federal agency requirements for these species.

The plants near the large dune entry are shown in the Landscape Plan which is fully compliant with the Conditions. Certification by a biologist was submitted Oct 16th. Staff has yet to identify any plants that are invasive or not native. Biofiltration basins are part of the storm drainage system and have been placed adjacent to development areas and roads, minimized in size and are not within the dune restoration areas. Fully compliant. Staff is overreaching. The plans comply with provisions to enhance habitat and sensitive species as described above. They do and comply with all the requirements identified in Condition 3, and the components identified in 3(a) thru 3(l). The contours along the northern edge have been altered and implemented at the specific request of staff. Now Staff wants another iteration of engineering to spin the process for more delay. There is no encroachment upon any buckwheat, and staff is attempting to "insert Condition 15", when in fact the Condition needs to be satisfied only after the CDP issuance and prior to construction. "More natural dune landform", has been implemented in the Plan to the maximum extent feasible, to comply with the Conditions of approval. SNG went far beyond the Conditions of approval to deliver staff with curvilinear forms that they requested. Conclusion: Condition fully compliant.

25. Special Conditions 4 and 6.

These Conditions require SNG to offer to dedicate and execute and record a Conservation Easement and a Public Access Easement. Both Offers to Dedicate have been prepared

consistent with the required Conditions, and are fully compliant. It is clear and obvious that the two OTD's have not been reviewed by legal staff, and hence Staff has waived any right to request additional changes, thus, the submitted OTD easements have been approved.

In an exercise of good faith, however, SNG will agree, to submit a revised OTD that is in the form and substance of the OTD very recently approved by legal staff of the Commission (Shea Homes). If Staff wishes SNG to proceed in that direction, SNG will agree to do so conditionally as long as the form and substance are consistent with the form approved by the Commission on the Shea Homes Limited Partnership.

SNG will make the following change: subject to Staff Specific Acceptance of the OTD as Approved for Shea Homes within 5 days of this letter. Otherwise, the SNG's position is that staff has accepted the fully compliant OTD's submitted by SNG on October 16, 2014.

Subordination Agreement forms have been provided. All will circulate with lenders for signature and can only be recorded once SNG has been advised that staff is ready to issue the CDP once the Subordination Agreements have been recorded. We are submitting again the Coastal Commission Subordination Agreement forms fully filled out for each lender, ready for recording once SNG has been notified that the Commission is issuing the CDP. Conditions 4 and 6 are fully compliant as submitted October 16, 2014.

Conclusion: Condition fully compliant.

26. Special Condition 5 (Public Access Management Plan).

The Revised Plans submitted by SNG include the Public Access Management Plan. It has been prepared in full compliance and conformance with the plans submitted by SNG to the Coastal Commission, titled Access, Signage and Lighting Plan dated October 2013. They have been modified to achieve compliance with Condition 5. It fully describes the manner in which the general public access associated with the Approved project is provided and managed, with the objective of maximizing public access and recreational use of all areas approved by the Commission, including, the parking, pathways, overlooks, beach and all other related areas and amenities. The Public Access Plan is prepared to be consistent with the Revised Plans and address all other areas, including: depiction of access areas and amenities, public access areas, public access signs and materials, no disruption of public access, reconstruction and relocation if required, use hours, public access prior to occupancy, and offsite parking/in lieu payment, and how public access and amenities shall be maintained. The Public Access Management Plan fully complies with Condition 5.

The Public Access Plan identifies each component of the condition from 5(a) to 5(i). and details the compliance in full. All requirements have been fully complied with. For example, for the Overlook, they are identified in the Plan as follows:

Scenic Overlook: The overlook will be publicly available for general public pedestrian access. The overlook will be approximately 300 square feet, will be made up of a wooden boardwalk surface, and will be sited and designed to eliminate the need for railings to the maximum extent feasible (e.g., setback a sufficient distance from the bluff top edge so as

to not necessitate such features). At least: three benches; one interpretive panel/installation; one recycling bin; one trash bin; and one doggie mitt station, will be provided at the overlook in locations that maximize their public utility and minimize their impact on public views. The overlook will be ADA compatible. Then, photos of benches, types are provided to illustrate the material and components. This is followed thru for each components of the Public Access Management Plan with similar detail where required. All measures have been detailed, beyond any requirement of the Condition for public parking area. The Resort Coastal Access shows the trails consistent with the Condition. Same can be found in greater detail in the VTM submitted October 16th. Sufficient distances and overlook areas have been responded to above. Staff is suggesting that perhaps SNG should provide a cross section of a chair? That's not reasonable. SNG would gladly at time of installation provide staff with manufacturer's specifications of chairs, and benches.

The Plan provides details of the signs as follows:

Public Access Signs and Materials: Signs and other project elements will be used to facilitate, manage, and provide public access to the approved project and include public education/interpretation features on the site (i.e., educational displays, interpretive signage, etc.). Sign details showing the location, materials, design, and text of all public access signs will be provided for review. The signs will be sited and designed so as to provide clear information without impacting public views and site character. At a minimum, public access identification and direction signs will be placed where the pathway system connects with the inland public recreational trail, at the base of each Fremont Street off ramp, at the entrance to the approved project (where it meets the public street), at or near the point where the tunnel entrance diverges from the parking lot entrance, at the entrance to the parking lot, at the beginning of the boardwalk section of the pathway system (at the parking lot), at the base of the beach stairway/path, and at other locations where identification and direction is necessary and appropriate. The Permittee will make reasonable efforts to work with Caltrans to install a Coastal Commission Public Access ("Feet") sign on both southbound and northbound Highway One provided that the Permittee will not be responsible for any decision made by Caltrans regarding such signage or for the installation or maintenance of such signs. The Permittee will pay for such signage, including installation costs, upon Caltrans consent for such signs. This complies fully with Condition 5 requirements

Conclusion: Condition fully compliant.

27. Special Condition 20 (Deed Restriction).

Condition 20 requires SNG to submit documentation demonstrating that the Permittee has executed and recorded a Deed Restriction. SNG has prepared the Deed Restriction as required by this Condition and Staff has approved the form.

Revision Accepted: SNG will submit the Deed Restriction with a MBS representative signature.

Conclusion: Condition fully compliant.

Regarding the final comments by Staff with reference to Condition 15: Staff is attempting to rewrite Condition 15 in violation of the Commission conditions of approval. SNG responded to the same remarks in its September 8th response which stated that "This is not part of the required Special Conditions and thus violates the conditions and timing as approved by the Commission. This also violates the terms of the Settlement Agreement. It is not within the purview of Staff to demand and suggest that "material changes to the project" will be required, a completely unwarranted assumption at this point. Not only does that contravene CDP approved by the Commission, but it violates the Settlement Agreement and raises a serious flag regarding staff's intentions to derail issuance of the CDP.

The MBS resort is a very sustainable and green resort that respects the land forms, habitat, coastal resources, water conservation, environment and the intended use by the public of the resort, its amenities, which also provides public access and conservation for the first time to a very degraded old sand-mining site. Staff's opposition, in spite of the Commission approved CDP defies the principles and agreement of the Settlement Agreement and good coastal stewardship. Perhaps in the future, staff will embrace these features the have guided this project all along.

We look forward to a meeting with you so that the CDP for the approved MBS Project can be expeditiously issued.

Very truly yours,

Edmond Ghandour

Ed Ghandour

SHK/mg

cc: Dr. Charles Lester
Hope Schmeltzer, Esq.
Mr. Dan Carl
Joel Jacobs, Esq.
Tom Roth, Esq.



December 19, 2014

VIA HAND DELIVERY & ELECTRONIC MAIL (Letter Only)

Mr. Michael Watson
Coastal Planner
Central Coast Area District Office
California Coast Commission
725 Front Street, Ste. 300
Santa Cruz, CA 95060

**RE: CDP A-3-SNC-98-114 (Monterey Bay Shores Resort/SNG)
Prior to Issuance Condition Compliance Review – Updated & Revised Plans and Reports**

Dear Mike:

This letter and transmittal of materials is a follow-up to our prior letter dated December 5, 2014 and the meeting held in your office on December 8, 2014 attended by you, Dan Carl, myself and Tom Roth (who attended telephonically by conference). As I have previously indicated in my response letters and in the meeting, SNG's complete submittal package of October 16, 2014 fully complies with the Commission's approval and the Special Conditions imposed by the Commission and agreed to by SNG as part of the settlement of the litigation. I appreciate the time you set aside for the meeting, and as I understand it from Mr. Kaufmann, you have set aside 4 hours for a meeting to be held January 15, 2015 in which I am hopeful remaining issues on PTI compliance of conditions can be worked out and finalized prior to CDP Issuance.

While SNG's position is that it complied with all conditions, you have asked that we provide additional information on a number of items. As accommodation to your request and the discussion in the meeting on December 8th, and in the hope that this good faith effort by SNG will bring quick closure and CDP Issuance, we are submitting the following Revised Plans which have been updated pursuant to staff request:

1. Vesting Tentative Map –Revised Plans (including additional cross-sections agreed to on December 8th meeting & Bestor Engineers remarks regarding Topo requested by staff)

2. Dune Restoration Plan (with revised acreage and Public Access Easement as requested by staff)
3. Preliminary Foundation Pile Layout (includes additional study requested by staff)
4. Deed Restriction (with SNG signatures as requested by staff)
5. Offer to Dedicate Public Access Easement (with revisions to public access easement as requested by staff)

The materials transmitted herewith, as revised, supplement the Plans and Reports submitted October 16, 2014. We look forward to the meeting set for the 15th of January so that the CDP for the approved MBS Project can be expeditiously issued.

Sincerely,

Ed Ghandour
Ed Ghandour

Enc.

cc. Charles Lester
Dan Carl
Steven Kaufmann
Thomas Roth

CALIFORNIA COASTAL COMMISSION

CENTRAL COAST DISTRICT OFFICE
725 FRONT STREET, SUITE 300
SANTA CRUZ, CA 95060
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December 3, 2014

Ed Ghandour
Security National Guaranty
505 Montgomery Street, Suite 1140
San Francisco, CA 94111

**Subject: Prior to Issuance Condition Compliance Response for Coastal Development
Permit Number A-3-SNC-98-114 (Monterey Bay Shores Resort)**

Dear Mr. Ghandour:

This letter is to respond to your letter dated November 24, 2014 regarding both your submittal of a topographic site plan and your observations regarding the prior to issuance (PTI) condition compliance process for your CDP.

First, we have never refused to meet with you and we are in fact trying to settle with you on dates for a meeting currently.

