

CALIFORNIA COASTAL COMMISSION

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**STAFF REPORT: REGULAR CALENDAR
COASTAL DEVELOPMENT PERMIT**APPLICATION NO.: **A-3-SNC-98-114**APPLICANT: **SNG Development Company (Ed Ghandour)**

PROJECT DESCRIPTION: Sand City approved a 495 unit mixed use resort consisting of: a 217-room hotel, 100-unit vacation ownership (timeshare) resort, 45 visitor serving (rental pool) condominium units, and 133 residential condominium units; ancillary facilities including a restaurant/bar, conference center, tennis courts, pool, spa, and private recreation areas; open space public access trails and recreation area; and, 10.2 acres of restored and stabilized sand dune habitat. The applicant has recently proposed a reduced project of a 378-unit mixed use resort consisting of: 176 hotel units; 124 vacation ownership and visitor serving condominium units (comprised of a range of 60-80 vacation ownership and 44-64 visitor serving condominium units); and, 78 residential condominium units (Exhibit 1). The project also includes grading on approximately 30 acres of the site, which involves the removal of 880,000 cubic yards of sand as approved by the City (630,000 cubic yards as reduced by the applicant), and subdivision of the 39.04 acre parcel (32.09 acres of which are above the mean high tide) into 5 parcels of 7.2 acres, 6.32 acres, 5.72 acres, 3.14 acres, and a 16.66 acre lot (6.96 acres of which are below the mean high tide line) along the shoreline portion of the property.

PROJECT LOCATION: Northernmost parcel of Sand City west of Highway One (adjacent to the southern boundary of the former Fort Ord), northwest of the Highway One and Fremont Blvd. Interchange (APN: 011-502-014) (Exhibit 3)

LOCAL APPROVALS: Sand City Coastal Development Permit 97-04, Site Plan Permit 98-06, and Design Permit 98-06

FILE DOCUMENTS: Sand City Local Coastal Program; Executive Summary, Monterey Bay Shores Mixed Use Resort As Approved by Sand City City Council, December 21, 1998;

Monterey Bay Shores Coastal Commission Appeal Packet, City of Sand City, December 31, 1998; Sand City Notice of Final Local Action, December 1, 1998; Vesting Tentative Map, as revised February 1998; Draft and Final Environmental Impact Reports, April and October, 1998; Habitat Protection Plan for the Monterey Bay Shores Project, September 12, 1997; Technical Reports Transmitted by the Larry Seeman Company, as listed in his letter of January 7, 1998; Sand City Local Coastal Program Amendment Files No. 2-97 and No. 1-93; Report to the City of Sand City on the Implementation of Its Local Coastal Program, California Coastal Commission, September 21, 1990; Proposed Findings on Consistency Determination CD-16-94 for the Disposal and Reuse of Fort Ord, California Coastal Commission, Adopted May 1994; Monterey Bay Shores Combined Development Permit Application: Volume I (Transmittal and Applications) and Volume III (Additional Reference Documents); letters from Haro, Kasunich and Associates, Inc. dated May 22, 1997, August 12, 1997, October 6, 1997 February 10, 1998, and, May 5, 1998; Monterey Bay Shores Draft Preliminary Economic and Financial Feasibility Analysis, McGill Martin Self, Inc., December 1998; Cooperative Agreement #05-CA-033 between the California Department of Transportation and Sand City, and Sand City Resolution 96-05 authorizing the City Administrator and Mayor to enter into this agreement; Draft Project Study Report On Route 1 Corridor In the Cities of Sand City and Seaside In Monterey County From Highway 218 to the Fort Ord Main Entrance, February, 1999; Habitat Conservation Plan and Implementation Agreement, Monterey Shores Project, March, 1999; Administrative Draft of the Sand City Coastline Habitat Conservation Plan, April 1, 1999; Coastal Development Permit Appeal File No. A-3-SNC-87-131 regarding the Lone Star Reclamation Plan for the project site.

PROCEDURAL NOTE

On February 3, 1999, the Coastal Commission determined that an appeal of the Coastal Development Permit approved by the City of Sand City for the subject project raised a substantial issue with respect to the project's conformance with the City's certified Local Coastal Program. As required by Section 13115(b) of the California Code of Regulations, the Commission must now consider the project in a De Novo hearing. The applicant previously requested a postponement of the De Novo hearing from the March 1999 Commission meeting pursuant to Section 13085(a) of the Commission's Administrative Regulations.

TABLE OF CONTENTS

SUMMARY OF STAFF RECOMMENDATION.....	3
I. STAFF RECOMMENDATION.....	6.
II. FINDINGS AND DECLARATIONS.....	6.
A. Project Background.....	6.
B. Project Description.....	7.
C. Project Location	10
D. LCP Background.....	11
E. Environmentally Sensitive Habitats.....	12
F. Water Supply.....	25

G. Visual Resources	28
H. Natural Hazards	33
I. Traffic and Circulation	41
J. Public Access and Recreation	48
J. California Environmental Quality Act	55

SUMMARY OF STAFF RECOMMENDATION

Staff recommends that the Commission DENY a coastal development permit for the proposed development on the grounds that the project is inconsistent with the Sand City certified LCP, as well as with Coastal Act policies regarding public access and recreation. Specifically:

- The project threatens the biological continuance of environmentally sensitive dune habitat areas on and adjacent to the project site, inconsistent with LCP Policy 3.3.1, which requires new visitor-serving and recreational development to protect natural resources; LCP Policy 4.3.20, which prohibits development adjacent to environmentally sensitive habitats that would significantly degrade such habitats, and requires such development to be consistent with the biological continuance of adjacent habitat areas; LCP Policy 4.3.21.d, which restricts land disturbance and the removal of indigenous plants to the minimum amount necessary for structural improvements; and, LCP Policy 6.4.1, which requires that development intensities be limited to those that adequately address constraints associated with sensitive habitats.
 - Over 30 acres the site's dune habitat will be disturbed during construction. This will result in the removal of all 58 seacliff buckwheat plants (host plant for the federally endangered Smith's blue butterfly) that currently exist on the site, and approximately 2.6 acres of vegetation currently containing the federally threatened Monterey spineflower. Project construction will also result in the alteration and removal of dune landforms that have been used by the federally threatened Western snowy plover as nesting sites.
 - Consultations with the U.S. Fish and Wildlife Service critical to addressing the project's direct and cumulative impacts on federally threatened and endangered species, including the Western snowy plover and Smith's blue butterfly, have not been completed. Until such consultations are completed, staff can not adequately assess the project's consistency with LCP standards requiring that new development protect, and be compatible with the continuance of, sensitive habitat areas on and adjacent to the project site.
 - The proposed mitigation (habitat restoration and management of most of the remaining 19 acres of the site, and the provision of two "biological stewards") does not assure the effective protection and biological continuance of the site's sensitive habitats, or of other sensitive dune habitats adjacent to the site. The biological value of the proposed restoration areas and existing habitats adjacent to the site will be diminished by the increased use of the area, as well as the noise, glare, and activity generated by the development. In addition, the removal of the existing buckwheat plants, which have

been identified as supporting a small population of Smith's blue butterfly, may result in the permanent loss of this population, regardless of the proposed buckwheat replacement.

- The permanent net loss of 13 acres of dune habitat (corresponding to the footprint of the development¹), and the diminishment of habitat values in the area surrounding the development, jeopardizes the protection, restoration, and enhancement of the sensitive habitat values of the site and the Monterey dune system. Other than the restoration proposed on the remainder of the site, no compensation for the loss of this habitat, such as the protection of an equivalent or greater amount of off-site dune habitat, has been provided. In addition, the development of this dune habitat area will be a barrier to connecting restored habitat on the Monterey Peninsula Regional Park District site south of the project, and the dune restoration area planned as part of Fort Ord reuse.
- The project is inconsistent with LCP Policies 4.3.31 and 6.4.11 because the availability and adequacy of the proposed water source to serve the development has not been appropriately established. The applicant has not obtained the necessary permits from the Monterey Peninsula Water Management District to utilize groundwater from the Seaside aquifer managed by the District. As detailed by the Final EIR for the project, current extractions of the Seaside exceed its estimated safe yield. The project will exacerbate overdraft of the Seaside basin and the potential for seawater intrusion.
- The project approved by the City, ranging from 4 to 7 stories, does not conform with LCP visual resource protection policies because: it exceeds LCP height limitations established by LCP Policy 6.4.5; encroaches upon the open view corridor established by LCP Policy 5.3.2; will significantly detract from the natural scenic qualities of the area, inconsistent with LCP Policies 5.3.1; and, is visually incompatible with the surrounding area and community character, in conflict with LCP Policy 5.3.4.a. The visual impact of the City approved project, as viewed from the beach and Monterey Bay, will be exacerbated by the proposed landform alterations that lower the height of the existing foredune area, contrary to LCP Policies 5.3.4.f and 5.3.10, which requires the use of existing dunes as visual barriers. While the revisions and reductions to the project recently submitted by the applicant on April 15, 1999 (attached as Exhibit 1) attempt to address these inconsistencies, staff has not been provided with adequate time or information to effectively assess the revised project's conformance with LCP visual resource policies.
- Landform alterations included as part of the project will lower the foredune area of the site in a manner that may expose the proposed development to hazards posed by storm waves, inconsistent with LCP Policy 4.3.8 requiring new development to minimize risks from flooding hazards. In addition, the project specific geotechnical report required by LCP Policy 4.3.9 has not been prepared; rather, the project relies on geotechnical data that is over 10 years old, supplemented by more recent letters from the project's geotechnical consultant. As a result, hazards associated with shoreline erosion have not been adequately addressed,

¹ (As stated on page 160 of the Final EIR, the project site's wildlife habitat would be permanently reduced by 13 acres. This footprint has been slightly reduced by the project revisions recently submitted by the applicant and attached as Exhibit 1).

and the City's approval does not conform with LCP Policy 4.3.12, which requires project designs to take into account such geological data before they are approved.

- There are significant outstanding concerns regarding the impact of the traffic generated by the project on local intersections and Highway One which preclude a finding of compliance with LCP Policies 6.4.11 and 6.4.24 requiring adequate circulation for the project. As a result of the traffic impacts generated by the recently constructed Edgewater Shopping Center (directly across the freeway from the proposed project) and other anticipated development in the area (including the reuse of the former Fort Ord), Sand City, in coordination with the California Department of Transportation (Caltrans), is in the process of identifying the roadway modifications and expansions necessary to provide for adequate circulation. The City has required the Monterey Bay Shores Resort project to financially contribute a "pro-rata share" of the "funding shortfall" for the implementation of the roadway improvements, not to exceed \$1.5 million. These improvements will be subject to future reviews and approvals (including coastal development review, and review and approval by Caltrans), and may pose adverse impacts to coastal resources. Until the improvements to Highway One and local roadways necessary to accommodate existing and anticipated future development have been identified and approved by the relevant regulatory agencies, it can not be concluded that adequate circulation has been provided for.
- While the project includes significant public access and recreation improvements, it can not be concluded that these improvements are consistent with the protection of natural resources, as required by Coastal Act Section 30210 and LCP Policy 2.3.9 until the impact of these improvements on threatened and endangered species are addressed through the City-wide habitat conservation planning process currently underway.

Coastal Commission staff have participated in the City's environmental and coastal development review process, and conducted numerous meetings with the project applicant in an effort to facilitate resolution of coastal resource issues (e.g., see letters attached to this report as Exhibit 15). Nonetheless, project inconsistencies described above remain.

Remedies available to the applicant to resolve the above inconsistencies include:

- resolving fundamental questions regarding water availability and the protection of federally threatened and endangered species (i.e., obtaining the necessary permits from the Monterey Peninsula Water Management District and the U.S. Fish and Wildlife Service);
- redesigning the project so that impacts on dune habitats, natural landforms, and visual resources are minimized;
- completing the required geotechnical review to ensure that the redesigned project will not be subject to natural hazards, particularly those associated with storm waves and shoreline erosion; and,
- identifying, and incorporating within the project, specific roadway improvements necessary to ensure that adequate circulation will be provided, in a manner acceptable to the relevant regulatory authorities (e.g., coordinating project development with implementation of the traffic improvement study ["Project Study Report"] currently underway).

I. STAFF RECOMMENDATION

Staff recommends that the Commission adopt the following resolution for **denial** of the permit:

The Commission hereby **denies** a permit for the proposed development on the grounds that it would not be in conformity with the certified Sand City Local Coastal Program, is inconsistent with the public access and recreation policies of the California Coastal Act, and will have a significant adverse impact on the environment within the meaning of the California Environmental Quality Act.

MOTION:

I move that the Commission approve Coastal Development Permit No. A-3-SNC-114 for the Monterey Bay Shores Resort project as approved by the City of Sand City.

Staff recommends a **NO** vote on the motion. A majority of the Commissioners present is required to pass the motion.

II. FINDINGS AND DECLARATIONS

A. Project Background

The project was conditionally approved by the Sand City City Council on December 1, 1998. The 59 conditions attached to the locally approved permit are attached as Exhibit 2. Some notable conditions of approval that must be satisfied prior to the issuance of the permit include: that the developer enter into an agreement with the City providing for implementation of a yet to be developed site-specific or city-coastal wide Habitat Conservation Plan approved by the U.S. Fish and Wildlife Service (Condition 32); and, that the Monterey Peninsula Water Management District confirm the developer's right to use water from on-site wells and that such wells are capable of meeting the requirements of the project (Condition 42). Also noteworthy is Special Condition 24, which requires that the City Engineer approve a final geotechnical investigation for the project prior to the recordation of the final subdivision map.

As approved by the City, the project was reduced from its original proposal of 597 units to 495 units. This action also represents a reduction from the "environmentally superior alternative" identified by the Environmental Impact Report (EIR) for the project (Alternative C, involving 513 units). As part of this reduction, the City required that the design of Alternative C be modified by lowering the northern quarter of the residential condominium from 6 stories to 5 stories; lowering the grade elevation of the six story hotel building by 10 feet (from approximately 15 feet above mean sea level at its lowest point to approximately 5 feet above mean sea level); lowering the 8 story vacation ownership (timeshare) building to 7 stories; and lowering the 5 story visitor serving recreation building to 4 stories.

Although the action by the Sand City City Council was an important step in the effort to resolve project inconsistencies with the Sand City LCP, significant inconsistencies remain, as detailed in the findings of this staff report.

B. Project Description

The Sand City City Council approved the Monterey Bay Shores Resort project on December 1, 1998. On February 3, 1999, the Coastal Commission determined that the two appeals of this approval raised a Substantial Issue. The appealed, locally approved project involves the construction and operation of a 495 unit mixed use resort consisting of a 217-room hotel, a 100-unit vacation ownership resort, 45 visitor serving (rental pool) condominium units, 133 residential condominium units, and a conference center. The applicant has since proposed a reduction of the total unit count to 378 units, including 176 hotel units, 124 vacation ownership and visitor serving residential units, and 78 condominiums (see Exhibit 1). The LCP designates this site for such hotel, visitor-serving residential, and residential uses, with a combined density not to exceed 650 units. However, LCP Policy 6.4.1 specifically recognizes that these maximum densities may not be realized due to the need to address the coastal resource constraints such as habitat, natural hazards, and public access and recreation needs, as further discussed in subsequent findings of this report.

Ancillary facilities proposed as part of the project include a restaurant/bar, tennis courts, a pool, spa, courtyard areas, and private recreation areas. The project also includes public access improvements and dune restoration areas, described in more detail below. According to page 160 of the Final EIR for the project, total site coverage is 13 acres. The remaining 19 acres of the site (above the mean high tide line) will be placed in public access and conservation easements.

The vacation ownership resort units would be one to two bedroom units with kitchenettes, available to club members through purchase of a membership, and available to the public when not occupied by a club member. As established by LCP Amendment 2-97 and conditioned by the City, both the vacation ownership resort units and the visitor serving residential units (available to the general public on a rental basis) are subject to a maximum stay of 29 consecutive days and 84 total days per year.

Subdivision

The project also includes the subdivision of the site (a single 39.04 acre parcel, 32.09 acres of which are above the mean high tide) into 5 separate parcels, each of which will contain a particular land use (please see Exhibit 4). The Vacation Ownership Resort (VOR) building will be located on Parcel 1, a 5.72 acre lot, 3.95 acres of which will be placed in a conservation easement. The hotel and conference center will be on Parcel 2, a 7.2 acre lot, with 1.13 acres subject to a conservation easement. Parcel 3 will contain the residential condominiums, and will be 6.32 acres in size, 2.83 of which will be placed in conservation and public access easements. Parcel 4, a 16.66 acre lot (6.96 acres of which are below the mean high tide line) is located along the shoreline portion of the property. Approximately one-half an acre of parcel 4 will be for private recreation, and the remainder will be placed in conservation and public access easements. Parcel 5 will contain the Visitor Serving Rental (VSR) units, and will be 3.14 acres in size, with 1.14 acres subject to a conservation easement.

Major Structures

As approved by the City total building and roadway coverage would consume approximately 13 acres of the site, or about 40% of the portion of site above the mean high tide line. The

approved hotel, which has a building coverage of approximately 39,650 square feet², will have six stories and a maximum height of approximately 75 feet above finished grade. Ancillary facilities associated with the hotel include a restaurant, bar, tennis courts, a pool, and a separate two-story conference center building with a footprint of approximately 32,900 square feet. The 7-story VOR building will have a footprint of approximately 44,850 square feet and a maximum height of approximately 85 feet above finished grade. Residential condominiums will be within a 5 - 6 story structure with a footprint of approximately 56,350 square feet and a maximum height of approximately 65 feet above finished grade. The VSR Building will be 4 stories tall, with a maximum height of about 55 feet above finished grade and a footprint of approximately 18,760 square feet. Almost all of the parking to serve the development, as well as some public parking, will be underground, beneath the structures described above. One parking structure will have one level that extends above ground, with a footprint of approximately 18,530 square feet.

Recent revisions proposed by the project applicant include height reductions to the proposed buildings so that the VOR building will be 3 - 4 stories, the Hotel will be 2 - 4 stories, the VSR building will be 3 stories, and the condominium building will be 2 - 4 stories. No building will exceed a maximum height of 45 feet above the finished grade.

Roadways and Paving

Access to the site will be gained by extending Sand Dunes Drive along the eastern edge of the property, from its current terminus near the Fremont Boulevard off-ramp. This roadway extension will continue to the northern end of the property, where 29 "overflow and public parking" spaces will be installed (Exhibit 4). A Class 2 bike path (i.e., striped bike lane) will be provided along this roadway extension until the entrance to the development, where a Class 3 bike path (i.e., signs only) will continue to the end of the extended roadway at the northeast corner of the site. As required by Condition 3 of the City's approval, the entrance to the development must be moved approximately 50 feet north in order to avoid impacting the dune restoration area specifically designated by the LCP. In total, the project involves approximately 107,354 square feet of new roadway³.

Grading

Site preparation activities associated with the project include grading, excavation, and recontouring of approximately 94% (30 acres) of the portion of the site above the mean high tide line (i.e., grading of all areas of the site inland of the 20 foot contour, other than the upper portion of the large dune at the site's southeast corner). As approved by the City, approximately 880,000 cubic yards of sand will be removed from the development area and foredune of the site. Under the applicant's revised plan, sand removal will be reduced to approximately 630,000 cubic yards. An unquantified portion of the excavated sand which will be placed on the beach, above the mean high tide line, outside of the snowy plover nesting season. The remainder of the sand will be removed from the site, and deposited at unidentified location(s).

As approved by the City, the grading would result in a lowering of the foredune area of the site, which currently ranges from 35 feet to more than 60 feet above mean sea level (Exhibit 5), to a

² Building coverage figures identified in this paragraph were obtained from the project's Vesting Tentative Map, as revised February 1998.

³ Total roadway coverage per the project's Vesting Tentative Map, as revised February 1998.

continuous 20 foot elevation (Exhibit 6). The applicant's revised proposal would lower the foredune area to a continuous height of 30 feet above mean sea level.

Utility Development

The only public service infrastructure currently in existence on the site is a well last used for sand mining/industrial purposes, which ceased in 1986. The project involves the conversion of this well to a domestic well, the establishment of a secondary on-site well, and the installation of a 450,000 gallon water storage tank (70 feet in diameter by 16 feet in height) and waterlines to serve the project. The proposed use of the well, and the construction of the water system, requires a permit from the Monterey Peninsula Water Management District, which has yet to be obtained. The applicant intends to form a private mutual water company to distribute domestic service within the project. This will require a permit from the state Department of Water Resources. Sewer service will be provided by the Seaside County Sanitation District, and require the extension of sewer lines from the project to the sewer main constructed at the Edgewater Shopping Center, directly across Highway One. Water and sewer lines, as well as other utility lines (i.e., electricity, gas, telephone, cable television) will be extended to the site underground, primarily beneath the proposed roadways. Storm drainage will be controlled by routing runoff from building roofs and other impervious surfaces to an underground collection system, through an oil-water separator, to a percolation basin, which, as approved by the City, would be located near the northern site boundary, in an area designated for public recreation. The applicant's revised project relocates this basin to two areas along the coastal bluffs. The stormwater percolation basin(s) are also proposed to double as habitat restoration area(s).

Public Access Improvements

As detailed in the project's Access, Signage, and Planting Plan, public access to the beach will be provided along the northern boundary of the property, on a concrete walk/service road that will transition into a boardwalk leading to a public vista point/gazebo on the bluff edge, then down to the beach. There will be a gate operated by the resort restricting public access to daylight hours. The public access route and the portion of the site seaward of the coastal bluff edge (20 foot contour) will be placed in a public access easement, and provide lateral access along the beach. The City has also conditioned the project to include a public access easement along the coastal bluff, with a minimum width of 20 feet, to allow lateral bluff top pedestrian access on the project site. Access will be managed through an interpretive signing program, and by a full-time biological steward to manage snowy plover and other sensitive habitat areas on the property (required by condition 16.b. of the City's approval). An additional biological steward, to monitor and protect sensitive habitats in other areas of the City, will be provided by the City, and funded in part by the Transient Occupancy Taxes generated by the project.

Revegetation

The project also includes a dune restoration program intended to restore and protect dune habitats on 10.2 acres of the site that will be placed in a conservation easement. Additional dune revegetation will take place within the additional 8.8 acres of the site that will be subject to a public access easement. The majority of such revegetation will take place on graded, reshaped, or built dune surfaces, rather than on dune surfaces as they presently exist. The details of this program, and its consistency with LCP requirements, are detailed in the environmentally sensitive habitat findings of this report.

C. Project Location

The project is located on the northernmost parcel of Sand City west of Highway One (Exhibit 3), which has previously been referred to as the Sand City Lonestar site, or the Dezonias/State Parks Foundation site, on the basis of past sand mining activities and ownerships. The 39.04 acre site, of which 32.09 acres lies above the mean high tide line, includes approximately 1,500 linear feet of shoreline, and approximately 4 acres of beach area⁴. It is adjacent to the southern boundary of the former Fort Ord, which is planned for eventual conversion to a State Park. To the south, the site is bordered by a former dumpsite that has been purchased and restored for open space and recreation purposes by the Monterey Peninsula Regional Park District. The Southern Pacific (now Union Pacific) Railroad and Highway One border the site to the east, and the Monterey Bay lies to the west. In a regional context, the project site is within the Monterey Bay State Seashore, which is comprised of the dune system extending from Monterey Harbor to the Salinas River. The habitat values of this dune system and of the project site are described in following findings regarding environmentally sensitive habitat areas.

The project site was previously leased to Lone Star Industries, Inc. for sand mining purposes, which ceased in 1986. As a result of these previous sand mining activities, portions of the site's natural topography has been significantly altered (particularly the borrow area, which remains a sand pit), and the site's vegetative cover significantly reduced. As required by the State of California's Surface Mining and Reclamation Act and City Ordinance 84-3, Lone Star Industries prepared a reclamation plan, which was conditionally approved by the City in 1987.

In reference to the reclamation plan, page 20 of the Final EIR for the Monterey Bay Shores Resort project states:

After reviewing the Reclamation Plan and conducting site reconnaissance, the City Engineer concluded that the majority of the Plan has been implemented. Based on his observations, it appears that the only portion of the Plan that has not been implemented is site regrading. ...In addition, the City's authorization of the Plan was conditioned to require revegetation of the site.

...The purpose of the regrading plan contained in the Reclamation Plan was to minimize hazards that can occur on a site with steep unnatural slopes. The grading that will be carried out as part of the project will accomplish this goal as well.

Authorization of the proposed project's grading plan will meet the intent of the City's original approval of the Reclamation Plan and the standards of the State Mining and Geology Board Reclamation Regulations. In addition, the project's proposed Habitat Protection Plan includes a revegetation program that will satisfy the City's January 20, 1987 permit condition.

⁴ As presented on page 19 of the project's Habitat Protection Plan, the portion of the site between the mean high tide line and the existing 20-foot elevational contour constitutes 4.2 acres.

However, neither the project EIR nor the City's approval address the potential increase in the current habitat value of the site if the regrading and revegetation associated with the Reclamation Plan had been completed as required.

D. LCP Background

The Sand City certified Local Coastal Program was certified in the mid-1980's as conforming with, and being adequate to carry out, the Chapter 3 policies of the Coastal Act. Consistent with this certification, the LCP contains broad policies that call for the protection of coastal resources, including sensitive habitats and visual resources. At the same time, it includes provisions for maximum levels of development which, based on current knowledge of the sensitive dune resources within the City's coastal area, are suspect in terms of their compliance with the broader resource protection requirements of the LCP and the Coastal Act.

In an attempt to address such internal and Coastal Act conflicts contained in the certified LCP, the Commission undertook and adopted a periodic review in 1990. This report contains various recommendations on how the LCP could be revised to enhance its ability to carry out Coastal Act objectives.

Similarly, in an effort to expand the area of the City west of Highway One where public parks and open spaces would be a permitted use, the Monterey Peninsula Regional Park District (MPRPD) initiated efforts to amend the City's LCP in 1989. This effort was accomplished in part in 1995, when the Commission adopted LCP amendment No. 1-93 requested by MPRPD.

During the period in which the Commission was considering MPRPD's request to amend the Sand City LCP, a Memorandum of Understanding (MOU) between the City, MPRPD, and the California Department of Parks and Recreation (State Parks) was arrived at. The MOU was a significant step in resolving a longstanding dispute between the City and MPRPD regarding land use in the area west of Highway One, and facilitated Commission approval of LCP Amendment 1-93. The approval of this amendment resulted in a significant expansion of areas within the City's coastal zone on which public parks and open space could be pursued. City staff estimates that about 80% of the City's coastal zone area west of Highway One will be dedicated to open space uses.

