

CALIFORNIA COASTAL COMMISSION

CENTRAL COAST AREA OFFICE

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HEARING IMPAIRED: (415) 904-5200



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 Issue/Continued De Novo Hearing
 Commission Action 12/12/96 approved with
 amendments to condition 1
 Revised Findings 2/4-7/97
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REVISED FINDINGS

DSL
 1/14/97

LOCAL GOVERNMENT: City of Marina

LOCAL DECISION: Approved with conditions

APPEAL NUMBER: A-3-MAR-96-094

APPLICANT: JOHN KING. KING VENTURES

APPELLANTS: Janie Figen, Ventana Chapter, Sierra Club
 Commissioner Calcagno, California Coastal Commission
 Commissioner Areias, California Coastal Commission

PROJECT LOCATION: 3295 Dunes Drive, City of Marina, Monterey County
 APN 33-192-33

SITE AREA: 19.49 acres: 18 acres estimated above MHW; rest is below mean high
 water (MHW);

COMMISSIONERS ELIGIBLE TO VOTE: Rick, Flemming, Staffel, Wan, Giacomini, Pavley, Campbell,
 Calcagno, and Chairman Areias.

PROJECT DESCRIPTION: **Marina Dunes Resort:** 112 vacation units (average unit: 1000 SF);
 71 hotel units (average unit: 955 SF); 1 manager unit; total square footage of units 175,499.
 Total building square footage for ancillary facilities 60,000 including restaurant/tavern 571 seats, conference
 center, offices, retail, spa and cosmetic surgery clinic, recreation building. Parking garage 12,827 SF. Other
 facilities: 2 tennis courts, pools, 18 public parking spaces and beach boardwalk access. 6.5 acres habitat
 restoration in form of dispersal corridors and buffers. Subdivision into four parcels: Parcel 1, 1.72 acres,
 conference facility; Parcel 2, 2.88 acres, restaurant/spa building; Parcel 3, 3.40 acres, hotel and main lobby
 buildings; Parcel 4, 11.40 acres, vacation unit buildings and recreational building, pools, tennis courts.

SUBSTANTIVE FILE DOCUMENTS: City of Marina Coastal Development Permit File for Marina
 Dunes Resort (not numbered); City of Marina certified Local Coastal Program; Fort Ord Dunes State
 Park, Preliminary General Plan, May 1996, California State Parks. Marina Dunes Habitat Conservation
 Plan, Administrative Draft, November 1990. Marina Dunes Local Coastal Plan Amendment,
 Preliminary Draft, April 1991.

CEQA: Final Marina Dunes Resort Hotel Environmental Impact Report, firma, May 1996. Preliminary Dunes Habitat Restoration Plan, Marina Dunes Resort Hotel, Thomas Moss, FEIR Appendix B.

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REVISED FINDINGS

To facilitate review of the revised findings deletions are ~~struck through~~ and additions are underlined.

On November 14, 1996 the Commission determined that appeal A-3-MAR-96-094 Marina Dunes Resort raised a substantial issue regarding project conformance with policies of the City of Marina certified Local Coastal Program (LCP), opened the de novo hearing, took testimony and then continued the hearing for the proposed development for further consultation and negotiation between the staff and the applicant. The Commission staff met with the applicant at the Commission offices on November 21 and has had numerous telephone communications. The communication and evaluation continued after the staff recommendation for the December 12 hearing was published. The applicant installed story poles for representative heights of buildings and met with staff in the field. For several of the points of contention regarding visual and habitat concerns mutually agreeable resolutions were found and the staff issued (December 12, 1996) an addendum to the staff recommendation which modified the conditions. However, the staff was unable to agree to the density and scale of the project. The proposed vacation resort though a well designed visitor serving use is wholly inappropriate for this dune site pursuant to the policies of the Local Coastal Program.

On December 12, 1996 the Commission voted to approve the project subject to conditions 2 through 12 pursuant to the staff recommendation but voted to amend condition 1 to further limit the density and scale of the project. The staff has revised the staff recommendation to reflect the Commission's action. Revisions resulting from the Commissions' amendment are on pages 3, 4, 5, 9, 10, 22, 24, 35, and 36. The staff recommendation on the revised findings is on page 8.

Please note that the Exhibits were not modified and have not been attached. Copies are available on request from the Central District office, Joy Chase, 408-427-4863.

The ~~outstanding~~ issues are analyzed in the following pages of this staff report. The results of this analysis indicate the need to redesign the project and supplement the local conditions of approval in order to ensure project consistency with the City of Marina certified LCP.

Table 1 below which summarizes the appellant's contentions, applicable LCP policies, project evaluation, and Commission conditions. The staff analysis is based on the project approved by the City of Marina and appealed to the Commission. Hence though several of the issues have been worked out informally with the applicant, for example, relocating the sidewalk along Dunes Drive to preclude fill into the Pond No. 4 habitat area, coastal permit conditions are retained in order to formalize the new agreements.

TABLE 1 - SUMMARY EVALUATION AND SUMMARY CONDITIONS

ISSUE	LCP POLICIES	PROJECT	CONDITION
<p>Emphasis on LCP Implementation Program</p>	<ul style="list-style-type: none"> In the coastal zone uses shall be consistent with the policies of the Local Coastal Land Use Plan. 	<ul style="list-style-type: none"> City staff report states that if project is consistent with Implementation Zoning Ordinance it is consistent with LUP. Land Use Plan policies have not been analyzed. 	<ul style="list-style-type: none"> See Finding 3.
<p>Density/ Intensity</p>	<ul style="list-style-type: none"> project should be less intensive than development in more intensive areas to north and south (cities of Monterey and Santa Cruz). appropriate projects are campgrounds, riding stables, inns and commercial uses dependent upon existing resources and recreational opportunities available in the area. 	<ul style="list-style-type: none"> major coastal destination resort with 184 units averaging 1000 SF; 60,000 SF ancillary facilities, (tennis courts, etc.) on 18 acre site. greater number of units than 87% of all visitor accommodations in the cities of Monterey and Santa Cruz (see Table 2) units three times as large as typical unit (see Table 3) three times number of units per acre for projects in similar resource settings (see Table 4). 571 seat restaurant, lounge & banquet. 	<ul style="list-style-type: none"> See Condition 1 Final Plans submit revised plans for Commission review, so that project intensity is reduced to prevailing pattern for comparables. revised plans to reduce density to 3.5 units/acre with 850 SF average unit size maximum capacity 10,000 SF for ancillary facilities with restaurant capacity of 120 seats.
<p>Type of Use</p>	<ul style="list-style-type: none"> lower cost visitor serving; provide public access land use should be dependent on existing resources and recreational opportunities 	<ul style="list-style-type: none"> consistent as visitor serving use; vacation club allows broad public participation public parking-18 spaces and beach boardwalk access dedicated beach. <u>Inconsistent with LUP: tennis courts.</u> 	<ul style="list-style-type: none"> See Condition 1 Final Plans, Condition 9 Residential Conversions and Condition 10 Access Dedication submit for Exec. Dir. review deed restriction to prevent conversion of visitor units to residential uses submit for Exec. Dir. review

ISSUE	LCP POLICIES	PROJECT	CONDITION
		<p><u>conference center/meeting rooms</u>, cosmetic surgery suite, nightclub <u>are</u> not related to resources or recreational opportunities</p>	<p>legal documents to dedicate public access</p> <ul style="list-style-type: none"> • <u>delete all ancillary facilities from final plans except 120 seat restaurant, cosmetic surgery suite from final plans</u>; prohibit future nightclub
Visual	<ul style="list-style-type: none"> • structures must be hidden or as inconspicuous as possible • max. height 35 ft. • not exceed height of nearest adjacent sand dunes • not visible from Highway 1 or beach if possible • blend in with dunes 	<ul style="list-style-type: none"> • dominates area • exceeds height standards • juts above adjacent dunes • highly visible from Highway 1 and beach • honeymoon suite visible from beach • uses non indigenous landscaping 	<ul style="list-style-type: none"> • see Condition 2 Visual • redesign to meet all standards, submit for Executive Director approval
Impacts to environmentally sensitive habitat	<ul style="list-style-type: none"> • resource evaluation for each site • develop only in disturbed area. • restore and protect dune habitat • site and design to protect habitat 	<ul style="list-style-type: none"> • no evaluation of Dunes Drive right-of-way; unneeded sidewalk intrudes into steep dune slope above vernal pond. • consistent with LCP regarding primary site: sand mining pit, site disturbed, no on- site sensitive habitat • Restoration and Management Plan for site establishes two habitat corridors • corridor interface with adjacent habitat not clear, culverts possibly inadequate, • MCWD dune reserve not clearly buffered • locates honeymoon suite in beach habitat corridor 	<ul style="list-style-type: none"> • see Condition 5 Final Restoration Plan and Condition 7 Habitat Deed Restriction • biological survey of Dunes Drive right-of-way required • preclude fill at west side of Dunes Drive at Pond 4 • review corridor connections with adjacent habitat • evaluate grading contours at south/north property lines to assure habitat continuity • use vegetation indigenous to Monterey Bay • structures within 50 feet of MCWD Dune Reserve to be designed to protect habitat • relocate honeymoon suite out of habitat corridor and out of view • consult with DFG and USFW for final restoration plans, submit for Coastal Commission approval.

ISSUE	LCP POLICIES	PROJECT	CONDITION
Off-site habitat protection and recreational management	<ul style="list-style-type: none"> protect dune habitat against overuse and overcrowding balance level of use with ability to operate, maintain, police and protect beach and dune environment 	<ul style="list-style-type: none"> project generates 250,905 visitors/yr. almost doubling visitor population west of Highway 1. Habitat Management Program proposed for off-site impacts; funded by Habitat Conservation Fund. Monitors for habitat and ameliorates impacts. Conceptually consistent with LCP. adequacy of Program and funding not substantiated. impacts on public agencies' abilities to protect and maintain habitat and provide public safety could be significant. Concerns raised by USFWS, DPR, and Monterey Regional Park District. 	<ul style="list-style-type: none"> see Condition 8 submit final Habitat Management Program and Conservation Fund proposal for Commission approval. consult with affected agencies and landowners to evaluate adequacy of personnel and funding for restoration, maintenance, and security and incorporate recommendations into Final Habitat Management Program.
Cumulative Impacts on habitat and public agencies' program	<ul style="list-style-type: none"> protect dunes ESH against overuse and overcrowding balance level of use with ability to operate, maintain, police and protect beach and dune environment 	<ul style="list-style-type: none"> intensity of project could be precedential for buildout of dunes. At same intensity and based on a previous (but unapproved) planning process (HCP/LCP), buildout of Marina Dunes Resort and two other major properties in dunes (Lonestar and Granite Rock) would result in an additional 2,250,905 visitors. 	<ul style="list-style-type: none"> reduce density as required above. require Habitat Management Program and Fund to incorporate participation of future developers/landowners in program and to coordinate with Habitat Conservation Program as finally approved by USFWS and Coastal Commission.
Cumulative Traffic Impacts	<ul style="list-style-type: none"> Coastal Act 30250(a) locate new development where no 	<ul style="list-style-type: none"> buildout at intensity proposed would result in need for freeway frontage road 	<ul style="list-style-type: none"> Condition 1 Final Plans and Condition 11 Traffic Information. reduce density as required

ISSUE	LCP POLICIES	PROJECT	CONDITION
	<p>cumulative impacts on coastal resources.</p> <ul style="list-style-type: none"> • Coastal Act 30210 maximize access and recreation consistent with public safety and protection of resource areas from overuse. • All policies of LCP listed under Cumulative Impacts above. 	<p>between Lonestar and Dunes Drive though an ESH.</p> <ul style="list-style-type: none"> • Incomplete information: require confirmation from CalTrans regarding methodology used for traffic for traffic generation. 	<p>above.</p> <ul style="list-style-type: none"> • submit CalTrans confirmation.

I. BACKGROUND

The subject project was approved by the City of Marina Planning Commission on June 24, 1996. This approval was appealed to the City Council. The appeal was denied and the project approved by the Marina City Council on July 30, 1996. The final conditions of the City's approval are attached to this report as Exhibit A.

The approval was appealed to the Coastal Commission by the Ventana Chapter of the Sierra Club and two commissioners. The appeal was filed on August 16, 1996. The Commission opened and continued a hearing on the matter on September 12, 1996, pending receipt of the City's administrative record. On November 14, 1996 the Commission determined that appeal A-3-MAR-96-094 raised a substantial issue regarding project conformance with policies of the City of Marina certified Local Coastal Program (LCP), open the de novo hearing, took public testimony, and continued the hearing for the proposed development to allow further consultation and negotiation between the staff and the applicant.

The Commission staff met with the applicant at the Commission offices on November 21 and has had numerous telephone communications. For several of the points of contention mutually agreeable resolutions have been found. However, the staff was unable to agree to the density and scale of the project. The proposed vacation resort though a well designed visitor serving use is wholly inappropriate for this dune site pursuant to the policies of the Local Coastal Program.

II. DE NOVO HEARING PROCEDURES

When substantial issue is found, the Commission proceeds to a full public hearing on the merits of the project. If the Commission conducts a de novo hearing on the permit application, the applicable test for the Commission to consider is whether the proposed development is in conformity with the certified Local Coastal Program.

In addition, for projects located between the sea and the first public road paralleling the sea, as is the proposed development, Section 30604(c) of the Coastal Act requires that a finding must be made by the approving agency, whether the local government or the Coastal Commission on appeal, that the development is in conformity with the public access and public recreation policies of Chapter 3 of the Coastal Act. In other words, in regard to public access and recreation questions, the Commission is required to consider not only the certified LCP, but also Chapter 3 policies when reviewing a project on appeal.

Any person may testify during the de novo stage of an appeal.

III. STAFF RECOMMENDATION ON REVISED FINDINGS

The staff recommends that the eligible Commissioners adopt the following revised findings:

Commissioners eligible to vote on the revised findings are those who were in the majority on the vote taken to approved the project on December 12, 1996. Those Commissioners are Rich, Flemming, Staffel, Wan, Giacomini, Pavley, Campbell, Calcagno, and Chairperson Areias.

IV. STANDARD CONDITIONS

Standard Conditions

1. Notice of Receipt and acknowledgment. The permit is not valid and development shall not commence until a copy of the permit, signed by the permittee or authorized agent, acknowledging receipt of the permit and acceptance of the terms and conditions, is returned to the Commission office.
2. Expiration. If development has not commenced, the permit will expire two years from the date this permit is reported to the Commission. 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. Compliance. All development must occur in strict compliance with the proposal as set forth in the application for the permit, subject to any special conditions set forth below. Any deviation from the approved plans must be reviewed and approved by the staff and may require Commission approval.
4. Interpretation. Any questions of intent or interpretation of any conditions will be resolved by the Executive Director or the Commission.
5. Inspections. The Commission staff shall be allowed to inspect the site and the project during its development, subject to 24 hour advance notice.
6. 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.
7. 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.

V. SPECIAL CONDITIONS

1. FINAL PLANS

PRIOR TO TRANSMITTAL OF THE COASTAL DEVELOPMENT PERMIT, the permittee shall submit to the Executive Director for review and approval revised final plans including grading, drainage, site, elevation and sections, and related plans which shall provide for:

- a. a maximum density of 3.5 units ~~(at 4 visitors per unit)~~ of overnight visitor accommodations per gross acre of the approximately 18 acres of privately owned land; ~~or any other number of units that does not generate more than 252 persons a day at 100% unit occupancy. For purposes of compliance any unit over 400 square feet shall be deemed to serve more than two people.~~
- b. average size of individual guest units shall not exceed 850 ~~900~~-SF.
- c. ancillary facilities shall be limited to ~~of conference space/meeting rooms/retail/commercial/office with a combined square footage not to exceed 17,000 SF~~ including a restaurant/lounge with a maximum seating capacity of 120 ~~200~~
- d. ~~deletion of cosmetic surgery suites; no future nightclub shall be allowed.~~
- e. d. deletion of bluff edge honeymoon suite.

- f. e. removal of existing abandoned bluff edge sand mining building and other sand mining buildings on site.

The site plan shall be reviewed in field with the U. S. Fish and Wildlife Service (USFWS) and the California Department of Fish and Game (DFG) to affirm that the reardune habitat corridor along Dunes Drive joins, with a minimum width of 100 feet, good native dune habitat ("conserved habitat" as shown on the Marina Dunes Land Use and Habitat Restoration Plan, Figure 7 of the Draft HCP) on the adjacent Granite Rock property. To provide for a viable continuous corridor, the southerly adjoining Marina City Dunes Drive right-of-way will be restored by the permittee and shall become a permanent part of the extended habitat corridor that will connect Granite Rock, Marina Dunes Resort, the Marina Coast Water District/City of Marina Dunes Drive right-of-way. The restoration of this off site area shall be undertaken concurrent with on-site restoration pursuant to Conditions 5, 6 and 7 below. The off site restoration shall be identified as a contribution to the Habitat Management Program/Mitigation Funding Program pursuant to Condition 8 below and shall fulfill such portion of the permittee's obligation to that Program as is determined appropriate through the process.

The permittee also agrees through acceptance of this permit that (1) the number of culverts to be installed to allow for black legless lizard dispersal shall be determined by the USFWS and the DFG, (2) that the maximum width for all improvements for each entry road across the restoration area shall be 24 feet, and (3) that no retaining walls or other structures shall encroach upon the 50 foot buffer along the northern property line, nor shall retaining walls or other structures interrupt the habitat corridor continuity with adjacent properties on either the oceanfront or Dunes Drive habitat corridors.

A construction phasing schedule shall be submitted for review and approval with the final plans. The schedule shall provide that all public access improvements approved as part of this project shall be installed and open for use at the earliest opportunity. The permittee will assure that rudimentary public access improvements will be available throughout project construction when such access will not conflict with public or worker safety. At a minimum the approved public access improvements shall be in place prior to occupancy of any structure.

2. VISUAL RESOURCES

The final plans pursuant to Special Condition 1 above shall meet the Local Coastal Program criteria for visibility¹ and shall include, but not be limited to, the following:

- a. No structures including "architectural extensions" shall extend above the nearest adjacent dune, as seen in views from Highway 1. Specifically, no portion of the project shall be visible to the unaided eye as viewed from the Lapis Overcrossing (southbound, Highway One; viewing position S1 on Exhibit 4 map); nor shall any portion visually extend above a horizontal line across the site represented by a projection of the Marina Coast Water District fence closest to and parallel to Dunes Drive (applies to both southbound and northbound views from Highway One perpendicularly along the axis of the site). (Viewing position S1, S3, and N3 on Exhibit 4 map).
- b. The horizon formed by existing dune ridges and existing dunecrest development on adjacent parcels shall be visible above the proposed structures as seen from primary viewpoints on

¹ View points or corridors may be modified to reflect actual areas of visibility determined by staff observation of story poles. See Map on page 1 of Exhibit 4.

Highway One, Dunes Drive, and nearby public beach access points to the north and south of the site. Specifically, these vantage points include: southbound Highway 1 immediately south of the R.V. Park; northbound Highway One from a point near Pond No. 1 to the Reservation Road Overpass; seaward edge of Dunes Drive, across Pond No. 4 from a point projected from the northerly boundary of Marina State Beach and also across the site from a point perpendicular to the Granite Rock property; and the mean high tide line of the beach, at the northerly boundary of Marina State Beach and the southerly boundary of the Monterey Peninsula Regional Park District accessway. (Viewing positions S2, N1, N2, D1, D2, B1 and B3 on Exhibit 4 map.)

- c. The horizon formed by existing dune ridges and (seaward of the midpoint of the property) the Santa Cruz Mountains shall be visible above the proposed structures as seen from Viewing Position D3.
- d. No structures shall be visible from the mean high tide line of the beach below that portion of the bluff located on project site, except sand fences, habitat enclosures, and boardwalks as needed to insure site stability and provide for landscape restoration; and a beach access stairway pursuant to the Final Plans. (Includes viewing position B2 on Exhibit 4 map.)
- e. All colors shall be subordinate and compatible with the dune colors to allow the structures to visually recede into the dune. Samples of materials and colors shall be submitted for the review and approval of the Executive Director as requested.
- f. The structures shall be designed, sited, and landscaped to be as inconspicuous as possible, as seen from public viewpoints.
- g. Night lighting shall be carefully designed to prevent impacts on beach and bay users and Highway 1 travellers.
- h. A signing program shall be submitted for review and approval of the Executive Director. (This component of the visual resources review may be deferred but must be submitted prior to occupancy of any structures.)

Following submittal of the final plans the representative structures shall be staked in the field with story poles for review and approval by Coastal Commission and Marina City staff to determine conformance with the Local Coastal Program and permit visual criteria stated above. Computer simulations or other graphics that clearly demonstrate the visual impacts shall be prepared from photographs of the staked site and submitted to the Executive Director for documentation purposes.

3. COASTAL COMMISSION REVIEW

In the event of disagreement between the applicant and the Executive Director, either may request that the Coastal Commission review the final plans and/or programs for conformance with the permit conditions. The review shall be scheduled for the next feasible hearing in Northern California following the request.

4. DEVELOPMENT ENVELOPE LANDSCAPING

Pursuant to USFWS direction plant species indigenous to the Monterey Bay region are preferred for landscaping within the development envelope. All plant species used shall be approved by the USFWS and the Department of Fish and Game. Any non-indigenous species must be non-invasive and shall also be visually compatible with the dune landscape. The final landscape plan shall be submitted to the Executive Director for review and approval prior to commencement of installation of landscaping.

5. FINAL ON -SITE HABITAT RESTORATION PLAN

WITHIN SIXTY DAYS OF TRANSMITTAL OF THE COASTAL DEVELOPMENT, the permittee shall submit to the Executive Director for review and approval, a Final Restoration Plan prepared in consultation with and approved by the U.S. Fish and Wildlife Service (USFWS) and the California Department of Fish and Game (DFG). Approval of the plan by the Executive Director must be obtained prior to occupancy of any structure. The Final Restoration Plan shall include the following:

- a. A biological survey of all areas to be disturbed by construction not yet surveyed, if any, and, specifically, the right-of-way along Dunes Drive where circulation improvements are proposed; survey results are to be reviewed by the DFG and USFWS to assure adequate mitigation or redesign as necessary.
- b. Avoidance of any fill which would encroach on the slopes of the Vernal Pond No. 4 wetland on the west side of Dunes Drive. If in the future a sidewalk is proposed on the Vernal Pond Reserve frontage, it shall not encroach seaward of the edge of existing pavement. However, with the concurrence of the California Department of Parks and Recreation and the California Department of Fish and Game a boardwalk style walkway may be considered adjacent to Dunes Drive to link the State Park access trails with the permittee's site.
- c. Restoration with native dune vegetation of all areas in the Dunes Drive right-of-way adjacent to and south of the project site (to Reservation Road) that are not to be developed. Authority to restore these areas shall be obtained from the City and submitted for Executive Director review and approval.
- d. Measures to preclude shading, irrigation overspray, trampling or other impacts to the dune reserve on the Marina Coast Water District property and habitat on the Granite Rock property.