Second, there are no "gross errors" in our November 14, 2014 letter. We provided you with direction on the materials necessary for staff to measure condition compliance, just as we do for all condition compliance reviews. Your submittals did not make significant changes between your first and second submittals, despite our August 29, 2014 letter providing direction and the September 10, 2014 meeting we had with you and your attorney that further explained the condition compliance requirements. Thus, our November 14, 2014 letter provides you direction on next steps in that regard.

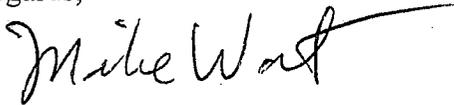
Third, as we stated in our August 29, 2014 letter, the July 2014 plan submittal included cross-sections that showed year 1995 as the topographic base when the conditions require a current topographic map as the base. As we requested in our November 14, 2014 letter, we need evidence that the plans submitted are based on a current topographic base, including verification from the surveyors that all plan sheets meet that requirement. The single topographic site plan submitted with your November 24, 2014 letter does not meet that requirement. Please see our November 14, 2014 letter for the details on what you need to submit in this regard.

Fourth, we are not in "breach of the settlement agreement." You have submitted inadequate compliance materials that lack the necessary detail to evaluate condition compliance, particularly with respect to the approved viewshed parameters. We can only sign off plans that will result in a project that meets the terms and conditions of the CDP so as to ensure the constructed project is consistent with the CDP.

Finally, we have prioritized your condition compliance, and have responded to your submittals within 30 days of receipt each time, including this response to your submittal (by your letter dated November 24, 2014) within 9 days. Our responses have been detailed so as to provide you the best possible information for meeting the prior to issuance conditions. The Monterey Bay Shores Resort project is large and complicated, and in a sensitive location with particular condition compliance requirements. We will continue to do our best to provide direction on meeting those requirements, as we have done all along. We appreciate the opportunity to respond and look forward to your responsive submittals.

If you have any questions regarding the above, please contact me (831) 427-4863 or via email at Michael.Watson@coastal.ca.gov.

Regards,

A handwritten signature in black ink that reads "Mike Watson". The signature is written in a cursive style with a long horizontal stroke extending to the right.

Mike Watson
Coastal Planner
Central Coast District

CALIFORNIA COASTAL COMMISSION

CENTRAL COAST DISTRICT OFFICE
725 FRONT STREET, SUITE 300
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December 19, 2014

Ed Ghandour
Security National Guaranty
505 Montgomery Street, Suite 1140
San Francisco, CA 94111

**Subject: Prior to Issuance Condition Compliance Review for Coastal Development Permit
Number A-3-SNC-98-114 (Monterey Bay Shores Resort)**

Dear Mr. Ghandour:

We received your letter dated December 5, 2014 on December 8, 2014. In your letter, you indicate that you believe that Security National Guaranty (SNG) has submitted all of the materials necessary to allow for the prior to issuance (PTI) requirements of conditionally approved coastal development permit (CDP) number A-3-98-SNC-98-114 to be evaluated and satisfied. As we discussed in our meeting with you and your attorney, Tom Roth, on December 8, 2014, we do not concur. We continue to believe that the materials we requested in our letter dated November 14, 2014 remain outstanding.

Also as discussed with you on December 8th, and as subsequently discussed with your attorney, Steve Kaufmann, we believe that it makes the most sense at this point to have a longer working meeting where we can walk through the materials requested in some detail, and endeavor to find a middle ground that can guide SNG's next submittal of PTI materials. Toward that end, we have now set up a four-hour meeting with Mr. Kaufmann and Mr. Roth on January 15, 2015 in Santa Cruz. We are looking forward to resolving issues at that meeting so that we can expeditiously issue the CDP for your project. If you have any questions or comments, please contact me at the address and phone number above, or via email at michael.watson@coastal.ca.gov.

Regards,

A handwritten signature in black ink that reads "Mike Watson".

Mike Watson
Coastal Planner
Central Coast District Office
California Coastal Commission

cc: Tom Roth and Steve Kaufmann



January 14, 2015

VIA HAND DELIVERY & ELECTRONIC MAIL (Letter Only)

Mr. Michael Watson
Coastal Planner
Central Coast Area District Office
California Coast Commission
725 Front Street, Ste. 300
Santa Cruz, CA 95060

**RE: CDP A-3-SNC-98-114 (Monterey Bay Shores Resort/SNG)
Prior to Issuance Condition Compliance Review – Updated & Revised Plans and Reports**

Dear Mike:

This letter and transmittal of materials is a follow-up to our prior letters dated December 5, 2014, December 19, 2014 with submittals, the October 16, 2014 submittals and the meeting held in your office on December 8, 2014 attended by you, Dan Carl, myself and Tom Roth (who attended telephonically by conference). As I have previously indicated in my response letters and in the meeting, SNG's complete submittal package of October 16, 2014 fully complies with the Commission's approval and the Special Conditions imposed by the Commission and agreed to by SNG as part of the settlement of the litigation. I appreciate the time you set aside for the meeting tomorrow, and I am hopeful remaining issues on PTI compliance of conditions raised by Staff can be worked out and finalized prior to CDP Issuance.

While SNG's position is that it complied with all conditions, you have asked that we provide additional information on a number of items. As accommodation to your request and the discussion in the meeting on December 8th, and in the hope that this good faith effort by SNG will bring quick closure and CDP Issuance, we have submitted the December 19th items and are supplementing those submittals with additional submittals that you requested. We are submitting herein the following items:

1. MBS Floor Plans that includes exterior window treatment identification.
2. Utility Plan
3. Updated Landscaping Plan (Planting and Restoration Plan)

4. Biological Certification
5. Storm Water Pollution Prevention Plan (SWPPP) [sheets 27-29 and 278-370 provide significant expanded sections on Post Construction BMP's]
6. EMC Planning - Lighting Plan analysis and response to Special Condition 1(I).
7. Public Access-Sheet 4 with detail of Overlook and Pathways
8. Resort Pathways and Overlook details Plan

The materials transmitted herewith, as revised, supplement the Plans and Reports submitted October 16, 2014 and December 19, 2014. We look forward to the meeting set for the 15th of January so that the CDP for the approved MBS Project can be expeditiously issued. All submittals discussed herein will be hand delivered tomorrow before the meeting.

Sincerely,



Ed Ghandour

Enc.

cc. Charles Lester
Dan Carl
Steven Kaufmann
Thomas Roth



January 29, 2015

VIA FEDERAL EXPRESS

Mr. Michael Watson, Coastal Planner
Central Coast Area District Office
California Coast Commission
725 Front Street, Ste. 300
Santa Cruz, CA 95060

**Re: CDP A-3-SNC-98-114 (Monterey Bay Shores Resort/SNG)
Response to November 14, 2014 Letter Re: Prior to Issuance
Condition Compliance Review –Clarifications**

Dear Mike: -

This letter provides additional clarifications to those clarifications submitted by Steven Kaufmann on January 26, 2015 and includes additional documents in that regard. I hope this is helpful to you and will speed up the completion of the compliance process and issuance of the CDP. While SNG's position is that it complied with all conditions, hopefully this and the clarifications and documents just submitted by Steven Kaufmann complete this phase of the process.

Conditions 4 & 5:

Enclosed are the Offers to Dedicate Conservation Easement and Public Access Easement which now have been updated to include the Course Tables (line and curves) that you requested. Other than those two inserts, the documents are the same as previously submitted.

Condition 1(b):

We are submitting further detail and supplementing the previously submitted Green Roofs details with vents and wells (roof equipment). This submittal (9 pages) is included as part of the Floor Plans (30X42 sheets), and shows the cross-section of the typical metal roof with vents and typical elevator shaft over-ride on the roofs throughout the buildings with elevators. The roof top elevators are identified by a dash line on the roof.

Sincerely,

Ed Ghandour

Ed Ghandour

Enc.

cc. Charles Lester
Dan Carl
Steven Kaufmann
Thomas Roth



February 2, 2015

VIA FEDERAL EXPRESS

Mr. Michael Watson, Coastal Planner
Central Coast Area District Office
California Coast Commission
725 Front Street, Ste. 300
Santa Cruz, CA 95060

**Re: CDP A-3-SNC-98-114 (Monterey Bay Shores Resort/SNG)
Response to November 14, 2014 Letter Re: Prior to Issuance
Condition Compliance Review –Clarifications**

Dear Mike: -

This letter provides additional clarifications to those clarifications submitted by Steven Kaufmann on January 26, 2015 and myself of January 29, 2015 and replaces the Floor Plans with typical vents on metal roofs and typical elevator equipment roof override with January 30th updated plans attached (you may dispose of the Jan 27th Floor Plans sent last Thursday and use the enclosed plans as Updated). The Plans also include additional information requested by you regarding exterior lighting, interior lighting, exterior colors and building materials and exterior windows (FP-05). I hope this is helpful to you and will speed up the completion of the compliance process and issuance of the CDP. While SNG's position is that it complied with all conditions, hopefully this and the clarifications and documents just submitted by Steven Kaufmann complete this phase of the process.

Condition 1(b):

We are submitting further detail and supplementing the previously submitted Green Roofs details with vents and wells (roof equipment). This submittal (12 pages) is included as part of the Floor Plans (30X42 sheets), and shows the cross-section of the typical metal roof with vents (vents on green roofs were submitted on Jan 26th) and typical elevator shaft override on the roofs throughout the buildings with elevators, both metal and green roofs. The roof top elevators are identified by a dash line on the roof. We took extra care to move elevators in the front residential building (72' Height) so now they are located south of the Dune View Line (DVL), as we took extra care to come up with solutions that provide for vents in wells on the 72' roofs in the residential buildings north of the DVL. While Uniform Building Code requires for the elevator

overrides and vents to extend beyond the roof surface, we went beyond Code requirement to find solutions that address your expressed concerns in the NE area of the residential buildings.

Condition 1(l), 1(m):

The Floor Plans contain additional clarifications and detailed explanation regarding the exterior lighting (in addition to the Lighting Plan) and interior lighting , as well as clarifications regarding exterior colors, building materials and exterior windows (previously submitted. All on FP-05.

Hopefully this brings us to a position, short of recording the OTD's , that completes the process of PTI compliance.