As part of the MOU, MPRPD modified their request to amend the LCP in a manner that would establish public parks and open space as an allowed use in all areas of the City west of Highway One, by excluding the three parcels being contemplated for future development by the City. These three sites included the Sterling site immediately north of Tioga Avenue, for which there is an approved Coastal development Permit authorizing 136 unit hotel/conference center; the site immediately North of the Sterling site, owned by the Sand City Redevelopment Agency; and the site of the currently proposed project. In specific reference to the site on which the Monterey Bay Shores Resort is proposed, the MOU states:

During the active period of the [private developer's] option [to purchase the property] (including any extension of said option), or in the event the option is exercised, CDPR [State Parks] and DISTRICT [MPRPD] agree to recognize and respect the option agreement and the option holder's right to pursue development of the Lonestar site consistent with the LCP. During the active

period of the option, CDPR and DISTRICT further agree not to acquire title to any portion of the Lonestar site unless specifically requested to do so in writing by the option holder.

Thus, the provisions of the MOU applicable to the project site were limited to the potential for MPRPD or State Parks to attempt to acquire the site during the period in which the developer had an option to purchase the property. It is also important to note that the Commission is not signatory to the MOU, and that the MOU is not a part of the certified LCP. The standard of review that must be applied to the project is the Sand City certified LCP and the Coastal Access and recreation Policies of Chapter 3 of the Coastal Act.

E. Environmentally Sensitive Habitats

1. LCP Policies and Standards

The certified Sand City LCP implements the environmentally sensitive habitat area (ESHA) policies of Coastal Act Section 30240 through broad policies requiring the protection of natural resources and dune habitats, and more specific policies that require the use of development standards to protect ESHAs. First, consistent with the Coastal Act definition of an Environmentally Sensitive Habitat Area, the LCP defines ESHAs as follows:

Any area in which plant or animal life or their habitats are either rare or especially valuable because of their special nature or role in an ecosystem and which easily could be disturbed or degraded by human activities and developments (Certified Implementation Plan, pg. 21).

Second, with respect to general ESHA protection, LCP Policy 3.3.1 provides:

Visitor-serving and public recreational uses are given priority west of State Highway One, as designated in the Land Use Plan Map in Section 6.0. *Development of these uses shall be consistent with the protection of natural and visual resources [emphasis added].*

Similarly, in discussing appropriate development densities for the Monterey Bay Shores site, LCP Policy 6.4.1 states in part:

... The described [LCP development] densities, both above and below, represent a maximum. As required by applicable policies of the LCP, permitted development *intensities shall be limited to those which adequately address constraints including*, but not limited to: public access and recreation needs (including adequate public access and recreation facilities inland of the 50-year erosion setback line); natural hazards; *dune habitats and their appropriate buffers*; and natural landforms and views to the Bay. ...[emphasis added].

Third, with respect to more specific protections, LCP Policy 4.3.21 states:

Protect environmentally sensitive habitat areas by developing and implementing standards for development (including vegetation removal, excavation, grading,

filling and the construction of roads and structures). Standards should include, but may not be limited to:

- a) encourage retention of open space through deed restrictions or conservation easements;
- b) restrict land disturbance and the removal of indigenous plants to the minimum amount necessary for structural improvements;
- c) require incorporation of appropriate mitigation measures such as setbacks, buffer strips, landscape plans, drainage control plans and restoration;
- d) where appropriate and feasible, allow the exchange of existing resource areas for other open space areas that would provide a more logical location for open space and that could be planted with those species found in the resource area; and
- e) require landscaping with native coastal plants in development proposals.

Finally, LCP Policy 4.3.20 requires, in relevant part, that ESHAs be protected as follows:

- f) New uses proposed adjacent to locations of known environmentally sensitive habitats shall be sited and designed to prevent impacts which would significantly degrade such areas, and shall be compatible with the continuance of such areas.

Policy 4.3.20 also calls out five specific dune habitat areas that were known at the time of LCP certification, within which specific development standards apply, including restrictions that only resource dependent uses be allowed within certain areas.

2. Project Analysis

The applicant's site is located in the Monterey Bay Dunes Complex (also known as the Seaside dune system). Geologists (Cooper et al) describe the dune system as having three main components, each layered upon one another with the oldest layers on the bottom: youngest are the Recent dunes, such as those found around Moss Landing and which are still in the process of building. The most ancient are the pre-Flandrian dunes, mostly located inland from Highway 1 and falling outside the coastal zone.

The highest and most dramatic component of the system is the strand of Flandrian-era dunes, named for an Ice Age event known as the Flandrian Transgression. These high dunes run as a narrow but continuous formation along the shoreline of Monterey Bay, beginning at the Salinas River and reaching approximately 13 miles to Monterey Harbor. The dune system traverses a variety of governmental jurisdictions: Monterey County, the City of Marina, California State Parks, U.S. Army (former Fort Ord), City of Sand City, Monterey Peninsula Regional Park District, City of Seaside, the City of Monterey and the U.S. Naval Postgraduate School. The Coastal Zone boundary through this region primarily follows Highway 1 which, for the most part, and in the case of this project, is the first public road paralleling the sea. The remnant pre-Flandrian dunes inland of Highway 1 in the cities of Seaside and Sand City have suffered severe impacts and are mostly already developed. While the high Flandrian dunes are also impacted, at present several largely undeveloped sections remain along the shoreline (including the project site).

a. The Project Site Is an Environmentally Sensitive Habitat Area.

The Dunes System

The project site is located within the Flandrian component of this dune complex. This dune system component, including the project site, must be considered environmentally sensitive habitat for several reasons. First, coastal dunes are an extremely limited environmental resource of statewide significance. Oceanfront dunes provide unique, sensitive habitat values. Throughout its history, the Commission has placed high priority on the protection and preservation of dune systems. On the Central coast, this includes the Nipomo dunes, Asilomar Dunes, and the Del Monte Dunes (also within the Monterey Dunes complex).

At 40 square miles, the Monterey Bay dune complex is one of the largest remaining coastal dune fields in California. However, less than half of the dune field has survived urbanization, conversion to military or agricultural uses, sand mining, and shoreline erosion.

According to the Technical Review Draft for the Smith's Blue Butterfly Recovery Plan, U.S. Fish and Wildlife Service:

More than 50 percent of the Seaside [Monterey Bay] dune system has been destroyed or altered significantly by sand mining, urbanization, military activities, construction, and the introduction of two aggressive exotic plants, European marram grass (*Ammophila arenaria*), and iceplant (*Mesembryanthemum* spp.). Even considering this, these dunes are the largest and best preserved of any of the central California dune systems except for the Oso Flaco Dunes near San Luis Obispo. The dune system at San Francisco has been almost totally destroyed (Powell, 1981).

The significance of the natural resource values of the Monterey Bay dunes -- particularly the Flandrian component along the shoreline -- is well recognized, as is the potential to restore and enhance these values in degraded areas (see more detail below). Several major dune restoration programs are underway in the vicinity of Sand City. A significant restoration effort has taken place immediately south of the proposed project, on a former dump site that was acquired and remediated by the Monterey Peninsula Regional Park District. To the north of the project site, State Parks intends to protect and restore 700 acres of dune habitat on dunes of the former Fort Ord seaward of Highway One. Other notable restoration areas within the dune system include State Park's restoration efforts at Monterey, Seaside, Marina, and Moss Landing State beaches, and the Navy's restoration of 44 acres of beach area at the Naval Post Graduate School in the City of Monterey. Most important, in the last two years, the U.S. Fish and Wildlife Service has been actively pursuing development of a regional Habitat Conservation Plan (HCP) for the dunes, intended to address the protection of endangered species.

Second, one of the most critical functions of the dune system is its role as habitat for a very unique flora and fauna. These are species which are specially adapted to the conditions and opportunities found in the dunes. Dune plants in particular play a special role by both stabilizing the dunes from the effects of wind erosion, and hosting rare fauna. However, as the natural dune system has been reduced and fragmented, the risk of extinction has increased for several

species. Thus, each new impact within the dunes system, has and will continue to contribute to the cumulative decline of these species.

Specifically, several native plants known to occur in the dunes are either already listed, or are on the candidate list for the federal register of endangered and threatened species. These include the Seaside bird's beak (*Cordulanthus rigidus littoralis*), sand gilia (*Gilia tenuiflora arenaria*), Sandmat manzanita (*Arctostaphylos pumila*), Eastwood's ericameria (*Ericameria fasciculata*), coast wallflower (*Erysimum ammophilum*), Menzies wallflower (*Erysimum menziesii*) and Monterey ceanothus (*Ceanothus rigidus*). The Seaside bird's beak is protected under the California Plant Protection Act of 1977. All seven species are recognized as rare by the California Native Plant Society. The sand gilia is both state-listed and federal-listed. Another sand-stabilizing plant species, the Monterey spineflower (*Chorizanthe pungens* var. *pungens*), is also found in the Monterey Bay dunes (including the project site), and has been listed in the Federal Register as an endangered species (U.S. Fish & Wildlife Service notice of February 14, 1994).

The U.S. Fish & Wildlife Service has also listed the Western snowy plover as a threatened species. These birds forage along the shoreline and nest in the foredunes of the Flandrian system. The plovers are known to nest in various areas of the dunes, including the project site, and have been the focus of significant conservation efforts by the State Dept. of Parks and Recreation (see below for more detail). According to staff of the U.S. Fish and Wildlife Service, it is expected that the dunes within Sand City will provide important breeding habitat as the species recovers.

Another species of concern existing within the dune system is the Smith's blue butterfly (*Euphilotes enoptes smithi*), a federally protected animal species listed as endangered by the U.S. Fish and Wildlife Service. Coast buckwheat (*Eriogonum parvifolium* and *E. latifolium*) are host plants to the Smith's blue butterfly, and occur in clusters that support localized populations of the butterfly. The black legless lizard (*Anniella pulchra nigra*), another native species of the Monterey Bay dunes, has previously been a candidate for federal listing as endangered, and is considered a Species of Concern by the California Department of Fish & Game because of its limited distribution.

Finally, while the distribution of these dune plants and animals may appear sparse to the uninitiated, over time they can collectively be expected to utilize the entire available dune surface. This is because the Flandrian component of the dunes complex is a dynamic system. The dunes present a rather harsh and difficult growing environment, where the wind keeps shifting the shape of the ground, rainfall rapidly percolates out of reach, and, lacking a distinct topsoil horizon, nutrients are quickly exhausted. Thus, a plant like Monterey spineflower may over a year or two use up the available moisture and nutrients at a particular site, and by means of wind-blown seed "move" to a neighboring area. In this simplified model, the original site remains a bare sand surface until life's necessities again accumulate at the original site—thereby allowing recolonization and repeating of the cycle. Therefore, the overall growing area ("habitat") needed over the long run is vastly larger than the area occupied by the plants at any one "snapshot" in time. This also helps explain why the entire dune surface—not just the locations where the plants (and animals) are found in any one particular year—must be considered as ESHA. More detail on this aspect of the dunes ESHA is presented in the discussion of the project site below.

MBS Project Site

Under Sand City's certified LCP, the entire Monterey Bay Shores (MBS) development site is an environmentally sensitive habitat area. First, as discussed above, the MBS site is part and parcel of a significant and sensitive ecological system— the Flandrian component of the the Monterey Bay dunes complex. Since certification of the Sand City LCP in 1985, much has been learned about the important role of specific areas within the dunes, and how both vegetated and barren sand surfaces contribute to the overall functioning of the dunes habitat system—even when these areas are to one degree or another degraded. As mentioned above, new development within the dune system contributes to the cumulative fragmentation and reduction of this unique sensitive habitat.

According to U.S Geological Survey data, the crest of the dune on the MBS site, rising directly from sea level to 135 feet, is the highest point shown within the Flandrian dune component. At just over 39 acres, this also the largest parcel on the Sand City shoreline, and compared to other sites there are proportionately fewer inroads by invasive non-indigenous plants. This means that despite its past history of sand mining, this site has a great range of potential habitat niches. Because there are no existing roads, buildings or other solid surfaces, all portions of the site are comprised of sandy surfaces. These sandy surfaces are practically a standing invitation to recolonization by the dune dwellers that make a specialty of the Flandrian-era dunes.

Therefore, it is no surprise that in the past decade, such a recolonization trend is strongly evident. As previously noted, when the Sand City LCP was certified in 1985, no sensitive habitat areas were specifically mapped on the project site. Since the LCP was certified, however, the site has been identified as supporting several sensitive native dune species. According to the project's Habitat Protection Plan (HPP), prepared by Zander and Associates:

...previous [habitat] studies characterized the habitat on the Monterey Bay Shores property as highly disturbed, consisting of areas of bare sand or non-native iceplant, and generally devoid of any native plant communities. However, despite its degraded condition, portions of the site have been documented to support the Smith's blue butterfly, western snowy plover and Monterey spineflower. Surveys for the California black legless lizard, Monterey ceanothus and sandmat manzanita yielded negative results. (Page 4)

The HPP states that the site also has the potential to support additional rare native animal and plant species of the Monterey Dunes. These include the Black legless lizard, the California Burrowing Owl, the globose dune beetle, Sand gilia, Sandmat manzanita, Monterey ceanothus, and Coast wallflower. Therefore, the MBS site, in addition to being an environmentally sensitive habitat area by virtue of its importance as a piece of the larger Monterey Bay Flandrian dune system, is also existing and potential habitat for particular sensitive species. In short, there is no doubt that the MBS site is an "area in which plant or animal life or their habitats are either rare or especially valuable because of their special nature or role in an ecosystem and which easily could be disturbed or degraded by human activities and developments." The following discussion considers some of these habitats in greater detail, and summarizes the potential for restoration.

Snowy Plover. One of the most important habitat values provided by the site is the nesting area it provides for the federally threatened Western snowy plover. The site is included within the "critical habitat area" for this species proposed by the U.S. Fish and Wildlife Service, which extends from Seaside through Sand City and the former Ft. Ord to Marina. It is known to be one of the most important nesting areas within the region. As stated by the HPP:

Since the site lies at the northern end of a distinct segment (Monterey North as per the classification system used by PRBO [Point Reyes Bird Observatory]) of plover breeding habitat (the beaches of former Fort Ord provide limited habitat because they are so narrow) that has limited human access, it has provided somewhat of a refuge to nesting plovers in the past. (Page 13)

Plover use of the site is further documented by the HPP as follows:

Over a five year period (between 1989 and 1994), the Point Reyes Bird Observatory recorded 15 nests of the western snowy plover on the Monterey Bay Shores property along the shoreline and in the interior near the sand pit (Plate 2 [attached as Exhibit 12]). In 1996, an adult male was observed with two separate broods, each with one chick, along the beach below the sand pit (Page 1997). In 1997, one active nest was observed on the beach at the border of the property with former Fort Ord. One brood also used the site during the 1997 season. The beaches on the property continue to provide suitable nesting and brooding habitat for the plover as does the relatively flat inland plateau north of the sand pit ... (Page 6-7)

According to the applicant's biologist, the Point Reyes Bird Observatory did not observe any Snowy Plover nests on the project site in 1998. Nevertheless, given the documented use of the site by snowy plovers in previous years, and the significance of this habitat area described on page 15 of the HPP, the absence of a nest in 1998 should not be construed as meaning that the site does not provide important nesting habitat. Indeed, comments from staff of the Point Reyes Bird Observatory submitted in response to the Draft EIR underscores the importance of this site as nesting habitat for the Western snowy plover.

Smith's Blue Butterfly. With respect to the federally endangered Smith's blue butterfly, the site provides habitat for this species within its northeast corner, and along the swale at the northern border with the former Fort Ord. The butterfly habitat is directly related to the existence of approximately 58 Coast buckwheat plants in this area. Seventy-eight additional buckwheat plants are found immediately adjacent to the northeast corner of project site, in the Southern (now Union) Pacific Railroad right-of-way. Another 14 buckwheat plants are located on a parcel (APN 11-501-004) owned by the applicant on the northern boundary of the project site, in the southeast corner of the former Fort Ord. The HPP assumes, based on previous butterfly surveys, that the 58 buckwheat plants on the project site "provide habitat for a minimal number (4-11) of Smith's blue butterfly and probably serve as habitat [for butterflies] that are dispersing from larger established populations to the north" (page 11).

Monterey Spineflower. The federally threatened Monterey spineflower was first identified on the project site during site surveys conducted in 1997 by the project biologist. According to the HPP, "the number of spineflower plants on the project site is not extensive. There are

approximately 2.5 acres of low density Monterey spineflower habitat and 0.3 acre of high density habitat in the southeastern and eastern portion of the project site" (page 14). Nonetheless, the recent colonization of the site by the Monterey spineflower is an example how previously disturbed dune areas provide significant habitat values.

Restoration potential and evidence of natural recovery. The majority of the site, including the beach area, is bare sand. Beside providing nesting habitat for the Western snowy plover, bare sand areas represent restorable dune habitat areas that are important to the long-term survival of the rare plant and animal species unique to the Monterey Dune ecosystem. Similarly, the approximately 1.9 acres of the site that is currently dominated by non-native iceplant, also represents restorable dune habitat. Removal of the iceplant, which can occur naturally (via heavy frost or disease) or with human intervention, would enhance the native dune habitat currently provided by the site, and assist in the recovery of this resource throughout the dune system. Recovery and expansion of native dune habitats on the project site is facilitated by the absence of European beach grass, a non-native invasive species that has degraded native habitats elsewhere in the Monterey Bay Dunes.

Because native dune plants are superbly adapted to life in an environment which is subject to periodic disturbance, natural recovery would be expected following removal of disruptive activity. In fact, much of the biological information collected for the site indicates that native dune plants and habitats are naturally recurring in areas that were previously disturbed by sand mining activities. The Habitat Protection Plan states that native dune plants considered to be "pioneers" in natural succession, including the federally endangered Monterey spineflower, extend from the northern slopes of the abandoned sand pit to the swale on the northern boundary of the project site, encompassing approximately 9.2 acres (page 5).

Other biological data indicating that the site is naturally returning to a native dune habitat includes the apparent expansion of the numbers of buckwheat plants found on the site. According to the HPP, Dr. Richard Arnold reported observing approximately 40 individuals of Seacliff buckwheat on the site in 1987 (page 10); the project biologist identified 58 plants in 1995. A reconnaissance survey in 1997 confirmed that the extent and distribution of buckwheat on the site is essentially the same as recorded in 1995.

In referencing Dr. Arnold's studies, the HPP states that "in July, August and September, 1987 [Dr. Arnold] reported finding four adults and two larvae of the Smith's blue butterfly along the northern border and near the northeastern corner of the property. Because he found such a small number of adults, and only found them on two of his six visits to the site, Dr. Arnold assumed the site was not heavily used by the Smith's blue butterfly and concluded that it probably provided habitat for transients that were dispersing from larger established populations to the north." (Page 11) One implication of this statement could be that the small population of Smith's blue butterfly on the site has migrated from a more established population to the north, and are pioneers attempting to establish a larger permanent population on the Monterey Bay Shores site. The removal of the existing habitat and "transient" butterfly population could significantly set back this process.

It is also worthwhile to note that the HPP states that "During July-August, 1988, LSA Associates observed a total of about 12 individuals on six separate occasions scattered in the vicinity of the northeastern property boundary." (Page 11). The HPP, however, estimates the site's butterfly

population to be only 4 – 11 individuals, and discounts the removal of the habitat area as insignificant on the basis of the small population and that it is likely a transient population (HPP, page 11).

Summary of environmentally sensitive habitat values. In summary, although the contours of the project area have been substantially altered by past sand mining activities, the site currently supports rare and important native dune habitats. This includes the significant extent of bare sand habitat, which provide nesting areas for the federally threatened Western snowy plover. Bare sand areas will also support the natural and human induced recurrence of rare native plant and animal species, as will areas of the site where habitat values have been diminished by the presence of non-native species. Given the rarity, sensitivity, and historic decline of the dune habitats native to the Monterey Bay dunes, successful recovery of this habitat is dependent upon the protection and biological enhancement of existing and disturbed yet restorable dune areas alike.

b. The Project Does Not Protect Environmentally Sensitive Dune Habitat

Having established that the MBS site qualifies as ESHA under the certified LCP, the Commission must find that the development proposed for the site "protects" this ESHA (LCP Policies 3.3.1; 4.3.21), and that any development is designed and sited to prevent impacts that significantly degrade or threaten the continuance of surrounding ESHA (4.3.20). Overall, any approved development density must be limited sufficiently to address the Monterey Bay dune habitat (LCP 6.4.1).

As approved the City of Sand City, the project is not consistent with these LCP policies. First, the overall direct impacts of the project on environmental sensitive habitat are substantial. As stated on pages 76-77 of the Draft EIR for the project:

The direct biological resources impacts as a result of this project would be the loss or disturbance of 30.7 acres of habitat through site grading and project construction activities.... The removal of these habitats will result in the loss of plants, and may result in the loss of wildlife.

A portion of the vegetation to be removed includes the Monterey spineflower, a threatened species under the Federal Endangered Species Act. In addition, removal of sea cliff buckwheat plants will reduce habitat for the Smith's blue butterfly, a species designated as a federal endangered species. Grading of the bare sand areas used in the past for nesting by the snowy plover, a species with a threatened status under the federal Endangered Species Act, will reduce available nesting habitat. The direct impacts on these three species are expected to be temporary since the project includes a plan to restore a portion of the site that would be maintained in its natural state in perpetuity, with a deed restriction.

The project would facilitate increased public access on the project site, as well as on the adjacent beaches and parklands. Indirect and cumulative impacts could result from the increased human traffic on the beach and strand areas that could

disturb the nesting western snowy plovers and reduce nesting habitat value on the site and in adjacent areas for this species.

In addition to the impacts described above, the project will adversely affect environmentally sensitive habitats by introducing significant amounts of noise, glare, and human activity, and by permanently removing 13 acres of currently open dune habitat from the Monterey Bay dune system.

The proposed methods of minimizing and mitigating these impacts are detailed in the HPP, the Final EIR, and the City's conditions of approval. In summary, 10.2 acres of 32 acres of the project site above the mean high tide line will be placed in conservation easements and protected and restored as dune habitat. The remaining 8.8 acres outside of the 13 acre development footprint will be public access easement areas; the HPP includes measures to revegetate and manage these areas as well, consistent with the public access improvements to be installed by the project. The specific provisions of the HPP are intended to minimize the impacts of project construction on existing sensitive habitats and species, and to facilitate the enhancement of native dune habitat values on the 19 acres of the site outside of the development footprint. Particular emphasis is placed on establishment of habitat that will benefit the rare plants and animals of the Monterey Dune system. No specific mitigation is proposed for the net loss of 13 acres of dune habitat, other than the on-site restoration and habitat management proposed on the remainder of the site.

Second, specific impacts to species protected under the Federal Endangered Species Act -- the Western Snowy Plover and the Smith's Blue Butterfly -- are significant and not adequately addressed.

Impacts to the Snowy Plover.

Project impacts on the federally threatened Western snowy plover are described in the Final EIR as follows:

On-Site: The Monterey Bay Shores project will affect western snowy plover nesting habitat on the site and may result in "take" of snowy plovers. Construction of the project will displace documented nest locations. Construction-related activity and noise on the property could discourage plovers from using the remainder of the site for the duration of construction. Although reestablished plover nesting habitat is proposed as part of the project, the extent of available plover habitat on the site following construction may be less than that existing today. Furthermore, the proximity of a new hotel/resort complex and increased access to and visitor use of the beach and strand area could limit or preclude future plover use of the property.

Off-site: The project has the potential to increase off-site impacts to the population of plovers using the Sand City shoreline. A destination resort and public access at a new location on the shoreline will introduce a new point source of human use into the shoreline environment. Increased, unrestricted use of the shoreline by people and pets resulting from the MBSR project could affect plovers at nesting, brood-rearing and foraging sites throughout Sand City. Finally, the cumulative effects of the MBSR project on western snowy plovers in

combination with other planned or proposed shoreline projects in Sand City, are potentially significant.

To reduce project impacts on the western snowy plover, the City has required that:

- the applicant obtain a 10(a)(1)(B) permit from the U.S. Fish and Wildlife Service prior to the issuance of the Coastal Development Permit for the project;
- a qualified biologist be on-site to monitor for and protect snowy plovers during construction. Construction may not commence during the nesting season unless the biologist confirms that there has been no plover activity on site for two months prior to construction. If plovers are observed in areas that could be affected by the project, construction may not begin until September/October after all snowy plover chicks in the project vicinity have fledged and are flocking in preparation for winter migration;
- the project fund one permanent, full-time equivalent biological steward/ranger to monitor the project site for compliance with the access management plan and to regulate the times, locations and other conditions under which the beach users are allowed access to the beach and other sensitive areas;
- the applicant participate in the development of a City-wide (coastal zone) HCP/management strategy and a program to establish and protect suitable permanent habitat for western snowy plover in the vicinity of the Sand City shoreline acceptable to the U.S. Fish and Wildlife Service.

To further protect western snowy plovers and their habitat, the City has committed in the final EIR to the adoption and implementation of the following ordinances and implementation programs (pgs 8-9):

- Prohibition of unauthorized vehicles, dogs and horses on City beaches;
- Prohibition with interfering with any fencing installed to protect western snowy plover pursuant to the Habitat Conservation Plan; and,
- Establishment of two-full time equivalent biological steward ranger positions (one of which will be funded by the project, as noted above) to monitor and protect plover habitat areas.

Unfortunately, the Western snowy plover habitat protection and restoration objectives included and required as part of the project do not ensure the effective protection, or the biological continuance, of the Western snowy plover habitats within and adjacent to the project. First, the project will displace and significantly alter documented nesting locations. As noted on page 8 of the HPP, while snowy plovers do not establish permanent nests that remain from year to year, they do exhibit high nest fidelity. Snowy plovers return to nest in specific locations because they have particular nesting needs. While the project intends to establish new nesting area, it can not be guaranteed that, following the significant landform alterations proposed as part of the

project and the increase in noise, glare, proximity to structures, and human activity, that the site will continue to provide viable habitat for this species.