6. ON-SITE AND MARINA DUNES DRIVE RIGHT OF WAY HABITAT RESTORATION PHASING

PRIOR TO TRANSMITTAL OF THE COASTAL DEVELOPMENT PERMIT, the permittee shall submit to the Executive Director for review and approval,

- a. a construction schedule that shows phasing of grading, utility, and building construction with On-site and Marina Dunes Drive right-of-way Habitat Restoration Plan implementation such that habitat restoration components are synchronized with the development components and occur at the earliest possible opportunity;
- b. a performance bond with the Coastal Commission that bonds for all components of restoration including a minimum five year maintenance program to follow completion of initial restoration. The amount of the bond shall be sufficient for all elements of the approved restoration plan for the first five years but not less than \$107,200 (\$15,000/ac. X 6.5 ac. X 110%) plus annual maintenance costs for five years. With the approval of the Executive Director, the amount of the bond may be adjusted as the resort and restoration projects each progress. The performance bond will provide for completion of Final Restoration Plan installation measures by December 1998 whether or not all the development phases of the project are constructed.

7. HABITAT RESTORATION DEED RESTRICTION

PRIOR TO ISSUANCE OF ANY GRADING OR BUILDING PERMIT, OR RECORDATION OF THE SUBDIVISION FINAL MAP, the permittee shall execute and record a deed restriction, in a form and

content acceptable to the Executive Director, for the purpose of protecting dune habitat restoration areas. The area covered by the deed restriction shall be the identified habitat restoration areas pursuant to the approved site plan and Final Restoration Plan. The document shall be recorded free of prior liens and any other encumbrances which the Executive Director determines may affect said interest. The restriction shall run with the land in favor of the People of the State of California, binding all successors and assignees, and shall be irrevocable.

8. INTERIM AND FINAL OFF-SITE MITIGATION FUND FOR ENVIRONMENTALLY SENSITIVE HABITAT/PUBLIC MANAGEMENT/SAFETY

PRIOR TO RECORDATION OF THE SUBDIVISION FINAL MAP OR OCCUPANCY OF ANY STRUCTURE the permittee shall submit to the Executive Director for review and approval, the final interim Habitat Management Program/Mitigation Funding Program which is required pursuant to City Mitigation A-8 to ameliorate actual off site impacts.

This interim program will be developed for implementation with the subject project during the period prior to the City's preparation and presentation for Commission action on a final program. The interim program shall continue until the final program is fully certified and in effect.

The interim program shall be developed in consultation with the U. S. Fish and Wildlife Service, the Department of Fish and Game, the California Department of Parks and Recreation, the Monterey Peninsula Regional Park District and the City of Marina. The final interim program shall include a re-examination of the capabilities of the City Public Safety Department and the State Department of Parks and Recreation to adequately protect natural resources and provide for public safety and shall include strategies to efficiently provide for public services.

Subject to City approvals, permittee shall initiate off-site improvements under this interim program by restoring the slopes within the City of Marina's Dunes Drive right-of-way at Pond No. 4 concurrently with on-site restoration improvements. Any such off-site improvements by permittee shall be credited against interim and final funding obligations established herein.

The Interim Habitat Management Program and Fund shall be structured to allow its incorporation into the future final Habitat Conservation Plan/Local Coastal Program Amendment currently being planned by the City.

Permittee agrees to provide educational exhibits and/or handouts for Marina Dunes Resort guests which inform the visitors about the sensitivity of dune vegetation and the need to avoid trampling of restored areas. Informational signage on the resort property shall be a part of the interim and final management programs.

In reviewing this interim program, the Executive Director may require performance guarantees or sureties in an amount determined to be sufficient to insure the permittees participation in the interim program, and to guarantee participation in a final program approved by the City of Marina and the Coastal Commission.

Any required guarantees or sureties for the interim program shall be in place prior to occupancy of any structure on the subject site.

The permittee shall submit the interim program to the Executive Director within 60 days of transmittal of the Coastal Development Permit. At the time of transmittal the permittee shall simultaneously submit said interim program to the U.S. Fish and Wildlife service, the Department of Fish and Game, the California Department of Parks and Recreation, the Monterey Peninsula Regional Park District, and the City of Marina for review and comment. Executive Director approval shall not occur prior to consultation with the noted agencies.

Approval by the Executive Director of the interim program shall be required prior to occupancy of any structure. If the permittee elects to proceed with subdivision of the subject property prior to approval of the interim program, the Executive Director may require a declaration or other instrument to be recorded with the subdivision disclosing this requirement and binding successors in interest to any of the subdivided parcels to satisfy this condition and interim program prior to occupancy of any structures on the subject property.

The interim program shall be approved by the Executive Director and implemented by the permittee (in place and functioning) prior to occupancy of any structures.

This interim program shall remain in full force and binding effect until such time as the HCP/LCP Amendment contemplated by the City of Marina is fully certified by the Commission and accepted by the City.

The final program shall be developed by the City of Marina in consultation with the U.S. Fish and Wildlife Service, the Department of Fish and Game, the California Department of Parks and Recreation, the Monterey Peninsula Regional Park District, and the City of Marina. This final program shall address all the issues raised in the interim program, and such other issues raised during the public review process at the City of Marina and through the agency referrals.

The permittee shall cooperate with the Executive Director in the timely preparation of final documents and declarations to implement this condition.

9. VISITOR SERVING USE ONLY

PRIOR TO TRANSMITTAL OF THE COASTAL DEVELOPMENT PERMIT, the permittee shall submit to the Executive Director for review and approval, a deed restriction which states that this coastal permit authorizes the development of the Marina Dunes Resort, a visitor serving use as set forth in Marina LCP Amendment No. 1-96. This deed restriction shall also specify that visitor length of stays are limited to no more than 29 consecutive days, and no more than 84 days per year. Furthermore, the deed restriction shall state that conversion of any portion of the approved facilities to a private use, or the implementation of any program to allow extended or exclusive use or occupancy of the facilities by an individual or limited group or segment of the public beyond that permitted by Marina LCP Amendment No. 1-96 is specifically not authorized by this permit and would require an amendment to this permit. Upon approval of the Executive Director, the deed restriction shall be recorded within 15 days and a conformed copy submitted for the record. ON AN ANNUAL BASIS COMMENCING AT THE CONCLUSION OF THE FIRST YEAR OF OPERATION, the permittee shall submit to the Executive Director copies of the project's Transient Occupancy Tax records in order to confirm compliance with this condition.

10. ACCESS DEDICATIONS

PRIOR TO ISSUANCE OF ANY BUILDING PERMIT, OR ANY GRADING PERMIT, OR RECORDATION OF THE FINAL SUBDIVISION MAP, the permittee shall submit to the Executive Director for review and approval, the legal documents required by Condition P3 of the City's conditions for vertical and lateral coastal access as required in the Local Coastal Program by proper legal instrument approved by the City Attorney in a form acceptable to the California Coastal Commission.

11. TRAFFIC DATA

PRIOR TO ISSUANCE OF ANY BUILDING PERMIT OR RECORDATION OF THE SUBDIVISION MAP, the permittee shall submit to the Executive Director for review and approval, documentation from the Department of Transportation (Larry Newland, Intergovernmental Review Coordinator) accepting as "accurate and reasonable" the traffic generation methodology used by the EIR consultant. If such documentation indicates a material change to the project is necessary, an amendment to the permit will be required.

12. INCORPORATION OF CITY CONDITIONS INTO COMMISSION COASTAL development PERMIT

All conditions of City of Marina Coastal Development Permit for Marina Dunes Resort become conditions of this coastal development permit, except as modified by Conditions #1-11 above. (See Exhibit A of this report for a copy of the local conditions of approval). City conditions modified by this approval include W14 (improvement plans for Dunes Drive) and DR2 (landscape plant palette). As this permit requires a final *on-site* restoration plan (Condition #5) and a final set of revised building and site plans (Condition #1), which may require further City review and modification of City-imposed conditions, the permittee shall submit any such revised City approvals to the Executive Director for review along with the plan submittals. Any revised conditions will be reviewed for materiality, and any determined to be material will be submitted to the Commission for review in accordance with its permit amendment procedures. These revised conditions would then be substituted for those shown in Exhibit A upon Commission approval.

As such conditions incorporated into this coastal development permit also serve as City Use Permit, Design Approval and other city permit conditions, and to avoid duplication of work, the Coastal Commission's District Chief Planner is authorized to determine, in consultation with the Marina City Planning Director, which conditions are solely the responsibility of the City to sign off and which also must be reviewed and approved by the Executive Director or the Commission. This determination shall be based on which, if any City conditions, address requirements for Commission (or Executive Director) review specified in Special Conditions #1-11 above.

PRIOR TO ISSUANCE OF ANY BUILDING PERMIT OR ANY GRADING PERMIT, OR RECORDATION OF THE SUBDIVISION MAP, the permittee shall provide evidence to the Executive Director that those conditions requiring satisfaction prior to the commencement of any work have been signed-off by the appropriate City official. Evidence of subsequent condition compliance must also be submitted to the Executive Director at the required stage. In the event that City officials do not exercise such authority, permittee shall submit condition compliance materials to the Executive Director for review and approval.

VI. RECOMMENDED FINDINGS AND DECLARATIONS

The Commission hereby finds and declares:

1. Project Description, Location and Surrounding Development

The City of Marina is bisected by Highway 1. The urbanized areas of the City are inland of the Highway. Most of the Coastal Zone lies seaward of the Highway. Areas landward of the highway that are within the Coastal Zone are primarily vernal ponds and their associated wetlands or (former) agricultural fields. Seaward of the Highway are the Marina Dunes, a part of the South Monterey Bay dune complex which occupies the central and southerly coastal areas of Monterey Bay and extends from the Salinas River southward to Canyon del Rey, a distance of approximately 12 miles.

Within the City of Marina are approximately 626 acres of largely undeveloped seaside dunes stretching along three miles of Monterey Bay. Reservation Road separates the dunes to the north and south. South of Reservation Road is the Marina State Beach, a day use facility with 170 acres and 1.2 miles of shoreline. To the north of Reservation Road are the Marina Coast Water District facility of 12 acres with 375 feet of shoreline; the applicant's Monterey Dunes Resort site of 19 acres with 540 feet of shoreline where limited sand extraction continues; the Granite Rock parcel of 50 acres with 900 feet of shoreline (formerly used for sand mining); the Monterey Regional Park District beach access site of 10 acres with 180 feet of shoreline; and the Lone Star Properties of 368 acres with 1.25 miles of shoreline where a full scale sand mining operation is on-going. See Exhibit 1, Map of Dune Properties.

The Highway 1 Reservation Road off-ramp is the main access to the City of Marina. On the oceanside of the highway Reservation Road connects to Dunes Drive, a short frontage road running north for approximately 2000 feet. The applicant's 19 acre site has frontage on Dunes Drive and extends to the ocean. Water and sewer lines extend the length of Dunes Drive. The LCP has designated the three oceanside sites with access from Dunes Drive -- Marina Dunes Resort, Granite Rock, and Monterey Peninsula Regional Park District -- as "Coastal and Development/Secondary Combining District" which allows development of coastal dependent and coastal access uses. The applicant's site has been approved for visitor serving uses under the Planned Commercial District as well. The LCP zoned the three parcels east of Dunes Drive as "Planned Commercial". They are developed as the 83-unit Travellodge on 1.65 acres; the 114 units InnCal on 1.82 acres; and the 65 space Chiappes Recreational Vehicle Park on 1.57 acres.

The project site is identified by the applicant as being 19.49 acres in size. This includes an unidentified portion of the site which is below the mean high tide line and, hence, is State Lands rather than privately owned. According to the EIR, 16 acres is inland of the bluff. EIR Map 3, Ownership and LCP Policy, shows the project site as 17.3 acres. The differences in areas quoted for the applicant's site are not clear. The City coastal permit, therefore, requires that the mean high tide be shown on the final grading and development plans. The site has been mined for sand for 60 years lowering the grade to well below adjacent properties. The proposed building and paving will cover 6.45 acres and landscaping 3.97 acres; 6.5 acres will be restored dune habitat. The balance of the site is apparently beach from the toe of the frontdune bluff to the boundary below the mean high tide. The Commission staff has estimated the area above mhw to be approximately 18 acres. (Again, lands below mean high tide are State Lands.) Recommended Condition #1 of this coastal development permit limits project density to 3.5 units/acre.

The proposed development consists of a 112 unit vacation club resort with an average unit size of 968 SF and a 72 unit hotel with an average unit size of 1075 SF (175,499 SF total). The vacation club members buy vacation credits which can be used in different resorts in the World Mark program. Vacant vacation units can also be rented as hotel units by the general public on a "space available" basis. The proposed development includes a conference center/retail facilities/office, restaurant/lounge/banquet facilities with seating for at least 571 people, health club, recreational building (60,000 SF total), two tennis courts, a sports court, a pool, a kids pool and playground; and 491 parking spaces including 18 public parking spaces for beach access. A boardwalk to the beach will serve the facility users and the public.

The parcel will be subdivided into four parcels: Parcel 1, 1.72 acres, conference facility; Parcel 2, 2.88 acres, restaurant/spa building; Parcel 3, 3.40 acres, hotel and main lobby buildings; Parcel 4, 11.40 acres, vacation unit buildings and recreational building, pools, tennis courts. Proposed Parcels 3 and 4 run the length of the existing parcel from Dunes Drive to the ocean. Proposed Parcel 1 has Dunes Drive only frontage, and proposed Parcel 2, ocean only frontage. Dune restoration areas are along the Dunes Drive frontage and the ocean frontage, hence, all four proposed parcels have areas of dune restoration.

The development will have 9.4 units an acre if the entire 19.49 parcel is considered, or 10.2 units an acre if the 18 acres above mean high water is used.

2. Standard of Review

The standard of review for appeals in jurisdictions with certified Local Coastal Programs (LCP), like Marina, is the Local Coastal Program. For projects like the Marina Dunes resort which are located between the first through public road and the sea, the Commission must also find that the proposed development is consistent with the public access and recreational policies of the Coastal Act (PRC 30603).

The importance of the dune habitat which makes up most of Marina's Coastal Zone was recognized in the 1982 Commission staff report for certification of the Marina City Local Coastal Program which stated, "the principal coastal planning concerns in Marina relate to the future of the sand dunes."

Planning Background. The dunes in the City of Marina are primarily undeveloped and, although sand mining has and does occur, are substantially undisturbed. The LCP identifies the foredune, dune and grassy inland areas as containing potential habitat for rare and endangered plants and animals. The LCP generally mapped disturbed areas and a draft Habitat Conservation Plan/Local Coastal Program Amendment (HCP/LCP) more specifically mapped areas of disturbance, types of vegetation, and areas where protected species are or are likely to be found.

The specific LCP policies and regulations applicable to the different elements of the project and the project's consistency with them are described in detail in the following findings.

Since certification of the LCP, a planning effort for the dune area was undertaken but not completed. In 1986 as a condition of a legal settlement between the Sierra Club and the City of Marina over the development of two motels (Travellodge and Days Inn) on the east side of Dunes Drive, the City created the Marina Coastal Zone Planning Task Force to resolve the ongoing debate regarding development and conservation of resources in the dunes. The task force was to oversee the development of a Habitat Conservation Plan and an amendment to the Local Coastal Program (HCP/LCP). The Habitat Conservation Plan identified the biological resource values of the dunes including a number of sensitive species. A Habitat Conservation Plan is essentially a contract (a Section 10(a) permit) between the U.S. Fish and Wildlife Service, the landowner, and the local jurisdiction to protect, enhance and/or restore the species of

concern. The plan would allow incidental take of species in designated areas. Completion of the proposed HCP and the LCP amendment (which would modify the certified LCP to include the HCP concerns as well as to provide other standards) would have more specifically defined the allowed development in the dunes.

Development proposals for the dune area were put on hold while the Task Force of landowners, city, resource agencies and environmental groups worked. The Commission was not a member of the Task Force but staff participated at the meetings and in writing throughout the process when staffing resources allowed. One of the most debated issues among all parties was the scale and density of the future developments. It was the opinion of Commission staff that, among other issues, the draft proposed densities were inconsistent with the LCP direction to maintain low intensity, low impact, recreational uses and support services and would have significant impacts on the natural and visual resources of the area. The draft was completed in 1991 but was not adopted by the City, nor submitted to the Coastal Commission. Processing was delayed while the City dedicated staff resources to the Fort Ord Reuse Authority Plan.

The draft Marina Dunes Habitat Conservation Plan and draft Local Coastal Program Amendment of 1991 thus have no legal standing. The draft, however, provided additional mapping and data on dune resources and a methodology for restoring, funding and managing dune habitat and the context within which to consider appropriate development locations and densities. The HCP/LCP draft may be viewed as providing another source of information on the dune habitat. The applicant has used the draft HCP/LCP extensively for background information and, among other applications, to formulate units per acre and approaches to mitigating impacts. The U. S. Fish and Wildlife Service in response to extensive use of the HCP in the Draft EIR clarified,

"... that the HCP was never approved by the Service and that a permit, pursuant to section (10(a)(1)) of the endangered Species Act of 1973, as amended (Act), was not issued. While the City of Marina (City) may find useful information and general planning guidance in the draft HCP, the City is not authorized to take a listed species under this plan."

The draft HCP/LCP is referenced as needed to clarify issues but is not a binding planning document. The standard of review for this appeal is the presently certified Local Coastal Program and the access and recreation policies of Chapter 3 of the Coastal Act.

Substantial Evidence in the Record. Decisions of the Coastal Commission et al. must be supported with substantial evidence in the record (Sundstrom vs. The County of Mendocino). Commission coastal permit conditions require design revisions that may substantially change the Marina Dunes Resort project. To avoid unnecessary additional review by the Commission, staff has worked with the applicant in an attempt to define within the conditions of the permit the significant parameters of the development and in cases where resource issues are not fully resolved has required in the conditions of the coastal permit the review and approval by the resource agencies with expertise, e.g., USFWS and California Department of Fish and Game. The staff has recommended a condition that provides that if there is disagreement on the final plans, the Executive Director or the applicant may request Commission review. Condition 8, regarding the Final Management Program/Mitigation Funding Program for off-site impacts does recommend Commission review because of the number of unknowns and the potential importance of the program on future planning.

3. City's Review of Project Based Primarily on the Implementation Plan Portion of the Local Coastal Program; Land Use Policies (LUP) Not Adequately Addressed.

The City of Marina Local Coastal Program received final certification in December 1982. The Program consists of a Land Use Plan document and an implementation portion consisting of two documents, the Marina Local Coastal Program Implementation Plan and the Marina Zoning Ordinance (MZO). The Implementation Plan is descriptive of the access, coastal protection structure, and habitat implementation measures and of the administrative procedures for coastal permits. It also lists the zoning ordinance modifications that were required for certification of the Local Coastal Program.

The fundamental problem with City review of this project is that they focused on the Implementation portion of the LCP and did not adequately address LUP policies. They also relied on the uncertified and unapproved Habitat Conservation Plan/Local Coastal Program policies to determine consistency with the Local Coastal Program. Finding No. 1 of the City of Marina Staff Report for the City Council, July 30, 1996, hearing on the project states in part:

Since Marina's Local Coastal Implementation Plan (LCIP) by definition contains the measures necessary to implement the LCLUP (Local Coastal Land Use Plan), a conclusion that a project will be consistent with these implementation measures logically leads to and supports a conclusion that the project is also consistent with the LCLUP and its component Planning Guidelines, even where the Planning Guidelines might present ambiguities if LCIP implementation measures were absent. The LCLUP is inherently more general than the LCIP with possible ambiguities in how it might be applied in the absence of implementation measures whereas the addition of the certified LCIP inherently provides for more precision in the application of its measures which implement the LCLUP and its Planning Guidelines. Marina's LCIP contains precise measures prescribing height limits, means of measuring these, and the treatment of the heights of architectural extensions.

Contrary to the City's finding, the Zoning Ordinance actually has few standards that specifically apply to coastal development. Throughout the Zoning Ordinance the reader is referred back to the Land Use Plan for guidance as to uses and standards appropriate to the coastal zone. *In all cases, it is required that Land Use Plan and coastal development permit regulations prevail when conflicts arise.*

The Commission Staff Recommendation (April 9, 1982) for the City of Marina Implementation Plan summarized the Implementation:

Implementation of Marina's adopted LUP policies is accomplished through a series of additions and revisions to the City's existing Zoning Ordinance. The Implementation Plan creates an overlay Coastal Development Permit Combining District (CP)(17.43), governing the City's coastal zone, in which *all new development will be reviewed against the policies of the City's adopted Coastal Land Use Plan.* (Emphasis added.)

In order to be consistent with the Marina LCP, a project must comply with zoning and Land Use Plan policies. In the Implementation Zoning Ordinance the Coastal Permit Overlay District covers the entire Coastal Zone and all uses are conditional. If there are conflicts between the underlying zoning district and the Coastal Permit Overlay District, the Coastal Permit District regulations prevail. As a result of the Coastal Permit Overlay District, in the Planned Commercial District (PC), the district of the project site, "the uses permitted shall be determined by the *Land Use Plan*" rather than the PC District. Additionally, the standards for height and coverage are subject to consistency with the policies of the *Land Use Plan*.

Chapter 17.06 General Zoning Regulations, Section 17.06.020 Use regulations, K. States:

In the coastal zone the proposed use shall be consistent with the designation and policies of the General Plan and the Local Coastal Land Use Plan.

For all significant issues, the Implementation and Zoning Ordinance refers the decision makers back to the Land Use Plan to evaluate coastal zone development proposals, and the Land Use Plan (p.1) states, "In case of conflicts between policy statements, the policy *most protective* of the coastal resources shall prevail.

It is clear that consistency with the Implementation measures without consideration and reference to the Land Use Plan does not meet the requirements of the Local Coastal Program because a significant portion of the LCP is simply not being acknowledged or applied to the project. The City's Finding No. 1 does not accurately characterize the relationship of the Implementation Plan and the Land Use Plan and has resulted in a flawed analysis of the project because key LUP policies have not been adequately addressed.

The City has stated that the LUP policies are general and thus difficult to apply to specific development proposals. The Commission acknowledges that the City's Local Coastal Program does not have the detailed standards that facilitate analysis. The Land Use Plan states goals and does not provide specific quantifiable criteria such as number of units per acres but offers more general guidance regarding appropriate land uses in the dunes such as those uses "oriented toward less intensive, lower cost visitor facilities". However, LUP policies do provide examples of uses envisioned for the project site: "hanggliding equipment sales, commercial overnight campgrounds, riding stables, inns and commercial uses dependent upon existing resources and recreational opportunities available in the area."