Sincerely,

Ed Ghandour

Ed Ghandour

Enc.

cc. Charles Lester

Dan Carl

Steven Kaufmann

Thomas Roth

CALIFORNIA COASTAL COMMISSION

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February 16, 2015

Ed Ghandour
Security National Guaranty
505 Montgomery Street, Suite 1140
San Francisco, CA 94111

**Subject: Prior to Issuance Condition Compliance Review for Coastal Development Permit
Number A-3-SNC-98-114 (Monterey Bay Shores Resort)**

Dear Mr. Ghandour:

Thank you for your submittal of supplemental materials intended to address the prior to issuance (PTI) requirements of conditionally approved coastal development permit (CDP) number A-3-98-SNC-98-114. The submittal is intended to be a response to our November 14, 2014 letter identifying certain inconsistencies as well as requesting additional information needed to evaluate your project for conformance with the terms and conditions of the CDP. We note that we received your submitted materials over the course of multiple weeks, on December 19, 2014, with revisions on January 15, 2015, January 27, 2015, January 30, 2015, and February 3, 2015, and that we are providing you this response on Monday February 16, 2015 within the prescribed timeframe agreed to by your attorney, Steve Kaufmann in his email correspondence to staff dated January 16, 2015. We also note that we met with your representatives, Mr. Kaufmann and Tom Roth, on January 15, 2015 for several hours where we shared our observations with them related to materials submitted prior to that time, and received additional information and detail regarding your submittals. We also identified areas of agreement and disagreement regarding both the degree to which submitted materials did or did not comply with the CDP terms and conditions, and identified next steps to resolve issues.

We have now reviewed your materials, and our comments on them are included herein. Although significant progress has been made, there remain some aspects of your submittals that do not yet conform with the terms and conditions of the CDP. Please note that we are unable to issue the CDP until the deficiencies identified below are corrected, and/or the additional information identified below is submitted to allow us to evaluate your submittals for consistency. Thus, the purpose of this letter is to identify areas where your submittal does not meet the PTI condition requirements, and to provide you next steps towards meeting those requirements. The numbering of items below matches the numbering in our November 14, 2014 letter for ease of reference.

- 1. Topo.** We have received the December 19, 2014 letter from Bestor Engineers certifying that the Vesting Tentative Map (including the site plan and sheets VTM-1 – TM-9) are based on current (2014) field surveys consistent with Special Condition 1. As we discussed in our meeting on January 15, 2015, it is our understanding that Bestor's letter applies to those plans as well as all other submitted plans that show existing dune contours. If that

understanding is correct, then please confirm that, and no further documentation is needed on this point.

2. **Plans.** Special Condition 1 requires a set of comprehensive revised final plans that address each subheading requirement (i.e., Special Conditions 1(a) – 1(v) via site plans, cross-sections, architectural elevations, additional plan detail, illustrations, etc.). We note that your recent submittals provided supplemental plans (related to construction, landscaping, stormwater, public access management, lighting, signage, dune restoration, and pile layout) that were not previously provided. Additionally, we have received supplemental plans related to rooftop equipment, living roof elements, resort and public access improvements (overlook, pathway, and beach stairways), and an expanded collection of cross-sections. We note that we have not received the requested northern elevations that we discussed in our January 15, 2015 meeting as critical for evaluating the materials for consistency with the Highway One viewshed performance standards, and our evaluation of consistency in that area is unable to be completed at the current time. As noted in the past, we will do our best to evaluate the materials submitted for conformance with the terms and conditions of the CDP absent the requested materials, but the CDP's allowance for development in that area is very specifically circumscribed, and it is critical that we ensure consistency on those points.

Finally, we note that there have been several revisions to the submitted plans, and more are likely in order to resolve issues identified herein. You have also submitted a variety of plan sheets that are in separate sets and formats. Please note that we will ultimately need two complete plan sets (i.e., sets that include all plan sheets at similar scale and orientation, as we have discussed) for final sign off (one set for your records, and one set for ours). Once we have reached agreement on the substantive points, we can discuss and make arrangements for getting the final set together for our files and yours.

3. **NGVD.** As we discussed and agreed at our January 15, 2105 meeting, the plans are in reference to the NGVD29 vertical datum, and no further materials or response are needed on this point.
4. **Special Condition 1(a).** As discussed on January 15, 1015, dune field manipulation north and northwest of the dune view line cannot exceed the height of the existing dune grade, with up to an additional 3 feet allowed for undulations for dune landscaping. The intent of this condition is to ensure that there is no new view blockage in this area due to dune manipulation and planting as compared to the current situation, and that any dune manipulation in this area appears natural. The plans received December 19, 2014 show dune grades that are greater than three feet above existing grade, and provide no information regarding how that is tied to undulations for replicated dune landscaping, if it is. In addition, it appears from the grading plans that these taller dune areas cover wide areas, and are not limited to undulations to allow for replicated dune landscaping, as is the express intent and language of the condition. We note that it is possible that the taller dunes depicted may be used to provide some screening of the northern building elevation, but it is difficult to

understand the relationship between the two without the requested elevation. For now, though, we need three things on this point: first, for any grade shown to be above existing grade, it must be lowered to no more than 3 feet above existing grade (e.g., plan sheets TM-2, TM-4, TM-5, and TM-6 show some instances where the grade is more than 3 feet above existing); second, any areas where the grade exceeds existing must be limited to discrete undulation areas that are sited to help make the dunes appear as natural as possible and to provide for dune landscaping and screening; and third, for any grades greater than existing grade (but, again, no more than 3 feet above that), we need evidence of the manner in which such additional grade is necessary to allow for undulations for dune landscaping in that area. Please correct all applicable plan sheets and submit revised plan sheets to address these points.

- 5. Special Condition 1(b).** As noted above, your latest submittal includes additional detail on rooftop equipment and living roof elements, as well as providing additional cross-sections, all as we discussed at our January 15, 2015 meeting. We note that we also requested a northern building elevation, and we haven't received that yet, so we may have additional observations once that is submitted, as discussed above. In addition, and critically, it is not clear that the elevations of the Highway show the elevation of the Highway surface itself, or rather the elevations of the underlying topography. The plans appear to be showing the underlying topography, which is obviously lower than the surface of the highway itself. This point needs to be clarified as soon as possible as it affects all of the public view requirements in a substantive way. The comments below are based on the topography shown on the plans. If the elevation of the Highway is higher than that shown, as appears likely to be the case, we are likely to have more comments as such a difference will materially affect Highway One view issues.

From what was submitted, though, it is clear that development is located in public views when it is not allowed to be. In fact, based on the provided cross-sections, portions of the resort development will extend above the re-configured dunes into the northbound Highway One viewshed. In particular, to date you have represented that there would be no rooftop elevator equipment, but the recently submitted plan sheets show three different areas where an additional floor would be added to accommodate rooftop elevator equipment. These floors have been added to the top of buildings, increasing their heights by 8 feet in these areas. The rooftop elevator floors on both the hotel and residential elements (see plan sheets FP-11 and SC-01A dated January 27, 2015) will be visible, inconsistent with Special Condition 1(b). In addition, by looking at the cross sections it is clear that portions of the buildings near the main resort tunnel will also be visible in this view. All of these elements need to either be removed from the project or the buildings further reduced in height to accommodate them consistent with the visibility requirements of the CDP. In addition, the plans show building development in the area north of the dune view line that is taller than existing grades (see cross-sections DV2 and DV3), and these elements need to be reduced to be at or below existing grade so as to meet the visibility requirements in this area as well. We also continue to be concerned about the northern elevation of the buildings seen in Highway One views,

and we may have more observations related to that elevation once you have submitted it. In addition, the inland rooftop elements in this area north of the dune view line show the building edges as opposed to allowing the dune and living roofs to extend over the top of them, and this needs to be corrected in this area, as these building elements are not allowed to be visible. In addition, the living roofs appear to be configured so that they will become a mass of vegetation, and not appear as dune, which does not meet the requirement that these areas blend seamlessly into the dune aesthetic in public views. Accordingly, all green roofs visible in the Highway One view need to clearly be designed as dune roofs where the plants and sands match those in the foreground views of them, and the plans need to be modified to make clear this requirement. Please correct all applicable plan sheets and submit revised plan sheets to address these points.

In addition, we note that it has become clear from the submitted plans that the project is being refined in such a way as to leave nearly no margin for error with respect to the way the dune features will provide a screening function. The cross-sections demonstrate that building heights are being tied to the elevation of views across manipulated and other dune features that if not maintained at those heights will result in buildings and related development being visible when it is not allowed to be. In addition, portions of the modified dune features are shown at what appear to be unmaintainable grades in this respect, and it is likely that they will reach a natural configuration post construction that is lower and flatter than is shown on the plan sheets. This is perhaps most obvious in the area of the extended dunes that are intended to be held together with retaining walls on either side (see plan sheets TM-2, TM-3, TM-4 and TM-7). Dunes are continually shifting in response to the effect of the wind, which is a significant factor at this location, and the dunes need to be shown in a way that will and can be maintained. Thus, the dunes being manipulated for screening purposes in this way need to be shown on the plans at a gradient that can realistically be maintained over time, such as a 4:1 gradient or lower. In addition, we would strongly suggest that the plans provide for a margin for error should shifting dunes move sand in such a way as to make building and related development visible where it is not allowed to be under the conditions. We can discuss how best to do this, but would note regardless that the visibility requirements must be met whether or not dunes shift, and we want to avoid a scenario where the project is out of compliance on these points because it didn't appropriately account for the shifting nature of dune materials.

6. **Special Condition 1(c).** This condition requires that all development located inland of the buildings and related development (e.g., road, access tunnels, parking areas, pathways, etc.), be sited, designed, and screened to minimize its visibility in Highway One views to the maximum extent feasible. With respect to the retaining wall elements, we have consulted with our engineer, and can concur on the need for the size of the retaining walls. That means they are going to be unavoidably visible in the public viewshed. Per the terms of the condition, it will thus be critical that all such retaining wall surfaces are made to appear as dune-like as possible to help minimize public viewshed impacts. Thus, please modify all applicable plan sheets to show that all exposed and visible retaining wall surfaces are going

to be faced with a sculpted concrete surface that mimics natural undulating dune landforms in the vicinity (in terms of integral mottled color, surface roughness, texture, and undulation to the maximum extent feasible), and seamlessly blends with the surrounding dunes. Any protruding concrete elements (e.g., corners, edges, etc.) need to be contoured in a non-linear and irregular manner designed to evoke natural dune undulations. The same applies for other similar and related elements visible in this portion of the site (including but not limited to exposed sides and edges of the tunnels).