Second, impacts associated with an increase in human use of Western snowy plover habitat areas on and adjacent to the site are proposed to be controlled by the presence of two biological stewards. The ability of these stewards to effectively manage plover habitat consistent with the significant increase in human use of the area, though, remains questionable. It is unclear how the presence of biological stewards will mitigate for the impact of the development itself, particularly given its scale and intensity. Even with the stewards, the glare, noise, physical presence, and increased human presence will remain. In response to previous Commission staff concerns regarding this issue, the Final EIR concludes, on page 23, "...noise, light, glare, proximity to structures and human activity and other indirect effects on plover nesting habitat may limit the plovers' ability to establish nests on this site regardless of the steward's efforts". Moreover, without a more considered assessment of the habitat values of the site, such as would be provided through the U.S. Fish and Wildlife Habitat Conservation Planning (HCP) process, it is difficult to know whether the proposed mitigation strategy is adequate (see below).

Finally, the City's approval of the project relies upon the Endangered Species Act Habitat Conservation Planning consultation process to resolve outstanding issues related to the projects direct and cumulative impacts on the Western snowy plover. The HCP process is one of the primary mechanisms used by the U.S. Fish and Wildlife Service to address the appropriate levels of development, consistent with the Endangered Species Act prohibition on the "take" of a listed species, such as the Plover. To approve an HCP, the USFWS must find, among other things, that any take of species related to a development is incidental and the taking will not appreciably reduce the likelihood of survival and recovery of they species in the wild.

The City conditioned the issuance of the coastal development permit for the MBS project, on the completion of these consultations with USFWS. However, it is premature and inappropriate to condition the approval of a development on these consultations. One purpose of the HCP process is to systematically assess the entire affected habitat of the endangered species, to better identify the extent of impacts on the species from prospective development occurring on a particular site. Such assessment is necessary for the Commission to make a finding concerning LCP compliance in this case. Indeed, a project can not be found to be consistent with the sensitive habitat protection requirements of the LCP until it has been demonstrated that it will not jeopardize the biological continuance and recovery of threatened and endangered species. Moreover, inasmuch as one of the primary objectives of the HCP process is to determine the appropriate locations and intensities of development within the habitat of an endangered species, approval of the project prior to the HCP assessment precludes consideration of the full range of alternatives available to address the habitat needs of such species, particularly those alternatives involving revised project designs.

As stated on page 23 of the Final EIR, "Sand City is committed to a City-wide approach to preservation and management of Western snowy plover habitat". In furtherance of this commitment, the City has initiated the development of a Habitat Conservation Plan (HCP) for the entire coastal area of the City west of Highway One. The purpose of this plan is to address the habitat protection needs of the various special status species, particularly the Western snowy plover, that exist within the Sand City portion of the Monterey Dunes, in light of the

various developments planned for the area (including the subject project). Again, this process, which is expected to be completed in the late summer/early fall of 1999, will provide critically important information regarding the protection of environmentally sensitive habitats, especially with respect to the survival and recovery of threatened and endangered species.

At the same time that the City is in the process of developing an HCP for the entire area of the City west of Highway One, the applicant has recently developed a Habitat Conservation Plan and Implementation Agreement specific to the project. These documents are intended to address the Endangered Species Act (ESA) issues raised by the project, and must be submitted for review by the U.S. Fish and Wildlife Service in order to obtain the Section 10 permit required by the ESA. Based upon discussions with U.S. Fish and Wildlife staff, it is expected that the applicant's submittal will be processed concurrently with the City's submittal to ensure that the inter-property and cumulative habitat issues are effectively addressed.

Clearly, completion of the ESA consultation requirements, either through a project specific or City-wide HCP, must precede a finding that the project complies with the LCP policies identified above. Furthermore, approval of the Coastal Development Permit prior to satisfying ESA requirements may prejudice full consideration of project alternatives that would more effectively protect environmentally sensitive habitats.

Impacts to Smith's Blue Butterfly.

All 58 of the seacliff buckwheat plants on the site will be removed as a result of the project. As previously noted, the HPP estimates that these plants provide habitat for between 4-11 individuals of Smith's blue butterfly. The removal of this habitat is primarily associated with the proposed recontouring of the site; a new dune formation, intended to provide restored habitat and to hide the development from the view of motorists traveling along Highway One, will be created in the northeast corner of the site. The removal of the existing buckwheat plants triggers the need for a Section 10 consultation with the U.S. Fish and Wildlife Service pursuant to the federal Endangered Species Act, based on the fact that these plants are known to support, and provide habitat, for the federally endangered Smith's blue butterfly. This consultation has yet to be completed.

In order to minimize impacts on the Smith's blue butterfly, the flowerheads and stems of all buckwheat plants within the construction area, as well as the sand/duff surrounding the plants, will be relocated to an adjacent parcel northeast of the project site that is outside of the project area. This site, which is owned by the applicant and currently contains approximately 14 buckwheat plants, is intended to provide interim habitat for the Smith's blue butterfly during construction. Following construction, 1000 propagules of seacliff buckwheat will be planted on each acre of leeward slopes in the dune management area, for a total of approximately 3,900 plants.

While restoration efforts in other areas of the Monterey Dunes have demonstrated that the revegetation of dunes with buckwheat can be accomplished, it remains unclear whether these plants will provide productive habitat for the Smith's blue butterfly. Of primary concern is that removal of the existing habitat, and the associated impacts to the existing population of the butterfly, will set back or preclude whatever gains have been made in the butterfly's effort to colonize this site.

One option that could prevent this impact would be to avoid impacts to the existing butterfly habitat on the project site altogether. This alternative, however, may reduce opportunities to enhance butterfly habitat that may be achieved by the proposed dune creation, which would provide additional habitat area that is more protected from the predominant northwest winds, and therefore favored by the butterfly.

Clearly, completion of the required biological consultations with the U.S. Fish and Wildlife Service is needed to help resolve this issue. Again, as with the impacts to the Western Snowy Plover, completion of the Endangered Species Act consultation is necessary to determine whether the project will have unacceptable impacts on this federally endangered species, and thus, whether the project complies with the LCP Policies that require new development to protect environmentally sensitive habitat areas and ensure their biological continuance.

3. Conclusion

There are numerous outstanding issues that preclude a finding that the project conforms to LCP standards protecting environmentally sensitive habitats, summarized below.

First and foremost, effective protection of habitat for the western snowy plover and the Smith's blue butterfly is dependent upon future consultation with the U.S. Fish and Wildlife Service pursuant to the Endangered Species Act. Prior to completing these consultations, it is impossible to conclude that the current project is consistent with these LCP requirements. Because significant changes to the project approved by the City may be necessitated by these consultations, it is inappropriate to require that the consultations be completed as a condition of project approval. Rather, the Commission must deny the MBS project because it is unable to find that the project is consistent with ESHA protection policies of the LCP.

Second, the project will result in a permanent net loss of over 13 acres of environmentally sensitive dune habitat areas (page 160 of the Final EIR). The cumulative loss of dune habitat areas on the site, combined with project impacts on remaining habitat areas (see third point, below), has the potential to jeopardize the continuance of the site's sensitive biological resources. No specific mitigation beyond the proposed restoration and management of the remaining 19 acres on the site has been proposed for this net habitat loss.

Third, the habitat value and biological productivity of the proposed on-site habitat restoration and management areas, and the ability of the biological stewards/rangers to effectively protect these areas, has not been adequately established. Noise, light, glare, proximity to structures and human activity, fragmentation of habitat, and other aspects of the development pose significant risks to environmentally sensitive habitats on and adjacent to the project site, and are outside of the control of a biological steward.

Fourth, contrary to LCP Policy 4.3.21.b (restrict land disturbance and the removal of indigenous plants to the minimum amount necessary for structural improvements), the project involves over 30 acres of grading, excavation, and land form alterations, which will remove almost all of the existing habitat areas on the site. Alternative types or intensities of structural improvements which would minimize land disturbance appear feasible, but would require substantial redesign of the project.

The remedies available to the applicant to resolve these issues involve completing the required endangered species act consultations and redesigning the project in a manner that minimizes the extent of land disturbance and associated impacts to dune habitats.

F. Water Supply

1. LCP Requirements

LCP Policy 4.3.31 states:

Require future developments which utilize private wells for water supply to complete adequate water analyses in order to prevent impacts on Cal-Am wells in the Seaside Aquifer. These analyses will be subject to the review and approval of the Monterey Peninsula Water Management District. In support of MPWMD's review and permit authority, the City should incorporate these requirements into City development review.

LCP Policy 6.4.11 requires:

New development shall be approved only where water and sewer services are available and adequate; and where adequate circulation and parking has been provided for.

2. Project Analysis

Water to meet the project's domestic, landscaping, and fire suppression needs is proposed to be obtained from an existing on-site well and supplemental second well that will be drilled on the project site. Because the project site is outside the service area of the Cal-Amwater company, an independent mutual water company will be formed to supply water to the project. As estimated by the project's engineers, 94 acre-feet of water will be required to serve the originally proposed 597-unit project on an annual basis (assuming 80% occupancy of the hotel). However, as noted in their comments on the Draft EIR, the Monterey Peninsula Water Management District estimates the project water demand of the originally proposed project to be approximately 125 acre-feet per year.

The groundwater extracted to serve the project will be from the Seaside aquifer, which is a managed groundwater basin. The Monterey Peninsula Water Management District (MPWMD) regulates extractions from this basin, and a Water Distribution Permit from the MPWMD is required for the project. The necessary distribution permit from the MPWMD has yet to be obtained, inconsistent with the requirements of LCP Policy 4.3.31 and 6.4.11.

The intent of LCP Policies 4.3.31 and 6.4.11 is to ensure that, prior to approving new development, it can be demonstrated that there is adequate water to serve the development. In particular, Policy 4.3.31 establishes a requirement to protect other wells in the groundwater basin. Towards this end, the LCP specifically calls for a comprehensive water analysis to be reviewed and approved by MPWMD, the regulatory body in charge of managing the basin, and

requires this review to be incorporated within the City's development review process. In order to issue a distribution permit, the MPWMD must find, among other things, that the project will not create or increase an overdraft of the basin aquifer or adversely affect the ability of existing systems to provide water to users.

Rather than completing the necessary water review prior to the approval of the development, the City conditioned the issuance of the permit as follows:

Prior to the recordation of the final tract map, and issuance of the Coastal Development Permit, the developer's right to use water from on-site wells for domestic service (potable water), capable of serving the requirements of the project shall be confirmed in writing by the Monterey Peninsula Water Management District, or by court order. This confirmation shall also contain verification of acceptable technical, financial and management capabilities of a mutual water company, unless the mutual water company is to be managed and operated by Cal Am or another appropriate entity acceptable to the City Engineer. Also, a water distribution permit shall also be required from the Monterey Peninsula Water Management District prior to the recordation of the final map.

This condition conflicts with the specific requirements of LCP Policy 4.3.31 in that the necessary water reviews will take place after the City's development review has been completed. Moreover, it is inconsistent with LCP Policy 6.4.11, which requires demonstration of adequate water prior to the approval of new development.

In response to Commission staff's requests that the applicant obtain the necessary water permits prior to the completion of the coastal development permit process, the applicant has asserted that a water permit can not be obtained until the necessary land use approvals (i.e., the Coastal Development Permit) is approved. In addition, the applicant has noted that the application for the Water Distribution Permit requires a completed copy of the Monterey Health Department's water permit application, which, in turn, requires complete construction plans and specifications for the proposed water system. The applicant contends that this has placed him in a "Catch 22" situation.

These contentions are not supported by the information that has been obtained by staff from the MPWMD. First, with respect to land use approval, number 10 of MPWMD's "Application For Permit to Create a Water Distribution System" requires "proof of land use approvals (Use Permit, subdivision map or other) by the municipal unit in which proposed System is located". In this case, the project has obtained City approval of a Vesting Tentative Subdivision Map and a Planned Unit Development, Site plan and Design Permit. While the Coastal Development Permit associated with these local approvals remains pending, the applicant has obtained the necessary approvals from the municipality in which the system will be located to move forward with the Water Distribution Permit application. Moreover, in correspondence with MPWMD, it has been confirmed that they will accept a permit application that does not have final land use approval from the Coastal Commission.

Second, item 11 of the Water Distribution Permit application, which requires "a completed copy of the Monterey County Environmental Health form entitled 'Water Permit Application and

Information", does not in any way necessitate that the Coastal Development be approved before the necessary applications are made to the MPWMD or the County Health Department. The applicant has already undertaken, under guidance of the County Health Department, the pump tests and water quality analyses that are required as part of the water permit application. Based upon correspondence with MPWMD (Exhibit 13), this information appears sufficient to allow the applicant to proceed with the necessary Water Distribution Permit application.

It is important to note that this is not only a procedural issue, but also raises important substantive issues in terms of the protection of water resources. Existing data regarding the Seaside aquifer does not support an assumption that there is adequate water to serve the project, or that the project's proposed water use will not have an adverse affect on existing wells in the basin. As stated on page 155 of the Final EIR,

Groundwater pumping now exceeds the safe yield [of the Seaside aquifer], which ... has been in overdraft since Cal-Am started pumping the Paralta Well in 1995. The pumping levels are below sea level as demonstrated by the negative elevations reported in the Fugro Phase III Report. In 1995 groundwater pumping of 4,701 acre-feet exceeded the safe yield by 383 acre-feet. The same occurred in 1997 with 4,496 acre-feet pumped which exceeded the safe yield by 121 acre-feet. During those three years, the Cal-Am Paralta Well was pumped for 1,656 acre-feet in 1995, 1,974 acre-feet and 1,335 acre-feet in 1996 and 1997. The safe yield was exceeded by 7.5% in 1995, 8.8% in 1996, and 2.8% in 1997. It is noted that pumping from the Paralta Well was reduced by 639 acre-feet from 1996 to 1997. This also resulted in reducing basin overdraft. Unless pumping of the Paralta well is further reduced, there will be a continuing basin overdraft of the Seaside aquifer which will exacerbate the potential for seawater intrusion.

Page 157 of the Final EIR states:

Use of the on-site PCA well will further exacerbate overdraft of the Seaside aquifer by an additional 125 acre-feet and bring the combined pumping of the Seaside aquifer to over 5,000 acre-feet as compared with the estimated safe yield of 4,375 acre-feet for an overdraft in excess of 625 acre feet.

The Final EIR continues, on page 158

... the Seaside aquifer could be in overdraft by an excess of 500 acre-feet depending upon the amount pumped from the project's well(s) and the pumping by Cal-Am and the other users of the groundwater basin. Most, if not all, wells in the groundwater basin are pumping from below sea level thus reversing the direction of groundwater flow from offshore toward the onshore wells. This results in a significant impact on the Seaside Aquifer and the groundwater resources.

In recognition of these impacts, the Final EIR proposes, on page 158, the following mitigation measure

Prior to the recordation of the final map for the project and the issuance of the CDP (in order to be consistent with LCP Policy 4.3.31) the MPWMD shall verify through its Water Distribution Permit review process, to the satisfaction of the City that either (1) groundwater pumping needed for the project (at City-approved or Coastal Commission modified level, should that occur) shall not exceed present groundwater basin extractions by causing a commensurate amount of water pumping reduction; or (2) basin management and production enhancement techniques have been implemented which increase the safe yield of the Basin in an amount sufficient to satisfy the demand from this project.

The above information regarding the project's water supply and its relationship to the Seaside aquifer provides evidence that the availability and adequacy of the proposed water supply remains in question.

Moreover, the mitigation measure suggested on page 158 of the Final EIR indicates that the project's proposed water withdrawals may necessitate a commensurate reduction in water extractions within the basin. Such reductions could have significant impacts on existing water users within the basin, and/or on coastal resources within the Carmel River watershed, which have yet to be identified. This is due to the fact that the primary user of water in the Seaside basin is the Cal-Am water company, which provides water to its users through groundwater extractions and diversions from the Carmel River via the Los Padres Dam. Both of these sources are currently being utilized near or above their sustainable yield. In addition to the overdrafted condition of the Seaside groundwater basin provided by the EIR, this is evidenced by actions taken by the State Water Resources Control Board that require a reduction in the amount of water being taken from the Carmel River by Cal-Am.

3. Conclusion

Outstanding issues that need to be resolved before the project can be found to be consistent with LCP Policies 4.3.31 and 6.4.11 include: whether there are available and adequate groundwater resources to serve the proposed project, as established through the MPWMD's Water Distribution Permit process; and, what the impact of the proposed groundwater extractions on other water users with the Seaside basin will be, and how will such impacts will be mitigated.

G. Visual Resources

1. LCP Requirements

LCP Policy 5.3.1 requires:

Views of Sand City's coastal zone shall be enhanced and protected through regulation of siting, design, and landscaping of all new development in the coastal zone, adjacent to Highway One (on both the east and west) in order to minimize the loss of visual resources.

LCP Policy 5.3.2 states, in relevant part:

Views of Sand City's coastal zone, Monterey Bay and Monterey Peninsula shall be protected through provision of view corridors, vista points, development height limits, and dune restoration areas, as shown on Figure 9 [attached as Exhibit 8]. Major designated view corridors are:

- a) southbound view corridor across the northern city boundary consistent with the public recreation designation ...

LCP Policy 5.3.4.a provides:

- a. Encourage project design that is compatible to its natural surroundings and that enhances the overall City image. All buildings should be designed and scaled to the community character as established by new development.

LCP Policy 5.3.3.a defines view corridors as follows:

"views across" [e.g., as provided in LCP Policy 5.3.2, above] shall be protected by retaining the view corridor free of new structures. These corridors will continue to provide broad unobstructed views of the sand dunes, shoreline, Monterey Bay, and the Monterey Peninsula (southbound) or Santa Cruz Mountains (northbound);

LCP Policy 5.3.4.f states:

Encourage the use of existing natural and manmade dunes as earth berms for visual and noise barriers, as well as buffers between land uses. Landforms are more efficient for visual and noise reduction than planting screens.

Similarly, LCP Policy 5.3.10 requires:

Utilize existing or manmade dunes within project design to enhance visual resources.

LCP Policy 6.4.5 establishes the following applicable height restrictions:

In the Sand City Coastal Zone, permit a height limit of 36 feet as measured from existing grade with the following exceptions:

... c) hotel uses shall not exceed 45 feet. ...

The above height restrictions are further specified by Implementing Ordinances particular to specific land uses/zoning districts, as follows:

Coastal Zone Residential, Medium Density

... No building shall exceed thirty-six (36) feet as measured from the existing grade. ...

Coastal Zone Visitor Serving Commercial

... No building shall exceed thirty-six (36) feet as measured from the existing grade except hotel uses shall be permitted variation in height to forty-five (45) feet. ...

Coastal Zone Visitor Serving Residential, Medium Density

... No building shall exceed thirty-six feet as measured from the existing grade.

...

2. Project Analysis

The LCP requirements cited above provide general guidance regarding the protection of visual resources in the Sand City coastal zone, and establish specific regulations to achieve such protection.

In terms of general requirements, the LCP calls for the protection of views within the Sand City coastal zone, and encourages project designs that are compatible to their natural surroundings. The LCP further directs that all buildings should be designed and scaled to the community character as established by new development.

More specifically, the LCP establishes particular height limits, view corridors, and design requirements intended to protect visual resources. These development standards include: a prohibition against the installation of new structures in the southbound view corridor across the northern city boundary consistent with the public recreation designation; a height limit of 36 feet above existing grade (45 feet for hotels); and, the requirement to utilize dunes as visual barriers.

As approved by the City, the proposed development is significantly inconsistent with both the general and specific LCP requirements identified above, for the following reasons.

- 1) The development will be visible to motorists traveling along Highway One (please see visual analysis provided by applicant, attached as Exhibit 10), in an area currently void of structures. It will also encroach upon the southbound view corridor that is required to remain free of structures by LCP Policies 5.3.2.a and 5.3.3.a. However slight the obstruction to coastal views from Highway One may be, this impact is significant in that it changes the viewers perception of the area from a natural dune environment to a built environment, and detracts from the spectacular views of the Monterey Peninsula and Monterey Bay currently available across this undeveloped natural foreground. The importance of preserving such views free of structural obstruction has been a significant factor in the Commission review of prior development proposals in the Sand City coastal zone. For example, in its approval of Coastal Development Permit No. A-3-SNC-94-08 for the Sterling Center (a 136 unit resort that has not been constructed), the Commission required that all structures within the LCP view corridor be limited to a maximum height of 50 feet above mean sea level, the lowest elevation of Highway One as it crosses the Sterling Center site.
- 2) The project will severely impact views of the Sand City coastal zone available to beach goers, altering it from an open space dune environment to an intensely developed complex of urban uses. As shown in the visual analysis of the project's

impact on views from the beach and bluff (Exhibit 11), the open space dune environment will be replaced by massive structures that will drastically change the character of the currently natural surroundings.

- 3) The scale of the development is clearly inconsistent with Sand City's community character, particularly in the area seaward of Highway One. The only structure currently in existence in this area is a one-story sewage pump station approximately three fourths of a mile south of the subject project. As previously noted, the 136 unit Sterling Center, which is the only other structure approved to be developed in the area, is limited to a maximum height of 50 feet above mean sea level, and does not exceed 4 stories. In comparison, the height of this 495-unit project approved by the City will range from approximately 90 feet to 100 feet above mean sea level, and be 4-7 stories tall.
- 4) The project sets a precedent for new development that will cumulatively have significant adverse impacts on the visual resources of the Sand City Coastal Zone. Based on the LCP directive that new development should be "designed and scaled to the community character as established by new development" (LCP Policy 5.3.4.a), the project would establish a basis under which similarly massive structures could be developed on other dune parcels. These include the coastal zone area currently owned by the City Redevelopment Agency and planned for development, as well as the Sterling site, should a revised project be proposed in this area.
- 5) The project exceeds the maximum building heights established by the LCP. As noted above, development in the Sand City coastal zone is limited to a maximum height of 36 feet above existing grade, except for hotels, which are limited to 45 feet above existing grade. The subject project is inconsistent with this requirement in two ways. First, the 45 foot height limit established for hotels only, has been applied to the Vacation Ownership Resort building, which does not qualify for an exception to the 36 foot height limit. Second, and more significantly, the method used to determine height limits for all project buildings is inconsistent with LCP standards, which are based on a specific height above existing grade. Rather than applying existing grades, project height limits were measured from an artificial grade established by connecting the highest points of landforms on either side of areas that were previously lowered by sand mining operations (please see Exhibit 7). This artificial elevation, referred to as the "mean pit level" by the project EIR, is significantly higher than the site's existing grade; in some areas almost 50 feet higher than the true existing grade (i.e., in the location of the proposed hotel). Thus, actual project heights are significantly taller than the 36 and 45 foot height limit above existing grade established by the LCP.
- 6) The project is also inconsistent with LCP policies 5.3.4.f and 5.3.10 that encourage the use of existing natural and manmade dunes as visual barriers and buffers between land uses, and that require the use of existing or manmade dunes to enhance visual resources. Approximately 880,000 cubic yards of sand will be removed from the site. Much of this sand will be generated by lowering the dunes on the seaward side of the development from their existing heights of 35 feet to more than 60 feet above mean sea level (MSL), to a constant elevation of 20 feet above

MSL. This will exacerbate the adverse visual impacts of the project when viewed from the beach, and expose areas proposed for habitat restoration to light, noise, and other negative influences of the development, in direct contradiction of these LCP policies.

In response to these issues, the applicant has recently submitted a revised project (Exhibit 1). Among other changes, these revisions reduce building heights to no more than 4 stories and no more than 45 feet above finished grade; lower the foredune area to 30 feet above MSL (rather than 20 feet above MSL); and, eliminate certain building components. According to the applicant, these changes result in a project that is "virtually hidden" in the dunes.

While the recently submitted project revisions are certainly an improvement when compared to the project approved by the City, they do not provide evidence of compliance with the specific LCP requirements addressed above.

First, the fact that all buildings do not exceed a height of 45 feet above finished grade does not ensure consistency with the LCP height limit of 45 feet above existing grade for hotels, and 36 feet above existing grade for all other structures.

Second, Commission staff has not been provided adequate time or information to confirm that the modified project conforms to LCP Policies 5.3.1, 5.3.2, and 5.4.4.a. The revised visual analysis for the modified project received by Commission staff on April 21, 1999, indicates that while the project's visibility from Highway One will be reduced, the residential component of the project will remain visible at a 90° viewing angle. No elevations of the modified project, including its appearance from the beach, have been submitted. In order to effectively assess the modified project's consistency with these standards, the height of the modified structures should be staked on the site and photographed, and elevations of the modified project, including its appearance as viewed from the beach must be provided.

Third, the project still includes significant modifications to existing landforms, especially in the foredune area, inconsistent with LCP policies 5.3.4.f and 5.3.10. While the proposal to grade these dunes to a constant elevation of 30 feet rather than 20 feet may diminish the visibility of the proposed structures from the beach, the natural characteristics of the existing undulating dune forms will be replaced by an unnatural landform of a constant height. These landform alterations also pose adverse impacts to the sensitive habitat values of the site, and have the potential to increase risks from natural hazards, as discussed elsewhere in this report.

Fourth, the modified project does not provide for a significant reduction in the overall footprint of the development (the proposed reduction from the 13-acre footprint approved by the City has not been quantified as part of the proposed revisions). As a result, the design and scale of the development remains potentially inconsistent with LCP Policy 5.3.4.a in terms of its compatibility with its natural surroundings, community character, and the precedence it will establish for new development. Rather than being subordinate to the area's dune forms and features, the development may still essentially dominate the natural setting.

4. Conclusion

As detailed above, the project approved by the City is clearly inconsistent with LCP visual resource protection standards. More specifically, the City approved project does not conform to LCP height limitations, will have significant adverse affects on the scenic and natural qualities of the region, encroaches upon the southbound view corridor required to remain free of structures, and is visually incompatible with the surrounding area and community character. These impacts are exacerbated by the project's removal of over 800,000 cubic yards of sand, in direct violation of LCP directives to utilize dunes to minimize visual impacts.

The modified project recently submitted by the applicant will reduce the visual impacts of the project when compared to the project approved by the City. However, the applicant has not submitted sufficient information to ensure that the modifications effectively achieve LCP consistency. As detailed above, there are significant outstanding issues regarding the modified project's conformance with LCP visual resource protection standards. Further revisions to the project, particularly those that will minimize the alteration of natural landforms and the footprint of the development, will be necessary to achieve compliance with these standards.

H. Natural Hazards

1. LCP Requirements

LCP Policy 4.3.8 requires:

All development shall be sited and designed to minimize risk from geologic, flood or fire hazard.