Meanwhile, when the Implementation Zoning Ordinance does provide coverage and height criteria for the Planned Commercial District, a district which applies to parcels both in and out of the Coastal Zone, it refers the decision maker back to the Land Use Plan policies to guide projects in the Coastal Zone. This reflects the fact that the Marina Dunes are an environmentally sensitive, visually significant, and recreationally valuable resource of statewide importance. The City's Local Coastal Program intends that parcels sited in the dunes require individualized review because they are part of a special larger resource. The Implementation Zoning Ordinance requires a careful interpretation of the regulations for commercial development in the Marina Dunes to carry out the spirit and intent of the Local Coastal Program.

Some of the differences between the City's approach in evaluating the project and that of the Commissions is a result of the City's greater reliance on the Implementation Plan. The City's argument for doing so is based on the fact that the Land Use Plan is overly general. Although it is true that the LUP policies are less specific than the ordinances, this fact should not lead to the conclusion that the LUP can be ignored in favor of Zoning standards which untempered by the LUP policies are generally more appropriate to the east side of Highway 1 where urban development densities exist and fewer natural resources remain.

4. Type of Use

Policies and Regulations Governing Type of Use. The site of the proposed development is zoned Coastal and Development/Secondary Use District CD/SU. In the CD District all uses are conditional (17.25.030). In addition to coastal dependent and coastal access uses, visitor accommodations can be allowed in the CD District (17.25) when it is combined with the Secondary Use District (SU) (17.41) if the Planning Commission finds that there is no feasible coastal dependent use for the site. On February 12, 1996 the Planning Commission determined by Resolution 1-96, that based on substantial evidence, coastal dependent uses were not feasible on the site. Accordingly "any or all of the Planned Commercial District (PC)(17.26) regulations for the site then may be used" and "the interpretation of the PC Regulations as they

pertain to the use of property combined with the SU District shall be liberally interpreted to carry out the spirit and intent of the Marina Local Coastal Program" (17.41.010 A.1 and 2.).

The Planned Commercial District (PC) regulations provide:

17.26.030 Permitted Uses.

C. In the coastal zone the uses permitted shall be determined by the Local Coastal Land Use Plan and a Coastal Development Permit shall be required. Such uses shall include, but not be limited to, visitor oriented retail and service uses and accommodations and public access.

The ordinance thus directs the decision-maker to the LUP which provides the following guidance:

Coastal development uses are to be oriented toward less intensive, lower cost visitor facilities than those in more intensively developed coastal areas to north and south. Two kinds of commercial uses are anticipated: one visitor-oriented and one exclusively dependent on ocean proximity. (p.14)

Visitor oriented commercial development is to be designed and priced for local and regional users. Among uses would be hanggliding equipment sales, commercial overnight campgrounds, riding stables, inns and commercial uses dependent upon existing resources and recreational opportunities available in the area. (p.16 and p. 20)

LUP Policy 5 directs the City to "encourage and place priority on passive recreational opportunities on the beach and dune areas", and LUP Policy 13 provides that priority be given to visitor serving commercial and recreational uses "in order to fully develop the unique coastal oriented recreational activities of Marina and still protect the natural resources."

To summarize the LUP policy direction for development in the dunes:

- less intensive than in more intensely developed areas to the north and south (i.e., in Santa Cruz and Monterey);
- visitor oriented uses that are dependent upon existing resources and recreational opportunities;
- lower cost, priced and designed for local and regional visitors.

These policies reflect Chapter 3 Coastal Act access and recreation policies. Section 30213 of the Coastal Act states in part that "lower cost visitor and recreational facilities shall be protected, encouraged, and, where feasible provided. Developments providing public recreational opportunities are preferred." Section 30221 provides that oceanfront land suitable for public or commercial recreational use shall be protected for recreational use and development and Section 30222 provides that the use of private lands suitable for visitor-serving commercial recreational facilities designed to enhance public opportunities for coastal recreation shall have priority over private residential, general industrial, or general commercial development, but not over agriculture or coastal-dependent industry.

Proposed Development: The proposed Marina Dunes Resort includes 112 vacation units (average unit 968 SF); 72 hotel units (average unit 1,075 SF) including a manager's unit; 60,000 SF of ancillary development including restaurant (500 seats); nightclub; tavern (71 seats); conference center, retail/office, fitness spa, cosmetic surgery suite; a parking garage 12,827 SF; two tennis courts, a pool, and 18 public parking spaces and boardwalk access to the beach. The number of visitors per day at the projected 70% occupancy is estimated to be 690 (see Finding #9 for occupancy discussion). The number of units per gross acre including

beach and below mean high water (MHW) is 9.48; excluding lands estimated to be below mean high water it is 10.2 units/gross acre.

Uses Not Dependent on Existing Resources and Recreational Opportunities: The Implementation Plan requires that the use of this property shall be determined by the Land Use Plan which provides that permissible uses include, but are not limited to, visitor oriented retail and services and accommodations and public access. The Land Use Plan further stipulates that the use shall be less intensive and lower cost and suggests that hanggliding equipment sales, overnight campgrounds, riding stables, "inns and commercial uses dependent upon existing resources and recreational opportunities available in the area are appropriate types of use." The LUP also instructs the decision maker to encourage and place priority on passive recreational opportunities on the beach and dune areas.

The major recreational uses in the dune and beach areas of Marina are fishing, surfing, hiking and picnicking. Hanggliding, dependent on the wind conditions available on this section of coast, is a very popular use activity. Kite flying contests are held each year. These uses are lower cost and dependent on the existing resources and recreational opportunities.

~~The proposed project includes elements which are not dependent on existing resources and recreational opportunities available in the Marina Dunes. For example, the cosmetic surgery suite and the potential nightclub allowed under the City's Use permit are not in anyway linked to a dunes location nor are they linked to typical dune recreational activities. These are new kinds of uses that are unrelated to the siting in the dunes and are not consistent with the direction in the LUP. On the other hand, a restaurant can be viewed as providing a needed and common support for visitors to the dunes and as an adjunct to overnight accommodations but, at the capacity proposed, raises issues of intensity as discussed below.~~

~~Therefore, the cosmetic surgery suite and any future nightclub are deleted from the proposed development to achieve consistency with the Local Coastal Program requirements regarding type of use. The permit is conditioned to require their deletion.~~

The proposed project includes elements which are not dependent or even related to existing resources and recreational opportunities available in the Marina Dunes. For example, the tennis courts, the spa, the cosmetic surgery suite and the conference center cannot be said to be dependent on a dunes location nor are they linked to typical dune recreational activities. These uses bring new recreational activities and new kinds of uses that are unrelated to the siting in the dunes and are not consistent with the direction in the LUP. On the other hand, a restaurant can be viewed as providing a needed and common support for visitors to the dunes and as an adjunct to overnight accommodations but, at the capacity proposed, raises issues of intensity as discussed below.

Therefore, the tennis courts, the spa, the cosmetic surgery suite, the nightclub, and the conference center/meeting rooms must be deleted from the proposed development to achieve consistency with the Local Coastal Program requirements regarding type of use. The permit is conditioned to require their deletion.

Vacation Club Accommodations as a Visitor Serving Use. The Land Use Plan provides that among the less intensive and lower cost uses an "inn" is an appropriate use. The Coastal Act (30222) provides that the use of private lands suitable for visitor-serving commercial recreational facilities designed to enhance public opportunities for coastal recreation has priority over residential and over general commercial or industrial uses.

On June 13, 1996 the Commission approved LCP Amendment 1-96 which broadened the definition of resort hotel (17.04.440) to include "vacation clubs" and removed limitations on the number of units allowed kitchens. Vacation club (17.04.745) was defined as a program for marketing transient occupancy for hotel, and/or motel accommodations to the general public through a membership agreement. Vacation clubs were identified as "visitor serving uses" in the Coastal Zone (17.06.100) subject to several findings: including reasonable affordability, availability to the general public and a membership large enough to insure a broad opportunity for visitor use. In addition permit requirements must assure availability of transient occupancy of membership unit by the general public on a "space available" basis.

The proposed project includes 112 vacation club units. WorldMark is a non-profit, mutual benefit corporation established to hold and manage recreation property for people who buy an interest which conveys a cooperative type of ownership in all of the Club's real estate. Members exercise their usage rights through a competitive reservation system based on annually renewed points and have voting rights in the corporation. WorldMark has 500 vacation units at 18 resort locations along the West Coast and in Mexico, Hawaii and British Columbia. Typical WorldMark Owners are a married couple with two children (74%), a home (72%), 42 years old, 55% are White Collar and 35% are Blue Collar workers with an average income of \$55,000 year. WorldMark has a membership of 30,000 people and the membership marketing program is directed to the public at large. The absence of restrictions on membership, the size of the existing membership, and the moderate cost to buy into the program (\$8000 average) insure broad public participation and thus qualify as a visitor-serving use under the LCP requirements.

Potential Conversion to Residential Use. Conversion of visitor accommodations to residential uses and the subsequent loss of visitor serving uses is a significant issue in coastal areas. Both the proposed hotel units and vacation units are large and more than adequate to serve as long-term residences. The vacation club will consist of 10 studios at 357 SF, 20 1 bedroom units at 794 SF, 72 2 bedroom units at 1,045 SF, and 10 3 bedroom units at 1,368 SF total square feet 108,370 and an average unit size of 968 SF. Most vacation units have full kitchens and two baths. The 71 hotel units will have an average unit size of 1,075 SF They are two bedroom units with two full baths, a living room and a small kitchen. Although not currently contemplated by the applicant, units of this size and design could be marketed as condominiums.

Residential uses are not a permitted use under the LCP and are inconsistent with Coastal Act Section 30222. Condition P8 of the City's coastal development permit avoids this potential problem by stating:

That prior to issuance of building permits for the project, deed restrictions which include, at least, provisions similar to that found below which was extracted from the "Summary of Declaration of Covenants, Conditions and Restrictions" received and dated 6/19/96 by the Planning Department and attached to a 6/18/96 letter from David Watson which was included as an exhibit to the Staff Report for the June 24, 1996 Planning Commission meeting. Said deed restrictions shall be prepared by the applicant, and then approved by the Planning Director and/or City Attorney and/or City Engineer in coordination with any CC&Rs which may be recorded pursuant to condition MS1 of the Minor Subdivision Approval for the Project.

5. Establish and enforce use restrictions to ensure that the site and uses related thereto remain visitor-serving, and to specifically preclude conversion of any of the subject facilities to permanent residential use (with the exceptions of a single on site manager's unit or accommodation).

To assure that the deed restriction is adequate and because the Commission has taken jurisdiction over the project, the permit has been conditioned to require submittal of the document to the Executive Director for review and approval, prior to transmittal of the coastal development permit by the Commission. A deed

restriction is required because it will ensure that future owners of the property are aware of the limitations on use.

Therefore, as conditioned, to require Executive Director review and approval of the deed restrictions to prevent conversion of visitor serving accommodations and uses to residential or general commercial uses, the proposed development "accommodations" as a type of use can be found consistent with the policies of the Local Coastal Program and the access and recreation policies of the Coastal Act.

Lower Cost Visitor Facilities/Priced for Local and Regional Users. The LUP provides that coastal development uses are to be oriented toward lower cost visitor facilities and the Coastal Act (30213) provides that lower cost visitor and recreational facilities should be provided where feasible. The hotel is for transient occupancy only and is not part of the vacation club thus allowing for general public use at moderate to high room rates. The applicant reports that the vacation club units members have an average investment of \$8,000. The program cost on a seven year contract averages out to a monthly payment of about \$100. There is a yearly maintenance fee of \$300. The average total nightly cost for members staying at the Marina Dunes Resort in one or two bedrooms suites would be \$80.00 and in studio units \$48.00. There is no restriction on members sharing or exchanging their credits thus broadening the potential categories of users. While it is less likely that local or regional residents will need to make use of either the hotel or the vacation club units, they will have access to the restaurant and to additional public parking and boardwalk access to the beach. The proposed project provides a mix of uses from no cost (beach access and parking) to moderate and higher cost. Most of the facility is available to lower to middle income visitors. Regarding type of use and orientation to lower cost visitor facilities, the proposed development is a moderately priced visitor accommodation which provides general public parking and access and is therefore consistent with the LCP and Coastal Act.

Summary Conclusion: Types of Use. As discussed above there are components of the development including specific types of use that are not consistent with the Local Coastal Program. However, as a category of use, a vacation club/hotel combination, if it is designed to meet all other requirements of the Local Coastal Program and the access and recreation policies of Chapter 3 of the Coastal Act could be found consistent.

The LCP provides for uses dependent on existing resources and recreational opportunities. The tennis courts, conference center, spa, cosmetic surgery suite, and nightclub introduce new recreational uses or users unrelated to existing opportunities and are inconsistent with the LCP. The permit has been conditioned to remove these uses. The LCP and Coastal Act require lower cost visitor serving uses. The proposed vacation club is a visitor-serving use open to a broad range of the public and is consistent with the LCP provided it is not converted to residential use. The permit is conditioned to provide for Executive Director review of the legal document required by the City to prevent conversion to residential use. Therefore, as conditioned, the proposed development is consistent with the Local Coastal Program and the Coastal Act as it relates to type of use.

5. Public Access

The Local Coastal Program Implementation (p. I-4) provides for vertical and lateral public access for the combined properties on the seaside of Dunes Drive or for individual properties as may be appropriate. Access easements are to be dedicated to the City or the State. Coastal Act Sections 30211-2 protects existing access where acquired through use or legislative authorization and provides for new access between the first public road paralleling the sea and the sea.

The proposed resort will provide 18 public parking spaces and a beach boardwalk for vertical access to the beach for the general public as well as resort clients and lateral access the width of the beach along the property frontage. The access parking is located at the beach frontage to facilitate public use.

Condition P3 of the City's conditions requires vertical and lateral coastal access as required in the Local Coastal Program by proper legal instrument approved by the City Attorney in a form acceptable to the California Coastal Commission.

The permit has been conditioned to require submittal of the legal documents for review and approval of the Executive Director prior to recordation. Therefore, as conditioned, the proposed development provides public access opportunities consistent with the Local Coastal Program and with Coastal Act access policies.

6. Density and Intensity of Use

A fundamental issue associated with this project is its intensity. Commission staff has consistently advised the City and the applicants that the intensity of the project needed to be carefully considered in view of the applicable LCP Policies (see Exhibit 6 attached). In June 1996, the Commission approved LCP Amendment No. 1-96 allowing for vacation clubs as a visitor serving use. Although the Marina Dunes Resort was motivation for this amendment, the Commission specifically found that approval of this type of marketing was not an endorsement of any particular project or density. Commission findings for the amendment stated, "Nothing in the amendment precludes Commission review of the appropriateness of the type of visitor serving use, e.g., public vs. private, low-cost vs. higher cost, *or of the appropriateness of the intensity of the development* or the impact of the type of development on natural resources. The proposed amendment simply allows for the potential of marketing a transient occupancy destination type resort in the coastal zone of the City of Marina."

The appropriate standards to apply to this project are those found in the certified LCP. The Marina Zoning Ordinance provides (1) that uses are to be determined by the Land Use Plan (17.26.030) and that (2) site coverage shall be 25% or lesser in the Coastal Zone. The LUP policies provide that the uses are to be oriented toward less intensive², lower cost visitor facilities:

Coastal development uses are to be oriented toward *less intensive*, lower cost visitor facilities *than those in more intensively developed coastal areas to north and south*. Two kinds of commercial uses are anticipated: one visitor-oriented and one exclusively dependent on ocean proximity. (p.14)

Visitor oriented commercial development is to be designed and priced for local and regional users. Among uses would be hanggliding equipment sales, commercial overnight campgrounds, riding stables, inns and commercial uses dependent upon existing resources and recreational opportunities available in the area. (p.16 and p. 20)

LUP Requires Interpretation: Given the structure of the Marina LCP, these are the core policies which should be used to determine the appropriate density of development in the Marina Dunes. Taken together, it can be inferred that any development should be less intense than that in the more urban areas like Monterey

¹ There is no definition for "intensive" in the Land Use Plan or the Implementation Plan. Webster's Seventh New Collegiate Dictionary defines intense as "1.a. existing in an extreme degree, b. having or showing a characteristic in extreme degree, c. very large. In planning terminology density refers to the number of units per acre.

to the south and Santa Cruz to the north. The uses listed as examples of development which could be consistent with this direction are, in the experience of planners, usually quite modest in their structural requirements. Campground development, for example, typically includes restroom/shower facilities, roads, barbecue pits and pull-ins for parking. Most of a campground however remains in open space. The use of the word "inn" rather than motel or hotel connotes a smaller, less intense visitor accommodation. Likewise, riding stables generally do not include extensive structural development. Thus, while it is acknowledged that the guiding policies do not include an extensive list of allowable uses or objective quantifiers such as number of units per acre, it is apparent from the language provided that it was envisioned that development of the dunes would be less than that typically associated with urban sites.

An analysis of existing patterns of visitor serving accommodations in Monterey and Santa Cruz reveals that, in many ways, this project is more intense than those of these neighboring cities. Please see following discussion and matrices.

Number of Units of Visitor Accommodations in Monterey/Santa Cruz. The LUP states that dune development should be less intensive than in coastal areas to the north and south. In 1982 when the LCP was certified the more intensively developed areas in the coastal areas to the north and south of Marina were the urban areas of the City of Santa Cruz and the City of Monterey. All of the coastal zone jurisdictions have experienced a growth in population but these two cities remain the more intensively developed areas. The LUP requires that the Marina dunes development be less intense than visitor development in these areas.

The AAA Tourbook for California/Nevada (valid through 1/97) provides information to help assess the intensity of visitor accommodations in the region. Table 2 categorizes the number of visitor facilities in the cities of Santa Cruz and Monterey (both in and out of the coastal zone) by size (number of units).

TABLE 2 - Visitor Accommodation Facilities by Range of Unit

CITY	30 or less	31-50	51-70	71-100	101-150	151-200	201-300	301-400	plus 500	Total
Monterey	15	21	6	2	2	2	2*	2*	1	53
Santa Cruz	8	6	6	1		3				24
Total	23	27	12	3	2	5	2	2	1	77
Percent	29.87	35.06	15.58	3.89	2.59	6.49	2.59	2.59	.77	99.43

*One of the facilities in the 201-300 unit range and one in the 301-400 range were not in existence when the LCP for Marina was being developed.

Of the 77 facilities, 50 [or 64%] are less than 50 units in size; 19.4% are between 51 and 100 units. At 182 units the proposed Marina Dunes Resort is larger in room count than 86.99 percent of visitor accommodations in these areas. In terms of number of rooms per facility the proposed Marina Dunes Resort cannot be found less intensive than visitor facilities in Santa Cruz and Monterey and, therefore, is not consistent with the Local Coastal Program.

The LCP does not give guidance on how to use a "less intensive" formula. If "less intensive" were only construed to mean "below average" regarding facility size, then the proposed project should be less than 50 units.

Size of Individual Units of Visitor Accommodations in Monterey/Santa Cruz. In addition to the number of units per site, the size and layout of the unit will affect the intensity of the development. The 112 unit vacation club will consist of 10 studios at 357 SF, 20 one bedroom units at 794 SF, 72 two bedroom units at 1,045 SF, and 10 three bedroom units at 1,368 SF for a total of 108,370 SF and an average unit size of 968 SF. All units have kitchens, and 2 and 3 bedroom units have 2 full baths. The 72 hotel units will have an average unit size of 1,075 SF. They are two bedroom units with two full baths, a living room and a small kitchen.

A review of the AAA Tourbook for Monterey and Santa Cruz reveals that the largest hotel (575 rooms), the Hyatt Regency-Monterey Resort and Conference Centers (not in coastal zone) has no rooms with kitchens, a limited number of one bedroom units and very "few" two bedroom suites (telecommunication reservation desk 9/18/96). The Holiday Inn Resort in Monterey (204 rooms) (not in coastal zone) has no kitchens and only two 2 bedroom suites. The Monterey Plaza Hotel (285 rooms) in Cannery Row has seven 2 bedroom units and ten 1- and 2 bedroom suites.

A review of several Commission files indicates that a common motel unit size (InnCal, Travellodge, the motels across Dunes Drive from the project site) is between 200 and 300 SF; and a common hotel unit size is 400 SF; (Monterey Plaza Hotel, Monterey Bay Inn on Cannery Row), a common RV site is 600 SF which includes its own parking. Table 3 charts a gross comparison of uses between the Monterey Dunes Resort and these standardized room/accommodation sizes and parking requirement area (200 SF per space).

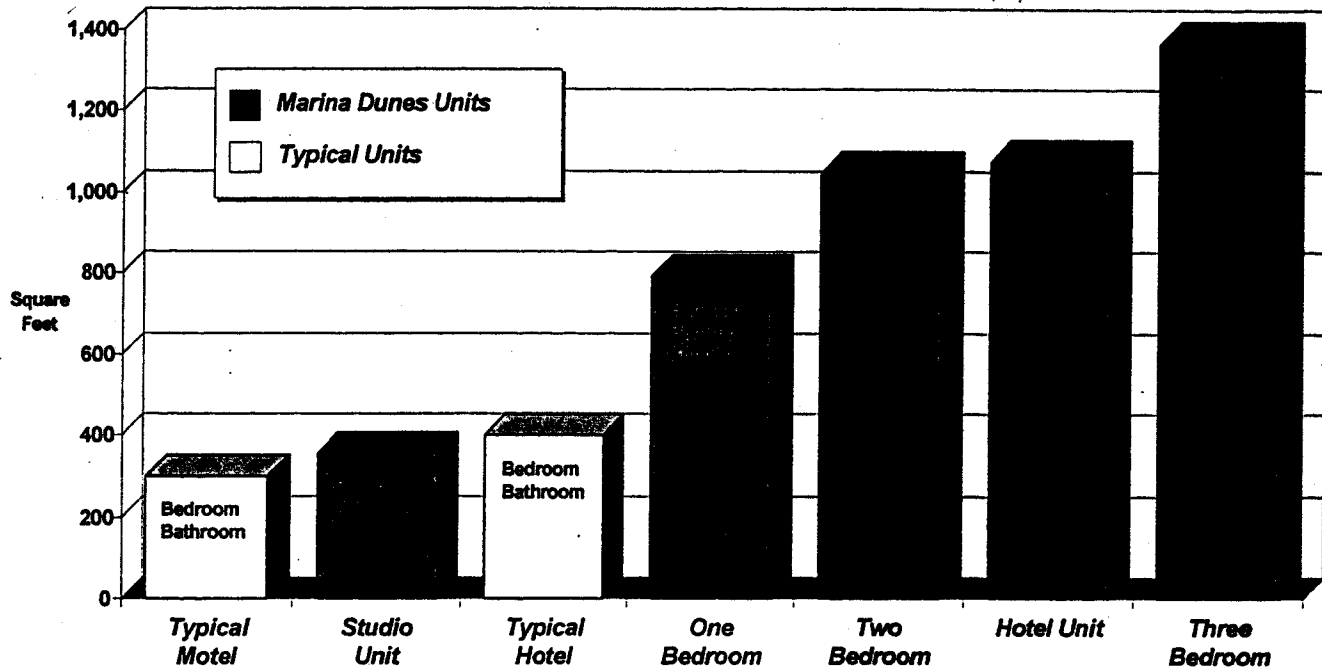
The proposed Marina Dunes Resort units at three times the size of standard visitor accommodations are equivalent to three typical Monterey or Santa Cruz motel units. In addition the multiple bathrooms and separate living areas are an arrangement that can accommodate large parties of visitors.