With respect to signage, despite our continued comments on these points (going back to comments on the originally submitted sign plans), the plans continue to show larger signs in the protected viewshed, including large monument-style resort signs that will be very visible from Highway One. Although we can appreciate the need for identifying signage, the terms and conditions require that any such features be sited and designed to minimize visibility in Highway One views and to blend into the dune aesthetic to the maximum extent feasible. With respect to the resort entry sign, one manner of doing this is to eliminate the 15' x 40' sign backing, and allow for the resort lettering to be placed directly on the retaining wall feature. Obviously there may be other solutions, and we are open to discussion on that point, but we believe that a sign that consists of just the resort lettering on the retaining wall can meet CDP requirements.

With respect to the gatehouse signage (Signs 2 & 3), these signs are both shown as 13' x 10' in size, and in locations where they will be visible from Highway One. As with the resort entry sign, there are likely many siting and design options that can appropriately address the visibility of these two signs, but we think one way of addressing the issue is to move any such signage to the Highway side of the entry road where it can be hidden from Highway One view. It may also be possible to include some sort of low-profile (48 inches or less) traffic calming and/or welcoming sign designed in a similar manner as the retaining walls if necessary. With respect to the tunnel signage (Signs 4 & 5), it is not clear why two more signs are necessary at this location, and, if these signs are necessary, it appears that similar view impact reducing measures can be applied (e.g., similar to the entry sign parameters), including where such signage is located along edges that themselves limit their visibility in the Highway One view. Finally, the 18' x 13' x 6' foot pie-shaped monument sign at the resort round-about (Sign 6) will be starkly visible, and needs to be modified and/or moved to avoid view impacts. Again, it is possible that this sign could be moved to the Highway side of the entry road out of view, and that it be reduced in size and scale. In short, the signs have not to date been changed in response to our repeated comments indicating that they do not meet the CDP terms and conditions. We are happy to work with you on possible alternative approaches to what we have identified here, but these suggested changes appear to be an appropriate starting point. Thus, we look forward to working with you on signs that are re-sited and re-designed so as to meet the CDP requirements. These modified signs must be shown in all requested materials (e.g., elevations, cross sections, visual simulations, etc.) to be able to evaluate compliance.

- 7. Special Condition 1(d).** We received the additional correspondence from the Monterey County Fire Marshall and the additional local and state Fire Code regulations that you submitted regarding the need for adequate vehicle turn-around distance. These materials provide the supporting justification for the road spur beyond the condominium tunnel access point, and no further information is needed on this point. We do note that the revised VTM plans (sheets TM-1, TM-2, and TM-9) contain a notation identifying an ‘existing access road’ to an adjacent offsite parcel located outside of Sand City and within unincorporated Monterey County. As you are aware, we spent a great deal of time discussing this road question as part of our settlement discussions, and ultimately agreed that the degree to which that road exists or not is not part of this approval, and that anything associated with it needed its own CDP. That was the genesis for the Special Condition 1(d) language. Accordingly, it is inappropriate for this plan set to identify an existing road in this area, and all such notations need to be eliminated.
- 8. Special Condition 1(e).** Thank you for the additional information you submitted related to the rooftop elements and overall building heights, including with respect to living roof details and elevator equipment features. Again, as indicated above, the elevator equipment floors came as a great surprise to us, and they lead to issues with height limits as well as the view issues discussed above). As shown on revised sheets FP-11 and SC-01A (dated February 3, 2015), the elevator equipment floors extend as much as 8-feet above the prior identified rooftop elevations for a maximum development height of 130-feet and 120-feet in the vicinity of the hotel towers. Special Condition 1(e) limits development height to no greater than 45-feet above existing grade for all hotel and hotel related development. In both cases, superimposing the elevator rooftop elevations and information from sheet FP-11 onto the Height Compliance sheet HC-1 shows that the height in these areas exceeds the 45-foot maximum height limit for hotel and condominium hotel development by between 3 to 5 feet, contrary to the requirements of Special Condition 1(e). As such the project will need to be revised to lower the overall building heights by 3 to 5 feet in the vicinity of the elevator equipment floors or to relocate these features to comply with the terms and conditions of the CDP. Please submit revised project plans making these changes.

With respect to the living roof elements, the recently submitted information now provides a scale, and shows that these take up 2 feet (one-foot for structural roof, and one-foot for the ‘trough’ to hold the living roof in place). As discussed, it seems as though this could lead to the actual building heights being 2 feet higher in all cases across the site where there are living roofs. You have indicated that this is not the case, and that these additional rooftop components are to be accommodated within the space allotted per floor. This will lead to the upper floors being some two feet shorter than other floors in order to accommodate the additional rooftop components. As this is such a critical factor for height and visibility issues, including in terms of the narrow margin for error provided as discussed above, please confirm that our understanding from your representation is correct, and that the building heights shown on the plans are measured to the top edge of the trough holding the living roofs where living roofs are present.

9. Special Condition 1(g). Thank you for the additional information provided associated with dune grading seaward of the resort. As you are aware, the terms and conditions of the CDP limit foredune grading seaward of the buildings down to 32 feet and only where such grading is designed to replicate natural dune landforms and to integrate into the surrounding dunes to the maximum extent feasible. The October 16, 2014 plans (as revised January 27, 2015) show grading of the foredune below the 32-foot contour, including for four depressions near the bluff edge and proposed fill along the bluff edge just seaward of the former main borrow pit area (see Sheets TM-2, DRP Figure 6, and GP-1). In our January 15, 2015 meeting, it was represented that the purpose of the depressions was to create habitat for snowy plovers. We requested additional information on this point, including how these features provide potential habitat enhancements. The response provided in the January 26, 2015 letter from Steve Kaufmann was that the grading was proposed to “provide the undulations and a more natural coastal dune formation.” We do not see a valid dune reason for the depressions, do not understand how they will enhance habitat, and believe them to be more unnatural than natural otherwise. In fact, given the windy environment, dune formations in this area are more likely to take the form of mounds or hillocks. The proposed depressions will not be stable and will be rapidly filled-in with blowing sand. Please eliminate this feature from the plans.

With regard to the proposed fill of the bluff edge seaward of the borrow pit area, no justification was provided either way with regard to this feature and it too needs to be eliminated from the plans. This area needs to remain in its existing state, and not be filled. In fact, and as discussed further with respect to the dune restoration plan, filling of the bluff edge in this location and steepening of the bluff gradient will hinder and may preclude use of the interior portion of the dunes for Western snowy plover, which have for years utilized the gentle slope to access the foredunes on this site. Please submit revised final plans eliminating all proposed grading below 32 feet NGVD, including fill of the bluff edge seaward of the borrow pit, on each plan sheet where it is shown (e.g., VTMs, Grading Plan, Dune Restoration Plans, Public Access Plans, etc.).

10. Special Condition 1(h). We received the January 15, 2015 plans as revised on January 27, 2015 which provides a bit more detail than the initial October 16, 2014 plan submittal on the resort path, scenic overlook, and beach access sand ladder. We have two issues with these resort elements. First, and as discussed at our meeting January 15, 2015, the boardwalk needs to be a wooden dune boardwalk that blends into the dune aesthetic. The cross section shows the boardwalk to be wood, but it is shown elevated by some two feet, on top of a base of unknown composition (and possibly concrete), with tall edging bumpers (+6 inches or more) on the top. The boardwalks need to be reduced in scope to be at-grade (as does the overlook), without any type of concrete or substantial superstructure, and with wooden bumpers that are approximately 2-3 inches as is more typical for dune boardwalks. Again, the CDP requires these elements to blend into the dune environment, and these changes are required to make that so. Second, the resort pathway and overlook is sited in the location where the plover have historically accessed the foredunes near the lower bluff edge near the borrow pit. To

protect plover, these elements must be moved downcoast to the edge of the big dune nearer to the 32-foot contour. Please submit revised project plans making these changes.

- 11. Special Condition 1(i).** Overall, and as we have discussed, the public access amenities portion of the plans are nearly all in order. However, similar to item 10 above, we received the January 27, 2015 supplemental plan sheet (sheet 4 of 4) that provides additional detail on the public access amenities including the scenic overlook and sand ladder for beach access. The same boardwalk changes as to the resort amenities need to be made to these features as well. Please submit revised project plans making these changes, both here and in relation to Special Condition 5 (see also below).
- 12. Special Condition 1(k).** Thank you for the January 15, 2015 revised Landscape Plan documents, including Sheet LP-02, and the landscape professional certification. We now have enough information to conclude that the submitted plans are adequate to meet the terms of Special Condition 1(k), and no further action is necessary on this point.
- 13. Special Condition 1(l).** The February 3, 2015 submitted plan revisions include additional lighting plan detail for exterior and interior building lighting (Sheet FP-05). As discussed, these changes reflect the addition of performance standards directly to the plans to ensure that exterior and interior building lighting will comply with the CDP including that all exterior building lighting be LEED certified, full cut-off, down lit, wall mounted or recessed into overhangs and eaves. No further information or action is required on these points.

With regard to the proposed exterior path and roadway lighting, we received the correspondence from Janet Ilse with EMC Planning Group in support of the proposed lighting plan. Although we appreciate Ms. Ilse's opinion that lighting has been minimized and will not be visible, we note that there are more than 100 lights of various sizes and lumens on project paths and roadways; 74 located on paths seaward of the proposed development within the Highway One public viewshed. As noted in our November 14, 2014 compliance letter the resort pathway lighting scheme appears excessive, not wildlife friendly, and it does not limit the amount of light or glare visible from public viewing areas. We have requested but not received a visual analysis of the effects of the lighting on Highway One views and the nighttime sky, and inadequate materials otherwise have been provided to demonstrate compliance with the terms and conditions of the CDP (i.e., evidence that it is necessary for safety purposes and/or evidence that the light wash and glare has been limited to the maximum extent feasible, etc.). Other similar resorts in the southern Monterey Bay do not have any dune path or beach lighting (see Asilomar Dunes Conference Grounds in Pacific Grove or the Sanctuary Beach Hotel in Marina). And many dune area pathways have no lights at all, consistent with their use as a nighttime feature. Further, even low lighting of the dunes, can subject vulnerable species such as Western snowy plover to increased predation by attracting predators. The sheer number of lights proposed out into the dunes will create a definite glow from the site as seen from public vantages such as Highway One. Accordingly, the proposed lighting plan is not consistent with the terms of special condition

1(l) and must be revised. It is likely that the requested lighting evaluation materials will help to refine lighting changes that are necessary, but at this juncture it appears that reducing the number of bollards along the resort entry road and parking area by half, and eliminating all pathway lighting of the public and resort vertical access paths, can serve to meet this aspect of the CDP.