LCP Policy 4.3.9 states:

Require preparation of geologic and soils reports for all new developments located in the coastal zone. The report should address existing and potential impacts, including ground shaking from earthquakes, direct fault offset, liquefaction, landslides, slope stability, coastal bluff and beach erosion, and storm wave and tsunami inundation. The report shall identify appropriate hazard setbacks or identify the need for shoreline protective devices to secure long-term protection of Sand City's shoreline, and shall recommend mitigation measures to minimize identified impacts. The reports shall be prepared by qualified individuals in accordance with guidelines of the California Division of Mines and Geology, the California Coastal Commission, and the City of Sand City. Geologic reports shall include the following:

- a) setback measurements that are determined from the most inland extent of wave erosion, i.e., blufftop or dune or beach scarp; if no such feature is identifiable, determine setback from the point of maximum expected design storm wave runup;
- b) setbacks based on at least a 50-year economic life for the project;
- c) the California Division of Mines and Geology criteria for reports, as well as the following:

- 1) description of site topography;
- 2) test soil borings and evaluation of suitability of the land for the proposed use;
- 3) evaluation of historic, current and foreseeable cliff and beach erosion, utilizing available data;
- 4) discussion of impacts of construction activities on the stability of site and adjacent area;
- 5) analysis of ground and surface water conditions, including any hydrologic changes caused by the development;
- 6) indication of potential erodibility of site and recommended mitigation measures;
- 7) potential effects of seismic impacts resulting from a maximum credible earthquake and recommended building design factors and mitigation measures;
- 8) evaluation of off-site impacts; and
- 9) alternatives (including non-structural) to the project.

LCP Policy 4.3.10 provides, in relevant part:

Encourage the clustering of developments away from potentially hazardous areas and condition project permits based upon recommendations presented in the geologic report.

LCP Policy 4.3.11 requires:

No development will be allowed in the tsunami run-up zone, unless adequately mitigated. The tsunami run-up zone and appropriate mitigations, if necessary, will be determined by the required site-specific geologic investigation.

LCP Policy 4.3.12 states:

Deny a proposed development if it is found that natural hazards cannot be mitigated as recommended in the geologic report, and approve proposed developments only if the project's density reflects consideration of the degree of the on-site hazard, as determined by available geotechnical data.

LCP Policy 4.3.15 provides:

Require the developer of a parcel in an area of known geologic hazards to record a deed restriction with the County Recorder indicating the hazards on the parcel and the level of geotechnical investigations that have been conducted.

LCP Policy 4.3.16 states:

Require drainage plans for developments proposed on coastal bluffs that would result in significant runoff which could adversely affect unstable coastal bluffs or slopes.

Page 3 of the Sand City certified Implementation Plan (IP) states, in part:

The specific contents of a coastal development permit application to be submitted to the City are as follows: ...d) Geology and soils report: Prepared according to City standards which are presented in the following Section of this Plan.

The standards referenced on page 3 of the IP are found on pages 13 –15 of the certified Implementation Plan, and are preceded by the following introduction:

The Land Use Plan stipulates that all development will be sited to minimize risks from geologic, flood, or fire hazards, and this requirement is included in the Zoning Ordinance as a finding for approval of a coastal development permit. To facilitate such a finding all proposed coastal developments will be required to submit geologic and soils reports as part of a coastal development permit application. The purpose of these reports is to address existing and potential impacts and to recommend mitigation measures to eliminate or minimize identified impacts. The reports will be used to determine findings of consistency with the Local Coastal Program and place conditions on the development, if necessary. ...

The minimum standards for the preparation of geologic and soils report specified on pages 13 – 15 of the IP generally reiterate the requirements established by LCP Policies 4.3.9, 4.3.11, and 4.3.16 cited above.

It is noted, on page 14 of the IP:

Geologic reports prepared for other projects in the area may be consulted if the material is pertinent to the project proposal and the level of detail in the report is adequate to meet all City requirements.

2. Project Analysis

Coastal erosion is a dynamic and episodic process that poses significant hazards for new development. Combined with storm-wave run-up, tsunamis, sea level rise, and earthquakes, these natural hazards are critically important considerations in the design and location of new development, as reflected by the above LCP policies.

By virtue of its exposure to ocean waves and high winds, and its make-up of unconsolidated sandy soils, the shoreline of the Monterey Dune system is extremely susceptible to such hazards. As cited in the Commission's findings for the U.S. Army's Disposal and Reuse of Fort Ord (the former Army base immediately north of the project site), the Army's consistency determination provides the following information regarding coastal erosion in the project area, and the dangers it poses for development:

The coastline of Monterey Bay along Fort Ord and adjacent areas is undergoing severe wave erosion. This coastal erosion has been occurring for several thousand years.... However, the erosion rate has accelerated in this century

from about 1.5 feet per year to up to an estimated 7.0 feet per year in 1983... Two possible reasons ... are sand mining along the coast ... and sediment trapping in the reservoirs in the Salinas River Watershed.

The existing Stilwell Hall located near the edge of the dune cliff-face is especially threatened by the rate of coastal erosion. Revetments constructed in the past have had some success in retarding the erosion rate at Stilwell Hall to the extent that the hall is now located on a pronounced peninsula, as the formerly continuous coastline to the north and south has continued its recession unabated. The revetment was last repaired in 1983, but erosion has since continued, particularly on the south side. The exposure of formerly buried storm drain pipes elsewhere along the Fort Ord coast is further evidence of the rate of coastal erosion.

The Stilwell Hall soldiers club, approximately two miles upcoast of the project site, is a good example of the risks to development posed by the natural hazards along this area of the coastline. When it was completed in 1943, it was setback approximately 300 feet from the shoreline. By 1950, the Army had initiated efforts to protect the structure from erosion.

These shoreline hazards, as applied to the project site, are described in more detail below.

Tsunamis.

Hazards to the project posed by tsunami's (a seismically induced wave or "tidal wave") on are summarized on pages 42 – 43 of the Draft EIR as follows:

The project's Pacific Coast location presents the potential for a tidal wave, or tsunami, caused by an earthquake to cause higher than normal shoreline flooding. A distant-source tsunami predicted for a 100-year recurrence interval, could cause a wave 11.5 feet in height or 14.8 feet if the tsunami wave coincided with a once a year storm [citation: 1987 Geoconsultants report]. ...The available data indicate that the project site could be inundated up to a level of 26 feet MSL.

...

Shoreline Recession.

The analysis of shoreline recession on the project site, and its application to building setbacks have been based upon the information contained in the 1989 Moffat & Nichol study⁵, and are summarized on page 45-46 of the Draft EIR as follows:

The [Sand City] shoreline [as defined by the Mean High Water Elevation] is expected to continue to recede in the future, though at a significantly lower rate than the average 7.5 to 8 feet it was estimated to have receded between the late 1940's and the 1970's.

...The factors affecting erosion rate taken into account in Moffat and Nichol's future shoreline positions were: natural recession, sea level rise, and extreme,

⁵ The Moffat and Nichol study, and the methodology it suggests to evaluate shoreline erosion, is not a part of the Sand City certified LCP, and has not been endorsed by the Commission as an official standard or procedure for analyzing Natural Hazards consistent with LCP requirements.

short-term beach fluctuations. ... Under a conservative, or low risk level, the Mean High water could move 75 feet landward by the year 2040 (end of the 50 year projection period).

...Taking into account a safety factor that reflects the uncertainty of the projection, in the 50 year forecasting period, the total average recession for the shoreline of Sand City is to be between 38 and 113 feet. If the temporary effects of winter storm recession are added, the total recession could be between 103 and 178 feet.

Storm Wave Run-Up.

As noted on page 46 of the Draft EIR, a critical natural hazard consideration in site planning that was not considered in the Moffat and Nichol Study, is storm wave run-up. In addressing this hazard, the Draft EIR states, on page 47, that according to various geotechnical reviews, "29 feet \pm 3 feet NGVD [National Geodetic Vertical Datum, generally equivalent to mean sea level] is a reasonable figure for project design purposes". However, as presented on page 17 of Geoconsultants Inc. 1987 Preliminary Geotechnical Study for a previous project proposed on the project site, storm wave run-up could attain elevations of 35 to 48 feet under worst-case conditions. The potential for this to occur is partly acknowledged, but discounted, on page 47 of the Draft EIR as follows:

Although storm wave run-up of up to 48 feet NGVD could be expected under worst case predictions a couple of miles up the coast at Fort Ord's Stilwell Hall, data for southern Monterey Bay, where the project is located, show that storm waves in the project site vicinity would be smaller due to the tendency for wave heights to diminish south and down-coast of Fort Ord.

In terms of addressing the impact of these hazards on the project, no geologic report, specific to the proposed project, was prepared. Rather, the Project's EIR and the City's approval rely upon previous geotechnical analyses of the site and surrounding area (all of which are over 9 years old), in combination with recent letters from a geotechnical consultant confirming the applicability of these previous studies to the current project. The primary geotechnical studies applied to the project include the *Preliminary Geotechnical Study, Proposed Monterey Dunes Beach Hotel and Condominiums*, prepared by Geoconsultants, Inc., in August 1987; *Soil feasibility Study for Monterey Dunes Beach Hotel*, prepared by M. Jacobs & Associates in February 1987; and, *City of Sand City Shore Erosion Study*, prepared by Moffat & Nichol Engineers in December 1989. Additional geotechnical information, and an analysis of the application of the previous reports to the proposed project, have been provided in letters from Haro, Kasunich and Associates, Inc. dated May 22, 1997; October 6, 1997; August 12, 1997; February 10, 1998; and, May 5, 1998.

Based upon the information obtained from previous reports, as reviewed and supplemented by Haro, Kasunich and Associates, all project buildings are proposed to be setback between 299 feet and 318 feet from the Mean High Water line. This exceeds the 178 feet 50 year erosion distance assumed to be the worst-case scenario by the 1989 Moffat and Nichol Study, and according to page 49 of the Draft EIR, falls within 75 and 100 year projected coastal shoreline recession distances estimated by this report.

However, the fact that an updated, project specific geotechnical report addressing the specific requirements contained in LCP Policy 4.3.9 has not been completed, results in project inconsistencies with the aforementioned LCP Policies, both procedurally and substantively, as detailed below.

Of utmost concern is that the significant alteration of the foredune area (i.e., the dune area seaward of the proposed structures) proposed by the project will expose the project to hazards posed by storm wave run-up. As approved by the City, the foredune area will be lowered from existing heights that range between 35 feet to more than 60 feet above Mean Sea Level (MSL), to a continuous elevation of 20 feet above MSL. As recently revised by the applicant, the foredune would be lowered to a continuous elevation of 30 feet above MSL.

According to page 49 of the Draft EIR, the proposed sand removal and grading will not affect shoreline recession because no sand will be removed from the back shore or foreshore beach area. This does not, however, account for the risks associated with storm wave run-up. As previously noted, prior geotechnical studies have estimated storm wave run-up elevations to be 29 feet \pm 3 feet, and up to 48 feet under worst-case conditions. The August 12, 1997 letter from Haro, Kasunich and Associates states that a 100-year storm wave run-up elevation of 30 feet (rather than 35 – 48 feet as previously estimated by this firm for the prior project proposed on the site) is appropriate because the previous estimates were based on the highest waves occurring at Stilwell Hall, where the highest waves in Monterey Bay occur. However, no geotechnical data is provided to substantiate a reduction of up to 18 feet in height in storm wave run-up over a distance of approximately 2 miles along a continuous coastline.

The Draft EIR further notes on page 52 that the arrival of a tsunami during a major storm run-up event could raise the run-up elevations an additional 3.5 feet. (This was not, however, taken into account in designing the project due to its low probability.) In any case, the proposed lowering of the foredune area to an elevation will increase the potential for the proposed development to be inundated during extreme storm wave run-up events, even if the lower 30 foot elevation recommended by Haro, Kasunich and Associates is applied.

Such risks are partly acknowledged on page 52 of the Draft EIR as follows:

The parking structures for the hotel and condominium will be founded as low as 15 feet NGVD and therefore inundation caused by a major storm event could reach these structures after future shoreline recession occurs. The project geotechnical engineer has concluded that this potential impact would not be significant since these buildings would be setback 110 feet to 140 feet from the 50 year predicted shoreline, and the wave would have to travel an additional run-up distance of 110 to 140 feet to reach the structures. In addition, the underground structures will be constructed with footings at about five feet MSL as enclosed, reinforced concrete basements with waterproofed walls. The entrances to the parking areas will be on the landward sides of the buildings at an elevation of approximately 35 feet NGVD, above the predicted wave run-up elevations for a 100-year recurrence interval.

This impact is summarized, and proposed to be mitigated, on page 52 of the Draft EIR as follows:

The project site could be exposed to flooding as a result of a tsunami if it occurred during a major storm. The project has been designed so that underground structures that would be exposed to inundation would be constructed with water-proofed walls, and would have entrances above the expected elevation of inundation.

Similarly, condition 31 of the City's approval requires:

Underground parking structures shall be waterproofed to the satisfaction of the City Engineer. Parking garages shall have entrances on the landward sides of the buildings, above the maximum storm wave runup elevation.

The EIR analyses and mitigation measures, as well as the City's conditions are deficient and flawed in the following ways. First, they do not consider the "worst-case" storm wave run-up elevations previously identified (35 to 48 feet above MSL; as previously noted, the reduced elevation of 30 feet considered by the EIR has not been appropriately substantiated). Such storm waves would overtop the proposed 30-foot foredune elevation by up to 18 feet, posing substantial risks of flooding, threatening the structural stability of the project, and placing the visiting public's safety at risk, inconsistent with LCP Policy 4.3.8.

Second, even with the lower 30 foot storm wave run-up heights suggested by the consultant and assumed by the EIR, such events will result in waves overtopping the 20 foot foredune elevation approved by the City, as well as the 30 foot foredune elevation recently proposed by the applicant. It is reasonable to assume that in the face of such an event, the property owner would pursue emergency measures to protect life and property, most likely in the form of an emergency rip rap seawall. There is no condition within the City's approval that would prohibit such future shoreline structures. The potential construction of a shoreline protection device on the project site would pose significant adverse impacts to sensitive habitats and public access and recreation opportunities, inconsistent with other LCP and Coastal Act policies identified elsewhere in this report.

Third, again applying the lower storm wave run-up heights assumed by the EIR, the EIR and City Condition 31 imply that potential flooding of the proposed structures, can be effectively mitigated by constructing waterproof underground walls. However, the engineering design of the underground waterproof walls has yet to be developed. Instead, condition 31 requires that these plans be developed at the building permit stage. This conflicts with LCP Policies 4.3.11 and 4.3.12, which specifically require mitigation measures for tsunami hazards to be determined by a site-specific geologic investigation, and allow new development to be approved only if natural hazards can be mitigated as recommended in the geologic report.

In addition to the significant risks posed by storm wave run-up, threats posed by shoreline erosion remain substantially unresolved. It has been over 10 years since a 250 foot setback was recommended by Geoconsultants for the previous project proposed on the site, and over 9 years since the city-wide shoreline erosion study was completed Moffat & Nichol. Both of these studies were heavily relied upon in determining the appropriate setback distance for the currently proposed project. However, there has been no technical comparison of the changes to the location of the MHT, or changes to the dune face, that may have occurred since these

reports were prepared, nor any analysis of how such changes compare to the shoreline retreat rate estimated by the Moffat and Nichol Report. Reliance upon these outdated report, without a more complete technical analysis of their application to the proposed project, does not meet the requirements of LCP Policy 4.3.9 or ensure project consistency with the other Natural Hazard policies identified above.

Similarly, there has not been an analysis of the effects of wind transport on dune profiles or dune erosion. Wind is a dominant factor in shaping dune topography, and therefore has a important relationship to coastal erosion. Landform alterations proposed as a part of the project will influence the way in which dune migration and shoreline erosion will occur in the future.

In addition, LCP Policy 4.3.16 requires drainage plans for developments proposed on coastal bluffs that would result in significant runoff which could adversely affect unstable coastal bluffs or slopes. The project proposes to direct all project drainage to a percolation basin that was originally proposed in the northwest corner of the project site. According to the recently submitted revisions, two percolation basins will be installed in close proximity to the coastal bluff, in the middle of the project site. (It is assumed that this change was intended to address concerns expressed by Commission staff regarding the placement of this facility in the limited area of the site designated by the LCP for public access and recreation purposes). The saturation of soils in close proximity to coastal bluff areas has the potential to reduce the long-term stability of such area, and thereby affect the project's susceptibility to natural hazards, particularly erosion. There has been no analysis of these drainage plans on the long-term stability of the coastal bluff area.

Finally, the deed restriction required by LCP Policy 4.3.15, indicating the hazards on the parcel and the level of geotechnical investigations that have been conducted, has not been incorporated into the project or the City's conditions of approval. (This inconsistency, as opposed to the prior and more significant LCP inconsistencies identified above, does not, however, substantiate denial of this permit because it can be easily addressed through a condition of approval).

4. Conclusion

Based upon the lack of an up-to date, project specific geotechnical report that meets the specific requirements of LCP Policy 4.3.9, and the resulting unresolved issues regarding the impact of natural hazards on the proposed development, it is impossible to find the project consistent with LCP standards concerning natural hazards. It is also impossible to condition an approval of this project in a manner that would resolve these inconsistencies, as the LCP specifically requires that these issues be addressed prior to the approval of new development.

In order to resolve this situation, a current, project specific geotechnical report that meets the specific requirements of LCP Policy 4.3.9, and ensures that the project is consistent with the other LCP Policies identified above (particularly 4.3.8 and 4.3.10) is needed. A significant component of this report should be dedicated to the unresolved issues regarding shoreline erosion and storm wave run-up identified in this finding.

I. Traffic and Circulation

1. LCP Requirements

LCP Policy 6.4.11 states:

New development shall be approved only where water and sewer services are available and adequate; and where adequate circulation and parking has been provided for.

In addition, LCP Policy 6.4.23.a states:

Development within the Coastal Zone shall insure public safety by providing for:
a) adequate ingress and egress for emergency vehicles

LCP Policy 6.4.24 states:

Require future development in the Coastal Zone area to provide safe adequate streets, parking and loading.

2. Project Analysis

Primary access to the project site is provided by Highway One, via the Fremont Boulevard interchange (also referred to as the Ord Village Interchange). Local streets that will also provide access to and from the project include, but are not limited to, California Avenue, Ord Avenue, Monterey Road, Fremont Boulevard and Del Monte Boulevard. A map of the existing local roadway network is attached to this report as Exhibit 16. The Highway One intersection north of the Fremont Boulevard Interchange is the Fort Ord Main Gate, and the Highway One intersection to the South is the Highway 218 Interchange.

Recent development locally, as well as in the region, has had a significant impact on these streets and intersections, as well as on Highway One capacity and Levels of Service. According to the information presented on pages 165 - 166 of the Final EIR, some of the most heavily impacted roadways under existing conditions include:

- The intersections of Fremont Boulevard and the Highway One northbound on-ramp and southbound off-ramp, which operate at a Level Of Service (LOS) of D⁶ during both morning and evening peak traffic hours.
- The intersections of Fremont Boulevard and Military Avenue and Del Monte Boulevard, which operate at LOS E⁷ both during the morning and evening peak traffic hours.

⁶ Defined on page 166 of the Final EIR as "Approaching unstable traffic flow where small increases in volume could cause substantial delays. Freedom to maneuver within the traffic stream is noticeably limited. Comfort and convenience are low and minor incidents can be expected to create queuing."

⁷ Defined on Page 166 of the Final EIR as "Operations characterized by high density with little room to maneuver within the traffic stream at speeds that still exceed 50 mph. Any disruption to the traffic stream, such as vehicles

- The intersection of Fremont Boulevard and Playa Avenue, which operate at LOS D during both morning and evening peak traffic hours.
- Highway One between the Highway 218 interchange and the Fremont boulevard interchange, which operate at a LOS E in the southbound direction during the morning peak traffic hour, and a LOS D in the northbound direction during the evening peak traffic hour. According to the Congestion Management Plan (CMP) developed by the Transportation Management Agency for Monterey County (TAMC), this section of Highway One currently operates at a Standard LOS E.
- Highway One between the Fremont Boulevard interchange and the Fort Ord Main Gate, which, according to TAMC's CMP operates at a Standard LOS D.

In commenting on the Draft EIR, the California Department of Transportation (Caltrans) states that the intersections of Fremont Boulevard and the Highway One northbound on-ramp and the south bound off-ramp, which would be the primary intersection serving the project, are currently operating at LOS F⁸ during peak periods. Caltrans also questions the EIR's identification of LOS E for Highway One between Fremont Boulevard and the interchange with Highway 218, based on their observation that southbound traffic regularly backs up from north of Fremont Boulevard to south of Highway 218. (Please see Exhibit 14 for a copy of Caltrans' comments on the Draft EIR.)

The tables provided on pages 123 of the Draft EIR further illustrate that, independent of the proposed project, these adverse traffic conditions are expected to get worse as the newly developed Edgewater Shopping Center reaches full occupancy:

- The intersections of Fremont Boulevard with the Highway One northbound on-ramp and southbound off-ramp will degrade from an existing LOS D to LOS E in the morning peak traffic hour.
- The intersections of Fremont Boulevard, Military Avenue, and Del Monte Avenue will degrade from an existing LOS E to LOS F during both the morning and evening peak traffic hours.
- The Fremont Boulevard and Playa Avenue intersections will degrade from LOS D to LOS E in the peak morning hour, and from LOS D to LOS F in the peak evening hour.

According to page 124 of the Draft EIR, the originally proposed project (597 units) would generate an additional 4,831 trips per day on average. This would contribute 321 additional trips during the peak morning traffic hour, and 380 trips during the peak evening traffic hour. As presented on pages 129 – 130 of the Draft EIR, the only intersection that would be adversely

changing lanes or entering from ramps, can cause a disrupted wave that propagates throughout the upstream traffic flow and produces serious breakdowns with extensive queuing."

⁸ Defined on page 166 of the Final EIR as "Forced flow operations. Speeds are reduced substantially and stoppages may occur for short or long periods of time because of downstream congestion."

affected by this increase is at California Avenue and the Highway One northbound off-ramp, which would degrade from LOS C to LOS D.

In order to assess traffic impacts generated by the revised project (i.e., the modified project proposed by the applicant and attached as Exhibit 1), it can be assumed that the reduction in the number of units per land use will result in a proportional reduction in the number of trips generated by each land use. These calculations, derived from the trip generation estimates for the original project included on page 124 of the Draft EIR, are provided in Table 1 on the following page.

The increase in traffic generated by the original project, in and of itself, was not considered to be a significant impact by the EIR, especially in light of the traffic mitigation measures proposed by the applicant. These mitigation measures, as presented on pages 130 – 132 of the Draft EIR include:

- Reconfiguration of the approach to the to the California Avenue/Highway 1 northbound off-ramp intersection to provide a southbound left turn lane. Even with this improvement, the LOS at this intersection would remain at D.
- Implementing an alternative transportation program, targeted to reduce employee trips. The proposed program involves adding a new bus stop adjacent to the project (if Monterey – Salinas Transit will extend bus Line 20), incorporating a bicycle trail into the project, and developing off-peak work hours for employees, deliveries, and maintenance workers. While the EIR estimates that this can achieve an overall reduction in project trip generation of 15%, it is not expected to improve the LOS at the Fremont Boulevard/Highway One intersection. In addition, Caltrans comments on the Draft EIR describe the assumption that a 15% reduction can be achieved as "highly questionable".

With the above mitigation measure, the EIR concludes that the project will not diminish the levels of service below baseline conditions (i.e., the levels of service anticipated upon buildout of the Edgewater Shopping Center). In fact, the table on page 129 of the Draft EIR indicates that the project's mitigation measures will improve the intersection of Fremont Boulevard with the Highway One northbound on-ramp and southbound off-ramp from LOS E under baseline conditions to LOS D during the morning peak hour.

However, according to the Levels of Service estimated on pages 173 – 174 of the Final EIR, even with the proposed mitigation measures, the originally proposed (597 unit) project's traffic impacts, *combined with the traffic generated by other reasonably foreseeable development within the project area*, would exacerbate existing traffic problems further:

- The intersection of California Avenue and the Highway One northbound off ramp will degrade from LOS C to LOS F during the peak morning hour, and from LOS D to LOS F in the peak evening hour.
- The intersection of Fremont Boulevard and the Highway One ramps would degrade from LOS E to LOS F, and from LOS D to LOS F in the peak evening hour.

- The intersection of California Avenue and Playa Avenue will degrade from LOS C to LOS F in the peak evening hour.
 - The intersection of Fremont Boulevard and Playa Avenue will degrade from LOS E to LOS F during the peak morning hour.
- Northbound Highway One from Highway 218 to the Fremont interchange will degrade from LOS D to LOS E during the peak evening hour.

Table 1: Estimated trip generation of modified project.

Land Use	Number of Units as Originally Proposed	Number of Units as Currently Proposed	Percent Reduction in Number of Units	Trip Generation by Original Proposal	Trip Generation by Current Proposal
Hotel	228	176	23%	1984 daily average; 153 peak morning hour; 173 peak evening hour	1528 daily average; 118 peak morning hour; 133 peak evening hour
Vacation Ownership Resort	132	60	55%	1,341 daily average; 44 peak morning hour; 63 peak evening hour	603 daily average; 20 peak morning hour; 28 peak evening hour
Rental Condos	76	64	16%	583 daily average; 53 peak morning hour; 55 peak evening hour	490 daily average; 45 peak morning hour; 46 peak evening hour
Residential Condos	161	78	52%	943 daily average; 71 peak morning hour; 89 peak evening hour	453 daily average; 34 peak morning hour; 43 peak evening hour
TOTALS	597	378	37%	4,831 daily average; 321 peak morning hour; 380 peak evening hour	3,074 daily average; 217 peak morning hour; 250 peak evening hour

In addition, as stated on page 172 of the Final EIR, "[t]he southbound segment of Highway 1 between Highway 218 and the California Avenue-Fremont Boulevard interchange is projected to operate at LOS E during the P.M. peak hour ...".

Although the cumulative degradation in traffic service described above was based on the original project proposal of 597 units, the proposed reduction in the project to 378 units is not expected to improve this situation. As shown in the above table, the revised project will still add an additional 3,074 trips per day on average, 217 additional trips during the peak morning hour, and 250 additional trips during the peak evening hour. Furthermore, the proposed project reduction will not affect the additional traffic generated by other development expected to occur in the area. As stated in their comments on the Draft EIR, "Caltrans has great concerns over this or any other development that will generate additional traffic on this section of SR [Highway] 1 or the Coe Avenue [Fremont Boulevard] interchange. Furthermore, until improvements to SR 1 are built, the LOS in this region will continue to decline."