TABLE 3 - TYPICAL UNIT SIZE COMPARED TO MARINE DUNES RESORT UNIT SIZE

Type of Development	Typical Unit Size	Typical Accommodation	Marina Dunes Resort Average Unit Size	Marina Dunes Resort Accommodation
hotel unit parking area	400 SF 200 SF	single room, 1 bath, no kitchen	955 SF 200 SF	living room, kitchen, 2 bdrm, 2 bath
motel unit parking area	300 SF 200 SF	single room, 1 bath, no kitchen	1,000 SF (vac. unit) 300 SF	1.9 bathrooms 3.3 bedrooms* kitchen
RV space includes parking	600 SF		none proposed	

*Studios and living rooms each counted as one bedroom.

FIGURE 1 - TYPICAL UNIT SIZE COMPARED TO MARINE DUNES RESORT UNIT SIZE



Because of the size of the units, the proposed development will support more people and automobiles (hence greater intensity) per individual unit than the unit count of 184 would ordinarily infer. Where two visitors per unit is common for a typical Monterey or Santa Cruz room, the Marina Dunes Resort suites will support more than double that number and, in the case of the largest units, triple the number. In terms of size of units the proposed Marina Dunes Resort can not be considered a lower intensive use compared to the urban areas of Monterey and Santa Cruz and is, therefore, not consistent with the Land Use Plan. If "less intensive" were only construed to mean less than average unit size, then the proposed project's units should be downsized to less than 400 sq. ft.

Distribution of Units Based On Carrying Capacity. Another method to determine what constitutes "low intensity" development involves allocation. The applicant has suggested identifying a units per acre formula to define a low intensity for the entire acreage (437 acres) of private oceanfront property north of Reservation Road within the City of Marina. The total allocation of units could then be distributed by percentage of gross acreage per parcel or by percentage of disturbed acreage per parcel. Following are examples of this approaches using two different densities for either gross acres (#1) or disturbed acres only (#2)

1) **Distribution By Gross Acreage:** Finding #9 (Offset Habitat and Recreation Management Issues) defines an intensity of use that would be consistent with maintenance of the dune ecosystem and provide for a high quality visitor experience based on carrying capacity as reported in the Ft. Ord Dunes State Park Preliminary General Plan and EIR (1996) and from data on visitor figures from the adjacent Marina State Beach. This Department of Parks and Recreation (DPR) carrying capacity was determined to be 1,133 visitors/acre/year.

At 1,133 visitors/acre/year the 437 acres of private property would have a carrying capacity of 495,121 visitors a year. This figure can then be divided by the number of visitors that would be expected to use each unit on an annual basis (1,368 persons/ year pursuant to that estimated for the proposed Marina Dunes Resort at the expected 70% occupancy rate). Hence, the total number of units for the entire area would be 361 (or .82 units/gross acre). (Less extensive support facilities could result in a reduced number of visitors and an increased number of units.) These 361 units can then be allocated among the three sites in proportion to their size.

A similar calculation to illustrate this concept can be performed using 2 units / gross acre as being considered "low intensity." The results of both scenarios are summarized in the table below:

TABLE 4 POSSIBLE UNITS USING AREA ALLOCATION APPROACHES

Site	Acres	Units @ .82 /gross/ac	Units @2 /gross ac.
LONESTAR	368 acres (84%)	302	734
GRANITE	50 acres (11%)	39	96
MDR	16 acres (4%)	14	35
Total	437	361	874

2) Distribution by Disturbed Acreage: An alternative set of calculations could be made by distributing the total number of units under both density scenarios among just the 78 acres of disturbed areas. This would result in proportionally more of the units allocated to the subject site, because it is almost entirely disturbed.

TABLE 5 POSSIBLE UNITS THROUGH ALLOCATION OF DISTURBED ACRES

Site	Disturbed Acres	Units @ .82 /gross/ac	Units @2 /gross ac.
LONESTAR	55 acres (70%)	252	612
GRANITE	8 acres (10%)	36	87
MDR	15 acres (19%)	68	166
Total	78	361	874

While these approaches have merit, they would be more appropriately used in a planning context rather than in determining density for one specific project, as must be done for this appeal. A Commission decision based on suggesting the assignment of specific units per acre to other properties through this appeal process could prejudice future planning efforts. It would also prevent adequate participation of the other property owners, affected public agencies and the public in general. The Lonestar site is not even designated or zoned for visitor serving use at this time. Identifying a carrying capacity for the dune complex in general is useful in that it can suggest the level of appropriate use to preserve the ecosystem and provide for public recreational use. However, the proper process for modifying Land Use Designations and Zoning Districts is an amendment to the Local Coastal Program (LCP).

Habitat Conservation Plan/LCP. An LCP amendment that could have given density guidance for this project never was finalized. The draft HCP/LCP has been used by the applicant to substantiate the intensity of use and scale of the proposed Marina Dunes Resort project. However, a review of the draft HCP/LCP proposals for the Monterey Sand, Marina Dunes Resort, Granite Rock and Lonestar sites shows that the proposed Marina Dunes Resort is substantially greater in density and intensity than contemplated in the draft HCP/LCP. Following are the planning guidelines contained in the draft for each site:

Lonestar: 368 acres, restore 285 acres, develop on 78 acres, uses allowed include 1200 units, coastal resort hotel or hotel/motel; recreational vehicle park; multi-owner visitor serving residential; public access. Maximum average unit size 700 SF; 900 SF for visitor serving condominium units; 15,000 SF restaurants; moderate scale visitor serving retail integrated into resort.. Support uses permitted are conference facilities, recreational facilities (i.e., swimming pools, tennis courts, spas) and visitor retail.

Granite Rock: 50 acres, restore 42 acres, develop on 8 acres. Uses allowed 400 room hotel and conference center, 7,500 SF restaurant; small scale visitor serving retail integrated with hotel and restaurant.

Monterey Sand (aka Marina Dunes Resort) Site: 16 acres, restore 4.77 acres, develop on 10.8 acres. Permitted uses were hotel/motel; restaurant 7,500 SF, recreational vehicle park; tent sites; support facilities for RV park to include retail store, lounge, laundry, shower and restrooms, pool, spa and administration office; and public access and parking. Hotel/ motel development up to 120 rooms; could be combined with 80 RV/tent sites; or 200 RV/tent sites if the motel/hotel is not developed.

Monterey Sand Co. representatives were participants in the HCP/LCP task force. Sales advertisements for the Monterey Sand property (Marina Dunes Resort site) indicated that the highest and best use of the property was considered to be either a 175 space recreational vehicle park or a 120 room hotel with restaurant and modestly sized banquet facilities. It might be deduced from this that the uses were indicative of what the property owner understood could be developed on the site and was conveying that information to potential buyers.

Proposed Marina Dunes Resort: The current proposal is substantially larger. It includes 112 unit vacation club resort with an average unit size of 968 SF and a 72 unit hotel with an average unit size of 1000 SF, and 60,000 SF. of ancillary uses including a conference center/retail facilities, restaurant/lounge/banquet facilities with seating for more than 500, health club, recreational building, two tennis courts, a sports court, a pool, a kids pool and playground; and 491 parking spaces including 18 public parking spaces for beach access.

Summary Regarding HCP/LCP. The HCP/LCP did envision a destination resort complex in the Marina Dunes but for the much larger 368 acre Lonestar site where allowed uses included tennis courts, conference centers, and visitor serving condominiums, uses that were not described for the Marina Dunes Resort site. Additionally the applicant's average room sizes at 1000 SF exceed even the maximum room sizes of 700 and 900 SF that were proposed for Lonestar.

The draft HCP/LCP density/intensity were considered too high by Commission staff at that time (see Exhibit 6) and those of the proposed development are much higher still. The HCP/LCP was not completed as City staff resources were redirected to the Ft. Ord Reuse Plan and thus has not been approved by the U.S. Fish and Wildlife Service nor reviewed by the Commission. Although the draft HCP/LCP is illustrative of what the City thought appropriate at the time, it was not adopted, is not a standard of review, and hence is not appropriate to use in determining appropriate density for this proposed project.

Intensity of Existing Development Between Dunes Drive and the Highway 1. Three nearby projects are not low intensity and thus do not serve as models for the subject site. A short frontage road, Dunes Drive, runs north from Reservation Road. Between Dunes Drive and Highway 1 are three developed parcels: 83-unit Travellodge on 1.65 acres (50 units/acre); InnCal 114 units on 1.82 acres (62 units/acre); and a 65 space recreational vehicle park on 1.57 acres (41 units/acre). These parcels are zoned "Planned Commercial" and were not subject to findings regarding feasibility of coastal dependent uses. The sites are distinguished from the applicant's site by their location on the highway frontage and their lack of continuity with the habitat values

of the oceanfront dunes. Nevertheless, they were subject to the same use and zoning standards of the LCP and it is clear in retrospect that they cannot be considered low intensity uses. The coastal permits for the motels were approved by the City of Marina in 1985. An appeal by the Sierra Club was rejected by the Commission because the local appeal process had not been exhausted. A legal settlement by the Sierra Club on the Travellodge site resulted in establishing a fee per unit (0.35) for use in restoration of and access improvements in the dunes. The Commission did not appeal nor formally review these projects.

Units per Acre Compared to Coastal Resorts in Similar Settings. Another method to evaluate whether or not the Marina Dunes Resort could be considered less intensive in terms of its setting and to determine appropriate intensity/density is to compare this project with similar projects which have been acknowledged generally as low intensity resorts. As just noted, nearby projects are not appropriate comparisons with regard to density, because they are clearly not low intensity. The hotel/motel facilities in the cities of Santa Cruz and Monterey are subject to urban zoning standards which generally do not regulate by units per acre but by height, lot coverage, and traffic and circulation standards. Units per acre are less relevant in these cases where within an urban context, basically void of natural resources, the thrust is to concentrate development. The MZO Planned Commercial District does not regulate units per acre but in acknowledgment of the special **setting** of coastal zone parcels requires referral to the Land Use Plan as the final arbiter of consistency with the Local Coastal Program.

Density has been relevant and important in actions that the Commission has taken for rural resort projects such as along the Big Sur and San Mateo County. Projects such as Ventana and Cascade Ranch can be considered low density at less than one unit per acre. But in reviewing the range of permitted projects and the AAA Tourbook, the Commission has determined that there are only two visitor accommodations in the region that are similar in type and setting to the Marina Dunes Resort, and thus would be appropriate for comparison. These are the Seascape Benchlands in Santa Cruz County and Spanish Bay at Pebble Beach in Monterey County.

Both developments have important open space and natural resource values which though not identical are similar to the proposed development. Both are located immediately adjacent to the sea and, in the case of Spanish Bay, one was built on degraded dunes just as proposed by this project. Spanish Bay was also the site of a former sand mine. These developments are destination visitor resorts with many of the ancillary facilities provided at the proposed Marina Dunes Resort. Both resorts were developed after certification of the Marina LCP.

Seascape Benchlands, Santa Cruz County: The Seascape Benchlands development in the Aptos-Seascape community of Santa Cruz County was permitted 280 visitor serving accommodations, 36,500 SF of restaurants, lobby, lounge, meeting rooms, a 9 acre park, a 60 space public parking lot for beach visitors. The site is 80 acres; 30 acres were developed and 50 acres were dedicated to the public. Gross density on this project is **3.5 units per acre**. The average size visitor unit is 850 SF.

Spanish Bay at Pebble Beach, Monterey County: The Spanish Bay Hotel in Del Monte Forest involved 230 acres. One hundred and thirty acres were developed (golf course included). Development included 270 unit hotel, 80 condominium units, 18 hole golf course, 8 tennis courts, 500 parking spaces. One hundred acres of habitat were dedicated and public access provided. In addition the 430 acre Huckleberry Hill was dedicated to open space. Gross density for the Spanish Bay project is **1.5 units per acre**. The average size hotel units is 548 SF and the average size condominium is 3825 SF, for a combined average of 1515 SF combined.

Table 6, compares the above projects with the Marina Dunes Resort and with the typical urban Santa Cruz/Monterey motel/hotel. The table and Figure 2 show that, regarding number of units per acre for the most comparable types of resort developments (Spanish Bay and Seascape), the proposed Marina Dunes Resort is at least three times the density of the other two facilities and, therefore, is not a low intensive use and is inconsistent with the Local Coastal Program. Table 6 and Figure 3 also shows that the Marina Dunes Resort has several times the square footage of ancillary facilities per acre as does either of the other two resorts.

TABLE 6 UNITS PER ACRE COMPARED TO COMPARABLE RESORTS IN SIMILAR SETTINGS*

Site Description	Marina Dunes Resort, Marina, Monterey County	Seascape Resort and Conference Center, Aptos, Santa Cruz Co.	Spanish Bay, Pebble Beach, Monterey County	Typical Urban Santa Cruz/Monterey Motel/Hotel
Acres	18 est. (above mean high water)	80	236	Varies, but under 2 typical on urban sites
Number of Units	184 (184,000 SF)	280 (238,000 SF)	270 hotel, 80 condo. (553,850 SF)	80% are less than 70 units
Units per Acre	10.2	3.5	1.5	
Average Unit Size	1000 SF Kitchens, multi-bdrm., multi-bath	850 SF	1515 SF combined (548 SF hotel 3825 SF condo)	350 sq. ft.
Description Ancillary Facilities	60,000 SF ancillary Conference/ retail/commercial, spa/cosmetic surgery unit, 500 seat restaurant, 71 seat tavern, 2 tennis courts, pool	40,000 SF ancillary, 150 seat restaurant, lounge, office, conference center, pools, rec. center	185,845 SF ancillary 2 restaurants (5545), 2 lounges (4952 SF) conference, retail, office, clubhouse/ fitness center, 8 tennis courts, 18 hole golf course.	1 room, no kitchen. No or small restaurant, pool.
Average Ancillary SF/AC	3,333	500	787	N/A
Number of Restaurant Seats	500	150		N/A
Building/Paving Coverage	(6.45 acres) 40% of developable site	buildings 5% of site; paving: N/A	15.7 acres, 7% of site	100%
Occupants/ unit	4	2		2
Habitat/Open Space/Public Access Improvements	6.5 acre restoration, 18 public parking spaces; beach access; program to fund protection/restoration off-site impacts	50 acre dedicated to public; 9-acre park, 60 beach parking spaces, bluff top trail	100 acres habitat dedicated; numerous access improvements. 430 acre Huckleberry Hill dedicated to open space.	N/A
LUP Designation Zoning	Visitor Serving, coastal dependent, coastal access. Planned Commercial.	Visitor Accommodations Specific Plan required.	Commercial Visitor Serving. Condo site residential 3.9/unit/ac Hotel site Planned Commercial.	Commercial Districts

* All figures are approximate.

FIGURE 2 UNITS PER ACRE COMPARISON

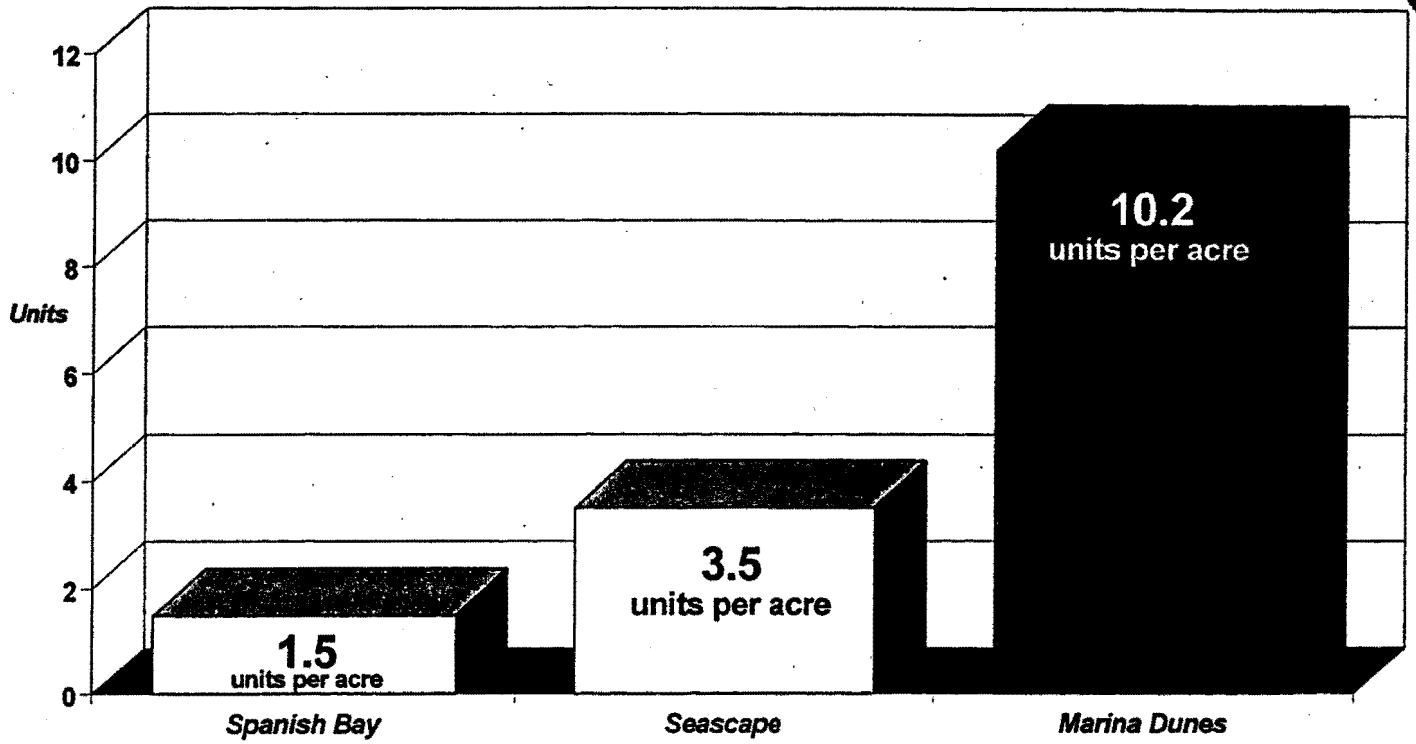
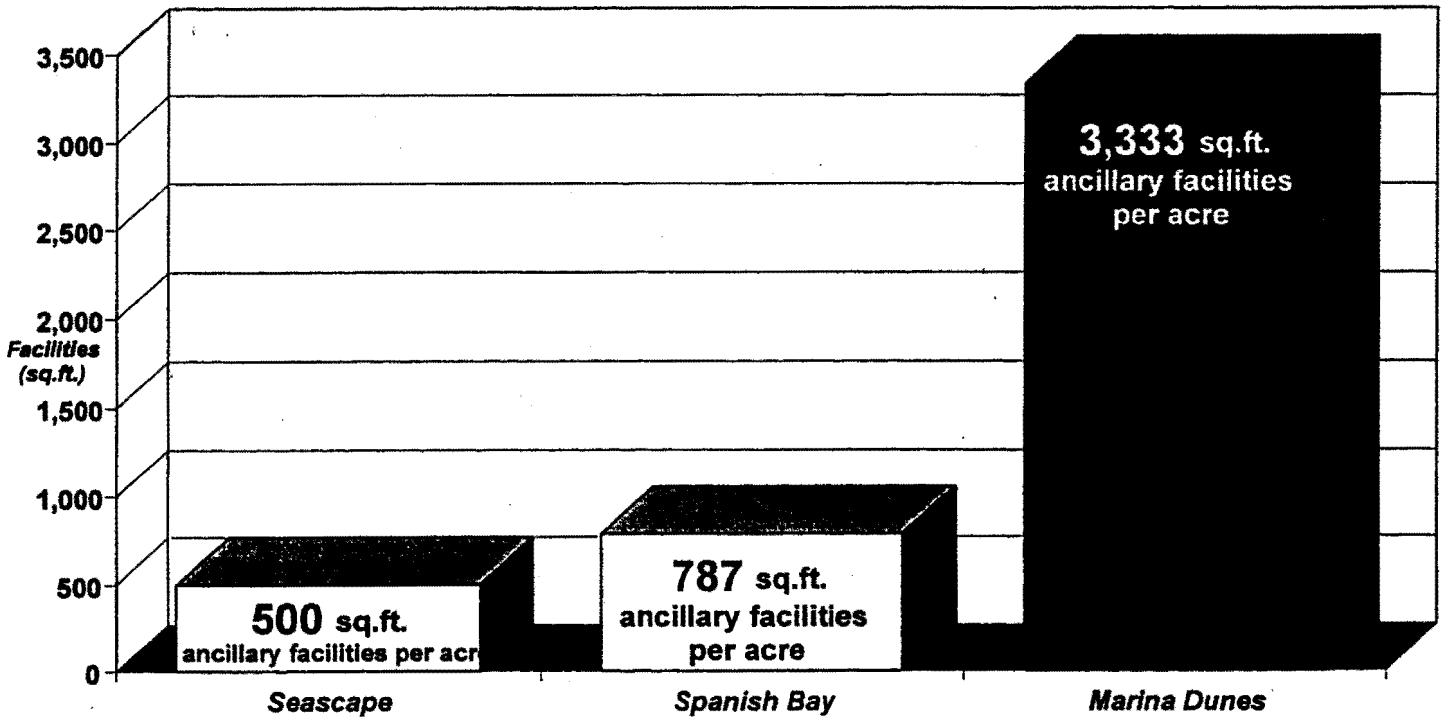


FIGURE 3 ANCILLARY FACILITIES PER ACRE COMPARISON



The above speaks to units per acre in projects that are located in open space/natural resource areas and are destination resorts. The applicant argues that since his site contains little resource value, density is not an issue. However, what is evident in the comparison is that the Spanish Bay Resort and the Seascape Benchlands Resorts are located on much larger sites that can mitigate for the impacts generated by their uses both on-site and through public improvements. The applicant's proposed development would generate a large number of visitors on a relatively small site and burden the surrounding natural and recreational resources. Finally, the LUP does not provide for high density on any parcels west of Dunes Drive irrespective of the resource value of a particular site.