14. Special Condition 1(m). The February 3, 2015 submitted plan revisions include additional detail for window and exterior surface treatments (Sheet FP-05). As discussed, these changes reflect the addition of performance standards directly to the plans to ensure that these features will comply with the CDP. No further information or action is required on this point.

15. Special Condition 1(n). Water, sewer, and storm water infrastructure are shown on the January 15, 2015 Utility Exhibit plans. The plans, however, continue to omit detail on electrical, natural gas, cable, and phone/data service, etc. Please provide a complete utility plan sheet with detail on the provision of all these services.

The plans also appear to include overhead equipment near the resort service entrance tunnel and other areas along the Highway. As noted in our November 14, 2014 compliance letter and as required by the CDP, the plan must provide for removal or undergrounding of all existing overhead utilities on the site and in areas between the site and Highway One. Please revise the plans accordingly.

16. Special Condition 1(o). The submitted plan revisions include additional detail on the proposed storm water system including with respect to the use of bio-infiltration basins, bubblers, and other storm water features. Of primary concern is the use of bio-infiltration basins within the dune areas of the site. Special Conditions 1(k) and 3 prohibit the use of non-native plant species within dune restoration areas, and Special Condition 3 requires this area to be used for dune restoration only. These storm water measures need to be accommodated within the allowed development areas of the site, and not within the protected dune areas. There appears to be ample space, including both under and inland of the fire road, to accommodate such infrastructure. Please revise the plans accordingly. Additionally, as we have previously indicated we remain concerned that bio-infiltration basins and bubblers may fail over time, particularly in conditions where blowing and drifting sand fill the basin. If the infiltration basins fill with sand, then certain plant species will not be able to grow and the efficacy of the basin to remove pollutants may be lost. Please provide information showing how such systems are intended to be maintained, including with respect to these wind blown sand issues, to ensure their operational efficiency and utility.

Additionally, the January 15, 2015 submittal includes a Storm Water Pollution Prevention Plan (SWPPP), which can be expected to address pre and post-construction infiltration and filtration requirements of the site. The SWPPP contains post-construction BMPs to handle the volume and variety of pollutants that might be expected to occur in runoff on site. Those BMPs include regularly vacuuming of the resort access driveway and public access parking

areas, periodic cleaning of oils and grease in the covered parking garage as well as the uncovered access parking, appropriate siting and containment of resort trash dumpsters, cleaning of restaurant grease traps, and regular maintenance of the resort delivery bay. The SWPPP was prepared by Bestor Engineers and is awaiting approval and certification of a Qualified SWPPP Developer. Please submit evidence that the SWPPP has been approved and certified to address the requirements of per Special Condition 1(o).

- 17. Special Condition 1(p).** We did not receive any additional materials related to signage. As detailed in number 6, above, the main entry signs need to be modified to meet the terms and conditions of the CDP.

With respect to other general resort and access signs, we continue to recommend that the proposed signage plan be modified. We believe that signage that interprets dune habitat and its inhabitants as opposed to language that states “dune restoration area...keep out” is more appropriate under this approval and more effective in managing access for the purposes of protecting sensitive resources. Similarly, if property boundary signs are needed, we believe that text that simply indicates the location of the property: “Property of Monterey Bay Shores Resort” or similar as opposed to “No Trespassing” is what is necessary to meet the terms and conditions of the CDP. With all due respect to your observations about other signs that have been approved, this is a brand new resort project with a comprehensive set of terms and conditions intended to address coastal resource issues to the maximum extent feasible given that overall package. To suggest that ‘no trespassing’ signs should be found consistent just because they have been approved before based upon issues associated with a vacant site does not recognize that issues associated with trespassing will be different once this is no longer a vacant site. We are happy to work with you on potential sign location and language that can be found consistent with the CDP, as we have indicated before, but do not believe that what has been submitted to date meets the terms and conditions of the CDP.

Further, additional directional access signs are also needed along the public access parking lot and out to the public overlook and bottom of the public beach access stairs. No information is provided on the “Dune” signs, which appear to be redundant to the Habitat Protection/interpretive type signs and thus they should be eliminated to avoid unnecessary clutter. Again, we are happy to work with you on the particulars necessary to meet access sign requirements. Alternatively, we note that all signs must be sited and designed to integrate into the dune aesthetic (i.e., natural materials, muted colors, diminutive in size, etc.) and placed in areas that minimize impacts on public views, including from Highway One and the pathway system itself, and would ask that you please provide revised sign sheets with the minimum number of signs addressing the above-described issues.

- 18. Special Condition 1(q).** In our November 14, 2014 compliance letter discussion on feasible foundation alternatives, we determined that to definitively conclude regarding the least environmentally damaging feasible alternative, you will need to examine a hybrid option that includes a drilled in place pipe pile with pressure grout tip for the higher load condition

elements of the development as shown on Sheet S1-02 (i.e., the 9-story building elements) and the mat foundation with over-excavation for the lower load condition elements. What we were provided was a hybrid of a drilled in place pipe and mat foundation with ground improvement. Although we appreciate your effort to analyze a hybrid alternative, the analysis you provided did not consider a mat foundation with over excavation for the lower load condition, so the provided analysis does not allow us to conclude that your most recent proposal is the least environmentally damaging feasible alternative. Please provide an analysis of a hybrid option that includes a drilled in place pipe for the higher load condition elements and a mat foundation with over-excavation for the lower load condition (i.e., for the buildings forward of the hotel tower). Please identify the cubic-foot per square-foot (average) estimate of the volume of disturbed soil for the over excavation option for the lighter load buildings. Please also provide the square-foot for each of the different foundation options in the hybrid options (mat versus pile or auger) so we can determine the total impacts as well as the square-foot impacts. Finally, the project contemplates a very large amount of soil excavation. Please provide an estimate of the excavation volume attributed to installation of piles or augers. In addition, please provide an estimate of how much more volume of materials, if any, is necessary for the over excavation option for the lower load buildings.

19. Special Condition 1(s). You have provided a geotechnical signoff for the project plans. The project plans may change based on necessary modifications that are identified in this letter, including potentially in terms of the foundation, as discussed above. The intent of the condition is that the approved plans are reviewed and approved by the appropriate professionals as identified in the condition. We recommend that instead of providing geotechnical signoff of the next submittal, that you wait until after the revised plan set is in a form that can be approved to obtain the required signoff. If you submit such signoff with the next submittal, it is possible that you may need to obtain another sign off at a later date, and we don't think this makes good sense. Of course, it is up to you if you want to take the chance that the next submittal satisfies all terms and conditions of the CDP, but we would recommend waiting at this point in light of the various changes that are necessary, and including in light of the uncertainty regarding foundation elements.

20. Special Condition 1(t). Based on the plans received October 16, 2014 and as clarified on our January 15, 2015 meeting, the submitted plans include detail regarding the manner in which excavated sand not necessary for the project will be disposed and/or beneficially reused consistent with the terms of the CDP (Sheet CP-1).

21. Special Condition 1(u). We did not see that you submitted additional details justifying the need for the proposed solid fencing along the perimeter of the property. As noted in our August 29, 2014 and November 14, 2014 compliance letters, the proposed 6-foot tall redwood perimeter fence with 6" planks is incompatible with the minimization requirements of the terms and conditions of the CDP. At our January 15, 2015 meeting your representatives suggested that this fencing was needed to deter trespassers, but as noted above, deterring trespassers once the site is developed will be less challenging than it is on a

vacant site. Per the condition requirement, the starting point is that all site fencing first be removed, and then it can be replaced by the minimum necessary to meet project objectives where such fencing is sited and designed to be compatible with the dune landscape and to minimize public view impacts to the maximum extent feasible. On this point we note that you have to date interpreted 'project objectives' narrowly in terms of security needs for the resort. However, the intent of the condition is not that narrow, and the project objectives include ensuring that dune and public viewshed resources are protected to the maximum extent feasible. As a general rule, fencing is not something that is consistent with the dune aesthetic, and it introduces additional clutter in the viewshed. That is one reason why the articulated starting point per the conditions is that there be no fencing, and fencing can be added only to the degree to which it is the minimum necessary for project objectives, including dune and viewshed objectives. Past your anecdotal observations, you have not submitted justification for such perimeter fencing, and we are still unconvinced that any perimeter fencing is needed or that it is appropriate under the CDP terms and conditions. If you provide conclusive evidence to the contrary, we will be happy to work with you on siting and design of fencing that can address identified security issues, such as potentially targeted and more limited fencing (e.g., split rail fence or other less intrusive fencing options). If you do not intend to submit more fencing justification, then please remove all perimeter fencing from the plans. You are always welcome to pursue additional fencing options at a future time after the resort is developed if circumstances support it.

22. Special Condition 1(v). The requirements of Special Condition 1(v) are overarching, and affect most if not all of the issues discussed above. This condition requires that all parts of the development, from buildings to roads to retaining walls to paths to other development in view, minimize visual incompatibilities with the dune landscape and public views. Although a stand alone requirement, it really is meant to be overlaid atop other condition requirements to ensure that it is clear that this primary objective is required to be met by the project overall. Thus, the issues and necessary plan changes described above must also be understood in terms of Special Condition 1(v) as well. Overall, although we have made progress on these issues, as described above the project plans are still in need of modification to address these visual concerns. In addition, any submitted materials in the future need to comply with this condition as well, and thus this condition can't be deemed complied with at the current time.

23. Special Condition 2. Thank you for the submitted Construction Plan dated October 16, 2014 and additional clarification provided on January 15, 2015. The submittal contains enough detail for us to conclude that the construction staging and stockpiling locations as shown on plan sheets CP-2 and CP-3 have been minimized to the maximum extent feasible and that our concerns with visual impacts have been addressed. We are also able at this time to sign-off on the Biological Monitor selections: John Wandke of Rana Creek and Janet Ilse of EMC Planning Consultants. However, with regard to pre-construction surveys, there is not sufficient detail regarding the survey protocol, i.e., methodology, timing, qualifications, other agency coordination, etc., for us to conclude that this aspect of Special Condition 2(e) has

been complied with. Please provide additional information / clarification on the required survey protocols.

24. Special Condition 3. Thank you for the submitted Dune Restoration Plan revisions. Your submittal basically includes slight revisions to the program figures. As noted in our November 14, 2014 letter, Figure 4 of the dune restoration plan is an exhibit illustrating areas subject to the dune restoration requirements of Special Condition 3. This condition provides that dune habitat restoration and stabilization shall occur for all dune areas of the site outside of development areas, as well as for all dune extension and screening areas. As currently shown in your submitted plan revisions, the dune restoration plan still does not cover all areas outside of the development footprint, and thus still does not comport with the requirements of Special Condition 3. The dune restoration plan must apply to all areas outside of the development footprint, including the entire areas between the tunnel access points, the sand dune areas between the roadway and public path, the path and property line, and essentially all sandy areas not covered by approved development. Please revise Figure 4 accordingly.