The low levels of service currently being experienced on local roadways and Highway One, particularly LOS E and F being experienced at certain points and times, and the ongoing degradation of these roadway capacities described above, raise serious questions regarding the proposed project's consistency with LCP Policies 6.4.11, 6.4.23, and 6.4.24. The fact that there is not adequate streets or circulation capacity currently available to serve the development is further evidenced by the fact that the City of Sand City and Caltrans have already established the need to pursue improvements to local roadways and Highway One.

In order to mitigate traffic impacts of the *existing* Edgewater Shopping Center and foreseeable developments in the area (particularly the conversion of significant portions of the former Fort Ord to commercial and residential uses), Sand City and Caltrans entered into a cooperative agreement on January 16, 1996. Pursuant to this agreement, Sand City committed to fund a Project Study Report (PSR) that is subject to the oversight, review and approval of Caltrans. This report is to identify, among other things, the long term improvements needed to allow the Highway One corridor between Highway 218 and the Fort Ord Main Entrance to operate at an acceptable level of service, as well as potential mechanisms to fund such improvements. As stated on page 183 of the Draft EIR, "[t]his study is being undertaken because the City has concluded that short-term improvements such as the addition of turn lanes and adjustment of signal timing are insufficient to address the problem [of future cumulative traffic congestion]".

The PSR is currently in draft form, and according to page 17 of the draft, is expected to be completed and approved by Caltrans in June 1999. The preferred alternative presented by the draft EIR includes, but is not limited to, the following components:

- Construction of a new Highway One "diamond" interchange between Fremont Boulevard and the Fort Ord Main Gate. This involves the development of a new two lane structure over Highway One, with new on- and off-ramps on the west and east sides of the freeways (4 new ramps).
- Widening Highway One from to a six-lane facility with 3 thru lanes in each direction between Highway 21 and the Fort Ord Main Entrance. (The majority of this expansion can be accommodated within the existing Highway median.)

- Widening the existing Highway One southbound on-ramp to two lanes.
- Widening California Avenue to three lanes, extending it into the Monterey Bay Shores Resort project, and modifying its intersections with Highway One ramps.
- Revisions to Old Monterey Road, Monterey Road, Del Monte Boulevard, and Military Avenue where they intersect with Fremont Avenue.
- Adding a new lane to the existing Highway One northbound on-ramp at Fremontboulevard, and adding a new two lane on ramp from California Avenue that will merge with the Fremont on-ramp.

The above projects have potential impacts on coastal resources, including environmentally sensitive habitats and visual resources, which have yet to be evaluated, and will need to be considered during the required Coastal Development Permit review(s). It is also important to note that the Draft PSR is subject to the review and approval of Caltrans. There is the potential that additional improvements, beyond what is currently proposed by the preferred alternative, will be deemed to be necessary to adequately address current and future circulation needs. Thus, it is premature to assume that the roadway additions and modification proposed by the Draft EIR will ensure that there will be adequate circulation capacities to serve the proposed development and other future development. It is also not clear that the roadway expansions and modifications necessary to accommodate such development will be consistent with relevant coastal development policies.

Notwithstanding the significant unresolved issues associated with the PSR, the City's approval of the Monterey Bay Shores Resort relies heavily on the PSR to provide the necessary mitigation for the project's share of cumulative traffic impacts. Condition 37 of the City's approval requires:

Prior to the recordation of the final tract map, the developer or any successor in interest shall provide surety bond(s) or other appropriate security acceptable to the City attorney guaranteeing a contribution of a pro-rata share of the funding shortfall for the implementation of the recommended design modification alternative identified in the currently-developing Project Study Report. Said surety shall be in the amount not to exceed 5 percent of the cost of planned improvements necessary for satisfactory cumulative traffic condition at the Ord Village [Fremont] interchange shall be required prior to the recordation of the final tract map. Said contribution shall not exceed \$1.5 million and shall be based on the project's prorata share of cumulative impacts as reported in the Final EIR for the project. The fee shall be earmarked for future improvements to the Highway One and the Ord Village Interchange.

In addition, Condition 38 of the City's approval requires:

The applicant, or other successor in interest shall enter into an agreement to not protest the inclusion of the project in a City or region-wide assessment district, should one be formed, for the purpose of funding the related construction of a

project that will improve the operation of the Ord Village interchange and Highway One from Route 218 to the Fort Ord Main Gate. The applicant, or other successors in interest will receive credit for any payments that were made pursuant to other conditions to improve the interchange if any of those monies are attributable to the improvements that are being financed by the assessment district. A note shall be placed on the final tract map acknowledging said agreement. The final tract map shall not be recorded until this agreement has been executed.

The fundamental deficiency of the above conditions is that they do not ensure that there is, or will be, adequate roadway capacity to serve the project as required by LCP Policies 6.4.11 or 6.4.24. Clearly, the City has made an effort to ensure that the project contributes an appropriate proportion of the cost necessary to expand and modify local roadways and Highway One to meet existing and future demands. However, the specific details of what roadway expansions and modifications are needed to effectively accommodate these demands have yet to be identified. Furthermore, the environmental impacts of roadway development, and the consistency of such development with applicable regulations (including the Sand City LCP and the Coastal Act). Even if the details of the necessary roadway improvements were known and could be determined to be consistent with regulatory standards, there is nothing within the City's approval or project description which ensures that they would be implemented prior to the construction of the project. Such improvements are necessary to address deficient levels of service that currently exist along Highway One, and along Fremont Boulevard, within the immediate vicinity of the project. Caltrans states, in its comments on the DEIR (Exhibit 14), that "it would be a prudent land use decision to delay making a determination on this project until the proposed Project Study Report for the Route 1 Corridor between the junction of SR 218 and the Fort Ord Main Entrance is completed".

3. Conclusion:

As detailed above, there is not adequate roadway capacity available to serve the proposed development under existing circumstances; portions of Highway One and many of the local intersections that will be impacted by the project are currently operating at LOS E and F during peak periods. As a result, the project can not be found to be consistent with LCP Policy 6.4.11, which requires that new development be approved only where adequate circulation has been provided for. Such levels of service, almost by definition, do not provide adequate circulation given the extreme levels of congestion they reflect. The lack of adequate circulation to serve the project also raises question regarding project conformance with LCP Policy 6.4.23.a, which requires development to insure public safety by providing for adequate ingress and egress for emergency vehicles. Although the project, independent of other anticipated development in the area, does not directly aggravate this situation, it also does not change this current less than adequate circulation capacity. Moreover, as conditioned by the City, it is unknown whether or when the increasing cumulative impacts and inadequate road capacity in the vicinity of the project will be resolved.

The improvements necessary to correct existing circulation deficiencies, and the increase in traffic congestion that will result from cumulative development in the area, have yet to be determined, analyzed, and permitted. The process to resolve these issues, however, is currently underway, via the Project Study Report (PSR) described above. Until this report is

completed and accepted by the relevant regulatory agencies, the project can not be found to be consistent with LCP Policy 6.4.11 or Policy 6.4.24, which requires future development to provide safe adequate streets, parking and loading.

Options available to the applicant and the City of Sand City to resolve this situation are: to incorporate additional and specific roadway improvements as part of a revised project, in a manner that will ensure that the roadways needed to serve the project operate at an acceptable level (e.g., no lower than LOS D) before it is constructed; or, to coordinate the timing of a revised project so that development does not commence until all necessary regulatory approvals have been obtained in order to implement the PSR.

J. Public Access and Recreation

1. LCP Requirements

LCP Policy 2.3.4 provides:

Work with landowners and public agencies to develop and manage vertical and lateral accessways in the general locations shown on Figure 4. Future developments shall implement safe accessways and improvements as determined by the City. Site specific locations shall be developed as part of future development proposals, and according to guidelines established by the City. The following criteria shall be used to determine the exact location of accessways.

- a) Accessways should be located at intervals commensurate with the level of public use.
- b) Accessways should be sited where the least number of improvements would be required to make it usable by the public, where support facilities exist or can be provided, where public safety hazards are minimal, and where resource conflicts can be avoided or mitigated.
- c) Vertical accessways to the shoreline should be located in areas where there is sufficient beach area, and should be distributed throughout an area to prevent crowding, parking congestion, and misuse of coastal resources.
- d) Accessways and trails should be designed and sited to:
 - 1) minimize alterations of natural landforms, conform to existing contours, blend in with the visual character of the setting, and be consistent with the City's design standards;
 - 2) prevent unwarranted hazards to land and public safety;
 - 3) provide for privacy of adjoining residences and minimize conflicts with adjacent or nearby established uses, and be wide enough to permit placement of a trail and/or fence and a landscape buffer;
 - 4) prevent misuse of sensitive coastal resource areas; and
 - 5) be consistent with military security needs.
- e) Coastal access trails should not be located in areas of high erosion or fire hazard or in areas hazardous to public safety (including blufftop areas where

bluff stability is a concern), unless the trail is designed and constructed so that it does not increase the hazard potential, or if it is required to correct abuse by existing access use.

LCP Policy 2.3.9 states:

New improved accessways shall not be made available for public use until public or private agencies responsible for managing the accessway have addressed the following management concerns:

- a) identification of the types of uses to be allowed;
- b) the need for any seasonal restrictions;
- c) the type of improvements needed, such as signs, gates, trash receptacles, boardwalks, restrooms;
- d) the proposed location, type and amount of parking facilities; and
- e) identification of the number of users that can be supported.

LCP Policy 2.3.11 requires:

Ensure provision of adequate parking for designated pedestrian accessways. Require provision of public parking as part of developments at a rate of 10 percent above the project's total required parking. The means of providing public parking areas will be the responsibility of State and local governmental entities and private development proposals. The following will be pursued where feasible and consistent with the Plan:

- a) utilization of State of California Parks Department Properties to provide public parking and other public services and amenities, which provide quick and easy access to beach areas;
- b) abandonment, when appropriate, of some City paper streets, which then could be utilized for public parking strips, or traded for adjacent properties to form a more logically shaped parking lot;
- c) the City shall require approved development plans to include a provision for public parking on-site, or provide the property off-site, but in a convenient location to the beach areas, or be assessed an in-lieu pro-rata fee that the City could utilize for public parking and maintenance purposes.

Parking areas should be located in geologically stable areas where they would not contribute to excessive erosion or slope failure. Parking areas shall be screened from public viewpoints through landscaping, berming or other appropriate measure consistent with the Design Standards required in Section 5.3 of this Plan.

LCP Policy 3.3.9 requires:

Ensure provision of adequate public beach recreational areas for public use commensurate with future population growth and development, and compatible with existing development. Require the dedication of all sandy beach areas

seaward of the toe of the dune, bluff or shoreline protection device as a condition of future development.

LCP Policy 6.4.1.k., in carrying out Public Recreation Land Use Designations established on the site by LUP Figure 11 (attached as Exhibit 9), states:

Allow public parks, picnic areas, parking areas, public vista points, sandy beaches and accessways which are publicly owned or over which access easements are to be required as a condition of development. In addition to areas designated public recreation in Figure 11, public recreation also means public uses within development projects such as picnic areas, wind shelters, promenades or other indoor public recreational areas; other support facilities for public recreational uses; and controlled public access and/or educational programs in areas of dune restoration programs.

LCP Policy 6.4.1, as amended by LCP Amendment 2-97, states, in relevant part:

The described densities, both above and below, represent a maximum. As required by applicable policies of the LCP, permitted development intensities shall be limited to those which address constraints including, but not limited to: *public access and recreation needs (including adequate public access and recreation facilities inland of the 50-year erosion setback line) ...* (Emphasis added.)

2. Coastal Act Requirements

Coastal Act Section 30210 provides:

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.

Coastal Act Section 30212(a) states:

(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, military security needs, or the protection of fragile coastal resources,
- (2) adequate access exists nearby, or,
- (3) agriculture would be adversely affected. Dedicated accessway shall not be required to be opened to public use until a public agency or private association agrees to accept responsibility for maintenance and liability of the accessway.

Coastal Act Section 30252 provides:

The location and amount of new development should maintain and enhance public access to the coast by (1) facilitating the provision or extension of transit service, (2) providing commercial facilities within or adjoining residential development or in other areas that will minimize the use of coastal access roads, (3) providing nonautomobile circulation within the development, (4) providing adequate parking facilities or providing substitute means of serving the development with public transportation, (5) assuring the potential for public transit for high intensity uses such as high-rise office buildings, and 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 onsite recreational facilities to serve the new development.

3. Project Analysis

Proposed Access Improvements and Dedications

The Applicant has proposed a substantial public access package as part of the project, including a vertical accessway to the beach along the northern boundary of the project, and a lateral accessway along the beach. The lateral access area includes the entire portion of the site seaward of the 20-foot contour, which generally corresponds to the toe of the foredune/coastal bluff, and totals approximately 4.2 acres. Both the vertical and lateral access areas will be placed in a public access easement, totaling 8.8 acres (8.1 acres of which are located above the mean high tide⁹). The project will also provide a public vista point in the northwestern corner of the site, in the same area that vertical access to the beach will be provided (please see Exhibit 4). In addition to lateral access along the beach, condition 2 of the City's approval requires a lateral public access boardwalk and easement along the coastal bluff, subject to consistency with the Habitat Conservation Plan. A twenty nine space parking area for the public and "overflow" parking is proposed in the north-east corner of the site. Finally, a Class II bike path (i.e., bike lane) will be provided along proposed extension of Sand Dunes Drive necessary to serve the project until the entrance to the resort, and will transition into a Class III bike path (i.e., signed bike route) for the remainder of this roadway extension.

Issues Presented by the Access Plan for the Project

The Sand City LCP and the Coastal Act both include a number of policies which encourage, support and mandate the provision of public access within shoreline projects such as this one. Indeed, providing maximum access to the shoreline for the public is a priority of the Coastal Act and of the LCP certified as consistent with this legislation. The provision of access is, however, tempered by another Coastal Act priority: the preservation of environmentally sensitive habitats.

⁹ According to page 12 of the Final EIR, "The project site is located on a portion of the Rancho Noche Buena, a Mexican land grant made to Don Juan Antonio Munoz on November 20, 1835, by Jose Castro, the Governor of California. Because the original title to the lands was derived from a land grant and confirmed by federal land patent, the State Lands Commission does not have a public trust easement over lands which the State of California acquired by virtue of its sovereignty upon admission to the Union."

Following the lead of the Coastal Act, the Sand City LCP also includes a number of policies designed to protect these sensitive areas. As detailed in the Environmentally Sensitive Habitat findings of this report, the entirety of this site is composed of sensitive dune habitat. Confronted with essentially two priorities, habitat protection and public recreational use, which appear to be conflicting in many ways, the issue here is finding the appropriate balance between access and natural resource protection. The following analysis looks at each component of the access program for this site and discusses its adequacy vis-à-vis the LCP and Coastal Act access direction; and identifies potential conflicts with habitat protection policies.

Public Access Easement Areas

The proposed access program includes areas of the site to be set aside for both vertical and lateral public access and for public parking which generally correspond to the Public Recreation land use designation for the site illustrated by LUP Figure 11 (Exhibit 9). Although this is the principal area of the site designated by the LCP for recreational use by the general public, activities in this area will be restricted to achieve dune restoration proposed as part of the project. As approved by the City, this area would also be used for stormwater percolation. Percolation basins are essentially engineered depressions to accommodate seasonal drainage until their contents can be absorbed into the underlying sand. As such, they are unusable for recreational activities for part of the year, but may be unsuitable for dune habitat restoration because of seasonal ponding. The applicant has since proposed to relocate the stormwater percolation facility to the foredune area in the center of the site (please see page 9 of Exhibit 1). This proposal, however, raises geotechnical concerns regarding the impact of this facility on the stability of the coastal bluff area, which as previously noted, has yet to be addressed.

The proposed lateral easement is located along the entire shoreline frontage of the site and extends landward to the 20' contour, taking in all of the gently sloping beach and a portion of the first line of dune. A condition of City approval adds a lateral, blufftop trail to the lateral component of the project's access program. Public access and recreation in easement areas inland of the coastal bluff will however be restricted to boardwalks in order to protect dune restoration areas. Public access and recreation on sandy beach areas will be restricted to avoid impacts to Western snowy plovers during the nesting season.

LCP Policies 2.3.4.e and 6.4.1 require that public access facilities be located sufficiently inland of the 50-year erosion setback line. As detailed in the Natural Hazard findings of this report, the potential for shoreline erosion to threaten the proposed development, including the proposed access improvements, has not been adequately addressed. The lateral public accessway proposed along the beach as part of the project, as well as the lateral bluff top accessway required by the City, may be subject to coastal erosion that could prevent the public from being able to traverse the project site along the shoreline. The applicant asserts that the proposed public access easements will move inland as erosion occurs and the shoreline recedes. However, neither the project as proposed nor the City's conditions of approval appear to indicate that this is the case. In the event that shoreline erosion consumes the beach and bluff-top area on which lateral access will be provided, the general public will lose its ability to travel laterally along the shoreline. As a result, as currently approved by the City, the project can not be found to be consistent with Coastal Act Section 30212(a) or LCP Policy 2.3.4.e.

Public Parking

Parking to serve public access and recreation will be located in the northeast corner of the site, adjacent to the proposed vertical access trail. This parking area may not always be available for public use however. As described on page 27 of the project's Habitat Protection Plan: "The parking areas provided for beach access will be considered for closure during the critical nesting season if heavy use is anticipated and snowy plovers are present in the area." It is also labeled on project plans as "public parking and overflow" spaces and described as an "overflow parking area" in the projects Access, Signage and Planting Plan. Thus, these spaces are not exclusively provided for public access and recreation purposes and may be consumed by project guests and residents or may be periodically closed altogether to protect nesting plovers.

In order to meet the LCP's requirement that new development provide a number of public parking spaces equivalent to 10% of the total number of spaces required to serve the project (LCP Policy 2.3.11), condition 4 of the City's approval requires:

For each phase of the visitor-serving portions of the project, a minimum of 10 percent additional parking shall be installed as public parking (over the required amount for the visitor-serving uses). The location and signage for this public parking shall be approved by the CDD [Community Development Director] prior to the issuance of any building permit for the project.

The City's approval is inconsistent with LCP Policy 2.3.11 because it applies the 10% requirement to the visitor-serving components of the project only, rather than the entire project. As conditioned by the City, no public parking will be provided as part of the development of the 133 residential condominium units approved by the City (117 as revised by the applicant), inconsistent with LCP Policy 2.3.11. The provision of this parking is important not only to accommodate public access on the site, but to assure adequate public access facilities in the vicinity of the project, in light of the increased demand for such facilities generated by the MBS development.

In addition, the City's reliance upon future plans to identify where and how the necessary public parking will be provided, does not provide the necessary assurances that such parking will adequately serve public access and recreation needs. For example, neither the proposed project nor the City's conditions specify a location for public parking to ensure that they effectively support coastal access and recreation for the general public. Nor do they include any signage provisions to inform the general public that such parking is available, and to direct the public to such parking. Without such information, it is impossible to find that approval of the project is consistent with the LCP and Coastal Act access and recreation policies identified above.

Provision of Maximum Access Consistent with Resource Protection

Both the LCP and the Coastal Act require that coastal access and recreation activities on the site and in the region, by both project guests, residents, and the general public, be provided and managed in a manner that effectively protects natural resources. Restrictions on public access and recreation, however, must be developed in a manner that achieves effective resource protection while maximizing coastal access and recreation opportunities for the general public. Adequate protection for the dune habitat may mean that intensive public use and recreational activities within these areas will be significantly limited. In order to achieve an appropriate

balance between access and ESH protection, a regional examination is warranted to identify where public access and recreation activities can be most appropriately maximized and accommodated consistent with resource protection needs.

Since LCP certification, a large portion of the City has been acquired for public park and open space purposes, including the coastal area south of Tioga Avenue, and the old landfill north of Tioga Avenue and immediately south of the project site. According to City staff, this results in approximately 80% of the City's coastal area west of Highway One as being available for public open space. At this point, however, public ownership does not equate with availability for public use. The actual establishment of public parks and facilities necessary to allow for public access and recreation in these areas, such as public parking, has not been accomplished, and will, in any case, be subject to future reviews and approvals, including reviews by the U.S. Fish and Wildlife Service to ensure that increased public use of these areas will not adversely affect threatened and endangered dune species. It is therefore premature to conclude that the proposed project's restriction of public access and recreation opportunities within the Public Recreation area specifically designated by the LCP will be offset by the increase in public access and recreation opportunities elsewhere in the City. In fact, adverse impacts of the proposed project on dune habitats within the project vicinity may necessitate stringent controls on public access and recreation within the dunes elsewhere in the City, including those portions currently in public ownership, in order to protect and enhance the reduced habitat areas that remain.

As detailed in the Environmentally Sensitive Habitat findings of this report, the City-wide Habitat Conservation Plan currently in progress will provide much needed information regarding habitat values and the amount and types of uses that can co-exist with these resources. This work must be completed before it can be determined that this project complies with LCP policies protecting the sensitive habitat values on and adjacent to the project site. This process will also identify the public access and recreation restrictions necessary to effectively protect the environmentally sensitive habitats throughout the area of the City west of Highway One. Until the constraints on access posed by the dune habitat are better understood, it is unclear whether the access program proposed as part of this project is consistent with LCP Policy 3.3.9, which requires the provision of adequate public beach recreational areas for public use commensurate with future population growth and development. As a corollary, before the specific public access management measures necessary to protect sensitive habitats are known, the project also can not be found to conform with Coastal Act Section 30210, which requires that maximum access be provided consistent with the protection of natural resources.

4. Conclusion

The proposed project to not ensure the provision of adequate public access and recreation opportunities, because fundamental issues regarding the provision of such facilities, consistent with the protection of natural resources and shoreline erosion, have yet to be resolved. As a result, the project, as currently proposed, can not be found to be consistent with Coastal Act Sections 30210 and 30212, or with LCP Policies 2.3.4, and 2.3.9. The project's use of the Public Recreation area designated by the LCP for habitat restoration and mitigation purposes also conflicts with these LCP and Coastal Act provisions, as well as with LCP Policy 6.4.1.k. Furthermore, the project does not provide adequate parking necessary to serve coastal access, inconsistent with Coastal Act Section 30252(4) and LCP Section 2.3.11.

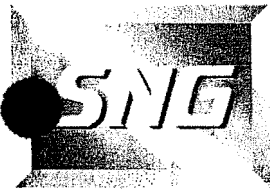
Completion of the City-wide HCP process, and incorporation of the habitat protection provisions needed to manage access consistent with the protection of natural resources, will be necessary to resolve these issues on this site and ensure the appropriate balance between these two Coastal Act and LCP priorities.

J. California Environmental Quality Act

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

The City of Sand City certified an EIR for the Monterey Bay Resort Project on December 1, 1998, on the basis that with implementation of the mitigation measures identified by the EIR, the project would not have a significant adverse effect on the environment. The Environmental Impact Report certified by the City is comprised of the Draft EIR and the Final EIR; the final EIR contains responses to the comments received regarding the Draft EIR, and revises and supplements specific sections of the Draft EIR.

As detailed in the findings of this staff report, the Commission has identified environmental impacts of the project that have not been effectively addressed by the certified EIR, particularly with respect to the project's impacts on sensitive dune habitats and limited water resources. Measures available to address these issues are also identified by this report. As a result, the Commission is unable to find that the proposed Monterey Bay Shores project will not have a significant adverse impact on the environment within the meaning of CEQA.



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Company**

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APR 15 1999

CALIFORNIA
COASTAL COMMISSION
CENTRAL COAST AREA

April 13, 1999

Mr. Charles Lester, District Manager
Mr. Steve Monowitz
California Coastal Commission
725 Front Street, Suite 300
Santa Cruz, CA 95060

RE: Permit Number A-3-SNC-98-114
Monterey Bay Shores resort, Sand City
SNG Development Company (SNG)

Dear Charles and Steve:

This memorandum will answer all the remaining questions and issues raised by you in our last meeting held on April 6, 1999 in Santa Cruz, and provide specific answers and solutions which can be implemented on this project to achieve a full resolution and reconciliation of all the issues. We propose to do this by suggesting a new project alternative defined as the Modified Reduced City Project ("MRCP"), incorporating by reference the project approved conditionally by the City of Sand City on December 1, 1998 including 495 units, with its 59 conditions of approval following the enactment by the City Council of eight(8) land use approvals for the project:

- | | |
|---|---------------------|
| 1. Certification of the EIR - | Resolution SC 98-83 |
| 2. Vesting Tentative Subdivision Map - | Resolution SC 98-85 |
| 3. PUD Permit, Site Plan & Design Permit - | Resolution SC 98-86 |
| 4. Mitigation Monitoring Program - | Resolution SC 98-87 |
| 5. Biological Survey, Habitat Protection Plan & Access Plan - | Resolution SC 98-88 |
| 6. Consistency with Redevelopment Plan - | Resolution RA 98-07 |
| 7. Coastal Development Permit(CDP) - | Resolution SC 98-93 |
| 8. PUD Ordinance - | Resolution SC 98-08 |

The project as approved by Sand City also requires us to obtain additional permits which are issued by other agencies:

- Water Distribution Permit
- Section 10 A USF&W Permit

EXHIBIT NO. <i>1, p.1</i>
APPLICATION NO. <i>A-3-SNC-98-114</i>
<i>Project Revisions</i>
<i>Submitted by Applicant</i>

The Water Distribution Permit is at this point primarily an administrative permit, while the Section 10A permit is subject to review of the Service and execution of a contract delineating all the responsibilities of the Service, the City of Sand City and SNG.

Since the approvals were granted SNG by the City, the City has begun its own Habitat Conservation Plan(HCP) which is focused on protection of the western snowy plover throughout the Sand City shoreline. This is in addition to the Memorandum of Understanding(MOU) entered into in April 6, 1996, by and between the City, the Monterey Regional Parks District, the California Department of Parks and Recreation and the City Redevelopment Authority wherein over 80% of the City coastline has been designated as park, openspace and habitat areas. The measures which have been proposed by SNG's biologists are intended to be consistent with those HCP implementation plans by the City. SNG is contributing a pro-rata share of the costs for the preparation of this City wide effort.