Summary Conclusions - Density/Intensity of Uses. The Commission interprets the lower intensity provision of the LUP to require a correlation of the density/intensity and scale of the development with the visual and natural character of the area and with the physical limitations of the land and the surrounding natural and recreational resources. The LUP requires that development on this site be less intensive than in Santa Cruz or Monterey, and suggests types of use that are less intensive, i.e., campgrounds, inns, commercial uses dependent on existing resources, such as hanggliding sales and riding stables.

The proposed development is a large destination hotel resort/vacation club complex that is greater in accommodation unit number than 86 percent of all motel/hotels in Santa Cruz or Monterey, has unit sizes two to three times the size of the typical motel/hotel in these areas, and has four times the number of units per acre as comparable facilities in comparable locations. It has 60,000 SF of ancillary facilities such as the restaurant/ lounge which seats 571 patrons, a capacity far in excess of typical restaurants. While the Commission has found that a "vacation club" as defined in the MZO is a visitor serving use, the proposed development at the density, design and scale approved by the City is not a low intensive development, is not consistent with the LCP and is not appropriate for this site.

In the absence of numerical densities in the LCP, the Commission relies on comparisons in order to determine a project density that can be approved as meeting the LCP standards. Using some of the cited averages could justify limiting a project on the subject site to less than 50 units at less than 300 square feet each. However, given the different site characteristics, using instead a comparable in terms of site characteristics, that yields a somewhat larger project on can be justified because of the relatively small size of the subject parcel and very extensive area of site disturbance. Additionally, the Marina Dunes Resort parcel is located where access and public services are available and in an area that the LCP has designated for commercial visitor serving uses (unlike the Lonestar parcel which is outside the urban service area with no public services and is limited by zoning to coastal dependent uses).

The Spanish Bay and Seascape resorts, being low intensity developments in similar settings, are good candidate comparables. The densities range from 1.5 to 3.5 units/gross acre. Using the Seascape Resort as a model, the Commission finds that a development on the Marina Dunes Resort site at the high end of the range, 3.5 units/gross acres with an average unit size of 850 SF, could be found to be a low intensity use within the meaning of Marina's certified Local Coastal Program. The resultant total unit square footage of 53,500 SF would yield 63 units at 850 SF per unit. ~~In keeping with the Seascape model, the total ancillary support development of the proposed project should be proportionately reduced to 10,000 SF, including the restaurant.~~ A commensurately sized restaurant to amply serve the scaled down vacation club and hotel patrons would be no more than 120 seats. Since proposed ancillary facilities, e.g., tennis courts, conference/meeting rooms, spa, cosmetic surgery suite, are "not dependent on existing resources and recreational opportunities" as discussed in Finding 4 above, they are inconsistent with the certified Local Coastal Program and the Commission finds that they shall be deleted from the project. This reduction in total square footage for accommodations reduces the number of visitors a year at 70% occupancy from 250,905 to

95,046 (63 rooms x 4 people = 252 + approx. 120 restaurant patrons = 372 day or 135,780 visitors year) not including public access parking users, a range of 64,240 to 78,110³

Therefore, as conditioned, to limit the total square footage for visitor accommodations to 53,500 and ~~the total square footage of ancillary facilities to 10,000~~ with the restaurant maximum seating capacity to 120, the proposed development is consistent with the Local Coastal Program provisions for low intensity development in the Marina Dunes.

7. Visual Impacts.

Natural Scenic Setting. The applicant's site is located in the South Monterey Bay Dune complex in the City of Marina. From the Salinas River approximately three miles south through the City of Marina to Fort Ord the dunescape west of Highway 1 is interrupted only by the Lonestar mining facility, a cluster of development at Reservation Road, and a view below the freeway to the City corporation yard at Lake Drive. The natural landform of the dunes rise in elevation from near sea level to as much as 144 feet and dominate the view for highway travelers. Monterey County has designated Highway 1 through its jurisdiction in this area as a scenic corridor. The 1971 Department of Parks and Recreation "California Coastline Preservation and Recreation Plan" identified the dune complex as one of the 38 natural areas in the State which, if properly managed, would assure that adequate examples of California's Coastal landscape heritage are protected" (p.98). The Marina Land Use Plan states, "Marina's coastal view has been called the 'Gateway to the Monterey Peninsula'. The dunes rise high on the west side of Highway 1 virtually eliminating the view of the ocean. View protection is an important aspect of coastal planning in Marina. The primary view is from Highway 1 which is elevated through much of the City. Views from the beach are important as well" (p. 13).

Policy 36 of the Land Use Plan states:

Provide and promote the role of Marina as the physical and visual gateway to the Monterey Peninsula.

Background - Visual Effects of Existing Development West of Highway 1. When driving south along Highway 1 from Moss Landing to Marina, the traveller crosses hundreds of acres of agricultural fields and after crossing the Salinas River, sees the major dune shapes of the South Monterey Bay Dune complex. At the northerly perimeter of the City of Marina, the Lone Star mining facility, in operation for several decades prior to the passage of the Coastal Act, interrupts the dunescape. The facility has made improvements in the last two decades but has not significantly increased the visual impacts.

Two miles later at Reservation Road, a Highway 1 off-ramp and a short frontage road, Dunes Drive, provide a logical place for extension of any development allowed in the dune area because of the ease of vehicular access and the existence of public services. The applicant's site is located on Dunes Drive. Five of the eight properties with access off Reservation Road are developed and are visible in varying degrees from Highway 1 and/or the beach. Please see Exhibit 2, Map of Marina Dune Area, attached.

The northernmost oceanfront parcel in Marina is the aforementioned 368 acre Lonestar property, 290 acres of which is basically undisturbed.

3. Note: staff is unable to account for the discrepancy between previous calculations and current calculations. The most logical explanation is that in previous calculations 2 persons per room was erroneously used as the factor for determining overnight visitors thus correspondingly erroneously reducing the estimated number of visitors.

Moving south, the adjacent parcel is the 10-acre Monterey Peninsula Regional Park District (MPRPD) site, also known as Gullwing. Abandoned mining structures have been removed from this site. A public access trail leads to the beach. The site is visually a dune.

Next comes the 50 acre Granite Rock parcel, an abandoned mining site. The site has undergone a natural restoration process, regaining natural dune forms, and is almost completely revegetated with a high percentage of indigenous plants. The site is visually a dune, also.

The applicant's site abuts the Granite Rock parcel. It is described in its own section below.

Abutting the subject site to the south, is the Marina Coast Water District (MCWD) facility. Developed in the 1960's and expanded in 1971, it has maintained a low profile by containing necessary public facility improvements within the original development envelope and at a height of less than 17 feet. The inland fifty percent of the site has been dedicated as a vernal pond/dune restoration area providing a visual buffer to the MCWD facilities. The MCWD is as inconspicuous as possible for its location and cannot be seen travelling south on Highway 1 but is partially visible to the northbound traveler.

The 170-acre Marina State Beach (MSB) parking lot is at the ocean end of Reservation Road. Approximately 130 acres of Marina State Beach is a dune reserve. Development at MSB has been limited to low impact recreational uses and support facilities – park office, boardwalks, a facility trailer, and hangglide platform at the parking lot above the beach. No structure exceeds 18 feet in height. Only a portion of the hangglide platform is visible from the beach. The park office is visible intermittently from Highway 1.

Across Dunes Drive from MPRPD and with Highway 1 frontage is the 1.65 acre Marina Dunes Trailer Park site. It was developed with 35 spaces in the 1970's and expanded to 65 spaces over the years. Buildings and trailers are all 17 feet or less and are hidden from Highway view by duneform and windswept cypress. The low profile facility has minimal and not unpleasant visual impacts.

Exceptions to Visual Compatibility. Two other developments between Dunes Drive and Highway 1 have had major visual impacts on Highway 1 and the visual context of the area. In 1985 the City of Marina approved two motel projects in the Planned Commercial District between Dunes Drive and Highway 1. The first was a 114 unit Best Inn, a low cost visitor facility estimated to charge 20 to 30 dollars a night, providing ninety-two 216 SF units and twenty-two 430 SF suites. The second was a 97-unit Travellodge with ninety-four 288 SF units and three suites. The City's findings for approval of the coastal permits for these projects were almost identical. Both projects were under the 35 foot height limit, being 31 feet or less from finish grade. The buildings were clustered to break up the visual impact and allow for view corridors. The City found that due to the location of the site it would be impossible to construct any project that was not visible from Highway 1, but that the project impacts were mitigated by using low profile buildings, stepping down the slope, and landscaping. The findings also reported that no primary or secondary habitat existed on site. Additionally, the sites were not oceanfront parcels located in the high Flandrian dunes and the motels would serve as visitor accommodations supporting coastal recreational users.

Both projects were appealed by the Sierra Club for, among other reasons, the adverse impacts on public views seaward of Highway 1 and the incompatibility of the scale of the developments with the dunescape. The local appeal process had not been exhausted and the appeals to the Coastal Commission were not accepted. The Sierra Club had also appealed the Negative Declaration for the Travellodge project on the grounds that a full EIR should have been required. The City and the Sierra Club agreed to a court settlement that resulted in the formation of the Marina Dunes Planning effort discussed in Finding 2. The Commission did not appeal these projects.

From the present perspective, although the developments met the zoning standards for the sites, the two motels have had a profoundly negative impact on the visual character of the area. They are very visible from the Highway traveling south and north. The three story structures loom up obstructing the view of the dunes behind them and creating a visually busy area where one of relative serenity previously existed. The designs are typical of motels with the exception that they step down the dune slope on which they were constructed. The brilliant detail coloring on one of the motels intrudes vividly on the natural colors of the area.

In sum, the visual impact of these structures is a lesson in the error of following the regulatory standards of the MZO without sufficient reliance on the direction of the LUP to moderate the result. (Please refer to Finding 3 above.)

The area west of Highway from the Salinas River through the City of Marina remains the scenic 'Gateway to the Monterey Peninsula' in spite of these visual exceptions. The applicant's development must be judged for its consistency with the Local Coastal Program provisions to site and design development to protect public views to the dunes as well as to and along the shoreline. The applicant's development must also be evaluated in relation to the unique characteristics of the subject site. The Local Coastal Program is the standard of review, not the adjacent motels.

Local Coastal Program Policies and Regulations. The Marina LCP, in recognition of the scenic qualities of the dunes, includes a number of policies and regulations aimed at preserving and enhancing this unusual landform. The method chosen by the City to achieve this goal was to limit the density of development in this area in order to ensure that the dunes would continue to be the dominant feature of the Marina shoreline. Key policies and regulations limit building heights and require that new development be designed to blend into the face of the dunes and be hidden if possible and, if not, to be inconspicuous. The relevant policies and regulations are given in their entirety below.

In Section 17.04.173 of the Local Coastal Program a "coastal scenic view corridor" is defined an "area in which development is sited and designed to protect public views to the dunes and to and along the shorelines and, in scenic coastal areas in order to minimize the alteration of landforms so that new development will be visually compatible with the character of the surrounding areas."

Land Use Plan Policy # 33 states: Protect scenic and visual qualities of the Coastal area including protection of natural landforms, views to and along the ocean, and restoration and enhancement of visually-degraded areas.

The Coastal Permit Overlay District (CP) requires that the Planning Commission make the following finding (Section 17.43.050 C.) to approve a project in the Coastal Zone:

1. Not impair major view corridors toward the sea and Highway 1 parallel to the sea, including the Planning Guidelines in the LCLUP.

The LUP Planning Guidelines, p. 13, Preservation and Enhancement of Coastal Views states:

Views of the dunes from Highway 1 and the beach shall be protected by keeping development off of the primary ridgeline. Development below the ridgelines shall be limited in height and mass to blend into the face of the dunes; generally structures should be hidden from public view where physical and habitat constraints allow. Where this is not possible, structures shall be clustered and sited to be as inconspicuous as possible.

In areas where mining activity or blowouts have removed sand dune landforms, new development shall not extend above the height of the nearest adjacent sand dunes and shall be clustered so as to preserve access views across its site from Highway One.

The LUP discusses visual elements of the Marina Coastal Zone referring both to the dunes on the oceanside of Highway 1 and to the vernal ponds abutting the urban development on the inland side of the Highway:

View protection involves a number of aspects. It involves protecting natural visual barriers such as edges of dunes and protecting natural ground cover and texture. In those locations where development is appropriate, it must fit in scale, mass and height with existing terrain. View protection does not preclude the symmetry of extensive urban development, but it would require that new development blend into the existing pattern and not conflict in bulk or height.

Additional specific regulations and policies as they apply to specific elements of the design are discussed below.

Visibility of Applicant's Site: The applicant's site has been sand mined for at least 60 years. Continuous mining has removed the natural landform and lowered the pre-mining grade significantly. Two abandoned, derelict sand mining structures exist on site, one at the ocean frontage and one near Dunes Drive. The site is almost wholly unvegetated except along its perimeters. In the mid areas of the parcel vegetation is reestablishing itself in areas where mining has been discontinued for a period of time. The site has no dune resources and an unnatural topography because of the mining. Traveling north on Highway 1 the site is highly visible. The 60-foot dune on the Granite Rock property forms a visual backdrop. The view is then blocked by the motels. Traveling south the site is also visible beyond and between dune forms and structures. There are no water view corridors from Highway 1. The beach is 20-30 feet below the elevation of the proposed building pad along the oceanfront. Views are upward and visibility of structures will be controlled by setback and height from the bluff edge. Areas of the site are visible from the public access boardwalk along the high dunes in Marina State Beach.

Applicant's Building Plans: The structures of the proposed resort complex architecturally reflect a "Coastal theme reminiscent of eastern seaside grand architectural styling" with towers and steeply pitched rooflines. Two access roads from Dunes Drive form a long loop (more than 2,000 feet in length) with large structures (25-46 feet high) grouped on either side. Within the loop are the tennis courts and pool; the restaurant building and spa are located on the ocean frontage. An abandoned mining building on the ocean frontage is proposed to be retained and used as a "honeymoon suite". A "habitat corridor" will be restored along Dunes Drive frontage, one along the ocean frontage and a 50 foot strip will buffer the Granite Rock environmentally sensitive habitat. Please see the attached Exhibit 3, the grading, site and landscape plans and the building elevations and sections for the resort. Also see Exhibit 4, the computer graphic simulations from the EIR.

The proposed project is of significant mass and scale and would be one of the largest resort complexes in the Central Coast Region of California. The following discussion details the visibility of the proposed resort.

Project Visibility: The visual impact of the project is not well-portrayed in the City's permit file, but will be significant. Although, the project has been redesigned since the EIR computer simulations, the project plans (as approved by the City of Marina and submitted with the administrative record for the appeal), while providing elevations and two cross sections, do not fully describe the visibility. According to the applicant, the buildings have been lowered 2 feet and rearranged into more compact groupings. However, the scale of the project is great enough and the modifications made as part of the City review limited enough that a discussion

of impacts is possible based on the information in the record. Stated another way, the project changed very little through the local process.

Project Visible Above Duneridge: The LUP allows no development on primary ridgelines and directs that in mining areas, where sand dunes have been removed, development shall not extend above the height of the nearest adjacent sand dunes. Development below the ridgelines should blend into the dunes.

The EIR found that several buildings were above the neighboring ridgeline on either side (determined to be at approximately the 60 foot contour per the proposed grading plan). The EIR stated that the vacation units were 13 feet above the neighboring ridgeline; the hotel units were 14 feet above the neighboring ridgeline; the restaurant was 16.6 feet above the neighboring ridgeline and the conference center was 29 feet above the neighboring ridgeline. The EIR noted that these calculations did not include the "architectural extensions" which would extend several feet higher. The Commission staff reviewed the grading plan and elevations as approved by the City of Marina and found that including the "architectural extensions", the vacation units varied from 13 to 23 feet above the 60 foot contour, the hotel units were 16.9 to 21.9 above the 60 foot contour, the hotel lobby building was 21 feet above, the spa/restaurant complex ranges from 20 and 25 feet above the 60 foot contour with the clock spire reaching 30 feet above the 60 foot elevation. Thus portions of the complex range from 13 to 30 feet above the nearest adjacent dunes.

Subsequently, the City staff used aerial photos to determine that 53% of the adjacent 50 acre Granite Rock parcel over its width was above the 78 foot elevation. The structures and most architectural extensions are below that elevation. The City undertook a similar analysis for the MCWD site. It is not clear from the City staff report what was actually measured and how near it was to the project development. The issue is the visibility of the project and whether or not the structures and their architectural extensions are visible above the nearest adjacent sand dunes. The adjacent dunes are generally at elevation 60' on both the MCWD and Granite sites. The City coastal permit, Mitigation C1, requires that:

Building heights should be reduced by either lowering the height of roof ridgelines by decreasing roof pitch or by lowering the mean elevations of the development areas, or a combination of both, in order to retain views to the northerly off site dunecrest, cupolas are excepted.

The LUP requires that in mining areas where sand dunes have been removed, development shall not extend above the height of the nearest adjacent sand dunes. The LUP also requires that below the ridgeline development shall be limited in height and mass to blend into the face of the dune. The proposed development extends above the ridgeline and, therefore, also can not blend into the dune. Therefore, the proposed development is inconsistent with the Local Coastal Program.

Subsequently, on December 4, 1996 the applicant installed story poles for representative heights of buildings and met with Commission staff in the field to mutually evaluate the potential visual impacts and establish standards for evaluating visibility of final design. The Commission coastal permit has been conditioned to require that prior to submittal of the final plans that the site be staked in the field for City and Commission staff review and that computer simulations or other graphics be submitted with the final plans so that the Commission has a pictorial presentation of how the structures relate to the duneform. Only with this subsequent review can the Commission ensure that the development is consistent with the City of Marina's LCP.

Project Exceeds Height Limitations: The LCIP Planned Commercial District regulations state that for height the maximum is thirty five feet except in the coastal zone where the height shall be 35 feet unless

the structure is located in a coastal view corridor where a lesser maximum may be established (17.26.060). The site is visible both from Highway 1 and from the beach as discussed below.

Height is defined as "17.04.400 Height of building. "Height of building" means the vertical distance from natural grade at the average of the highest and lowest points of the building site covered by the building, to the topmost point of the roof."

The sections submitted with applicant's plans show that the height has been measured to the ceiling of the top floor. The area between the ceiling and the topmost point of the roof has been identified as an "architectural extensions (unoccupied space)". The method of measuring contradicts Section 17.04.400 of the zoning regulations and results in buildings that are higher than permitted. If the buildings are measured to the topmost point of the roof as required by the LCP, rather than to the ceiling, the heights of the spa and restaurant are 35 feet, conference center, 38 feet, hotel, 37 feet, hotel lobby, 46, vacation club, 32, and recreation building, 25. This does not include "architectural extensions" as discussed below. At a minimum, the conference building, hotel, and hotel lobby exceed the 35 foot height limit and are therefore inconsistent with the Local Coastal Program MZO 17.26.060 which limits the maximum height to 35 feet.

Architectural Extensions Higher than 35 Feet and Above Ridgeline: In addition to the roof itself, several other elements of the buildings extend above the 35 foot maximum height limit.

Section 17.06.060 of the zoning ordinance provides, "Chimneys, vents, cupolas, spires, and other architectural or mechanical appurtenances may be erected to a greater height than the limit established for the district in which they are to be located, **except in the coastal zone** where the height of such structure shall be subject to a coastal permit".

Building Heights including architectural extensions measured from finished grade (City approved plans submitted with administrative file) are: hotel complex 42 feet, vacation club 41 feet, recreation building 25 feet, hotel/vacation club lobby building 51 feet; conference building 59 feet, spa restaurant 50 feet and the clock tower 66 feet, honeymoon suite 36 feet.

Section 17.06.060 specifically indicates that "architectural extensions" are subject to a coastal permit which must conform to the Land Use Plan. The Land Use Plan specifies that development must be kept off the ridgeline and that below the ridgeline it should be limited in height and mass to blend in with the face of the dunes. Additionally, development should be hidden from public view where physically possible and, if not, should be as inconspicuous as possible. Architectural extensions clearly are not exempted from the visual impact policies of the LUP and, therefore, may not extend above the adjacent duneridge and, furthermore, must be as inconspicuous as possible in order to be consistent with LCP provisions. In the appropriate context, architectural extensions may be consistent with the LUP. However, in this case the architectural extensions extend above the duneline (not shown on computer simulation); and, as highly visible architectural features they draw attention to the project rather than allow the development to blend in and be inconspicuous. These design elements are, therefore, inconsistent with the Local Coastal Program.

Building Heights/Natural Grade/City Condition P6: The City has recognized that the 35 foot height limit may not have been met and conditioned the City coastal permit as follows:

P6. That prior to approval of a final grading plan and/or permit and prior to final design review approval, the applicant shall submit an analysis demonstrating to the satisfaction of the Planning Director that the buildings meet the height limit of MZO Section 17.26.060 given the definition of "height of building" in MZO Section 17.04.400. The determination of "natural grade" shall be based

upon the oldest available and usable topographic map for the site or a similar alternative means to the satisfaction of the Planning Director.

17.04.400 of the MZO states, "Height of building" means the vertical distance from **natural grade** at the average of the highest and lowest points of the building site covered by the building, to the topmost point of the roof.

The City has asked the applicant to determine what the historical natural grade was prior to commencement of mining (at least 60 years ago) or the best possible substitute. The City's interpretation is that if the natural grade was, for example, 40 feet higher than existing excavated grade, than the maximum allowable height of a building on the site could be 35 feet plus 40 feet or 75 feet above existing grade. Under this method maximum height is limited only by the depth of the pit excavated by the sand mining.

The City indicates that this definition was derived from Monterey County regulations when the city incorporated and that in the Illustrated Book of Development Definitions, Moskowitz and Lindbloom, 1981, natural grade is defined as, "the elevation of ground surface in its natural state before man-made alterations." Monterey County Planning Department confirms that they use this concept of natural grade, but that "maximum" is the upper limit allowed and not a guarantee. Reliance on the use of "natural" grade which in this case has not existed for over six decades, provides an inappropriate rationale to circumvent the thrust of all of the other relevant LCP guidance which read together, clearly state that new development in the dunes should be limited in height, below 35 feet if necessary to ensure that the project blends in and is inconspicuous. (Furthermore, as discussed below in more detail, the LUP makes it clear that development is not to exceed the height of adjacent sand dunes.) Not only will the City's strained interpretation allow heights in excess of those contemplated in the LCP for this site, it will set a dangerous precedent for other mined out sites in the Marina Dunes. When there is no "natural grade", as in this instance, a more appropriate approach would be to recognize that this portion of the ordinance cannot be applied to this site, and based on the direction in the LCP, evaluate and measure from the grade the buildings will be built on because this is what will determine the visibility of a finished project.