Secondly, Special Condition 4 specifically states that the dune conservation easement shall apply to the dune restoration area described in Special Condition 3 and generally depicted in Exhibit 11a. As illustrated in in your submitted Figure 3 (“Conservation Easement”), the easement area does not comport with the dune restoration area or the requirements of Special Condition 4 and must be revised accordingly. Although the Commission allowed some additional development in the areas covered by Exhibit 11a, it did not modify the area to be covered by the dune conservation easement. Thus, as proposed by your attorney, the easement itself will specify what development is allowed in the area covered by the easement, but the depiction of the dune easement area and the metes and bounds legal description of the area must be consistent with that shown generally in Exhibit 11a.

Third, your submitted Figure 1 illustrates the property habitat management areas, which are separated into categories including the beach, foredune, backdune, and developed areas. There are a number of areas around the perimeter of the actual physical development on the site that are classified as “developed” but in reality are either foredune or backdune – including but not limited to the dunes between the access tunnels, the area seaward of the fire access road, a triangular shaped area in the very northeast corner of the property, and the dunes between the resort driveway and public access path. Please modify the plans to correctly identify these areas as dune and not developed, although, as acknowledged above, some minimal development, such as a subsurface water tank, existing well-head, and geothermal well, will be allowed in these areas.

Fourth, with regard to the dune restoration plan specifics, Special Condition 3(a) requires that restoration be premised on enhancing dune habitat so that it is self-functioning, high quality habitat in perpetuity. The dune restoration plan provides a planting plan for the sandy areas seaward of the proposed resort development, but does not include a plan to actually re-create

a natural looking and/or functioning “dune” environment. The submitted plans show the entire site seaward of the development graded and/or filled to a uniform 32-foot NGVD. As discussed above, plan changes are necessary to remove the unnatural depressions and to eliminate the fill are near the former borrow pit. More broadly in terms of the dune restoration plan, it needs to then provide the appropriate guidance and implementation measures to restore these and other sandy areas as functioning dune. The starting point for dune habitat is the dunes themselves, and the plan does not yet provide for the establishment of dune hummocks, mounds, and similar dune formations. Without such dune formation, the site restoration is unlikely to support plant recolonization and natural regeneration, and this area is not likely to function as “self-functioning, high quality habitat in perpetuity” as is required. Please submit plan modifications that include all measures to be taken to provide for the appropriate dune landform establishment and maintenance.

Fifth, as discussed above, stormwater biofiltration areas are proposed in two locations in areas reserved for native dune restoration, and this is not authorized. Please remove these areas from the dune restoration area.

Sixth the submitted Dune Restoration Plan still does not provide any specific provisions to protect and enhance sensitive species habitats, including for Western snowy plover and Smith’s blue butterfly as required by the Special Condition 3(b). Your next plan submittal must explicitly address the required sensitive species habitat enhancements. With respect to plover, we would recommend that you at least initially focus on areas where the plover has historically occupied the site, including access to the more interior dunes through the lower area fronting the old borrow pit. With respect to Smith’s blue butterfly, grading of the entire bluff from a generally meandering 60-foot NGVD height to a uniform 32-foot NGVD is likely to eliminate the existing wind-shadowing effects of the relatively higher bluff, which has created the micro-climate needed for the colonization of Smith’s blue butterfly along the northern property boundary. Rather than being in the “lee” of the bluffs and at a lower elevation of the bluffs, the butterfly habitat will be at a higher elevation and directly affected by the predominant northwest winds. Other than proposing to plant additional buckwheat plants, the host plant for Smith’s blue butterfly, no additional information is provided on how the habitat values will be enhanced in the post-grading site condition. The plan also proposed to plant numerous Monterey spineflower plants. But as noted above, without the creation of dune formations, including high and low points, the bare sandy areas are not likely to be stable and planting efforts are not likely to be successful. The plan must also provide for a program to address these species requirements, and not just a planting plan. We would be happy to work with your biological consultant to address these questions and issues directly, should that be more efficient. We would also strongly suggest that you coordinate with the California Department of Fish and Wildlife and the United States Fish and Wildlife Service as you prepare plan revisions as the condition requires that the provisions in the restoration plan “shall be consistent with applicable state and federal requirements for these species” and those agencies implement the State and Federal Endangered Species Acts. Please submit revised plans that include dune re-establishment and contours that are designed to match

natural dune landforms along with a planting plan and program that takes advantage of dune topography to enhance habitat values of the site including for sensitive species. Please include a description of the specific provisions that enhance habitat for sensitive species, including snowy plover and Smith's blue butterfly habitats, as part of dune restoration activities. Please provide details on the provisions to enhance such habitats as required.

25. Special Conditions 4 and 6 (Dune Area Conservation and Public Access Easements). We received the supplemental drafts of the Irrevocable Offer of Dedication for the Public Access Easement (Public Access OTD) (required pursuant to Special Condition 6) and Dune Area Conservation Easement (Dune Conservation OTD) (required pursuant to Special Condition 4) on February 3, 2015. We cannot fully review and comment on them in less than the 30-day review period provided for in the Settlement Agreement due to the complexities of the documents. In an effort to review your submittal as expeditiously as possible, we have, nevertheless, started our review of these documents and wished to give you some preliminary comments in this letter related to the graphic depiction and legal description associated with the public access easement, with the understanding that we will provide the remainder of our comments within the 30-day time period allotted by the settlement agreement (i.e., by March 5, 2015). In the past, we have found it most efficient for our recorded document staff to speak directly to the surveyor that you have hired, as many of our questions and concerns can typically be addressed through a few phone call conferences.

As an initial matter, the small scale of the graphic depiction led to some potential ambiguities that must be addressed before the easement can be recorded. A larger scale map may address many of the concerns identified below, and it would allow the courses to be labeled to more accurately identify the various Points. A larger scale map (similar to what you provided for the complex portion of the dune conservation areas) is essential to a meaningful review.

With regard to Easement Parcel One, Parking Lot

On the graphic, confusion is created by the use of Parcel 1 for the point of beginning of the Easement, because the property is also identified as Parcel 1. Either labeling the parcel by letter or at least identifying it as Parcel One would help remove any ambiguity as to which "Parcel 1" is intended in this case.

With regard to Easement Parcel Two, Pathway System

This issue may be related to the One and 1 confusion, but it appears that you intend to describe the "centerline" of the pathway (the most southern portion, which is the 10-foot wide bike path), which is supposed to lie 3 feet to the southeast of this centerline and 7 feet to the northwest, but the description begins "at a point on the easterly line of said Parcel 1," which appears to be the easterly property boundary. If the description begins on the easterly property line, then the path cannot lie 3 feet to the southeast of the centerline, as that would be off of the property. From the graphic depiction it does not look like the Point of Beginning is on the parcel boundary, but based upon the legal description, it sounds like it is, so we need some clarification on this point. In addition, it is not clear if courses 18 through 28 trace

the eastern property boundary, whether the Point of Beginning is instead three feet from the eastern property boundary, or whether the curve on course 18 moves the “centerline” northwest of the property boundary. Again, if a larger scale graphic is provided, it may resolve these issues.

The above-described concerns are also related to the last statement of this easement: “The sidelines at beginning of the strip are to be shortened or extended so as to terminate on the aforesaid easterly line of Parcel 1.” This statement suggests that there are not three feet on the southeasterly side of the “centerline”, only 7 feet or 3 feet on the northwesterly side. Clarification is needed on this issue.

The 108 foot segment of the Class 2 bike lanes directly south of the parking lot is only 6 feet wide, like the rest of the public access pathway that is north of the parking lot. Special Condition 5(b)(2) requires the portion of the pathway system that extends from the public recreational trail to and along the public parking lot to be a separate, dedicated pedestrian and bicycle path similar in width as the inland public recreational trail, which is 12-feet in width. Revised plan sheet TM-2 received January 27, 2015 meets the intent of Special Condition 5(b)(2) and identifies this pathway segment as 10-feet in width. Easement Two will need to be modified to reflect a 10-foot wide, dedicated public pedestrian and bicycle trail.

Easement Parcel Four, Beach Stairway/Pathway

The description starts “A strip of land 6.00 feet wide, lying 3.00 feet on each side of the following described centerline, Beginning at the hereinabove described Point B; then continuing along the line described in course #27 hereinabove.”

This description is unclear because Point B is at the end of the Parcel Two easement pathway, which ends at Course # 45. The line described in course #27 is the parcel two easement pathway; and course #27 is about where the pathway leaves the eastern property boundary. If this understanding of the easement is correct, it would be more accurate to describe the pathway as “then continuing along the line described in the Easement Parcel Two, Pathway System from course #27 through course #45 hereinabove” or just “then continuing along the line described in course #45 hereinabove...” because the course for #45 is the same as the next course described (#50). Course #50 continues the same direction, starting at Point B, where the parcel two pathway ends at Point B. Again, these are complicated technical questions that may be easily answered and clarified by your surveyor, and we would be happy to try to work through them directly with him/her.

It is unclear from the depiction why the Parcel two easement pathway, ends at point B, which does not extend to the 20’ NGVD contour. It is also unclear why Parcel Four was separated from the Parcel Two easement.

Finally, we note that both the public access and dune conservation easements must be recorded free of prior liens and encumbrances. We will need a copy of a preliminary title

report to review the current existing liens and encumbrances on the property to determine which could interfere with the easements required by the CDP. At a minimum, we understand that there are deeds of trust recorded against the property, and these will need to be subordinated to the easements. We will provide you with a copy of the template we typically use for subordination of deeds of trust, so that you may also work on obtaining these agreements while we are continuing to review the easements you submitted.

26. Special Condition 5 (Public Access Management Plan). Special Condition 5 requires the submittal of a Public Access Management Plan designed to address and provide for the public access areas and amenities of the site. On July 31, 2014 we received a copy of the Plan, and we have provided comments and direction on modifications necessary to meet the requirements of the CDP, including in our November 14, 2014 letter. To date, however, although different plan sheets associated with the revised plans requirements of Special Condition 1 have been submitted, the Public Access Management Plan itself has not yet been updated. As you are aware, many components of the Plan have evolved or have been required to be modified via the compliance review process, including with regard to the public access amenities, lighting, signage, fencing, etc., and which have not been carried forward into the Plan. Although we are clear on the components and changes we have discussed, including in relation to the pathway and overlook system as detailed above, the Plan is intended to function as a standalone document that will guide and govern public access use of the site, and it is critical that all related materials be brought back into the Plan. In addition, it affects and is affected by other portions of the PTI condition requirements, including that it a required exhibit for the Public Access Easement OTD and will need to be finalized and approved prior to final condition compliance sign-off on that item as well.