I am also incorporating herein by reference in proposing the MRCP all of the documents and material submitted to you since the date of the appeal on December 18, 1998 through the date of this letter and MRCP. While we believe that the MRCP answers all of your concerns, it goes far beyond answering issues related to Standards of Review and conformity with the Sand City Certified LCP which you raised. As such, the steps undertaken by us in our proposal of this MRCP are undertaken in order to respond specifically to your questions, accommodate all of your concerns and reconcile our differences. However far reaching your interpretations of the LCP may be, in no way does our MRCP proposal suggests our concurrence of that interpretation or understanding by you.

Enclosed herewith for your review are the following documents and exhibits which are incorporated by reference:

- Modified Reduced City Project (MRCP)
- Exhibit "A" - Site Plane Modifications
- Exhibit "B" - Statistics of Modifications
- Exhibit "C" - Parking Requirement changes
- Exhibit "D" - View from the Beach projections

I am also enclosing herewith for your review and records a copy of the following documents for the Monterey Bay Shores Project("MBS") submitted to the USF&W Service ("Service") as part of our Section 10A Permit requirement(replacing the copies provided previously):

- Habitat Conservation Plan("HCP"), March 1999
- Implementation Agreement-HCP, March 1999

One further point I wish to note regarding policy. Our preliminary information is that the Coastal Commission has set prior precedence on a number of previous approvals wherein CDP was approved by the Commission prior to the issuance by USF&W of a Section 10A permit. It is my understanding that our legal council on habitat matters, Mr. David Ivester, Washburn, Briscoe and McCarthy, San Francisco, has confirmed this fact.

A-3-SNC-98-114
Exhibit 1, p. 2

I would hope that after your review of our MRCP, which addresses all of the remaining concerns raised by you, you will concur that indeed we have made significant reductions and changes to the City approved project and that those changes are of such degree and magnitude that they fully respond to all of your questions and concerns and bring the MBS project into full conformity and consistency with the City LCP and applicable policies of the Coastal Act. If you, your staff or consultants have any further questions, please feel free to bring them to our attention or contact any of our consultants or technical experts ASAP so that we can respond to you in a timely manner and assist you prior to the writing of your Staff Report for the May 1999 Coastal Commission hearings. At this time, we will not be requesting further continuance as we believe all questions raised by you have been responded to.

I look forward to working with you and coordinating the approval of this project under the proposed MRCP, and hope that Staff will join in its recommendation of approval. Please let me know if we can be of further assistance at this time.

Sincerely yours,



Ed Ghandour, Ph.D.
President

Enc.

cc. Steve Matarazzo, Sand City
Randy Meyenberg, Esq.
David Ivester, Esq.
Larry Seeman

A-3-SNC-98-114
Exhibit 1, p. 3

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Modified Reduced City Project
Monterey Bay Shores
Permit Number: A-3-SNC-98-114
April 13, 1999

APR 15 1999

CALIFORNIA
COASTAL COMMISSION
CENTRAL COAST AREA

Introduction:

In our most recent meeting held April 6, 1999 at your Central District offices, you raised the following remaining questions and issues (arranged in the order in which you presented them to us)

- A. Information on HCP and its assessment
- B. Remaining water issues - to be discussed with Ms. Diane Landry
- C. Circulation - traffic mitigation
- D. Visual constraints
- E. View from the Beach
- F. Interpretation of 45' height by Certified LCP
- G. North East corner of Site where presence of Buckwheat and Spineflower have been documented
- H. Land form alterations

While responses to all these questions have been provided Staff in the past communications, including the City records and detailed technical studies on MBS which addressed the project and design criterias of the City approved project, the MRCP goes substantially further in that it responds to your concerns with further specific modifications to the City-Approved project. The responses are contained in the detailed analysis on the MRCP that follows. All comparisons are with statistics of the City approved project of 495 units. Detailed examination of MRCP and its modifications, as well as the HCP documents, results in the identification and satisfaction of all your concerns. These include the following:

SITE PLAN MODIFICATIONS:

The MRCP Site Plan has been modified (see Exhibit "A") in the following manner:

- The elimination of certain building components
 - Southwest portion of VOR
 - Northeast corner of Residential Condominiums
 - Parking garage structure (between VSR and Condo buildings)
 - Reduction of Conference/Spa Center
- Reduction in garage and parking requirement - both above grade and below grade
 - Parking requirement reduced by approximately 27%
- The raising of the bluff grade to 30' and developed areas accordingly
- The reduction of buildings footprint and coverage
- The reduction of sand excavation by ~ 250,000c.y, or by about 30%

A-3-SNC-98-114

Exhibit 1, p. 4

Excess sand can be used for regional coastal restoration projects and beach replenishment

- The relocation of the Percolation area out of the CZ-PR district
- Increase area of additional Dune Restoration areas
 - Slight Relocation of VSR building towards the Condos which provides for additional screening
 - Enhancement of the dunes behind the Conference/Spa Center
 - Increased Dune Restoration on NE corner of the site
 - Increase Dune Restoration on SW corner of the site
- The relocation of structures further away from 50 years erosion setback line SW corner of VOR building
- Reduced land alteration of the site. Although this site was used heavily for sandmining for over 40 years by LoneStar, the MRCP reduces alterations further.
- Increased public access and recreation area in the NW corner of the site. (Note that currently, because the property is part of the former Rancho Noche Buena, a Mexican land grant that preceded creation of the State of California, public access along the shoreline on this property below the mean high water line is not available through the public trust doctrine as it is in most other coastal locations in California)

BUILDING MODIFICATIONS:

A number of changes have been made to address mass, bulk and character issues which include the following (see Exhibit "A" and Exhibit "B")

- All buildings have been reduced so that MAXIMUM height does not exceed 45' from finished grade (although; the Certified LCP criteria for building heights are 45' from existing grade).
- Height Reduction throughout the project: ALL building clusters and components
 - The VOR building has been reduced by 3 floors resulting in 3 & 4 stories
 - The Hotel has been reduced by 2 floors resulting in a 2-4 story building
 - The VSR building has been reduced by 2 floors resulting in 3 stories
 - The Condominium buildings have been reduced by 2 floors, resulting in:
 - South Condo Wing: 2 to 4 stories
 - North Condo Wing: 2 and 3 stories
 - (the two courtyard clusters have been maintained in order to provide wind protection to guests and visitors)
- Roof form changes: While variable height has been maintained, the roof pitch has been reduced to allow compatibility with 45' height. Articulation of heights to conform to the undulating dune forms has been maintained to preserve the coastal character.
- Dormer units in the roof floor area have been removed
 - The reduction in mass and bulk has scaled the buildings down

A-3-SNC-98-114

Exhibit 1, p. 5

VIEW MODIFICATIONS:

- The building height reduction and modifications outlined has eliminated ALL viewshed issues associated with the MBS to a degree where now it is virtually hidden in the dunes and unique physical siting of the site. While this criteria is far beyond that required by the Certified LCP, the MRCP addresses the wishes of Coastal Staff to have the project buildings not be seen, especially in the southbound Hwy 1 view corridor. The MRCP has achieved in delivering this criteria.
- View from Monterey/U.S.Coast Guard: virtually unseen, as the project is over 3 miles away and is buried in the dunes with no buildings rising above adjacent dunes or restored dunes.
- View from the Beach(see Exhibit "D"): The buildings are not visible from the beach. A person standing 8' tall at 2'MSL (total 10') 50' seaward off the bluff, will not see the buildings.
- South Bound Highway 1 - 1330' North of Property Line: This Photo point analyzed the most extreme viewshed of all the photo points driving south from Main Gate at Fort Ord towards Monterey, the view of blue water lasting only few seconds. By redesigning and modifying the building heights, the blue water view is preserved in its entirety and the VOR ridge and top of the Hotel elevator shaft sitting against the big dune have been lowered out of sight.

MAJOR PROJECT STATISTICS:

The MRCP design modifications have resulted in a substantial reduction in height, bulk, unit count and parking requirements(see Exhibit "B" and "C"). Additional cumulative impacts of the project modifications will be discussed below.

- Unit count has been reduced to 378 units. This represents merely 58% of the zoning maximum allowed 650 units on this site, and an additional 24% unit reduction below the City Approved project of 495 units.
- Parking count has been reduced by over 27%
- Unit reductions reduced traffic impacts proportionally

Due to operational concerns, the MRCP allows the units to be intermixed as approved by LCP Amendment 2-97, as approved unanimously by the Coastal Commission in June 1997.

Ratio of visitor serving to residential Condos has been increased dramatically to over 3.8, far exceeding the 2.7 ratio required by the LCP.

A-3-SNC-98-114
Exhibit 1, p. 6

HABITAT CONSERVATION PLAN:

The HCP has been submitted to the USF&W Service along with the Implementation Plan for the issuance by the Service of a 10A incidental take permit. Both documents address the measures that need to be taken in order to minimize and mitigate impacts on the habitat and the manner in which the management program is implemented. It sets forth significant funding requirements by SNG for implementing the HCP, including the funding of biological stewards to oversee the protection of habitat in the MBS site. Additionally, SNG has been conditioned by the City to fund a significant portion of the city-wide HCP which is currently in progress. Additionally, the City has committed to fund a second biological steward from its Transient Occupancy Tax(TOT) revenues in order to assure successful management and protection of the habitat throughout the City. Without the assistance of SNG and the project revenues, the area wide habitat protection programs envisioned for the Sand City shoreline area are unfunded.

Additional dune restoration areas have been provided for in the NE corner of the site. Staff has raised the question regarding additional suitable habitat for the Smith's Blue Butterfly and the Buckwheat host plant in the NE corner. After further consultation with a biologist, it has been recommended that it is better to provide enhanced habitat areas on the leeward side of the dunes in which the Smith's Blue Butterfly and the Buckwheat can propagate, then not restoring these areas.

While the Smith's Blue Butterfly has not been observed in the MBS site in 1997 or 1998, and the western snowy plover has not been observed on the site in 1998 with only one(1) citing in 1997, it is the intent of SNG to provide active habitat management and protection both on site and off site by funding biological stewards, seasonal limitation on grading and public access to particularly sensitive areas. Coastal Staff has indicated to us that to date their biologist has not reviewed these biological issues. We encouraged them to contact Mr. Zander and review the issues.

CIRCULATION:

The reduction in the number of units and parking requirements has significantly reduced the circulation impacts of this project. ATE's extensive technical studies on traffic, including cumulative impacts, have demonstrated that current LOS LEVEL will not be degraded with the City Approved Project. The MRCP will clearly have a lesser impact altogether.

Further, the City has conditioned this project to contribute a pro-rata share of funding shortfall for implementing the design modifications identified by the Project Study Report. This funding will place a burden on this project requiring it to share in the cumulative traffic impact for the Ord Village interchange. Further reductions in project unit count will result in diminished funding for this important future regional traffic infrastructure project.

A-3-SNC-98-114

Exhibit 1, p. 7

WATER SUPPLY:

Through various submissions to the City and Coastal Staff to date, it has been demonstrated that the MBS water plan with respect to the City Approved project¹ is adequate both in terms of quantity and quality, and that questions relating to overlying water rights have been answered adequately. The remaining permit and design issues are merely of a ministerial administrative function. To the extent that additional questions may prevail, our legal council specializing in water issues, Mr. Lloyd Lowry, has not been contacted recently with further inquiry Coastal Staff.

FISCAL IMPACTS:

Part of the difficulty in making the proposed changes recommended by the MRCP, is the reconciling of the economic viability of the project with the reduction in size. Prior technical and financial studies by McGill Martin Self, November 17, 1998, done for the City of Sand City, have concluded that any further reduction in the number of units will require significant financial contributions to the project by the City and the Redevelopment Agency and that any further reduction to the City Approved project will negatively impact the project's economic viability and substantially increase the risk to SNG and the City, which will result in a project that is not feasible.

While the MRCP has responded to Coastal Staff issues which do not address economic issues, it is possible that this proposal will not be financially feasible unless the City makes significant funding available through its own resources or other Agencies to assist in the construction of this resort project. So, while all habitat and coastal resource issues might have been answered, the economic viability issue has not been resolved. This element of increased financial risk after years of substantial investment in the site and project is not tenable!

Furthermore, extensive market studies have demonstrated a very strong market demand for another 2,100 rooms in the Monterey Peninsula. The MBS resort will only fulfill a very tiny portion of that demand.

SUMMARY:

In summary, the cumulative benefits and impacts that the MRCP provides are far greater than those already described here. They have been clearly identified here, and in ^{mbs.mrcp}all prior documents submitted to Coastal Staff and the City of Sand City in their approval of the project. All impacts have been mitigated to a level of insignificance far beyond that recommended by the Certifeid Final EIR or required under CEQA. The MRCP has attempted to go beyond Coastal Staff recommendations so as to incorporate those changes and modifications that yield maximum benefit. It is through the project that future habitat protection and management in the region becomes a reality.

A-3-SNC-98-114
Exhibit 1, p. 8

Exhibit "B"
Statistics of Modifications

UNIT COUNT:

Visitor Serving:	
Hotel*	176
Vacation Ownership Resort(VOR)*	60 (80)**
Visitor Serving Residetial(VSR)*	64 (44)**
Sub-Total:	300
Residential Condominiums*	78
TOTAL:	378 (76%) (58% of zoning maximum)

*Units may be intermixed per LCP Amendment 2-97

**Count depends on use of VOR and VSR

RATIO:

Visitor Serving to Residential Units: 3.84 (142% greater than that required by
LCP Amendment 2-97)

HEIGHT:

	New Height	Max. Roof Elevation	Net Height Reduction with New Grade
Hotel	29'-45'	80'	-25'
VOR	26'-45'	80'	-30'
VSR	36'	81'	-19'
Condos	26'-45'	80'	-20'

A-3-SNC-98-114
Exhibit 1, p.10

Exhibit "C"
Parking Requirement Changes

Hotel	176	
Restaurant	48	
Conference Center/Spa	140	
Retail	10	
 Vacation Ownership Resort(VOR)*	 90 (80)	
 Sub-Total:	 464 (454)	
 10% Public Parking	 47 (46)	
Visitor Serving Residential(VSR)*	64 (66)	
 Residential Condominiums	 117	
 TOTAL:	 692 (683)	(73%)

*units may be intermixed per LCP Amendment 2-97

A-3-SNC-98-114
Exhibit 1, p. 11

EXHIBIT C
MONTEREY BAY SHORES
MASTER SET OF CONDITIONS OF APPROVAL

These conditions of approval collectively constitute the conditions applicable to the Monterey Bay Shores Project ("Project"). Four separate approvals are covered by these conditions, as required by the Sand City Municipal Code and Local Coastal Program: site plan approval (SP), coastal development permit approval (CDP), vesting tentative map (VTM), planned unit development rezoning and permit (PUD). Not all conditions are conditions of each approval. After each condition, the applicable land use entitlement to which it is related is noted in parentheses.

LAND USE

1. All development on the site shall conform to the approved site plan, as modified by these conditions, with a total unit count of 495. The development shall be generally consistent with the following unit counts: a 217-room hotel, a 100 unit vacation ownership resort (VOR), 45 visitor serving (rental pool) condominium units, 133 residential condominium units, auxiliary facilities including a restaurant, conference rooms, and other commercial auxiliary facilities, open space, public access trails and recreation area, and a minimum of 10.2 acres of restored and stabilized sand dune habitat. The site plan and distribution of units is attached hereto and incorporated herein by this reference. A Final Site Plan shall be submitted and reviewed for conformance with these conditions prior to the recordation of the final tract map. Any significant deviation from the approved site plan (except to the extent required by these conditions of approval) shall be subject to the review and approval by the City Council. Any questions of intent or interpretation of the site plan, architecture or of the conditions contained herein shall be resolved by the Community Development Director. (SP, CDP, VTM, PUD)
2. The Final Site Plan shall include a public access easement along the coastal bluff of the property which will include a public access boardwalk and the proposed public vista point structures subject to HCP consistency. The public access easement shall have a minimum width of twenty (20) feet. The purpose of this easement will be to allow bluff top pedestrian access on the project site consistent with the Sand City LCP and the Coastal Act requirements for maximum public access. An irrevocable offer of dedication to the City of Sand City shall be required for all public access easements and conservation easements. The public access and conservation easements shall be shown on the final tract map prior to recordation. In addition, a public access easement for the improvement of a Class II bike path shall be required along Sand Dunes Drive on the site's eastern boundary. (VTM, SP, CDP)
3. The Final Site Plan shall be revised to move the roundabout and entry driveway approximately 50' farther north to avoid encroaching on the north end of the dune stabilization/restoration area as depicted on Figure 7 of the LCP and the residential condominium complex shall be relocated approximately 7' in a southerly direction to be outside of the public recreation

EXHIBIT NO. 2, p 1
APPLICATION NO. A-3-SNC-98-114
Local Conditions

designation on the property. The design and siting of the other project features in this area, such as the VSR building, may be adjusted to accommodate this relocation. The Community Development Director shall confirm this site plan requirement prior to the recordation of the final tract map. (CDP, SP, VTM, PUD)

4. For each phase of the visitor-serving portions of the project, a minimum of 10 percent additional parking shall be installed as public parking (over the required amount for the visitor-serving uses). The location and signage for this public parking shall be approved by the CDD prior to the issuance of any building permit for the project. (CDP, VTM)
5. Construction of the public vista point located at the northern end of the project site and access thereto from the Sand Dunes Drive extension shall occur during the first phase of construction, as part of the initial building permit for the project. The public vista point shall include a minimum of two benches and a gazebo-type area/structure large enough to shelter ten (10) people. Other public vista points and associated public boardwalk facilities may be constructed with later phases, but must be installed prior to occupancy of the hotel. (CDP, PUD)
6. Final design of the public vista point gazebo-type structures shall be reviewed and approved by the Design Review Committee (DRC) prior to installation. The design and materials shall be appropriate for the coastal climate and natural setting and compatible with the project architecture. (CDP)
7. Prior to the approval of the final grading, drainage, and erosion control plan, a Final Landscape and Irrigation Plan which is consistent with the Preliminary Landscape Plan and Access, Signage and Planting Plan, dated September, 1998 and reviewed by the DRC on October 22, 1998 shall be reviewed and approved by the Design Review Committee (DRC). The Final Landscape and Irrigation Plan shall (a) be in accordance with Section 18.62.050 of the Municipal Code; (b) utilize native non-invasive coastal plants to the extent feasible; and (c) provide for the use of drought-tolerant plants in accordance with Chapter 15.12 of the Municipal Code. Prior to the issuance of a certificate of occupancy, landscaping shall be installed, or otherwise secured by a form of surety acceptable to the City Attorney. All landscaping is to be maintained pursuant to a maintenance agreement subject to review and approval by the Community Development Director and City Attorney. (SP, CDP, VTM)
8. All signage within the project shall be in accordance with a uniform sign program prepared for the project, which shall be reviewed and approved by the Design Review Committee (DRC) prior to sign installation. One, indirectly lighted bi-directional site identification sign shall be allowed at the project entrance and designed to be visible from Highway 1. The uniform sign program shall be consistent with the provisions of Chapter 18.66 of the Municipal Code. Building permits shall be obtained for all signs prior to installation. Following sign program approval by the DRC, all sign permits will be issued administratively provided the signs are consistent with said sign program. Commercial uses customarily

appurtenant to a resort development, including a restaurant, bar, conference facilities and spa as described on the site plan, are hereby permitted by approval of the Coastal Development Permit for this project. (SP, CDP, PUD)

9. A Final Lighting Plan and Management Program consistent with the Access, Signage, and Planting Plan, dated September, 1998 and reviewed by the DRC on October 22, 1998 shall be submitted and approved by the Community Development Department (CDD) prior to the issuance of any building permits for the project. The CDD shall confirm that the lighting is directed on-site and that it does not create glare. The CDD shall also confirm that the Lighting Plan and Management Program meets the requirements of the Habitat Conservation Plan (HCP) to be prepared for either the project site or the entire City coastline and the associated mitigation measure (15a) contained in the Mitigation Monitoring Program. (CDP)
10. Final architectural plans shall be submitted and approved by the Design Review Committee (DRC) prior to the issuance of building permits for each phase of the project. Architecture shall conform to the recommendations made by the DRC on October 22, 1998 and shall be reviewed for final approval by the DRC and included on contract drawings of the building permit plans. The architecture shall reflect the revisions to Alternative C contained in the FEIR as follows: reduction of one floor on the VOR building, one floor on the northern quarter of the residential condos, and a grade reduction of 10 feet for the hotel building as recommended by the DRC. Dormer units may be included in the development provided that building height limitations, unit count limitations, and building footprints are consistent with the FEIR and DRC recommendations. In addition, the VSR building shall be reduced in height by one floor to reduce the visibility of the building from Highway 1. (CDP, PUD)
11. Final building materials and colors shall be submitted approved by the Design Review Committee (DRC) prior to the issuance of any building permits for the project. All colors shall be earthtone to blend in with the dune environment consistent with the material/color board reviewed by the DRC on October 22, 1998. The roof material, however, is approved as variegated green tile. (CDP, PUD)
12. Dedication of the street right-of-way of Sand Dunes Drive to the northerly property line to the City of Sand City shall be required. Said dedication shall be shown on the final tract map prior to recordation and shall provide for the bike path and public parking as shown on final site plan. (VTM, CDP)
13. The developer, or any successor in interest, shall pay the Sand City Redevelopment Agency a housing in lieu fee to be earmarked for the provision of low-to-moderate income housing within the City. Said fee shall be an amount of \$6,300 per each non-visitor serving residential unit and may be secured by a surety bond subject to review and approval by the City Attorney. (VTM, CDP)

14. A property owner's association shall be formed with documentation subject to the approval of the City Attorney that assigns maintenance responsibilities for all on-site, private improvements. (VTM, CDP)
15. Each approval, and the conditions applicable to each approval, shall run with the land and be binding upon and inure to the benefit of all successors in interest to the property or any portion of the property and all assignees of the Property Owner to the extent applicable to the relevant portion of the property. (SP, CDP, VTM, PUD)
16. Covenants, conditions and restrictions (CC&Rs) for the condominium, vacation ownership units and visitor serving residential units (if applicable), shall be submitted to the City for review and approval prior to building permit issuance for these project components. The CC&Rs shall be recorded. (VTM, CDP)
 - a. The CC&Rs shall provide for the establishment, operation, management, use, repair and maintenance of all common areas and facilities, including all structures and landscaping.
 - b. The CC&Rs shall require 24-hour on-site management of the property, including the beach area. They shall also include the establishment of a full-time biological steward to manage snowy plover and other sensitive habitat areas on the property.
 - c. The CC&Rs shall limit owner-occupancy of individual visitor-serving units to the limits established in the Sand City Local Coastal Plan, as amended by LCP Amendment 97-02.
 - d. The CC&Rs shall make the City an enforcing agency thereto.
17. Visitor-serving units of the project shall be constructed prior to, or simultaneously with, the residential portion of the project as required by LCP amendment 97-02 approved by the California Coastal Commission. (CDP, PUD)
18. As part of all building permit submittal packages, certification shall be required from an acoustical engineer that interior sound levels of the building design(s) will not exceed 45 dBA(ldn - day/night average). (CDP, VTM)
19. Prior to issuance of a certificate of occupancy for the hotel component of the project, the developer shall either provide private shuttle service to the Monterey Peninsula Airport or provide for Monterey-Salinas Transit (MST) service to the site. The method of transit/paratransit service selected shall be reviewed and approved by the Community Development Department prior to recordation of the final tract map. (CDP)

20. Prior to the issuance of a certificate of occupancy for the planned restaurants, bars or other retail food facilities, approval by the Monterey Office of Environmental Health shall be required. (CDP)
21. Prior to the issuance of a certificate of occupancy for the swimming pool or spas, approval by the Monterey Office of Environmental Health and the City's Building Department shall be required. (CDP)

GRADING, DRAINAGE AND CONSTRUCTION

22. Prior to recordation, the City Council shall approve a final subdivision map which shall be in substantial conformance with the approved Vesting Tentative Map, as conditioned. Condominium plans may be filed in phases after recordation of the final vesting subdivision map. The final map shall include all required easements and dedications for public agency improvements, public utilities and public access/recreation. This map shall be subject to review and approval by the City Engineer and Community Development Director. (VTM)
23. A Preliminary Grading, Drainage and Erosion Control Plan for the site shall be submitted to and approved by the Community Development Director and City Engineer prior to recordation of the final map. A Final Grading, Drainage and Erosion Control Plan for the site shall be submitted to, and approved by the City Engineer prior to the issuance of any building/grading permit for the project, or phases thereof. Implementation of the final grading plan shall be consistent with the USFWS-approved Habitat Conservation Plan (HCP) for the project or the City, coastal-wide HCP and with the requirements of the Mitigation Monitoring Program. (CDP, VTM)
24. A final geotechnical investigation shall be submitted to, and approved by the City Engineer prior to recordation of the final map. Recommendations of the geotechnical report shall be required conditions to building permit approval for all phases of the project and a note on the final map shall include this requirement, citing that the report is on file at Sand City City Hall. (CDP, VTM)
25. Building permits are required for all buildings as well as for other structures where required by the Uniform Building Code (UBC). Prior to the issuance of building permits, plans for the specific design and construction of the building for which the permit is issued shall be approved by the City Building Official, and to the extent necessary by the City Engineer. Said plan shall, without limitation:
 - a. Meet the requirements for seismic safety outlined in the UBC.
 - b. Incorporate the recommendations of the geotechnical investigation and soils report for the site. (SP, CDP, VTM)

26. All construction contracts shall require watering of exposed earth surfaces in the late morning and at the end of the day; frequency of watering shall be increased if wind speeds exceed 15 miles per hour. Daily clean-up of mud and dust carried onto street surfaces by the construction vehicles shall be required during excavation and construction. The City Engineer may require the use of tarpaulins or other effective covers if necessary to minimize dust. (CDP, SP)
27. A preference to use local labor shall be established by contacting the Private Industry Council (PIC) and local builders exchanges. Local construction firms that can demonstrate an ability to perform the work required shall be notified of up-coming construction by notice through the Monterey Builders Exchange. The developer and any successors in interest agree to give first consideration to construction firms that provide first priority to using local labor, as available, on this project. (SP)
28. The project area shall be fenced during construction for safety purposes and to keep out unauthorized personnel. (SP, CDP)
29. The beach replenishment program shall occur in conjunction with initial site grading and shall be shown on the Grading Plan. The sand shall be deposited above the mean high tide line at quantities approved by a recognized coastal engineering firm for the purpose of assisting in beach replenishment and short-term coastal erosion control. (CDP)
30. An offer to dedicate a drainage easement to benefit the future Fort Ord Dunes State Park shall be made to the City to facilitate the future coordination of an area-wide drainage solution for the park in conjunction with the applicants drainage percolation system, as shown on the approved site plan. This easement shall be identified on the final tract map prior to recordation. The easement may be assigned by the City to the California Department of Parks & Recreation at such time as the California Department of Parks & Recreation takes title to the adjoining area of former Fort Ord and requests such assignment. (CDP, VTM)
31. Underground parking structures shall be waterproofed to the satisfaction of the City Engineer. Parking garages shall have entrances on the landward sides of the buildings, above the maximum storm wave runup elevation. (CDP, VTM)

VEGETATION AND WILDLIFE

32. Prior to the issuance of a Coastal Development Permit, the property owner shall enter into an agreement with the City of San Diego providing for implementation of a site-specific HCP approved by the USFWS or a city-coastal-wide HCP approved by the USFWS. The HCP may include off-site mitigation measures for which the developer will be partially responsible. The developer of this site, or any successor in interest, shall pay a proportionate share of the cost of implementing the off-site mitigation measures such share being based upon a minimum of two financial participants. A credit shall be given for any additional funding or if additional

beneficiaries of the mitigation are later identified. Project CC&R's shall specify the property owner responsibilities related to either HCP. Issuance of a 10a incidental take permit by the USFWS for the subject project shall also be required prior to the recordation of the final tract map and issuance of the Coastal Development Permit.