On June 24, 1996, the City approved a coastal development permit for a Mining Reclamation Plan for the "Marina Plant", the site of the proposed Marina Dunes Resort. The approved plan requires that after cessation of the mining, the site is to be graded to certain contours. The contours were proposed to be roughly consistent with the perceived needs for development of the Marina Dunes Resort. These contours are shown on the Reclamation Plan. The area to be developed with most of the proposed buildings is between elevations 40 and 45 feet. The Commission finds that an appropriate determination of height would be to use the approved grading plan contours as the basis for determining maximum height and then, in conjunction with all other LCP policies, determine an **appropriate** height for the individual buildings. To be consistent with the above cited policies, the structures would have to be under 20 feet high -- the difference between the 60 foot elevation of the adjacent dunes and the 40 to 45 foot planned elevation after reclamation. Alternatively the applicant could propose a new grading plan that selectively lowered finished grades, (i.e., propose amending the coastal development permit for reclamation), to allow a maximum height consistent with the LCP.

Landscaping: The applicant proposes the use of a wide range of non indigenous plants for his landscaping scheme. According to City Mitigation Measure A5, landscaping shall avoid CNPS listed invasive plants and adhere to the Preliminary Restoration Plan. The Preliminary Restoration Plan restricts the use of invasive species and plants which require regular irrigation and recommends the use of drought tolerant plants and native plants indigenous to the area. Marina State Beach, the Marina Coastal Water District and the Monterey Peninsula Regional Park District have all used indigenous plants for revegetation projects in the last 20 years.

The USFWS in their response comments to the DEIR recommended the use of plants indigenous to Monterey Bay region. The use of indigenous plants is not only appropriate for its visual compatibility with the dunescape, but is necessary to support the fragile dune ecosystem. Recommended Condition #3, therefore, requires that landscaping be approved by the USFWS and the DFG and recommends use of species indigenous to the Monterey Bay region.

Composite of Visual Impacts. The LUP states that "development shall not extend above the height of the nearest adjacent sand dunes." Building components extend above the nearest adjacent sand dunes between 13 and 30 feet and will be visible from Highway 1 traveling in both directions, and are, thus inconsistent with the LCP. The LCP MZO sets the maximum height at 35 feet from natural grade to the topmost point of the roof with lesser heights in the coastal zone when appropriate. The City has accepted measurements to the top of the ceiling resulting in buildings that are more than 35 feet to the topmost point of the roof (not including architectural extensions) as follows: conference, 38 feet, hotel, 37 feet, hotel lobby, 46. All, therefore, are inconsistent with the LCP. The City interprets natural grade to be "historic" natural grade, i.e., the grade prior to commencement of mining, and has asked the applicant to review and adjust the building heights in that context. The result would be that buildings could be much higher than 35 feet, theoretically up to the number of feet excavated.

Maximizing the scale and height of the structures has resulted in a development that is visually conspicuous and that dominates, rather than blends in, with the surrounding dunes.

Summary/Conclusion. The Local Coastal Program directs the decision maker in the LUP Planning Guidelines, p. 13, Preservation and Enhancement of Coastal Views:

Views of the dunes from Highway 1 and the beach shall be protected by keeping development off of the primary ridgeline. Development below the ridgelines shall be limited in height and mass to blend into the face of the dunes; generally structures should be hidden from public view where physical and habitat constraints allow. Where this is not possible, structures shall be clustered and sited to be as inconspicuous as possible.

In areas where mining activity or blowouts have removed sand dune landforms, new development shall not extend above the height of the nearest adjacent sand dunes and shall be clustered so as to preserve access views across its site from Highway One.

The applicant's proposed design has relied on a generous interpretation of the Marina Zoning Ordinance that allows maximized scale and height. The "maximum" is the greatest permissible, not the legally required. While maximum heights are appropriate in most urban settings, the Local Coastal Program is clear that the Marina Dunes are an exceptional resource of regional and statewide value and require special attention in planning and development. The City has not given adequate attention to the spirit and intent of the LCP.

The design of the resort complex with its strong, sharp vertical elements and massive structures does not blend in with the soft rolling shapes of the dune forms. The height of the structures extends above the surrounding dunes, hiding the dune form on the adjacent Granite Rock parcel; and, though visually blocked in part by the intervening motel, the development will be visibly conspicuous from Highway 1. The "honeymoon suite" and other large buildings near the beach bluff rise over the line of sight from the beach. Visually, the proposed Marina Dunes Resort complex will dominate the surrounding dune area. Its significant mass and scale make it one of the largest resort complexes proposed for the Central Coast Region of California.

While the design is a strong aesthetic statement, it is not visually compatible with this dune environment and is inconsistent with the Local Coastal Program as discussed above. In 1984 the Commission denied on appeal the "Gullwing" project, a 228 unit timeshare development on the 8.9 acre site now owned by the Monterey Bay Regional Park District. The development would have impacted large areas of native dune vegetation and destroyed the natural land form of the site. While not complying with habitat policies, the applicant, however, had proposed "a unique design that optimized the use of the site while reducing the visibility of structures" in the spirit of the Land Use Plan. The buildings in that case were recessed and stepped down the dune slopes with sand used to blend the structures into the dunes.

Though the applicant's site may not lend itself to this specific treatment, optional designs that meet the standards and intent of the Marina Local Coastal Program are certainly obtainable.

Therefore, only as conditioned (see Condition #2), to provide that no structures including "architectural extensions" extend above the nearest adjacent dunes, no structures shall be visible from the beach, all structures shall be measured from finish-grade, colors shall be subordinate and compatible with the dunescape, the design shall be subordinate to the setting and as inconspicuous as possible, is the proposed development consistent with both the letter and the intent of the Local Coastal Program. Though the project will have to be extensively re-designed, Condition 2 provides a methodology for determining visibility and will assure conformance with the Local Coastal Program. Hence, the Condition provides for review and approval by the Executive Director.

8. Environmentally Sensitive Habitat in the Marine Dunes/On-Site Habitat

Geographic Area and Description of Sensitive Dune Habitat. The Marina Dunes, are a part of the South Monterey Bay dune complex which occupies the central and southerly coastal areas of Monterey Bay and extends from the Salinas River southward to Canyon del Rey. The area includes beach sand, active dunes directly behind the beach, and Flandrian dunes (dunes formed since the Ice Ages -- 18,000 to 4,000 years ago). These dunes are characteristic of retreating shores and have migrated landward at varying rates, rapidly during the rise in sea level which marked the close of the last glacial period and much more slowly since that time.

The dune complex stretches through six separate political jurisdictions -- Monterey County, City of Marina, Fort Ord, Sand City, City of Seaside and City of Monterey. To the north are the pristine dunes of the Salinas River Wildlife Refuge, the Martin property, and the north section of the Lonestar property. To the south, areas of dune over the years have variously been used as industrial sand sources, a staging ground for military activities, and as a dump. The South Monterey Bay Dunes are a natural asset of tremendous ecological and aesthetic value. They comprise the largest and best preserved of any of the historic dune systems in Central California, except for the Oso Flaco Dunes in San Luis Obispo County. According to Gordon's Monterey Bay Area: Natural History and Cultural Imprints:

Dune life is a complex and interesting assemblage of species, with the natural vegetation supporting a characteristic fauna...In addition to the ecological considerations, the protection of dune vegetation is important simply from an engineering standpoint...In places the dunes are essential protection against marine flooding...Dunes in the South Monterey Bay area appear to be richer in species than those in the north.

Sensitive species found in the vicinity of the site are *Erysimum menziesii* (Menzies' wallflower) and *Gilia tenuiflora* ssp. *arenaria* (sand gilia) -- federally endangered; *Chorizanthe pungens* var. *Pungens* (spineflower)

- federally-threatened; *Erysimum ammophilium* -- species of concern; *Anniella pulchra nigra* (black legless lizard) -- proposed for federal-listing as endangered; *Charadrium alexandrianus* (snowy plover) -- federally-threatened; *Euphilotes enoptes smithi* (Smith's blue butterfly) -- federally-endangered. The draft HCP/LCP maps and discusses these sensitive resources and the EIR updates the information. The Local Coastal Program identifies dunes habitat as environmentally sensitive.

Local Coastal Program Policies. The certified Marina Local Coastal Program has numerous policies addressing the protection and restoration of the environmentally sensitive habitat in the Marina Dunes. The following policies provide the general directive:

LUP 8. To prohibit further degradation of the beach environment and conserve its unique qualities.

LUP 19. To promote restoration and protection of native dune habitat and vegetation.

LUP 25. To protect the habitat of recognized rare and endangered species found in the Coastal dune area.

LCP policies relating to specific aspects of the project are discussed below under each topic.

No Environmentally Sensitive Dune Resources (within the meaning of the LCP) on the Marina Dunes Resort Site: When the LUP was certified, it was presumed that dune areas which have been severely disturbed are not environmentally sensitive habitat. The current understanding is that all of the Monterey Bay dunes, whether disturbed or not, constitute portions of an environmentally sensitive habitat. In fact, the native dune plants are specifically adapted to respond to the type of disturbance resulting from constant wind and shifting sands, and will thrive where the rate or type of disturbance does not exceed their regeneration capacity. Of course, some areas are no longer viable as habitat because of fragmentation by development. However, even those sites which currently support little native plant life because of disturbances such as excessive trampling, having been over-run by invasive exotic plants, or sand mining activity still function as part of the overall dune habitat -- in much the same way as all the waters of Monterey Bay are habitat for marine life which over time, ranges throughout and utilizes the entire resource.

While, in terms of our current biological perspectives, the Marina Dunes Resort site is part of the overall environmentally sensitive dune habitat of Monterey Bay, the standard of review nonetheless remains the Marina LCP as certified. Therefore, the project needs to be evaluated strictly in terms of the LCP's standards, including the LUP policies, rather than the more inclusive current biologic insights.

The LUP requires that each site be evaluated for environmentally sensitive habitat and restricts development to disturbed areas of the dunes (p.12). Disturbed areas are identified in the LUP as areas where little or no native vegetation or landform remains. The EIR reports that there are no sensitive species on the site of the proposed Marina Dunes Resort. Approximately 15 acres of the site are currently being mined for sand and little natural duneform remains. Limited areas of non native vegetation can be found in the southeast corner of the site, and some native plant specimens appear to be pioneering the seaward perimeter..The applicant's proposed site plan (19.4 acres within the property lines) indicates that 6.45 acres will be covered with buildings and pavement, 3.97 acres will be landscaped, and 6.5 acres will be restored to natural habitat conditions. The approximate 2.5 acre balance is presumably beach and tidal area.

The site was evaluated for environmentally sensitive habitat. It was found to be almost wholly disturbed and (in terms of the LCP) void of sensitive habitat. Therefore, the proposed development is consistent with the Local Coastal Program requirement to restrict development to disturbed areas of the dunes.

Restoring and Protecting Restored On-Site Habitat and Designing to Protect Adjacent Sites. The LUP (p.10) requires that primary habitat areas shall be protected and preserved and that all development must be sited and designed so as not to interfere with the natural functions of such habitat areas. It states that potential secondary or support habitat areas to the primary habitats identified on the site should also be defined. Secondary habitat investigation should include identification of the role and importance of the secondary area to the primary habitat area and should stress the impact of use or development in the secondary area on the primary habitat. All development in this area must be designed to prevent significant adverse impacts on primary habitat areas.

LUP Policies (p.6-8) provide:

LUP 19. To promote restoration and protection of native dune habitat and vegetation.

LUP 26. To regulate development in areas adjacent to recognized rare and endangered species or their habitats so that they will not threaten continuation of the species or its habitat.

The site itself has no sensitive habitat but undisturbed or recovered duneform and dune habitat with several sensitive species are located on the adjacent parcels as well as in the larger area. The Granite Rock site to the north, a former mining site, has reestablished its duneform and habitat. More than half of the 12 acre Marina Coast Water District parcel to the south is a designated dune reserve; the dune area surrounds a vernal pond, another category of environmentally sensitive habitat.

Dune Restoration Plan to Establish and Protect On-Site Habitat and to Buffer Contiguous Habitat. City Coastal Permit condition E1 incorporates the document "Mitigation Monitoring Plan and Program for the Marina Dunes Resort Hotel" into the conditions of the City coastal permit. Mitigation Measures A-1 through A-8 address habitat protection and restoration.

Mitigation A1 provides that to offset potential impacts on the surrounding dunes due to increased visitor use that final plans shall include a minimum 6.5 acres of dune restoration and a long term management plan and agreement for monitoring and management of the resource, consistent with the Biological Resources Mitigation Strategies and Restoration Concept (Map 12) and the preliminary restoration plan in Appendix B of this EIR, and including any off site areas potentially disturbed by improvements to Dunes Drive. Mitigation's A2 through A8 amplify on A1.

[The issue of whether on-site restoration is adequate mitigation for off-site impacts on the surrounding dunes is discussed in Finding 9, Offsite Habitat and Recreational Management Issues, as is Mitigation A8 which addresses assessment per occupied unit per night as a contribution to a Habitat Conservation Fund.]

A Dune Habitat Restoration Plan for the Marina Dunes Resort Hotel (Restoration Plan) was prepared by biologist Thomas K. Moss which states that it is "consistent with the policies and guidelines stated in the Marina Dunes HCP." However, the HCP was not adopted by the City nor approved by the Coastal Commission or the USFWS (see Finding #2). The HCP was to provide an approach to planning in the dunes to allow for development to proceed based on comprehensive rather than fragmented habitat resource restoration/protection programs. An important consideration was that habitat areas for the endangered Smith's blue butterfly needed to be contiguous or joined by habitat corridors to allow adequate dispersal between butterfly demographic centers. According to the Administrative Draft HCP and Environmental Assessment, April 1990, p.22, optimal corridors between preserved/conserved habitat areas should be at

least 100 feet in width. The corridors should be maintained in the sheltered afdunes as well as the more exposed foredunes. (Foredunes would be also maintained through erosion setbacks)."

Habitat Corridors and Habitat Buffers. The habitat corridors into the proposed project plans would allow Smith's blue butterfly and black legless lizard dispersal across the applicant's site between the Granite Rock site and the MCWD site. The Restoration Plan provides for restoration of 6.5 acres of dune habitat in three locations. Each of these locations is problematic in the following ways:

- (1) a 3 acre foredune habitat corridor and dune stabilization project the width of site which includes a 50 foot buffer from the development envelope and restoration of Snowy plover habitat.

More than half of this corridor is within the 50 year erosion setback and thus does not have a long term habitat value. It also is not clear how this corridor connects to the adjacent MCWD site and if the grading plan provides for effective habitat continuity. The Final Restoration Plan needs to address this issue. The foredune habitat corridor is also broken by the development of a "honeymoon suite" on the foundation of an old mining structure. This interruption of the corridor does not allow for optimum dispersal of the endangered Smith's blue butterfly. The structure should be relocated to the development envelope. The Commission's coastal development permit has been conditioned to require review of the interface with habitats on adjacent properties to the north and south to assure effectiveness and to adapt the location and grading plan (if necessary) as well as to relocate the honeymoon suite out of the habitat corridor.

- (2) a reardune habitat corridor along Dunes Drive 50 to 100 feet wide connecting to habitat on adjacent properties, the corridor will be crossed by two roadways. (The Restoration Plan was revised during the city review process deleting an equestrian center and moving tennis courts out of the reardune habitat corridor.) The corridor width is at least 100 feet.

Information developed as part of the HCP formulation indicated that habitat corridors should be at least 100 feet wide. The HCP identified a corridor at the midpoint of the applicant's property leading from an area of good habitat on the Granite Rock site to the back dune area of the Marina Coast Water District site. The City-approved landscape plan submitted with Marina Dune's Resort appeal file shows the afdune corridor to be located on the eastern edge of the property along Dunes Drive from the Granite Rock site to the MCWD site. The EIR does not provide adequate graphics to support a conclusion that the proposed location optimizes dispersal of sensitive species between the two adjacent properties. It is not clear that the corridor connects to the most productive existing habitat areas on the adjacent properties. Two 24 feet wide roads cross this corridor. The afdune corridor also allows for dispersal of the black legless lizard through 36 inch culverts under each entrance roadway. The Department of Fish and Game raised the issue of whether the number of culverts is adequate to assure lizard movement through the corridor. The EIR response indicates that the number of culverts will be finalized in the final restoration plan. With the given information, the Commission cannot find the reardune corridor is appropriately located and adequately designed to provide for effective restoration and habitat continuity. The Commission's coastal development permit thus has been conditioned to require that in finalization of the Restoration Plan these issues be reviewed in more detail and the appropriate measures taken to assure effective restoration including 1) the number of culverts to be installed to allow for black legless lizard dispersal shall be determined by the USFWS and the DFG, (2) that the maximum width for all improvements for each entry road across the restoration area shall be 24 feet, and (3) that prior to Executive Director approval of the final plans that that the location of the reardune corridor be reviewed by the USFWS and the CDFG in field.

- (3) a 50 foot wide buffer zone along the northern property boundary to protect adjacent habitat.

The EIR states that the:

"Natural angle of repose for dry, loose dune sand is about 26 degrees, or approximately a 2 (horizontal) to 1 (vertical) slope. The steepness of a stable, unsupported face varies with the amount of compaction, the type and thickness of bedding, the size and angularity of the individual sand particles, and the moisture content. Artificially constructed slopes may be made as stable as natural ones if they are appropriately designed. The slopes at the site have achieved dynamic stability in slopes averaging about 29 degrees. These slopes can be disrupted fairly easily by wind, water, vibration, trampling or vehicular loading. The lack of vegetation to hold the sand in place contributes to the ease with which the balance can be disrupted.

Earth Resources Mitigation B5 states:

Design of final cut or fill slopes of berms, dunes or other landformed features to reflect the stability characteristics of the material in the slopes and shall repair/remedy existing slope problems along the south boundary.

Mitigation Implementation/Monitoring

1) Action to be taken: The proposed 3:1 slopes shown along the south and north sides of the project on the Preliminary Grading and Drainage Plan should be adequate for slope stability purposes, but these slopes could steepen from wind erosion. It must be demonstrated to the satisfaction of the City Engineer that the final slopes can be stabilized, by vegetation or mechanical means, using soils from the site.

This mitigation measure addresses the issue of slope stability along both the north and south slopes. The issue arose from existing slope failures and erosion due to sand mining along the south property line shared with the MCWD which has resulting undermining the adjacent site. It also raises an issue of slope steepness and compatibility with adjacent primary habitat resources on both the south and north property boundaries. The mitigation measures state that 3:1 slopes may need mechanical stabilization, for example, retaining walls. What affect, if any, these steep slopes will have on adjacent primary habitat resources is unclear. The applicant must demonstrate that stabilization techniques do not in anyway reduce the value of the buffer areas to prevent adverse impacts on primary habitat or must revise the grading plan to reduce slope steepness. The permittee agrees and the permit is so conditioned that no retaining walls or other structures shall encroach upon the 50 foot buffer along the northern property line, nor shall retaining walls or other structures interrupt the habitat corridor continuity with adjacent properties on either the oceanfront or Dunes Drive habitat corridors.

Insufficient Buffer Along South Property Line: The Restoration Plan does not show a buffer along the south property line. The MCWD and the Dunes Drive right- of-way enclose Vernal Pond #4, an environmentally sensitive habitat. All of the MCWD property below their eastern property line is a dune reserve. Hence the southern property line of the Marina Dunes Resort is adjacent to an environmentally sensitive habitat. The HCP shows a 50 foot buffer along this southern property line. The proposed eastern habitat corridor on the Resort property itself provides a buffer for most of the reserve. However, the corridor stops short of buffering the entire reserve and the applicant has sited a portion of the back corner of the conference center building within 50 feet of the reserve. With appropriate safeguards, this limited exception to a natural buffer zone can be found consistent with the Local Coastal Program. Accordingly, the Commission's coastal development permit has been conditioned to require measures to preclude shading, irrigation overspray, trampling and other impacts to the dune reserve as part of the On-site restoration plan.

Dunes Drive Improvements: In addition to the above issues, no biologic survey of the habitat resources on the areas along Dunes Drive that will be impacted by widening of the road for vehicular, bicycle and pedestrian improvements has been done as required by the LUP. These areas in the road right-of-way are vegetated dune (exotic and native species) and are an extension of the dune reserve/vernal pond area of the MCWD site and the restored dune habitat area of the State Parks. Extension of an asphalt/concrete sidewalk is an unnecessary intrusion on dune resources. However, with the concurrence of the California Department of Parks and Recreation and the California Department of Fish and Game a boardwalk style walkway may be considered adjacent to Dunes Drive to link the State Park access trails with the permittee's site. Pedestrian access to the beach is provided within the resort. Pedestrian access across Highway 1 to the City of Marina will be available by using the proposed sidewalk on the inland side of Dunes Drive.

To provide for a viable continuous corridor, the applicant has agreed and the permit has been conditioned that the southerly adjoining Marina City Dunes Drive right-of-way will be restored by the permittee and shall become a permanent part of the extended habitat corridor that will connect Granite Rock, Marina Dunes Resort, the Marina Coast Water District/City of Marina Dunes Drive right-of-way. The restoration of this off site area shall be undertaken concurrent with on-site restoration pursuant to Conditions 5, 6 and 7. The off site restoration shall be identified as a contribution to the Habitat Management Program/Mitigation Funding Program pursuant to Finding 9 below and Condition 8 and shall fulfill such portion of the permittee's obligation to that Program as is determined appropriate through the process.

Discussions with the applicant indicate that no sidewalk above the Dune Reserve will be required by the City. The Commission's coastal permit retains a condition to require a biological survey of all areas to be disturbed with survey results reviewed by the DFG and USFWS to assure adequate mitigation or redesign if necessary. The final plans submitted pursuant to permit condition 1 may make this condition moot.

Landscaping: Mitigation A5 provides that ornamental landscape within the development envelope shall not use any invasive exotic plants listed as such by the California Native Plant Society. Finding 6, Visual Resources, of this recommendation discusses the aptness of using plants indigenous to the Monterey Bay area to provide for greater visual compatibility with the surrounding dunescape. All revegetation and landscaping on the west side of Dunes Drive since the inception of the Coastal Act has been indigenous to the area. The USFWS has recommended the use of indigenous species. The use of indigenous species not only guards against the invasion of non-native species into the adjacent sensitive dune habitat, but also provides greater visual compatibility and increases the value of the site as secondary habitat. The Commission's coastal permit is therefore conditioned to recommend the use of plant species indigenous to the Monterey Bay area and require review of the final landscape plan by the Department of Fish and Game and the USFWS.

Deed Restriction for Habitat Restoration Area: City permit conditions do not address permanent preservation of restoration areas as open space/conservation areas. To assure these ecosystem improvements have long term success, the Commission's coastal development permit has been conditioned to require a deed restriction to ensure that restoration areas (as identified on the final restoration plan approved by the Executive Director) remain as protected open space habitat.