If you would prefer, you can wait to submit a revised Public Access Management Plan until after the revised plans are finalized. Alternatively, please submit a revised Plan that addresses the changes we have discussed, including as described herein, and also addresses outstanding issues from our November 14, 2014 letter (e.g., associated with signs and off-site parking).

27. Special Condition 20 (Deed Restriction). We received and reviewed the draft Deed Restriction. Please note that all appears in order with the exception that the Notice of Intent (Exhibit B) must include your signature. Once it is signed, please record it at the Monterey County Recorder's Office. Once we have received a certified conformed copy, then this condition will be deemed satisfied.

In closing, we request that all revised materials that must be submitted prior to issuance of the CDP be submitted for review at the same time on the same date, unless you would prefer to address a subset in one submittal and defer submittal of other materials until that is resolved (e.g., resolving the Special Condition 1, 2, 3, and 5 requirements before resolving the Special Condition 4 and 6 legal document requirements). Please note that there may be additional changes and/or materials necessary to comply with the terms and conditions of approval

Ed Ghandour
Monterey Bay Shores Resort
February 16, 2015 PTI Condition Compliance Status Letter
Page 18

depending upon the nature of the materials you provide in response to this letter, particularly regarding submittal of a complete set of revised plans with all necessary components (e.g., including regarding compliance with height requirements, site grading, dune conservation area, etc.). Further, we note that your submittal and this response is limited to the requirements of the CDP that must be met prior to issuance of the permit, and that there are other terms and conditions, including other necessary submittals and events that also must be complied with, including certain prior to construction and occupancy requirements, that also apply but are not addressed here. We look forward to working with you on both the materials that must be submitted prior to issuance of the permit and the other conditions of approval moving forward.

If you have any questions regarding the above, please contact me (831) 427 4863 or via email at Michael.Watson@coastal.ca.gov.

Regards,

Mike Watson
Coastal Planner
Central Coast District

cc: Steve Kaufmann
Tom Roth

CALIFORNIA COASTAL COMMISSION

CENTRAL COAST DISTRICT OFFICE
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March 5, 2015

Ed Ghandour
Security National Guaranty
505 Montgomery Street, Suite 1140
San Francisco, CA 94111

**Subject: Prior to Issuance Condition Compliance Review for Coastal Development Permit
Number A-3-SNC-98-114 (Monterey Bay Shores Resort)**

Dear Mr. Ghandour: *Ed*

Please see attached a draft of the Dune Conservation Easement Offer to Dedicate (OTD) and a graphic depiction of the easement area. We are providing you this information in response to your February 3, 2015 supplemental draft of the OTD, and to finalize our comments related to both the language of the OTD and the graphic depiction of the easement area as were contained in our February 16, 2015 compliance status letter. As noted above, we received these OTD materials on February 3, 2015 and are providing you this response on these materials on March 5, 2015, within the 30 days allowed by the settlement agreement. Please note that we have now responded to all of your recent submittals and are awaiting response from you at this point. Please also note that we are unable to issue the CDP until all of the deficiencies identified in our letter of February 16, 2015, including in relation to the supplemental guidance identified in these OTD attachments, have been corrected and responsive materials submitted and signed off as consistent with the terms and conditions of the CDP.

If you have any questions regarding the above, please contact me (831) 427 4863 or via email at Michael.Watson@coastal.ca.gov.

Regards,

A handwritten signature in black ink that reads "Mike Watson".

Mike Watson
Coastal Planner
Central Coast District



RECEIVED

MAR 16 2015

CALIFORNIA
COASTAL COMMISSION
CENTRAL COAST AREA

March 13, 2015

Via Email and Federal Express

Mike Watson, Coastal Planner
Central Coast District
California Coastal Commission
725 Front Street, Ste 300
Santa Cruz, CA 95060

RE: Changes Requested in February 16, 2015 Letter by Mike Watson
Prior to Issuance Condition Compliance Review for Coastal Development Permit
Number A-3-SNC-98-114 (Monterey Bay Shores Resort)

Dear Mike,

The following changes and submittals respond to requests made by you in your February 16, 2015 letter and the subsequent response letter by Mr. Kaufmann dated March 9, 2015. In submitting these changes, we understand that these condition items have been cleared and no further response is needed on this item. By prior letters, SNG advised staff that, in its view, the conditions imposed by the Commission in its April 2014 decision have been fully satisfied, and nothing else should now be required, and the CDP approved should be issued forthwith.

The below numbers correspond with those in your letter and Mr. Kaufmann's follow-up letter of March 9th.

5. Special Condition 1(b):

Cross-Section W2 has been clarified as to Hwy 1 elevation on the attached revised VTM.
Cross-Section X2-Dune feature has been modified, by increased height, in order to insure the top of building is out of sight (see attached VTM).
Dune height across elevator overhead has been increased to help screen the elevator overhead (see attached VTM).

6. Special Condition 1(c):

1

All the language for exposed and visible retaining wall surfaces requested by you has been incorporated into the VTM as Note 22, TM-01." All exposed and visible retaining wall surfaces are going to be faced with a sculpted concrete surface that mimics natural undulating dune landforms in the vicinity (in terms of integral mottled color, surface roughness, texture, and undulation to the maximum extent feasible), and seamlessly blends with the surrounding dunes." We also added: "Any protruding concrete elements (e.g., corners, edges, etc.) will be contoured in a non-linear and irregular manner designed to evoke natural dune undulations."

In the round-about, the sculpted surface monument height has been reduced to 10'.

6. Special Condition 1(d):

The following language has been incorporated into the existing access road on the VTM, TM-02 : "existing access road (not part of this approval)".

8. Special Condition 1(e):

Language has been added to the elevator override that includes further screening by color and texture to blend with the dune surrounding, in addition to changes noted in Special Condition 1(b) above, as follows: "exposed and visible exterior elevator override walls will be screened by color and textured surface that blends with the surrounding dunes". See sheet SC-01A of MBS_Floor Plans(Page 12).

Living Roofs heights have been modified to show 4"-12" range.

9. Special Condition 1(g):

The 4 depressions in the foredune area have been removed from the final grading and VTM revised accordingly, as attached.

10. Special Condition 1(h):

The Resort Pathways plan details have been modified to show a new boardwalk (previously approved by the Commission in Carpinteria for DPR). See attached.

11. Special Condition 1(i):

The Public Access Pathway plan has been modified to show a new boardwalk (previously approved by the Commission in Carpinteria for DPR). See attached Page 4.

15. Special Condition 1(n):

The OHE utility line will be removed, as indicated in the Notes, VTM TM-01 and the Utility Exhibit (attached) which is included herein in the submittal of changes requested by you.

18. Special Condition 1(q):

An additional letter by MKA, the structural engineers for the project, dated March 11, 2015 has been submitted responding to your request to analyze a drilled in place pipe pile with pressure grout tip for the higher load condition elements of the development as shown on Sheet S1-02 (i.e., the 9-story building elements) and the mat foundation

with over-excavation for the lower load condition elements. MKA does not recommend this option as a solution that meets condition 1(q).

24. Special Condition 3:

The 4 depressions have been removed as noted above in SC 1(g).

26. Special Condition 5:

The boardwalk has been updated as noted above in SC 1(i) as part of the Public Access Management Plan.

With these submitted changes, we believe that all matters related to these items have been cleared as well. Thanks for your cooperation in bringing this matter to its final conclusion and issuance of the CDP soon.

Sincerely yours,



Dr. Edmond Ghandour
President

Cc: Dan Carl
Dr. Charles Lester
Chris Pederson, Esq.
Steve Kaufmann, Esq.
Thomas Roth, Esq.

CALIFORNIA COASTAL COMMISSION

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April 15, 2015

Ed Ghandour
Security National Guaranty
505 Montgomery Street, Suite 1140
San Francisco, CA 94111

**Subject: Prior to Issuance Condition Compliance Review for Coastal Development Permit
Number A-3-SNC-98-114 (Monterey Bay Shores Resort)**

Dear Mr. Ghandour:

Thank you for your submittal of supplemental materials intended to address the prior to issuance (PTI) requirements of conditionally approved coastal development permit (CDP) number A-3-98-SNC-98-114. Your submittal was in response to our February 16, 2015 letter, which identified certain inconsistencies and also requested additional information needed to evaluate your project for conformance with the terms and conditions of the CDP. We note that we received your submitted materials on March 16, 2015.

In addition, on March 9, 2015 we received a letter from your attorney, Steven Kaufmann, requesting a dispute resolution before the California Coastal Commission (Commission) regarding the remaining condition compliance items where there is disagreement regarding whether the prior to issuance conditions of CDP A-3-98-SNC-98-114 have been met. Per the request of Mr. Kaufmann, this dispute resolution will be heard at the Commission's May 2015 hearing. Thus, we are devoting the bulk of our time to preparing a staff report for that hearing. As a result, the responses in this letter are necessarily more abbreviated than our prior condition compliance letters have been and they do not address items not updated in your March 16 submittal. Any deficiencies in meeting PTI conditions identified in our February 16, 2015 letter that are not specifically addressed in this response remain outstanding.

Please note that we are unable to issue the CDP until the deficiencies identified below, and any deficiencies identified in our February 16, 2015 letter that are not specifically addressed here, are corrected, and/or the additional information identified below is submitted to allow us to evaluate your submittals for consistency.

Special Condition 1(b):

- While we appreciate your clarification to cross-section W2, it is cross-section W, depicting the northbound section of the Highway 1 overpass that required clarification, not cross-section W-2. Please submit a revised cross-section W, based on the northbound Highway 1 view.

- The X2 cross-section and revised VTM show that the elevator overrides, which are approximately 40 feet by 55 feet and extend 8 feet above the proposed roofs, will be highly visible from Highway 1. Special condition 1(b) requires that building and related development be hidden from view from north and southbound Highway 1, with the exception of development that is inland of the dune view line that may be visible from southbound Highway 1. Please revise the project plans to ensure that the elevator overrides, and any other mechanical equipment sited on roofs, are hidden from view, as required by Special Condition 1(b).