Due to the potential cumulative impact of increased visitor-beach use caused by this project and other pending projects within the Sand City Coastal Zone, a city-wide-coastal HCP is being prepared. The developer of this site, or any successor in interest, shall pay a proportionate share of the cost for the preparation of the city-wide habitat conservation plan based on a minimum of two financial participants, City of Sand City Redevelopment Agency and the project property owner. The property owner's contribution shall not exceed \$55,000. The developer shall pay said contribution prior to the Final Approval of the Coastal Development Permit. A credit will be provided should additional funding be obtained. (VTM, CDP)

33. All conservation easements shall be identified on the final tract map. The conservation easements for dune and habitat restoration areas shall be dedicated to the City or another agency or entity acceptable to the City. The instrument of dedication shall be in accordance with the requirements of the Local Coastal Program and shall be reviewed and approved by the City Attorney. (SP, CDP, VTM)

TRANSPORTATION/CIRCULATION

34. Prior to issuance of any certificates of occupancy, the extension of Sand Dunes Drive shall be constructed by the property owner in accordance with engineered plans approved by the City Engineer. Public utilities necessary to serve the project shall be sized and installed in accordance with City standards, the Seaside County Sanitation District and each of the public utilities. (SP, CDP, VTM)
35. Prior to the construction of required improvements within the Caltrans right-of-way, an encroachment permit shall be obtained from Caltrans. (SP, CDP, VTM)
36. Prior to the recordation of the final tract map, the project owner shall prepare and provide for implementation of a trip reduction plan consistent with the transportation management program contained in Volume II, Technical Appendix of the Draft EIR. Project plans shall include the installation of a Class II bike lane to link-up with Sand City's bicycle path and bicycle facilities on-site, including, but not limited to bicycle lockers for hotel employees and bike racks with a minimum capacity to secure up to 50 bicycles. (SP, CDP, VTM)
37. Prior to the recordation of the final tract map, the developer or any successor in interest shall provide surety bond(s) or other appropriate security acceptable to the City Attorney guaranteeing a contribution of a pro-rata share of the funding shortfall for the implementation of the recommended design modification alternative identified in the currently-developing

Project Study Report. Said surety shall be in the amount not to exceed 5 percent of the cost of planned improvements necessary for satisfactory cumulative traffic condition at the Ord Village interchange shall be required prior to recordation of the final tract map. Said contribution shall not exceed \$1.5 million and shall be based on the project's prorata share of cumulative traffic impact as reported in the Final EIR for the project. The fee shall be earmarked for future improvements to the Highway 1 and the Ord Village Interchange. (VTM, CDP)

38. The applicant, or other successor in interest shall enter into an agreement to not protest the inclusion of the project in a City or region-wide assessment district, should one be formed, for the purpose of funding the related construction of a project that will improve the operation of the Ord Village interchange and Highway One from Route 218 to the Fort Ord Main Gate. The applicant, or other successors in interest will receive credit for any payments that were made pursuant to other conditions to improve the interchange if any of those monies are attributable to the improvements that are being financed by the assessment district. A note shall be placed on the final tract map acknowledging said agreement. The final tract map shall not be recorded until this agreement has been executed. (VTM, CDP)
39. The final location of the bike path shall be shown on the Final Site Plan. (SP)
40. The transportation demand management strategy for the project shall be noted on the final map, prior to recordation. (VTM, CDP)
41. If cultural resources are uncovered during site preparation or construction, work shall be halted in the immediate area of the find and the regional office of the California State Archeological Survey and the City of Sand City shall be notified so that suitable mitigation measures can be implemented, if necessary. (SP, CDP, VTM)

PUBLIC UTILITIES AND SERVICES

42. Prior to the recordation of the final tract map, and issuance of the Coastal Development Permit, the developer's right to use water from on-site wells for domestic service (potable water), capable of serving the requirements of the project shall be confirmed in writing by the Monterey Peninsula Water Management District, or by court order. This confirmation shall also contain verification of acceptable technical, financial and management capabilities of a mutual water company, unless the mutual water company is to be managed and operated by CalAm or another appropriate entity acceptable to the City Engineer. Also, a water distribution permit shall also be required from the Monterey Peninsula Water Management District prior to the recordation of the final map. (SP, CDP, VTM)
43. Prior to the issuance of a building permit for any building, all water system and supply permits shall have been issued and submitted to the City Engineer. Plans for the water system and fire protection system shall be designed and constructed in accordance with the requirements.

A-3-SNC-98-114
Exhibit 2, p. 8

of the City's Fire Marshall and approved by the City Engineer prior to installation. In addition, prior to the commencement of construction of any building, the applicant shall construct any portion of the water system required by the fire department. (SP, CDP, VTM)

44. Water conservation devices and ultra low flow flush toilets (1.6 gallons per flush) are required for the project and the inclusion of which shall be confirmed prior to the issuance of any certificates of occupancy. Landscape irrigation plans shall be approved by the Community Development Department prior to installation and shall utilize water conserving components. (SP, CDP)
45. Prior to the recordation of the final tract map, sanitary sewer service facilities and all other utilities, including the establishment of the mutual water company and water improvements related thereto, shall be installed, or bonded by an instrument of surety approved by the City Attorney. Sanitary sewer service and any requirements related thereto shall also be approved by the Seaside County Sanitation District prior to recordation. (SP, VTM, CDP)
46. Prior to issuance of building permits for any buildings, a fire protection plan, including the provision of adequate fire flows with hydrants at the required spacing, installation of sprinklers, fire equipment access, and the designation of fire lanes shall be reviewed and approved by the City's Fire Marshall. (SP, VTM)
47. Beginning with the issuance of building permits for any building and continuing for a period of one year following issuance of a certificate of occupancy, a project specific Public Safety Mitigation Fee in the amount of \$75,000 per year shall be paid by the developer to the City to cover the increased costs of police services and road maintenance for a two-year period between construction of this project and generation of sufficient sales taxes and Transient Occupancy Taxes (TOT) to cover these costs after full implementation of the project. The developer and any successors in interest shall provide security during project construction. (CDP)
48. New utility lines and extensions shall be placed underground. Where transformers must be pad-mounted above ground, they shall be located away from the general public view, or shall be effectively concealed by a screening fence and landscaping of a design approved by the utility and the Community Development Department. (SP, CDP, VTM)
49. Habitat and open space areas shall be maintained on a regular basis, as provided for in the site-specific HCP or the City. Coastal-Wide HCP (CDP)
50. Easements for all public improvements including sanitary sewers, water mains and other public utilities shall be identified and offered for dedication on the final tract map. The location and width of each easement shall be subject to the approval of the applicable public agency, public utility, and the City Engineer. The minimum width of easements shall be ten feet. (VTM)

51. A recycling program shall be included as part of the overall property owners maintenance agreement or covenants, conditions and restrictions. Said program shall include a location or locations where recyclable materials can be deposited within trash collection areas. Said program shall be approved by the Community Development Department prior to issuance of any certificate of occupancy. A "Construction Material Recycling Program" shall be submitted by the applicant to the Community Development Director for review and approval, which shall outline the method for the recycling of excess materials used during the construction phase of the project. This Construction Material Recycling Program shall be approved by the Community Development Director prior to the issuance of a building permit. (SP, CDP)
52. Prior to recordation of the final tract map, all construction plans for civil and public infrastructure improvements, e.g., water, sewer, roads, parking and drainage, shall be approved by the City Engineer and all said improvements not completed shall be bonded at the rate of 125% of the Engineer's Estimate, as approved and/or prepared by the City Engineer. This requirement also applies to improvements which will be owned by private entities such as the mutual water company. All construction plans shall be in accordance with the subdivision improvement agreement. (VTM)

RECIPROCAL EASEMENTS AND COVENANTS

53. Prior to issuance of building permit(s), the property owner shall execute covenants, conditions and restrictions and/or reciprocal easement agreements for access, parking, utilities, landscaping, security and maintenance as appropriate, among the parcels shown on the approved tentative map, as conditioned. The instruments shall be subject to review and approval by the City Attorney. (SP, CDP, VTM)

MONITORING PROGRAM

54. The mitigation measures contained in the Mitigation Monitoring Program are hereby incorporated in the Conditions of Approval (SP, CDP, VTM)

INDEMNIFICATION

55. The applicant agrees as a condition of approval of the permits for the Project to hold harmless, defend and indemnify the City of Sand City and its officials at the applicant's sole expense against any action brought as a result of the approval of the permits for the Project or the certification of the Environmental Impact Report for the Project. The applicant will reimburse the City for any court costs and attorney's fees which the City may be required by a court to pay as a result of such action. The City may, at its sole discretion, participate in the defense of any such action; but such participation shall not relieve applicant of its obligations under this condition. An indemnification agreement incorporating the provisions

of this condition shall be recorded upon demand of the City Attorney or prior to the issuance of building permits for the Project, whichever occurs first. (SP, CDP, VTM, PUD)

PLANNED UNIT DEVELOPMENT

56. The applicant shall make a request and obtain approval of a Planned Unit Development ordinance consistent with the project approvals prior to issuance of a Coastal Development Permit. (SP, CDP, VTM, PUD)

ACCEPTANCE

57. The approvals subject to these conditions (SP, CDP, VTM AND PUD) shall not become effective unless and until the applicant signs a copy of such approvals agreeing to accept such approvals subject to these conditions.

NOTICE OF RECORDED PERMIT

58. Prior to recordation of Final Map, the applicant shall record a notice stating that "this project was approved subject to the Master Set of Conditions of Approval which are on file at the Community Development Department of the City of Sand City." The form of the notice shall be approved by the City Attorney.

VACATION OWNERSHIP RESORT (VOR) IN-LIEU FEE

59. An annual transient occupancy in lieu fee shall be paid on a quarterly basis to the City of Sand City for that portion of the project with vacation ownership units, currently containing 100 such units. The annual in lieu fee for the initial year of VOR operation shall be \$45 per interval or week sold. For example, based on 100 units, and 5100 intervals sold, the annual fee paid to Sand City would be equal to $5,100 \times \$45 = \$229,500$. This annual fee per interval shall also be subject to annual adjustment based on the All Urban San Francisco/Oakland/San Jose Metropolitan Statistical Area consumer price index (CPI-U) escalator. (CDP)

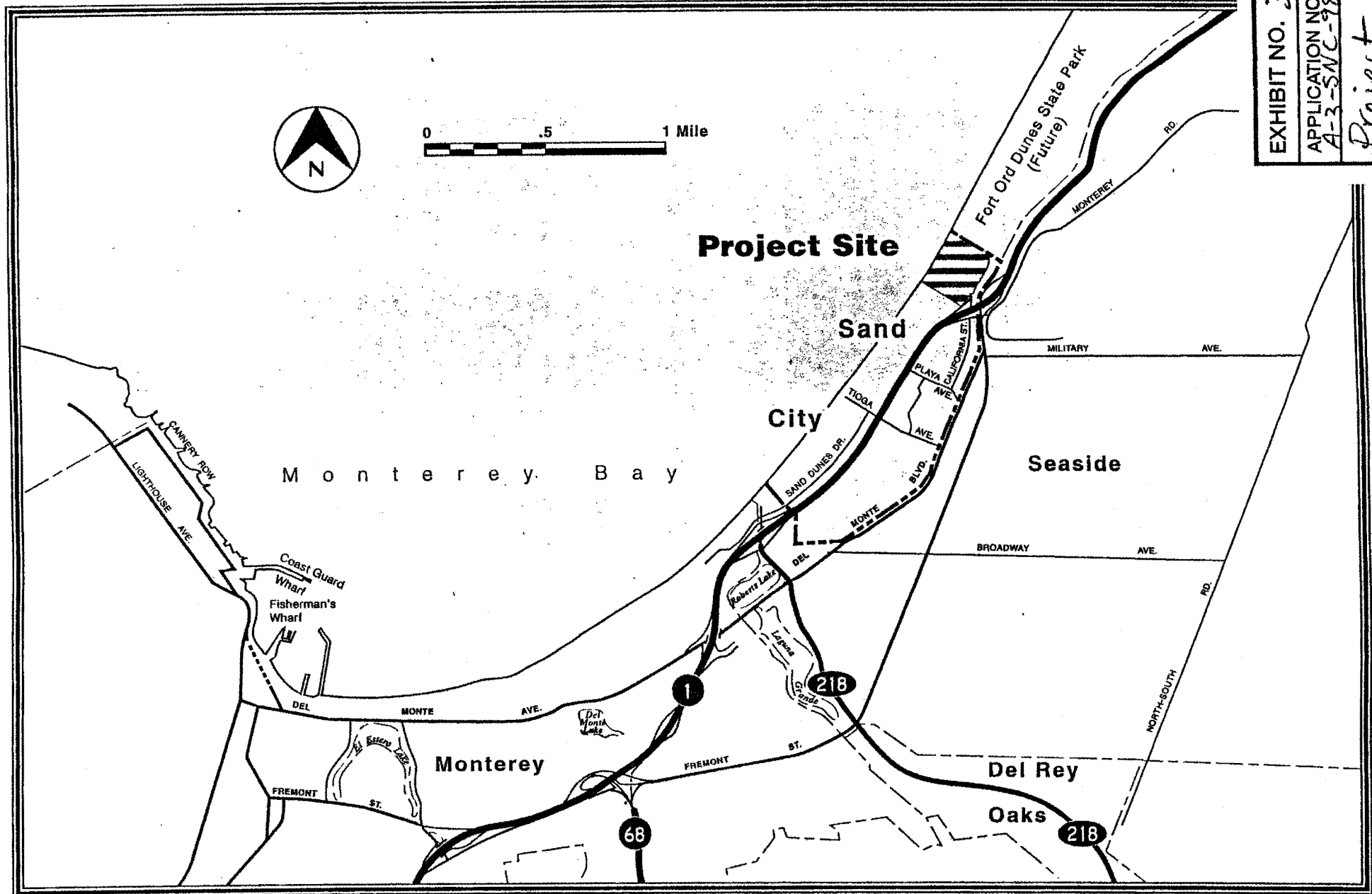
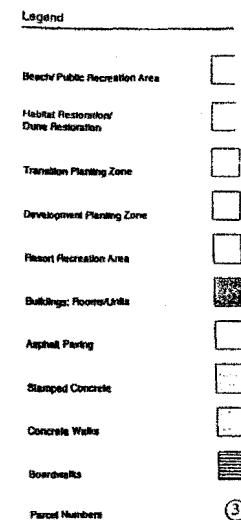


EXHIBIT NO. 3
APPLICATION NO. A-3-SWC-98-114
Project Location

PROJECT LOCATION MAP

Site Plan /



Monterey Peninsula, San City, California

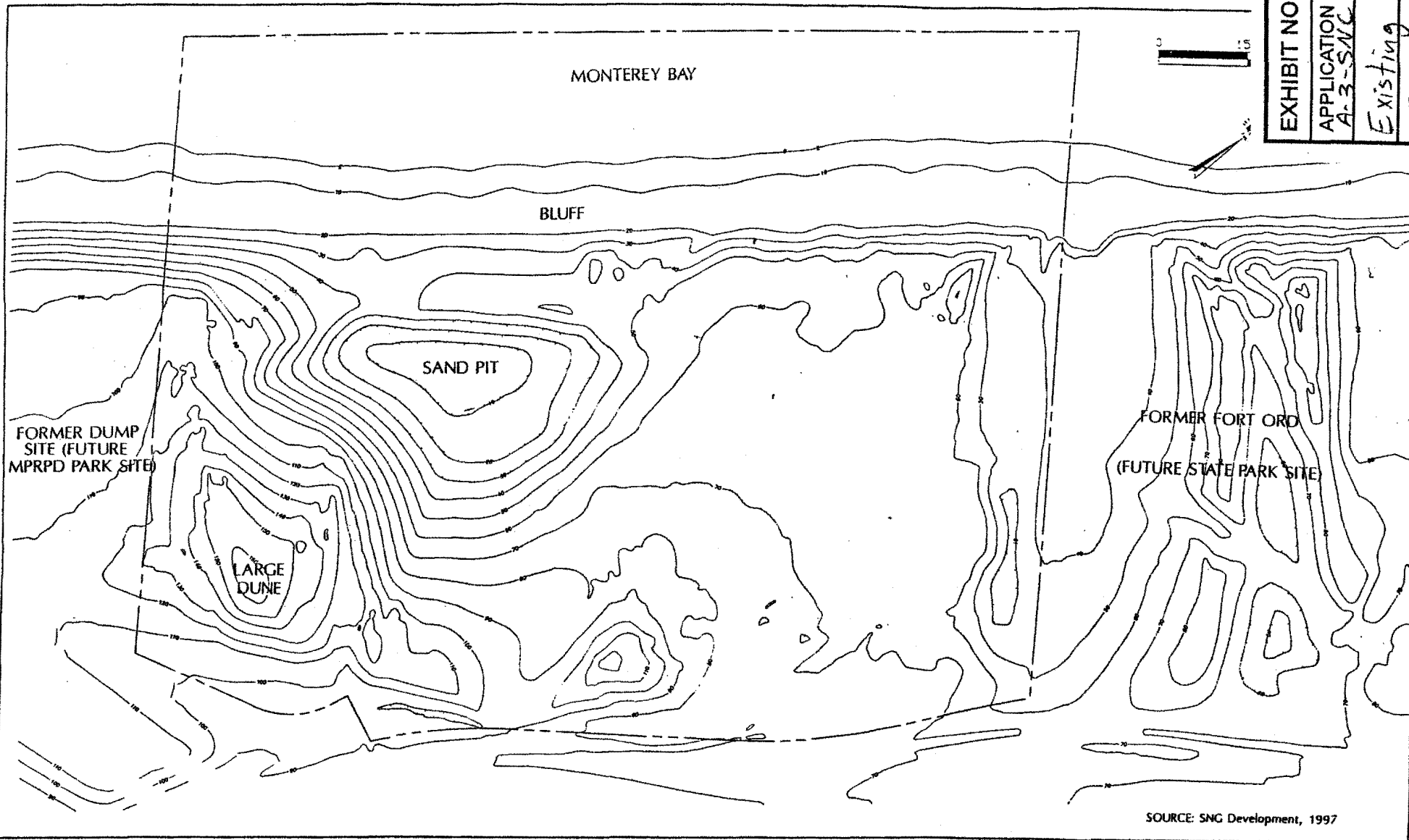
Alternative "C" Modified*

November 17, 1998

SNG Development Company

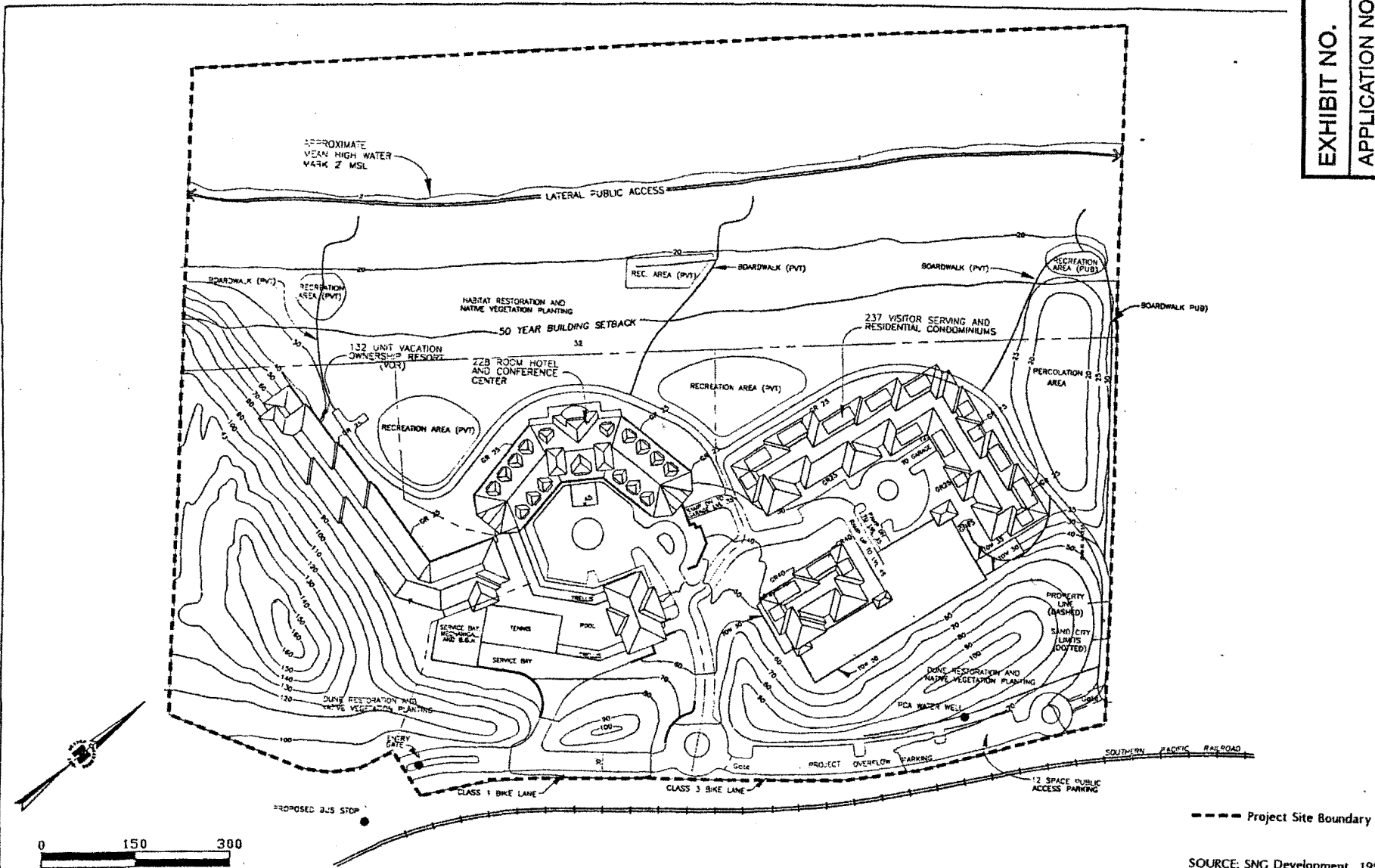
*As Approved By Sand City
City Council November 17, 1998.
Subject to Final Design & Siting As
Required By Conditions of Approval

EXHIBIT NO. 5
APPLICATION NO. A-3-SNG-98-114
Existing Site



EXISTING SITE CONTOURS

FIGURE 4



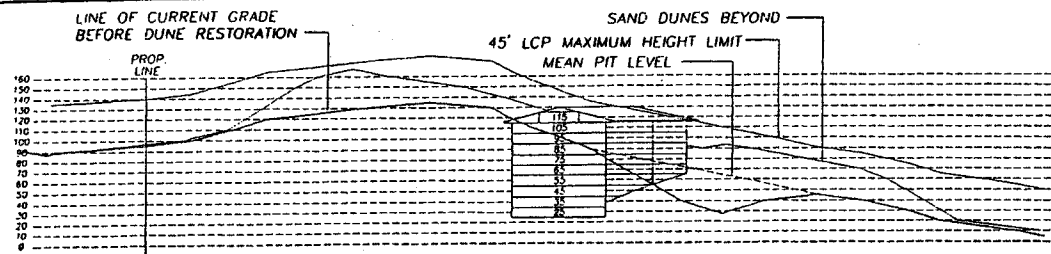
PROPOSED SITE PLAN AND FINISHED GRADE CONTOURS

FIGURE 7

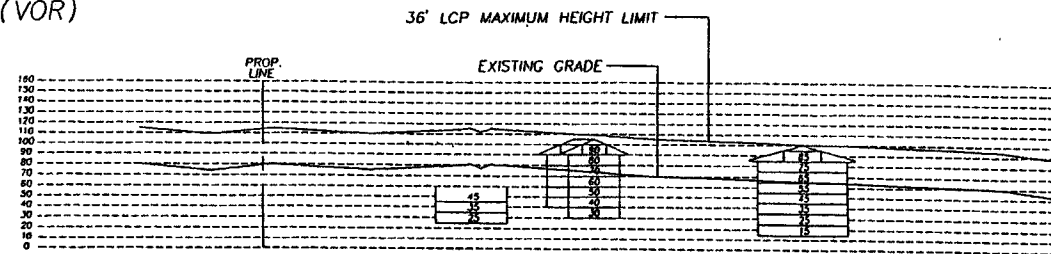
EXHIBIT NO. 7

APPLICATION NO.
A-3-SNL-98-114

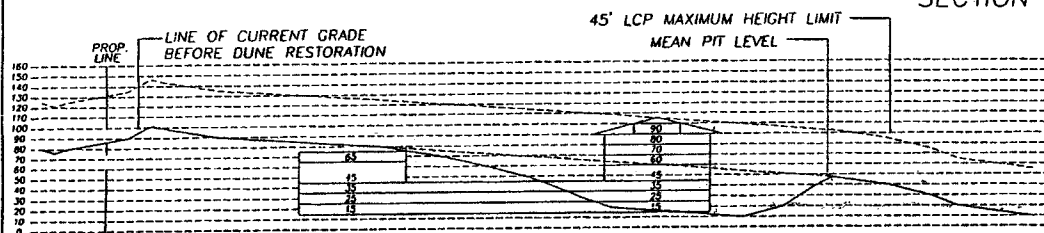
Methodology used to
determine max. height