Procedures for Re-Establishing and Maintaining Restored Areas: The procedures for re-establishing and maintaining the native coastal dune restoration areas include native seed collection, exotic species eradication, sand stabilization, revegetation, means to protect dune habitat areas on-site and on adjacent properties including boardwalks and fencing and environmental education. Monitoring and maintenance provisions include quantified standards to judge successful restoration and a project biologist

who for five years will evaluate the program and prepare an Annual Monitoring Report to be submitted to the USFWS, CDFG and the California Coastal Commission. These aspects of the Restoration Plan are consistent with LCP policies regarding restoration and protection of dune resources

Summary Conclusion: The Local Coastal Program provides no quantified standards to protect or restore dune resources. The appropriate standards are derived from the conclusions of the individual site evaluations which identify primary and secondary habitat. The LUP (p.10) requires that primary habitat areas shall be protected and preserved and that all development must be sited and designed so as not to interfere with the natural functions of such habitat areas. LUP 19 directs the City to promote restoration and protection of native dune habitat and vegetation and LUP 26 directs decision makers to regulate development in areas adjacent to recognized rare and endangered species or their habitats so that they will not threaten continuation of the species or its habitat.

The Marina Dunes Resort Restoration Plan creates new dune habitat resources and provides buffers for existing habitat on adjacent parcels. It provides habitat corridors where none are currently available for dispersal of species. The plan closely follows the HCP directives on how to revegetate with native species, eradicate and control exotic vegetation, reintroduce species of special concern, and manage and monitor the restored resource based on quantitative and qualitative standards to determine success. These techniques are consistent with the LCP requirements for protection and restoration of habitat. While the overall thrust of the restoration plan meets the intent of the LCP policies, components of the plan need further evaluation and refinement.

The permittee has recognized the need for the following issues that need to be addressed in the Final On-Site Restoration Plan include 1) the relationship of corridors to habitats on adjacent parcels, 2) the removal of the honeymoon suite in the front dune habitat corridor, 3) the best location of the rear dune corridor to optimize chances of success, 4) the number of culverts needed for black legless lizard dispersal, 5) evaluation of grading contours to assure stability of habitat corridors/buffers without resort to structures that would impact resources; 6) recommendations for use of landscaping with plants native to the Monterey Bay region, 7) a biological survey of all areas to be disturbed by construction not yet surveyed and, specifically, the right-of-way along Dunes Drive where circulation improvements are proposed; survey results are to be reviewed by the DFG and USFWS to assure adequate mitigation or redesign as necessary, 8) deletion of the extension of sidewalk beyond the applicant's site on the west side of Dunes Drive from the circulation plan and restore all areas in the right of way that are not developed with native dune vegetation consistent with the Dunes Drive corridor, 9) restoration habitat areas restricted as permanent open space/environmentally sensitive habitat areas, 10) provisions to mitigate intrusion of buildings into 50 foot buffer along the southern property line that protects the dune reserve on the Marina Coast Water District Property.

The Commission's coastal development permit is conditioned to require submittal of the final Restoration Plan prepared in consultation with the U.S. Fish and Wildlife Service and the Department of Fish and Game and addressing all of the above issues to the Executive Director for approval. The applicant shall submit to the Executive Director for review and approval, an offer to dedicate to a public agency or non profit group an open space/habitat protection easement over the identified restoration areas.

The site plan shall be reviewed in field with the U. S. Fish and Wildlife Service (USFWS) and the California Department of Fish and Game (DFG) to affirm that the rear dune habitat corridor along Dunes Drive joins, with a minimum width of 100 feet, good native dune habitat ("conserved habitat" as shown on the Marina Dunes Land Use and Habitat Restoration Plan, Figure 7 of the Draft HCP) on the adjacent Granite Rock property. Therefore, as conditioned, the proposed development is consistent with the Local Coastal Program policies protect and promote restoration of sensitive dune habitat and to site and design development so as not to

interfere with the natural functions of habitat areas as it relates to newly established on-site habitat and habitat on contiguous parcels.

Change in Commission Perspective on Dune Ecology. Since the certification of the Marina LCP in 1982, knowledge of dune resources and the ability of disturbed dune areas to recover both duneform and plant and animal life has resulted in a change in perspective on the classification of dunes as environmentally sensitive habitat. The entire dune substrate, e.g., the sand itself with its ability to shift and reform, to be stabilized by dune plants and to reconstitute itself as viable habitat, has been recognized as environmentally sensitive habitat. Structural development on sand dunes, disturbed or not, represents an irrevocable fragmentation of the dune system and a permanent loss in a dune resource.

Since the Marina LCP was certified prior to this growth in understanding, its policies which are the standard of review for this project specify that disturbed areas are not considered sensitive habitat and can be developed. The Commission recommends that the City of Marina revisit the issue of the intrinsic value of dunes, disturbed or not, in the light of the Commission's actions and consider amending the Marina LCP to reflect these new understandings.

9. Off-site Habitat and Recreational Management Issues

Monterey Bay and its adjacent waters and submerged lands off Central California is a marine environment of special national significance and was designated as the Monterey Bay National Marine Sanctuary 1992 to provide for its comprehensive management and protection. The South Monterey Bay dune system is an onshore counterpart to the Sanctuary. The open space and scenic qualities of the dunes, beach and Monterey Bay are a statewide attraction. The dunes are a unique geologic resource and an environmentally sensitive habitat. The environmental and recreational resources of the Marina Dunes are closely linked. The dunes are an access route to the beach, offer solitude and an attractive refuge to explore and picnic out of the wind. Many of the activities prized in the area are undertaken on the oceanfront beach itself, fishing, surfing, hanggliding (from a platform provided by State Parks).

Local Coastal Program Policies Addressing Off-site Impacts. The Land Use Plan (p.6-8) provides policies directing development to locations which will protect against overuse of the dunes and policies that emphasize the need to balance the level of use with the ability to manage the number of people to prevent dune degradation and to provide for visitor's safety.

LUP 1. To insure access to and along the beach, consistent with recreational needs and environmental sensitivity of Marina's Coastal area.

LUP 2. To provide beach access and recreational opportunities consistent with public safety and with the protection of the rights of the general public and private property owners.

LUP 6. To provide for a level of recreational use consistent with the ability to operate, maintain, police, and protect the beach and dune environment.

LUP 14. To reinforce and support Coastal recreational and visitor-serving activities in the inland area, where appropriate, to the extent the support activities would complement, not destroy, the coastal resource.

LUP 32. To minimize adverse environmental affects, by concentrating new development within or adjacent to areas of existing development in the Coastal Zone.

LUP 38. To regulate development in order to minimize the risks to life and property in the Coastal Zone.

Because this project is appealed on the basis of its location between the sea and the first public road paralleling the sea, the grounds for an appeal to the Coastal Commission include the allegation that the development does not conform to the public access policies of the Coastal Act. Coastal Act Policies that relate to access and recreation and are applicable to the Marina Dunes Resort proposal are:

30212 (a) Public access from the nearest public roadway to the shoreline and along the coast shall be provided in new development projects except where: (1) it is inconsistent with public safety...or the protection of fragile coastal resources...

30212.5 Wherever appropriate and feasible, public facilities, including parking areas or facilities, shall be distributed throughout an area so as to mitigate against the impacts, social and otherwise, of overcrowding or overuse by the public of any single area.

30252 The location and amount of new development should maintain and enhance public access to the coast by... (6) assuring that the recreational needs of new residents will not overload nearby coastal recreation areas by correlating the amount of development with local park acquisition and development plans with the provision of on-site recreational facilities to serve the new development.

The Marina Dunes Resort site is related geographically to the biological and recreational resources of the surrounding area. Visitors to the Marina Dunes Resort will also be visitors to the beach and surrounding dunes including Marina State Beach to the north, and, hence, will impact resources off-site as well as on-site. The impacts of any project on environmental and recreational resources on-site and off-site will be determined by many factors including existing resources on-site, siting and intensity of development, restoration and management program. Thus, although the location of the applicant's site is an appropriate location for a development, all aspects of the proposed development must be evaluated to determine whether or not the proposed development is appropriate for the location. The Commission found that the type of development, a visitor accommodation facility, was consistent with the LUP (see Finding #4). The question is whether the number of users generated by this project is balanced with the means to protect dune resources and provide for public safety.

Number of Estimated Visitors to Marina Dunes Resort and Potential Impacts. According to the EIR, the proposed development will generate a maximum of 986 visitors a day including 732 using accommodations, 187 restaurant patrons, 40 off-site conference attendees and 27 public access users. At the applicant's expected 70% occupancy rate, the resort will generate 690 visitors a day or a cited 250,901 visitors a year. (Note: the EIR's calculations are incorrect, but for consistency purposes, this report utilizes the EIR's figures; the correct figure is 251,923.) According to a Transpo Group letter (6/22/95) to Trendwest submitted by the applicant's consultant with EIR comments, Worldmark vacation resorts in the northwest have an annual average occupancy of 75% with peak occupancy of 95%. Thus, actual occupancy may well be greater than projected, with attendant greater off-site impacts.

Though members of the Marina Dunes Resort and visitors to the hotel are not specifically visitors to Marina State Beach or the adjacent environmentally sensitive habitats, the project location is a main attraction of the

destination resort. Most users are not enroute, but are longer-term visitors, conferees or resort members, who will likely make substantial use of the dunes and beach area as well as other regional attractions.

Trampling and other impacts from a large number of visitors could result in significant impact on the habitat and on the ability of public agencies to police and manage the natural resources and provide for public safety. Different user types can have widely different impacts. For example, children will be tempted to slide down the face of a dune, an activity less interesting to most adults. Untutored picnickers seeking a sheltered spot in the dunes could cause considerable damage to the dune vegetation while a Native Plant Society field trip would likely have negligible impacts. Increased numbers of surfers and hanggliders will require increased aquatic safety personnel. While there is no definitive means to estimate how many Marina Dunes Resort visitors would go off-site or to quantify the impact they might have, the preliminary carrying capacity studies done for the Fort Ord Dunes State Park is illustrative of what is considered user numbers that balance recreational use/experience and habitat protection.

Determining a Carrying Capacity for the Marina Dunes. In the absence of specific densities in the Marina Local Coastal Program and in the absence of an approved regional planning document, the Ft. Ord Dunes State Park Preliminary General Plan and EIR (1996) offers a current analysis of the carrying capacity in the South Monterey Bay dune complex.

California Public Resources Code Section 5019.5 requires that a land carrying capacity survey be made prior to preparation of any development plan for any park or recreation area and that attendance be held within the limits established. The concept of "carrying capacity" was used to plan for management of uses to prevent increased resource disturbance associated with increasing recreational use. The optimum carrying capacity has been defined as the level of recreational use consistent with protecting the resource and satisfying the recreationalist. Allowable use intensity helps to determine limits of the development areas and appropriate levels of use for the areas, consistent with resource management objectives. The relationship of use and amount of impact is not, however, direct and is affected by the type of environment, time, type and distribution of use and how the uses are managed. The Preliminary Ft. Ord Dunes State Park General Plan and EIR (1996) used these concepts to arrive at the maximum development and resulting number of users estimated to be consistent with resource protection and user perception of a quality experience.

The Plan proposes to restore and maintain as open space and native coastal strand and dune scrub habitat 700 of 886 acres. An estimated 75 acres (8.5 %) will be covered with building and paving (8.5%) in a development envelope of 137.26 acres (15.4%). Development includes a 40-80 unit lodge, restaurant, up to 350 campsites, and amenities with a projected maximum visitorship of 2457/day or 896,805/yr. Though the Fort Ord Plan did not use the concept of persons per acre, it is a calculation that can be more easily extrapolated to other sites in the same dune complex. The draft Fort Ord Plan would result in 1,012 persons/ac/yr. These preliminary buildout numbers are used in the following discussion.

The Plan identified the beach area as a moderate intensity use zone, the undisturbed or restorable dunes as a low intensity use zone, and the currently developed areas of the back dune as high intensity use zones. The total number of users that could be accommodated consistent with maintenance of site resources and recreational user satisfaction was 896,805 a year. The Plan took into consideration that only a portion of the visitors were estimated at any one time to use the beach or trails and considered day users as well as hotel and campground users in its total numbers. State Park hotel and campground users like Marina Dune Resort users will not spend all of their on-site. Thus, Fort Ord Dunes State Park visitors may not be dissimilar to resort users. On the other hand, there is an assumption in the Ft. Ord figures that the area will be maintained and staffed and policed, to facilitate resource protection and visitor enjoyment.

Fort Ord Dunes State Park on its northern boundary is contiguous to Marina State Beach. The North Dunes Trail System will connect to the Marina State Beach Dune Trail, and Marina State Beach parking and access at Lake Court will also provide access to the Fort Ord Dunes. Though these park units will be separately managed, they are physically integrated. The Marina Dunes and the Ft. Ord Dunes are within the same dune complex and have the same basic characteristics. The Ft. Ord estimated carrying capacity and the Marina State Beach use figures have been combined and averaged to provide a DPR visitor total. Table 7 compares the total visitor numbers per acre with the visitor numbers per acre estimated for the Marina Dunes Resort site.

TABLE 7 STATE PARKS/MARINA DUNES RESORT - VISITORS/ACRE/YEAR

Site	Acres	Units	Visitors/Year	Visitors/acre/year
Ft. Ord Dunes State Park.	886	40-80 unit lodge; up to 350 campsites	896,805	1,012
Marina State Beach	170	day use only	300,000	1,765
Total	1056		1,196,805	1,133 avg
Marina Dunes Resort	16 ^a	184 resort units	250,905 70% occup.	15,681

a. Pursuant to HCP/LCP. Used to facilitate comparative analysis with the Granite Rock and Lonestar projects whose acreage's will be per HCP/LCP.

Table 7 is based on estimates and extrapolations; however, it does illustrate a relative user impact potential based on the available information. The average number of visitors per acre at the Marina Dunes Resort is 15,681 compared to the 1,133 at the State Beaches. The Commission can deduce from these figures that it is likely the resort users will spill over into the wider dune area and, in fact, they have been invited to the Marina Dunes Resort because of its location in the dunes.

Public Agency Concerns. The Marina Dunes Resort EIR finds that the restoration of 6.5 acres of on-site dunes with boardwalks and educational brochures will reduce potential on and off-site impacts to less than significant levels. The U.S. Fish and Wildlife Service in their comments on the draft EIR (April 19, 1996) stated: "The Service supports these restoration measures to mitigate for the permanent loss of sand dune habitat and to minimize habitat fragmentation. However, the Service strongly disagrees that such on-site mitigation would reduce the impact of an additional 250,000 visitors per year (almost double current use levels) at Marina State Beach to a less than significant level. A doubling of current beach visitation is likely to seriously degrade sand dune habitats....that support a diversity of species including populations of several sensitive species such as the federally endangered Smith's blue butterfly."

Associated with increased needs for protecting resources, the applicant will also need to consider the safety of his visitors. The EIR reports that the City Public Safety Department (an integrated police and fire organization of 28 sworn officers, backed by a force of 29 volunteer fire fighters), anticipates up to 1600 calls a year from the Marina Dunes Resort. The City does not maintain a ratio of fire fighters per population or maximum response time for police. However, the EIR reports that the impact is not considered significant. The State Park reports that they currently supply emergency and management assistance for the adjacent private properties. The State Parks budget for the Marina State Beach is \$171,400 a year for operation and

equipment which enables DPR to manage approximately 300,000 annually with volunteer help and with grants or special funds for specific projects, such as restoration. DPR expects that "with the anticipated increased visitor use on the State Beach and beaches to the north we anticipate that our efforts with existing staff will not provide an adequate level of public service" (letter Mary Wright, DPR to Marina City Mayor, July 30, 1996). The Regional Park District has expressed similar concerns to the Mayor finding that at current beach and dune use rates we are having questionable success in limiting human disturbance. "We are extremely anxious about the effect another expected quarter-million people will have on our ability to be a successful open space land manager for this property." (Letter Mayor Voelka from Gary Tate, Regional Park District, July 29, 1996).

Proposed Mitigation for Off-site Impacts Attributed to Visitors of Marina Dunes Resort.

To mitigate for the off site impacts that could occur from visitors to the proposed resort, the City of Marina has determined that the applicant shall be assessed a fee to be contributed to a Habitat Conservation Fund.

City Condition E2 requires,

That concurrent with the preparation and consideration for City approval of the final Restoration and Management Plan pursuant to adopted Mitigation Measure A1, a Habitat Management Program for off site impacts shall be similarly prepared and considered for City approval to address how the funds to be contributed by the project to the City Habitat Conservation Fund pursuant to adopted Mitigation Measure A1 can be used to ameliorate actual off-site impacts which might eventually be determined through periodic habitat monitoring or other appropriate means to be associated with the project.

Marina City Mitigation measure A-8 provides that the project shall be assessed a rate per occupied unit per night as a contribution to the existing City Habitat Conservation Fund (HCF) and that the current fee \$0.35 per visitor serving room per night shall be reevaluated and increased to account for inflation, proportion of visitors from the proposed project over those anticipated in the draft HCP (a factor of 1.5) and changes in management or circumstances that would warrant additional funding.

The City has clarified (Jeff Dack, personal communication, 9/10/96) that the current HCF was established as part of the legal settlement for the Comfort Inn (now Travellodge) and is not suitable to act as the fund for the larger dune area maintenance since it does not have provisions for changes in rate and the distribution of the fund is controlled by the Sierra Club and the City. Moneys from this existing fund has been granted to the Regional Park District for improvements to the Dunes Drive access parcel.

A new Habitat Conservation Fund will need to be established for the monies collected from the applicant pursuant to Mitigation A-8. The FEIR established a \$0.52, rate per occupied unit and reported that the fee may be increased when information on the Snowy Plover has been analyzed. Mitigation A8 also provides that up to two years of such contributions received prior to the completion of the HCP, LCP amendment and related documents for the Marina Dunes may be used to fund the completion of said plan and documents.

Background on Determination of Base Rate for Funding Habitat Management Program. The base rate of .35 was taken from the draft Habitat Conservation Plan/Local Coastal Program Amendment also known as the Marina Dunes Plan. The HCP had two major components covering the 626 acre area of dunes within the city limits of Marina: 1) the biological component for species and habitat maintenance and the 2) security component. There would be a Marina Dune HCP Implementing Agreement between landowner interests. The property owner would be responsible for full restoration of existing disturbed dunes. After restoration the project would contribute to a permanent fund for long term maintenance and protection.

A Plan Administrator would oversee HCP implementation assuring that species and habitat maintenance activities were properly conducted. The City of Marina, the Monterey Peninsula Regional Parks District, the Department of Parks and Recreation, Department of Fish and Game and the U. S. Fish and Wildlife were listed as potential management entities. In 1990 the cost was estimated to be \$35,000 for ½ time position and supplies for this component of the plan.

For the security component of the Plan, the HCP Environmental Assessment reported that landowners and police agencies in the plan area did not incur a high incidence of illegal trespass or vandalism. The HCP indicates that security guards employed by the individual developments would be trained to report and respond to infractions in the open space areas directly adjacent to their grounds. The security component concluded that a 1/2 time position at \$35,000 per year would handle the responsibility for law enforcement within the open space habitat areas of the study area, i.e., the 447 acres north of Reservation Road. The program would be funded by assessing the developments based on maximum number of units allowed in the HCP (1800) and based on the projected amount of money needed to implement the plan.

The fee was determined to be .35 based on the fee established under the Sierra Club/City of Marina legal settlement involving the Travellodge project. At the total number of units proposed and at the rate of .35 per occupied unit at 60% capacity, \$138,000 a year would be generated. Twice the approximate \$70,000 estimated to be needed for implementation of the biological and security components of the Plan.

However, the Commission has no record that the HCP/LCP identified the potential numbers of visitors, or comparatively evaluated the costs of monitoring and maintenance of dunes with actual costs in other areas, and did not present evidence that the number of security personnel would be adequate to be responsible for law enforcement and safety. The HCP provides for a 1/2 time position to police and protect the visitors to the Marina Dunes and a ½ time position to manage and maintain resources. If the dune sites were developed the densities (number of units) proposed in the HCP/LCP and at the intensity (unit and ancillary facility capacity) of the proposed Marina Dunes Resort, at full buildout at 70% occupancy there would be 2,250,000 additional visitors a year that could visit the dunes. (See Finding 9 on Cumulative Impacts for a discussion on buildout to see how this figure was reached). The costs needed to maintain the existing level of service and preserve dune integrity needs to be more thoroughly assessed and an attempt made to quantify the needs.

Conclusion. The LUP policies direct the decision makers to insure access to and along the beach, consistent with recreational needs and environmental sensitivity (Policy 1) and to provide beach access and recreational opportunities consistent with public safety (Policy 2) and to provide a level of recreational use consistent with the ability to operate, maintain, police and protect the beach and dune environment (Policy 6). Policy 38 requires that development must be regulated in order to minimize the risks to life and property in the Coastal Zone. The applicant is specifically locating his development in the dunes to facilitate access to the beach and dunes. To meet the directives of this policy the applicant must also assure that the environment can be managed to sustain the use and that the visitors are safe.

The City proposes to develop a final Habitat Management Program for off site impacts resulting from visitors to the resort. A Habitat Mitigation Fund will pay for the monitoring and maintenance. The Program will provide for progressive response to observed or quantified problems. However, the actual costs and personnel needs for providing this kind of restoration, maintenance and security has not been adequately evaluated. A further analysis of the capacity of City personnel in conjunction with State Park and Regional Park District personnel to police and provide for the safety of resort visitors on the beach and dunes as well as maintenance and repair should be undertaken as part of the Final Habitat Management Program. Measures to mitigate for deficiency in personnel or funding for the estimated increased impacts should be included.

Mitigation A8 also provides that up to two years of such contributions received prior to the completion of the HCP/ LCP amendment and related documents for the Marina Dunes may be used to fund the completion of said plan and documents. It is not clear how the Marina Dunes Resort visitors will be served during this period or how the dune maintenance will be funded. These issues should be resolved as part of the Habitat Management Program.

The permit is conditioned to require that prior to recordation of the subdivision final map or occupancy of any structure, the permittee shall submit to the Executive Director for review and approval, an interim Habitat Management Program/Mitigation Funding Program as required pursuant to City Mitigation A-8 to ameliorate actual off site impacts.

This interim program will be developed for implementation with the subject project during the period prior to the City's preparation and presentation for Commission action on a final program. The interim program shall continue until the final program is fully certified and in effect.

The interim program shall be developed in consultation with the U. S. Fish and Wildlife Service, the Department of Fish and Game, the California Department of Parks and Recreation, the Monterey Peninsula Regional Park District and the City of Marina. The final interim program shall include a re-examination of the capabilities of the City Public Safety Department and the State Department of Parks and Recreation to adequately protect natural resources and provide for public safety and shall include strategies to efficiently provide for public services.

Subject to City approvals, permittee shall initiate off-site improvements under this interim program by restoring the slopes within the City of Marina's Dunes Drive right-of-way at Pond No. 4 concurrently with on-site restoration improvements. Any such off-site improvements by permittee shall be credited against interim and final funding obligations established herein.