Special Condition 1(c): The note you are proposing on the VTM appropriately requires all exposed and visible retaining walls to blend into the dune aesthetic to the maximum extent feasible. This complies with a portion of Special Condition 1(c). However, the revised plans do not clearly indicate whether the proposed 15 foot by 40 foot sign-backing on the retaining wall will be colored and textured to blend with the dune aesthetic. Please clarify that the background structure has, in fact, been modified to mimic the dune aesthetic as required by the Special Condition 1(c). In addition the VTM plan note does not address the inconsistency of your proposed monument signs with the requirements in Special Condition 1(p), as addressed in more detail in our letter of February 16, 2015. The signs remain out of compliance with the required special conditions.

Special Condition 1(d): While we appreciate your efforts to address the concerns we have raised regarding the area you have described as an existing access road on the VTM, we continue to disagree with you that a “road” exists on this portion of the site. All parties agree that the Commission did not approve any development in this area, so this feature need not be identified on your project plans. We therefore renew our request that this area not be identified as a “road” on your VTM – the Commission cannot stamp as “approved” plans that include this feature, as the implication would be that the Commission actually approved a road in this location, which it did not.

Special Condition 1(e): This condition restricts “development” to 45 feet above existing grade. The definition of development includes mechanical structures associated with the hotel, such as the elevator overrides, and any development associated with the proposed living roofs, with the exception of the plants themselves. Please submit revised plans that show all development located at or below the 45 foot maximum height limit.

Special Condition 1(g):

- Special condition 1(g) allows foredune grading directly seaward of buildings only when such grading is designed to replicate natural dune forms and to meet other requirements of the special conditions. This grading can be no lower than 32 feet NGVD. While we appreciate your revisions to the VTM and the final grading plan to show that the “4 depressions” described in your letter have been removed from your proposed development, the plans are still not fully compliant with this condition. The

foredunes must undulate to replicate natural dune forms, and they cannot be graded to below 32 feet NGVD. As a result, your plans should show dune undulations, with no undulation located below 32 feet NGVD.

- Your plans also include filling of the former sand mining pit. Because this grading is neither designed to replicate natural dune forms nor needed to comply with other special conditions, it is prohibited by this special condition. Please remove this fill from your grading plans and VTM.

Special Condition 1(h) and 1(i): The new plans that you have submitted for the design of the resort access pathways and the public access pathways address some of staff's concerns regarding special conditions 1(h) and (i). Special Condition 1(h) requires, however, that the walkway be made of natural material, and Special Condition 1(i) requires a wooden boardwalk. Your newly submitted plans show the walkway system being constructed of Trex, a synthetic material. Please revise your plans to show that these walkways will be wooden boardwalks. The resort pathway should also be moved downcoast to avoid the area of the site that snowy plovers use to access the interior of the site.

Special Condition 1(n): It appears that you have agreed that the OHE utility line will need to be underground. Please revise the remaining plan sheets to show this utility line underground.

Special Condition 1(q): Our coastal engineer has reviewed the additional information submitted by your engineer Magnusson Klemencic (MKA) regarding a potential hybrid foundation system. Based on this submittal and the other submittals prepared by your engineer, the auger-style caisson system that is proposed by your engineer and laid out in detail on Sheets S1-01 through S1-04 of the plans prepared by MKA and dated received in the Coastal Commission's Santa Cruz office on December 19, 2014 appears to be the least environmentally damaging feasible alternative for this project. Thus, this condition has been met.

Special Condition 3: Your March 16, 2015 submittal removed the "4 dune depressions" from the project plans, per staff's request. The remaining items identified in the February 16, 2015 letter related to compliance with Special Condition 3 have not yet been met, however. Please refer to that letter for the remaining condition compliance items related to this special condition.

Special Condition 5: Your March 16, 2015 submittal appropriately updated the plan regarding the structural aspect of the proposed boardwalk with the exception of specifying the use of Trex as the construction material, instead of a wooden boardwalk (see above for required changes). The remaining items identified in the February 16, 2015 letter related to compliance with Special Condition 5 have not yet been met, however. Please refer to that letter for the remaining condition compliance items related to this special condition.

We appreciate your continued efforts to comply with the special conditions imposed by the Commission on your proposed development. As described above, while there are some remaining areas of disagreement, with respect to Mr. Kaufmann's March 9 letter and our February 16 letter, significant progress has been made regarding PTI condition compliance. If you have questions about any of the above or the items identified in our February 16 letter that are still outstanding, please contact me (831) 427 4863 or via email at Michael.Watson@coastal.ca.gov.

Regards,

A handwritten signature in black ink that reads "Mike Watson". The signature is written in a cursive, flowing style with a long horizontal stroke extending to the right.

Mike Watson
Coastal Planner
Central Coast District

cc: Steve Kaufmann
Tom Roth

Watson, Michael@Coastal

From: Carl, Dan@Coastal
Sent: Wednesday, April 22, 2015 9:06 AM
To: 'Ed Ghandour_SNG'
Cc: 'Steven H. Kaufmann'; 'Tom Roth'; 'Joel Jacobs'; Watson, Michael@Coastal; Warren, Louise@Coastal; Lester, Charles@Coastal; Pederson, Chris@Coastal
Subject: RE: Condition compliance

Hi Ed,

As indicated, we will do our best to find the time to meet. Unfortunately, we needed to spend staff time to respond to your separate submittal (i.e., after Steve requested the dispute resolution hearing, you proceeded to also submit additional materials for consideration), which Mike sent last week, and that took time away from framing dispute resolution issues. As a result, we are in a mode where we need to produce a staff report in a very short time window. That significantly and necessarily limits the amount of time we have available for meeting. That is not to say I don't see the value, just recognizing the realities of our production cycle. As I told Steve, it makes more sense to shoot for a later hearing than May in order to allow some time to work out as many issues as we can. He asked you about that, and you apparently want to push for May. Your insistence on that calendar means we will have limited time to work things out. That is your choice, but be aware that it is not without consequence as there are very few days and hours left before reports go out. And no, no meetings have been scheduled. I have asked Mike to work with Steve to try to set something up, but nothing has been settled on yet. With Steve out of the country, that will be made more difficult, if not impossible, to get scheduled. Again, I think meeting makes sense, and that we are very close to resolving most issues, but we don't have the time luxury to spend the time it takes to work through the issues while simultaneously writing a staff report and preparing for a dispute resolution hearing that becomes a moving target as we work things out. We will do the best we can, but you need to be aware of those scheduling and hearing production realities.

Dan

From: Ed Ghandour_SNG [mailto:edg.sng@equus-capital.com]
Sent: Wednesday, April 22, 2015 7:47 AM
To: Carl, Dan@Coastal; 'Steven H. Kaufmann'
Cc: 'Tom Roth'; 'Joel Jacobs'; Watson, Michael@Coastal; Warren, Louise@Coastal; Lester, Charles@Coastal; Pederson, Chris@Coastal
Subject: RE: Condition compliance

Dan Hi- Thanks for your email.

Steven is out of the country at the moment without reach, however, as I understand it based on your discussions with him last week (email confirmation below on April 17th), a meeting with Staff is planned for next week. Please schedule a date that accommodates you in Santa Cruz or San Francisco.

At the same time, SNG will proceed with the May hearing as planned and in accordance with the terms of the Settlement Agreement.

I am hopeful that the remaining PTI Conditions compliance issues, if not all, can be worked out in our meeting with you and staff. Our team looks forward to that.

Regards,
Ed

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www.MontereyBayShores.com



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From: Carl, Dan@Coastal [<mailto:Dan.Carl@coastal.ca.gov>]
Sent: Tuesday, April 21, 2015 6:26 PM
To: 'Steven H. Kaufmann'
Cc: Ed Ghandour_SNG; 'Tom Roth'; 'Joel Jacobs'; Watson, Michael@Coastal; Warren, Louise@Coastal
Subject: RE: Condition compliance

Hi Steve,

As discussed, if Ed wants to proceed with the hearing in May, then that will significantly and necessarily curtail the time we have available to meet and try to find common ground. We will do what we can to be ready to meet, but we need to concentrate on getting a staff report out, and yes, staff reports go out this Friday for first mailing. As discussed, I would advocate that it makes more sense to spend a little time meeting to try to find that common ground, then it does to try to rush to a May hearing. That being said, we will prepare for May, and that means we will have limited time to meet. Those are the tradeoffs unfortunately. There are only so many hours in the day. Mike will be in contact as regards potential meeting dates and times. Thanks...

Dan

From: Steven H. Kaufmann [<mailto:SKaufmann@rwglaw.com>]
Sent: Friday, April 17, 2015 10:41 AM
To: 'mike.watson@coastal.ca.gov'; Carl, Dan@Coastal; 'Joel Jacobs'; Ed Ghandour_SNG; 'Tom Roth'
Subject: FW: Condition compliance

Mike,

I spoke with Dan at the Commission meeting and we discussed setting a meeting now on Dan's calendar to discuss dispute resolution and whether we can resolve all remaining issues or at least greatly narrow them. I understand that you are preparing the staff report and Dan indicates that it is due next Friday. If that is for first mailing, then it seems to me that it we may benefit still from a meeting in advance of completing the staff report. Ed indicates that he does wish proceed with the hearing in May. I think it makes the most sense to set a meeting during the week of April 27 in your office. Can you let Ed, Tom and me know? Thanks very much.

~ Steve

Steven H. Kaufmann
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From: Ed Ghandour_SNG [<mailto:edg.sng@equus-capital.com>]
Sent: Thursday, April 16, 2015 5:28 PM
To: 'Watson, Michael@Coastal'; Steven H. Kaufmann; 'Tom Roth'
Subject: RE: Condition compliance

Mike-

I have been out of town, but did receive your letter today responding to our March 13, 2015 transmittal.

We'll review your letter and respond. Are we set for May Commission Dispute Resolution Hearing per the Settlement Agreement requirements? Please confirm.

I would think that it would be advisable for all parties to get together in a meeting beforehand and try to narrow most the issues .

Ed

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From: Watson, Michael@Coastal [<mailto:Michael.Watson@coastal.ca.gov>]
Sent: Wednesday, April 15, 2015 2:30 PM
To: Ed Ghandour_SNG (edg.sng@equus-capital.com); 'Steven H. Kaufmann' (SKaufmann@rwqlaw.com); Tom Roth
Cc: Watson, Michael@Coastal
Subject: Condition compliance

Ed,

Please see the attached compliance letter responding to your March 16, 2015 submittal. If you have any questions about the contents of the letter or any of the items identified in previous letters, please feel free to contact me.

Mike

Mike Watson

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