The Interim Habitat Management Program and Fund shall be structured to allow its incorporation into the future final Habitat Conservation Plan/Local Coastal Program Amendment currently being planned by the City.

Permittee agrees to provide educational exhibits and/or handouts for Marina Dunes Resort guests which inform the visitors about the sensitivity of dune vegetation and the need to avoid trampling of restored areas. Informational signage on the resort property shall be a part of the interim and final management programs. In reviewing this interim program, the Executive Director may require performance guarantees or sureties in an amount determined to be sufficient to insure the permittees participation in the interim program, and to guarantee participation in a final program approved by the City of Marina and the Coastal Commission.

Any required guarantees or sureties for the interim program shall be in place prior to occupancy of any structure on the subject site.

The permittee shall submit the interim program to the Executive Director within 60 days of transmittal of the Coastal Development Permit. At the time of transmittal the permittee shall simultaneously submit said interim program to the U.S. Fish and Wildlife service, the Department of Fish and Game, the California Department of Parks and Recreation, the Monterey Peninsula Regional Park District, and the City of Marina for review and comment. Executive Director approval shall not occur prior to consultation with the noted agencies.

Approval by the Executive Director of the interim program shall be required prior to occupancy of any structure. If the permittee elects to proceed with subdivision of the subject property prior to approval of the interim program, the Executive Director may require a declaration or other instrument to be recorded with the subdivision disclosing this requirement and binding successors in interest to any of the subdivided parcels to satisfy this condition and interim program prior to occupancy of any structures on the subject property.

The interim program shall be approved by the Executive Director and implemented by the permittee (in place and functioning) prior to occupancy of any structures. This interim program shall remain in full force and binding effect until such time as the HCP/LCP Amendment contemplated by the City of Marina is fully certified by the Commission and accepted by the City.

The final program shall be developed by the City of Marina in consultation with the U.S. Fish and Wildlife Service, the Department of Fish and Game, the California Department of Parks and Recreation, the Monterey Peninsula Regional Park District, and the City of Marina. This final program shall address all the issues raised in the interim program, and such other issues raised during the public review process at the City of Marina and through the agency referrals.

The permittee shall cooperate with the Executive Director in the timely preparation of final documents and declarations.

Therefore, as conditioned, the proposed development is consistent with the Local Coastal Program policies to insure access to and along the beach, consistent with recreational needs and environmental sensitivity (Policy 1) and to provide beach access and recreational opportunities consistent with public safety (Policy 2) and to provide a level of recreational use consistent with the ability to operate, maintain, police and protect the beach and dune environment (Policy 6).

10. Cumulative Impacts on Sensitive Habitat and on the Operation of Public Facilities in the Dune Complex.

The applicant's proposed Marina Dunes Resort could set a precedent which would allow development of equal intensity and scale on other sites in the dunes, indirectly increasing the population density in the dunes and changing the pattern of use. In conjunction with existing development, currently planned projects and probable future projects, the proposed project could have significant cumulative negative impacts on the dune ecosystem and on the public capability to manage and protect the recreational visitor.

Local Coastal Program Policies Addressing Cumulative Impacts. Two primary goals of coastal zone management are to maximize public access to the shoreline and to preserve unique and valuable coastal resources. This would indicate that the number of visitors, available recreation area, and management capability must be continually adjusted. Planning efforts for recreational areas with high resource values must estimate and assess incremental population increases carefully to avoid impacts. The LUP policies encourage increased recreational opportunities but in every instance require that use must be consistent with the capacity to protect sensitive habitat and provide for public safety. If development, individually or cumulatively, cannot meet this standard, it should be located inland or reduced in scale to assure the balance needed.

The Local Coastal Program policies and Coastal Act policies quoted in full in Finding 8, Off-site Habitat and Recreational Management Issues, instruct the decision maker to balance the level of use with habitat and public rights. They also indicate that the rights of private property owners must be respected. The Marina

Local Coastal Program requires that the level of recreational use must be "consistent with the ability to operate, maintain, police, and protect the beach and dune environment" (LUP Policy 6).

The existing level of use and available management, the level of potential development buildout, and the State Parks combined use carrying capacity has been used to estimate a level of use compatible with maintaining the dune resource and providing a quality visitor experience.

There are six developed properties on the oceanside of Highway 1 (not including the Lake Drive City Corporation Yard and residences) in the City of Marina. Table 8 lists the properties and some of the more relevant data for each.

TABLE 8 EXISTING DEVELOPMENT WEST OF HIGHWAY 1

Site Description	Acres	Ocean Frontage	Current Use	Units /acre	Estimated Visitors/Yr.	Visitors acre/yr
Monterey Penins Reg. Park District	10	180 ft	access trail	N/A	N/A	N/A
Travellodge Mote	1.65	No. Between D Drive and Hwy.	83 unit motel average unit 21 SF.	50	43,340 ^a	26,266
InnCal Motel	1.82	No. Between D Drive and Hwy.	114 unit motel, average unit 28 SF.	62	60,590 ^a	33,291
Marina Dunes Tr Park	1.57	No. Between D Drive and Hwy.	65 space RV p	41	33,215 ^a	21,156
Marina Coast Wa District	12	375 ft	public facility	N/A	(20 employe	N/A
Marina State Bea	170 (130 i dune pres	1.2 mi	day use park	N/A	300,000 ^b	1,765
Total	197.04		262		437,145	2,219

a. Estimated 70% occupancy. Actual average annual occupancy for InnCal is 37.5, letter InnCal to J. Dack, 6/19/96.

b. Marina State Beach Preliminary General Plan, 1987.

Table 8. Table 8 shows that the three existing visitor accommodations on Dunes Drive host 137,145 visitors a year. Since access to the beach and dunes is by way of DPR Reservation Road entrance or the Monterey Peninsula Regional Park District access parcel, it is likely that a significant but undetermined number of these Dunes Drive visitors are included in the DPR visitor count of 300,000. Hence the actual total number of current users per acre is over represented by the Table both by virtue of the fact that users are double counted and that not all visitors to the commercial accommodations will go to the beach. In addition some visitors will move along the beach to the north where the beach is unregulated, thus the recreational acreage available to the visitor is not limited to the total parcel acreage's shown above.

Estimated Current Impacts: Marina State Beach has two access points - Lake Drive at the south end of the park and Reservation Road at the north end. Most use initiates at the main entrance at Reservation Road where there is a 150 space parking lot. Visitors then move south along the Park trails and beach or north along the private properties. Use diminishes with distance from the parking lot. Marina State Beach

Park Rangers currently provide police and safety services to visitors in the park and outside but near the park boundaries. Their resources are fully utilized and require volunteer help and special funding to keep up with dune maintenance and to support

recreationalists. The HCP/LCP reported (1990) that the landowners and police agencies in the area north of Reservation Road did not incur a high incident of illegal trespass or vandalism. The EIR did not report a number of annual incidents. The EIR did report that the Public Safety Department of the City estimated 1600 calls a year would be generated from the Marina Dunes Resort visitor population of 250,905.

Future Potential Development on Oceanside of Highway 1 in the City of Marina. Development sites that are located west of the Highway in the dunes have the greatest potential to most directly contribute to an increase in dune visitors by fact of proximity. In addition to the Marina Dunes Resort site there are two sites in the City of Marina, the Granite Rock and the Lonestar parcels, that have potential for development of visitor serving uses that will attract large numbers of people. Development on both the Granite Rock and Lonestar parcels has been included in the City's major HCP/LCP planning process.

The following buildout scenario is based on the HCP/LCP with the exception that the unit numbers and ancillary facilities for the Marina Dunes Resort is based on the development proposal.

Marina Dunes Resort: a 184 unit coastal resort with an average unit size of 968 approximately 1000 SF, 60,000 SF of ancillary facilities including a 500 seat restaurant, a conference center/retail facilities, lounge/banquet facilities, health club, recreational building, two tennis courts, a sports court, a pool, a kids pool and playground; and 491 parking spaces including 18 public parking spaces for beach access. The site is 16 acres (according to the HCP); 6.5 acres will be restored.

Granite Rock: Granite Rock is the 50 acre site on the northern boundary of the applicant's parcel. Like the Marina Dunes Resort site it is zoned Coastal and Development/Secondary Use District CD/SU which allows coastal dependent and coastal access uses; visitor accommodations can be allowed if the Planning Commission finds that there is no feasible coastal dependent use for the site. The Planning Commission made these findings for the Marina Dunes site and the Granite Rock proponents could follow the same process. Public services are available at Dunes Drive for this site. The HCP/LCP permitted a 400 room hotel and conference center, 7,500 SF restaurant; small scale visitor serving retail integrated with hotel and restaurant on 8 acres; 42 acres restored.

Lonestar: North of Granite Rock beyond the intervening Regional Park District parcel, is the 368 Lonestar site which supports a major mining operation. The Lonestar site is zoned Coastal and Development and is not part of a Secondary Combining District. Hence, in order for Lonestar to develop any project, e.g., a resort complex, that is not coastal dependent or coastal access, the City of Marina would need to rezone the property and an LCP amendment would be required. Nonetheless, the draft HCP/LCP proposed up to 1200 units on this site. Since the City and all property owners were participants in this process, it is reasonable to assume such a development is considered desirable by the City and the property owner and must be seriously considered in illustrating potential cumulative impacts. The Lonestar site has access off of Highway 1 but does not have water and sewer. It is currently outside the MCWD service boundary.

Table 9 compiles the data on potential future development. It shows that using the numbers of units in the unadopted LCP/HCP Amendment quoted by the applicant and if the Granite Rock and Lonestar properties were developed at the same intensity as the proposed Marina Dunes Resort, i.e., with equivalent ancillary facilities and room capacities, that the cumulative numbers would be dramatic. The 400 units at the adjacent

vacant Granite Rock site at 70% occupancy would generate 500,000 visitors a year. The Lonestar site to the north would develop 1200 units which at 70% occupancy would generate 1,500,000 visitors a year. The cumulative number of visitors per year at the three sites at 70% occupancy would be 2,250,000.

TABLE 9 - POTENTIAL FUTURE DEVELOPMENT

Site Description	Acres ^a	Beach	Current Use	Future Use Potential	Units /acre	Estimated Visitors/yr.	Visitors acre/yr.
Proposed Marina Dunes Resort^a	16	540 ft	limited sand mining	184 unit resort complex	11.5	250,905	15,681
Lonestar Industries	368	1.25 mi	sand mining	1200 unit resort complex	3.2	1,500,000	4,076
Granite Rock	50	900 ft	vacant	400 unit motel/hotel	8	500,000	10,000
Total Future	434			1784		2,250,905	5,186 avg

a. Represents acreage identified in HCP/LCP including Marina Dunes Resort site.

Total Future	434		1784		2,250,905	5,150 avg
Table 8 -Existing	197		262		437,145	2,219 avg
Total Cumulative	631		2046		2,688,050	4,260 avg

The yearly number of visitors, existing and future, in the City of Marina west of Highway 1 would be 2,688,050, or, 4,240 visitors per acre. Theoretically buildout would increase the maximum possible number of visitors per acre to Marina State Beach from 1,764 to 4,260.

Table 10 compiles the existing visitor count with the projected visitor numbers at buildout for the west side of Highway 1 in the City of Marina and compares these totals with Fort Ord carrying capacity (discussed in preceding finding) combined with the Marina State Beach visitor counts for an average DPR visitor/acre count.

TABLE 10 PUBLIC PROPERTIES/PRIVATE PROPERTIES VISITORS ACRE/YEAR

Site	Acres	Units	Units/Ac	Visitors/year	Visitors/ ac/yr
Ft. Ord Dunes State Park.	886	40-80 unit lodge 350 campsites	0.5	896,805	1,012
Marina Beach	170	day use only	n/a	300,000	1,764
Total	1,056			1,196,805	1,133 av

Marina Dunes	16	181	11.5	250,905	13,205
Granite Rock	50	400	8	500,000	10,000
Park District	10	beach access	n/a	n/a	n/a
Lone Star	368	1200	3.2	1,500,000	4,076
Total	447	1781	3.9 avg	2,250,905	5,035 av

Table 10 shows that at buildout the average number of visitors per acre/year north of Reservation Road (includes Regional Park District site) on the west side of Highway 1 at the intensity of the Marina Dunes Resort would be 5,035, more than four times the number estimated for compatible use in the State Parks -- 1,133. This is a significant number of users for an environmentally sensitive dune complex and may not be sustainable.

The Granite Rock and the Lonestar sites can be distinguished from the Marina Dunes Resort site. The subject project site has no current on-site resources (as defined by the LCP), is contiguous to other visitor-serving development, and has road access and all public services available. The Granite Rock site is 84 percent sensitive habitat and/or natural duneform. The Lonestar site can be distinguished in several ways: most importantly the site is not zoned for visitor-serving uses and would require an Implementation Zoning Amendment to the Local Coastal Program. There are several reasons why Lonestar has different zoning: Its entire northern section is a continuation of the pristine dune habitat on the Salinas River Wildlife Refuge and the Martin property. The site is not within the Marina Coast Water District service area and is a rural site surrounded by agriculture or environmentally sensitive habitat. The applicant's chart on the Differentiation Between Privately Held Parcels Marina Dunes Planning Area is included as Exhibit 7 of this report.

Conclusion: Nevertheless, the proposed number and size of units on the Marina Dunes Resort site, the smallest oceanfront parcel in the area evaluated, could set a precedent for comparably large, intensive development on other dune parcels in the area, most specifically the Granite Rock and Lonestar sites which could have significant cumulative impacts.

The Marina Local Coastal Program and the Coastal Act apply the same resource protection standards to private and public property. The City's Land Use Plan requires that access and recreation must be consistent with protecting the environmentally sensitive habitat, and with public safety and public rights (Policies 1 and 2). The level of use must also be consistent with the ability to operate, maintain, police, and protect the beach and dune environment (Policy 6). In addition support facilities must complement and not destroy the coastal resource (Policy 14).

The intensity should be distributed to assure there is no overuse of any single area, for protection of the dune habitat on the adjacent public and private sensitive dune habitat as well as on the applicant's site and to assure that the numbers of public using Marina State Beach and the adjacent beaches can be adequately and safely managed. This conclusion reinforces previous findings and conditions which require a less intensive project than approved by the City on the subject site.

11. Circulation/ Cumulative Impacts

The Local Coastal Program policies and Coastal Act policies quoted in full in Finding 9 Off-site Habitat and Recreational Management Issues, instruct the decision-maker to balance the level of use with habitat and public rights. They also indicate that the rights of private property owners must be respected. The Marina

Local Coastal Program requires that the level of recreational use must be "consistent with the ability to operate, maintain, police, and protect the beach and dune environment" (LUP Policy 6). The cumulative affects of development must be consistent with these policies.

An issue is the cumulative effect of this and similar intensive projects with respect to traffic congestion. Reservation Road and Dunes Drive provide the primary access routes to Marina State Beach and the Regional Park District's vertical accessway, respectively. These roadways are two lane facilities with only limited parking capacity. On a cumulative basis, the traffic generated by this and comparable projects could compromise parking and roadway capacity and thereby impair coastal access. Coastal Act access policies provide for maximizing coastal access and recreational uses. It also provides in Section 30250 that

(a) New residential, commercial, or industrial development, except as otherwise provided in this division, shall be located within, contiguous with, or in close proximity to, existing developed areas able to accommodate it or, where such areas are not able to accommodate it, in other areas with adequate public services and where it will not have significant adverse effects, either individually or cumulatively, on coastal resources.

Section 30210 of the Coastal Act states:

In carrying out the requirement of Section 4 of Article X of the California Constitution, maximum access, which shall be conspicuously posted, and recreational opportunities shall be provided for all the people consistent with public safety needs and the need to protect public rights, rights of private property owners, and natural resource areas from overuse.

Thus though coastal access and recreational development and uses have a priority in the Coastal Zone under the Coastal Act, they must nevertheless be located where there are adequate public services including circulation systems that will not have significant adverse effects either individually or cumulatively on coastal resources and where they will not result in overuse or destruction of natural resource areas.

The EIR (p.IV-D9) stated:

Although not identified as an impact now, the City should consider extending Dunes Drive northward to the Lone Star area to provide a secondary access for the Dunes Drive area and the Lone Star area. Additional study of the traffic impacts associated with this potential link should be performed prior to consideration of this action. At a minimum, a connection for emergency access between Dunes Drive and the Lone Star area should be considered since both areas could eventually serve a significant amount of development which in both cases would be accessed via cul-de-sac roadways.

The secondary access route that the consultant is referring to would extend Dunes Drive north through the low lying backdune meadow area that is adjacent to the Lonestar dunes and which is within Monterey County jurisdiction. The North Monterey County Land Use Plan designates this area as Resource/Conservation, Wetlands and Coastal Strand, an environmentally sensitive habitat where only low intensity uses such as recreation, education, and research and underground essential public utility lines are allowed. A frontage road would not fit into this use category and would be inconsistent with the habitat resource policies of the Monterey County LCP. This extension would also required an LCP Amendment to the Monterey County LCP amendment.

This points out the difficulty of placing intensive development within an environmentally sensitive dune complex even if the siting of the development structures themselves may not impact resources. The development of the Marina Dunes Resort gives impetus to the development of comparable intensive uses on the properties to the north and would cumulatively force the development of an access road to provide for public safety through environmentally sensitive habitat. Therefore, the development at the intensity proposed, is not consistent with access and recreation policies of the Coastal Act which provide for the protection of natural resources.

The Department of Transportation in commenting on the EIR (letter Larry Newland to Jeff Dack, April 11, 1996) stated that the discussion on cumulative impacts needed to be expanded and that,

...Caltrans Traffic Operations staff does not recognize the San Diego Traffic Generators mentioned on page IV-D7 as a viable methodology. District staff recommends pass by trip analysis be conducted in accordance with the most recent version of the ITE Trip Generation Manual. District staff would however be willing to consider the San Diego analysis study provided sufficient documentation can be provided by the applicant to show the accuracy and reasonableness of its methodology.

City Planning Director, Jeff Dack, indicated that the City had not received this letter and, hence, the EIR consultant had not responded to the CalTrans concerns. At this time the City is working with Caltrans to expedite a resolution to the issue and submit the information to the Commission for review. Until this information is available it cannot be concluded that the findings of the EIR are accurate. The Commission's permit is conditioned to require submittal of documentation from the Department of Transportation for review and approval of the Executive Director, that the methodology used by the applicant is acceptable. If in fact this conclusion is not forthcoming, additional review by the Commission may be necessary.

12. Local Coastal Program/CEQA

The Marina Local Coastal Program received final certification in December 1982 and the City assumed coastal permit jurisdiction. Three amendments were proposed by the City of Marina and approved by the Commission: LCP Amendment No. 1-86 for a sign ordinance and rezoning from residential to open space of several parcels; LCP Amendment No. 1-88 which redesignated and rezoned the 25-acre Brown Bulb Ranch on the east side of Highway 1 from K/C-P Agriculture to PC/C-P Planned Commercial (subsequently developed as the Marina Landing Shopping Center) and added coastal permit exemption procedures for the Coastal Zone, and LCP Amendment No. 1-96, discussed in Finding 4, which provided for vacation clubs as visitor serving uses in the Coastal Zone.

In 1984 the Commission denied Gullwing, a 228-unit (612 SF) condominium project on an 8.9 acre dune site. The Commission found that the development was too intensive (25 units/gross acre), altered the landform of the entire site, thus impacting environmentally sensitive habitat and would set a precedent for future development. The site was subsequently purchased and public access to the beach formalized by the Monterey Peninsula Regional Park District.

In 1985 the City approved the Travellodge and Best Inn motels on the east side of Dunes Drive. As a condition of a legal settlement between the Sierra Club and the City of Marina regarding the adequacy of the EIR for the Travellodge, the City created the Marina Coastal Zone Planning Task Force to resolve the ongoing debate regarding development and conservation of resources in the dunes. As discussed in Finding 2, the task force was to oversee the development of a Habitat Conservation Plan and an amendment to the Local

Coastal Program (HCP/LCP). Completion of the HCP and the LCP amendment which would modify the LCP to include the HCP concerns as well as to provide other standards would have more specifically defined the allowed development in the dunes. Development proposals for the dune area were put on hold while the Task Force of landowners, city, resource agencies and environmental groups worked. Among other issues, the draft proposed densities were inconsistent with the LCP direction to maintain low intensity, low impact, recreational uses and support services and would have significant impacts on the natural and visual resources of the area. The draft was completed in 1991 but was not adopted by the City or submitted to the Coastal Commission. Processing was delayed while the City dedicated staff resources to the Fort Ord Reuse Authority Plan.

The Marina Dunes Resort is the first major project proposed west of Dunes Drive since Gullwing. The City's interpretation of the LCP, i.e., the Gullwing project, the two motels on Dunes Drive and the Marina Dunes Resort, leads to a concern that the provisions of the LCP can be so interpreted that they are insufficient to fully protect the dune habitat and the recreational resources of the area in a manner consistent with the Coastal Act. Development at the densities approved could interfere with the continued viability of the existing environmentally sensitive habitat. It is also probable that despite fencing and boardwalks, the amount of activities associated with development at these intensities (including noise, lights, drainage, foot and vehicular traffic) will further degrade the overall habitat and compromise proposed restoration.

The USFWS stated in their letter commenting on the EIR that though an HCP is not required for the development of the Marina Dunes Resort, "the increased visitor use of the Beach and surrounding areas resulting from this and future development would likely degrade and eliminate habitat supporting the federally-listed Smith's blue butterfly and the western snowy plover. The service recommends that the City develop an HCP for the entire Beach." The City does, in fact, intend to re-initiate the process and have proposed as conditions of their permit for the Marina Dunes Resort to allow Habitat Conservation Funds collected from the applicant to be used to complete the HCP/LCP.

There is no primary habitat on the applicant's site though both adjoining parcels have environmentally sensitive habitat. A Habitat Conservation Program, though desirable, is not required for the development of the Marina Dunes Resort. The LCP amendment that would have been a consequence of an HCP would have identified specific densities and would have, most probably, addressed the other significant issues raised by the Marina Dunes Resort proposal. In the absence of having specific densities determined in Marina Local Coastal Program, the Commission has taken the available information and estimated a density that would be appropriate for this specific site.

A draft EIR was prepared and circulated for the proposed project. Public agency and the public comments focused on statewide significance of the environmental and recreational resources of the Marina Dunes and impacts of a project of intensity and density of the Marina Dunes Resort. Commission staff made extensive comments on the draft EIR which are attached as Exhibit 6. A Final Marina Dunes Resort Hotel Environmental Impact Report, firma, May 1996 was certified by the City of Marina on May 28, 1996. Mitigation measures, including monitoring, were incorporated into the City's project approval (see Exhibit A). Nevertheless, this report details additional mitigations necessary to reduce potential environmental impacts to an acceptable level. As so further conditioned by the Commission, the proposed project will not have any significant impacts on the environment within the meaning of the California Environmental Quality Act.

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