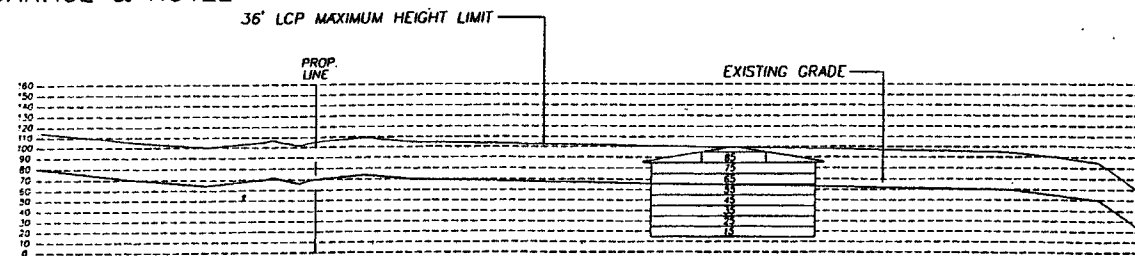
SECTION A - THRU VACATION OWNERSHIP RESORT (VOR)



SECTION C - THRU CONDOMINIUM PARKING GARAGE & CONDO BUILDGs



SECTION B - THRU CONFERENCE CENTER, PARKING GARAGE & HOTEL



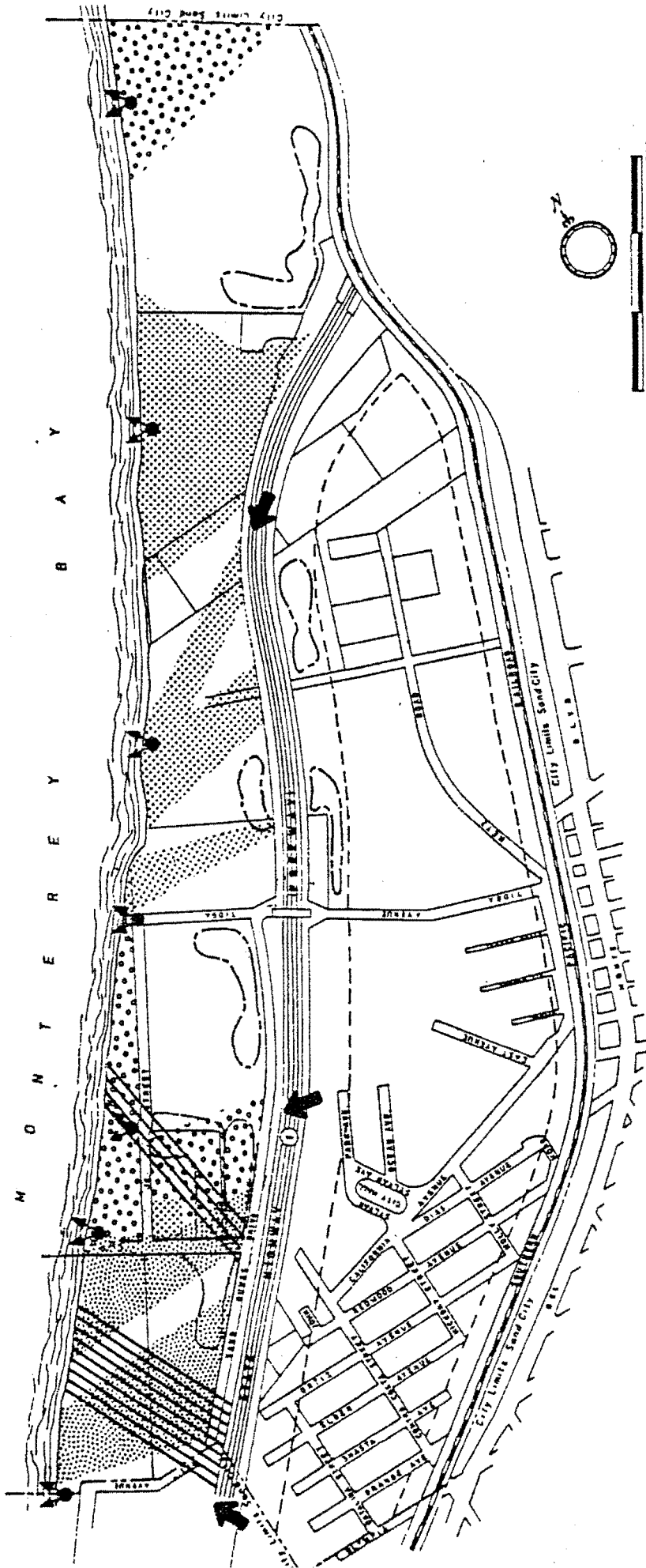
SECTION D - THRU CONDOMINIUM BUILDING

SOURCE: Bestor Engineers, 1997

RELATIONSHIP OF BUILDINGS TO EXISTING & PROPOSED GRADES

FIGURE 6

SAND CITY SHORELINE



VIEW CORRIDORS IV-A/IV-B SOUTH OF BAY AVENUE

VIEW CORRIDORS SV-A/SV-B SOUTH OF BAY AVENUE

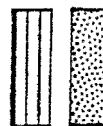
VISTA POINTS

OPEN VIEW CORRIDORS

VIEW CORRIDORS OVER DEVELOPMENT

DUNE PRESERVATION, STABILIZATION
& RESTORATION AREAS

KEY COSTAL OVERVIEWS



Note: For more detail south of Bay Avenue, refer to Figure 12

SAND CITY LCP LAND USE PLAN

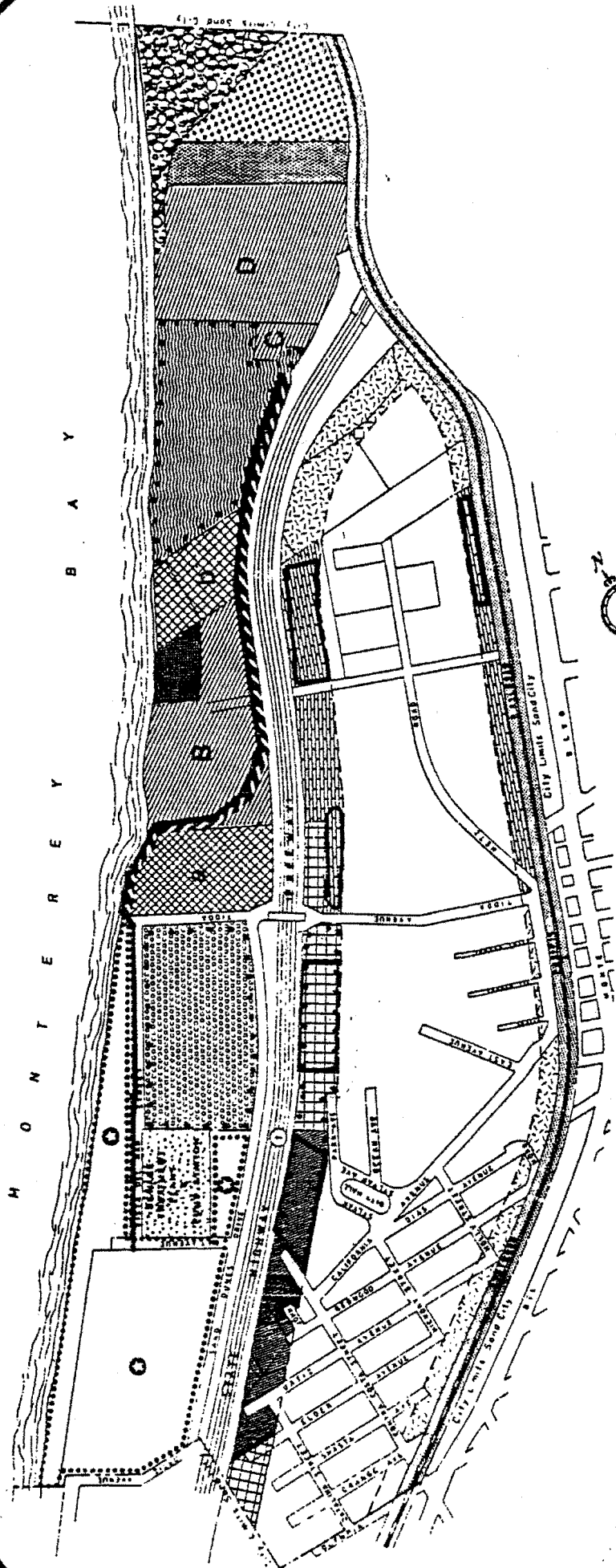
VISUAL RESOURCES

Figure 9

EXHIBIT NO. 8

APPLICATION NO.
A-3-SNL-98-114

Generalized Views from Hwy. 1 and Vistas



LAND USES

- Visitor Serving Commercial
- Coastal Dependent Industrial
- Industrial Manufacturing, Visitor Serving Commercial
- Visitor Serving Residential, Low Density
- Visitor Serving Residential, Medium Density
- Residential, Medium Density
- Residential, High Density
- Light Commercial
- Heavy Commercial
- Industrial Manufacturing
- Industrial Park
- Public Recreation

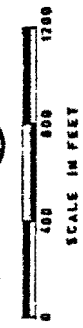
B, C, D, E, b
see density standards

COMBINING DISTRICTS

- Special Treatment Area
- Resource Management
- Special Treatment Area, South of Bay Avenue

CIRCULATION

- Transportation Corridor
- Floating Pier Line
- Bike Path



SAND CITY LCP LAND USE PLAN

LAND USE PLAN MAP

Figure 11

EXHIBIT NO. _____

APPLICATION NO. A-3-SN-98-114

LUP Figure 11

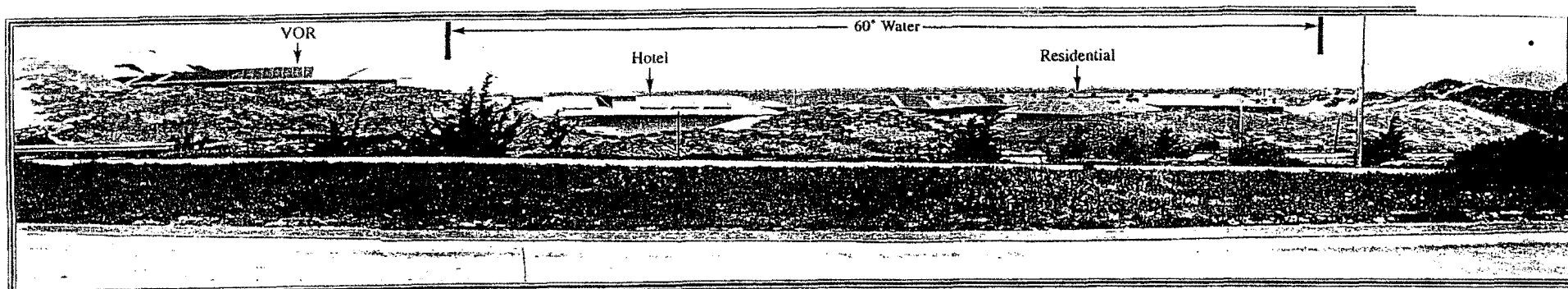
see 12 and 13 for specific questions for these areas.

any and Special Treatment Combining South of Bay Avenue Land Use Area.

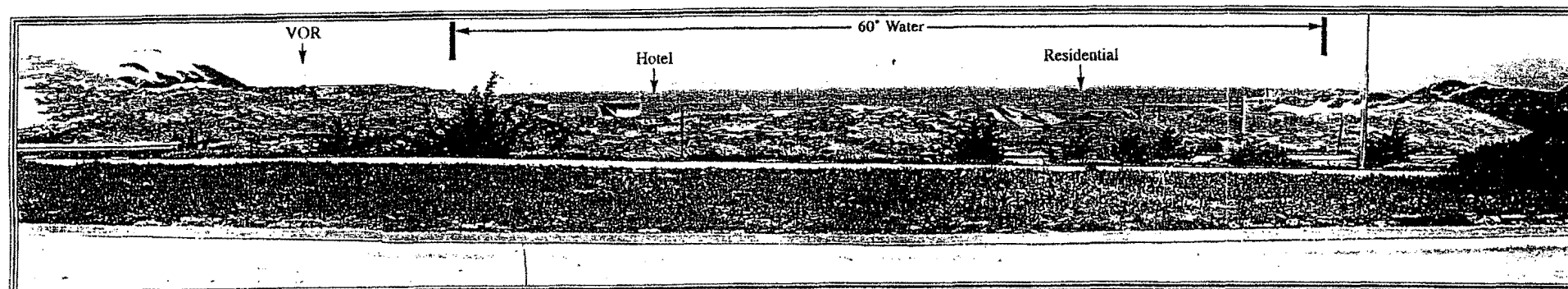
EXHIBIT NO. 10a

APPLICATION NO.
A-3-SALC-98-114

Visual Analysis



WITH PROJECT AS PROPOSED



Subject to Final Design & Siting as Required by Conditions of Approval

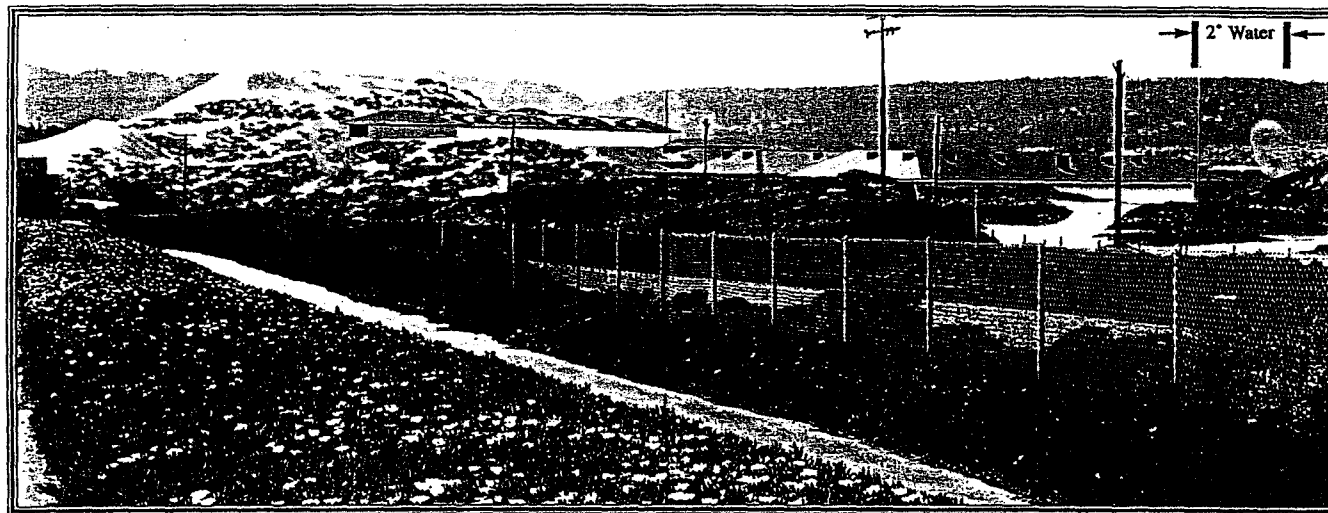
WITH ALTERNATIVE "C" MODIFIED (as approved by Sand City City Council 11-17-98*)

PHOTO POINT 6: Northbound Side Window (90°) View Opposite Site

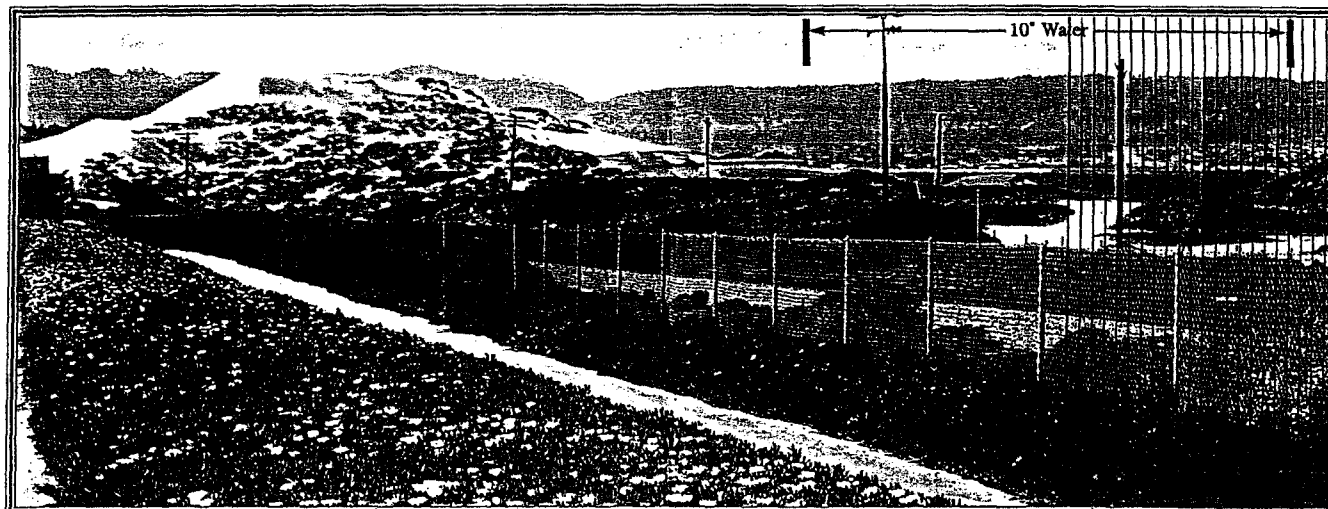
EXHIBIT NO. 106

APPLICATION NO.
A-3-SWC-98-114

Visual Analysis
by [illegible]



WITH PROJECT AS PROPOSED



*Subject to Final Design & Siting as Required by
Conditions of Approval

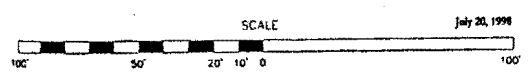
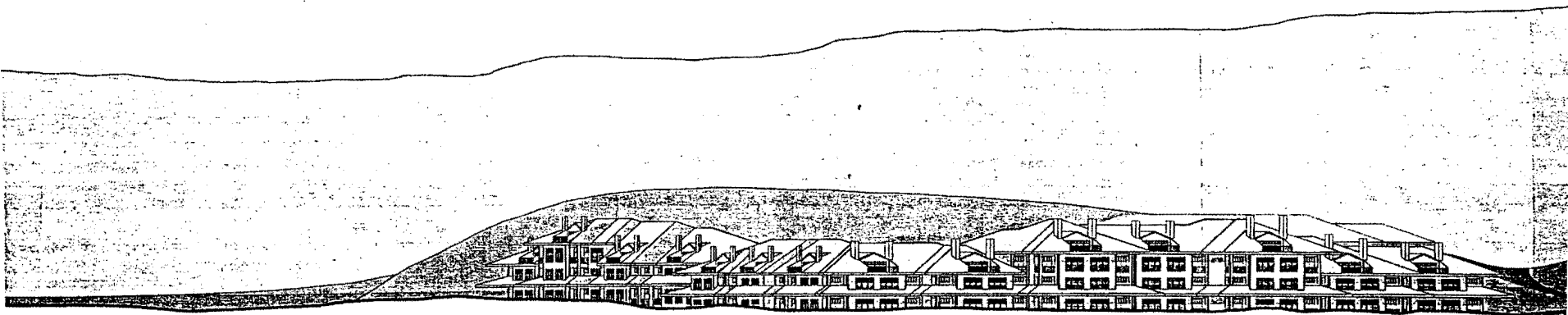
WITH ALTERNATIVE "C" MODIFIED (as approved by Sand City City Council 11-17-98*)



LCP Fig. 9 View
Corridor as viewed
from 1,330' view point

PHOTO POINT 2: Southbound 1,330 Feet North of Property Line

EXHIBIT NO. 11a
APPLICATION NO. A-3-SNC-98-114
View of portion of project from beach

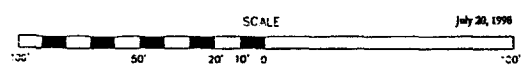
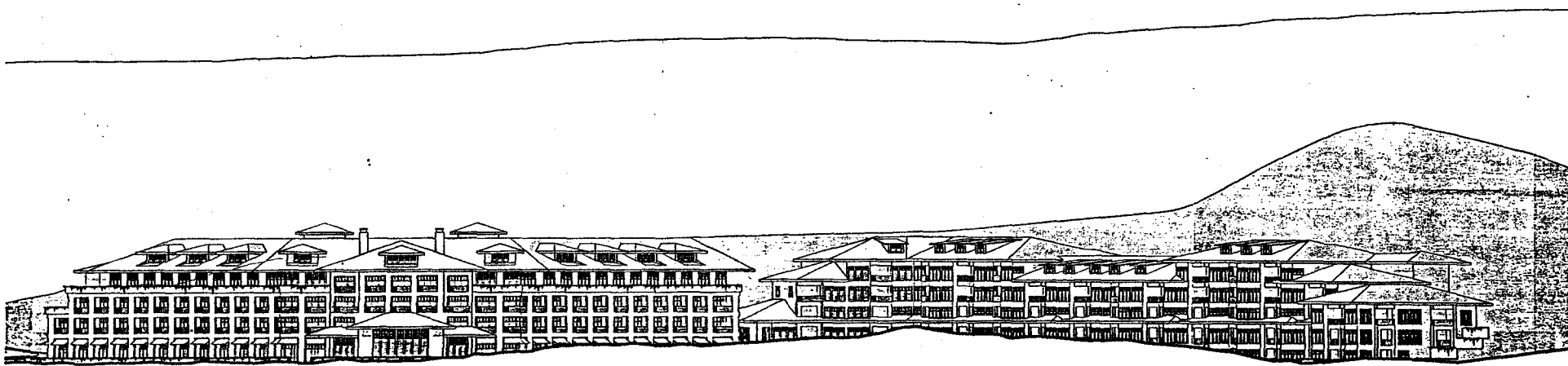


Northern portion of these
buildings must be lowered
by one story per City
Council's approval.

ALTERNATIVE C RESIDENTIAL CONDOMINIUMS - VIEW FROM BEACH PERPENDICULAR TO SHORELINE

FIGURE 46

EXHIBIT NO. 11b
APPLICATION NO. A-3-SNC-98-114
View of portion of project from beach



Hotel building lowered by 10 feet in elevation
 VOR building lowered by one story
 per City Council's approval

ALTERNATIVE C HOTEL AND VOR BUILDINGS - VIEW PERPENDICULAR TO SHORELINE FROM BEACH

FIGURE 45

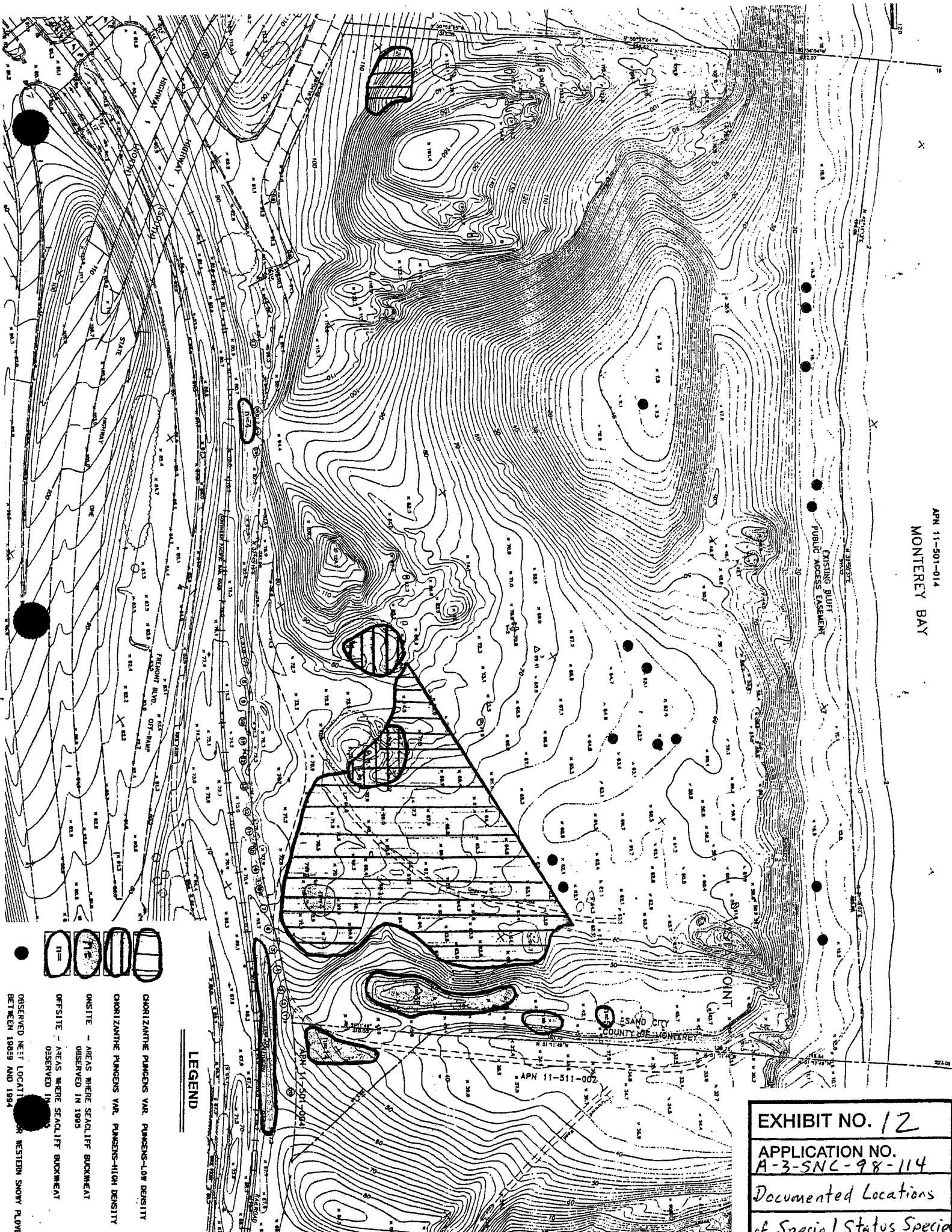







EXHIBIT NO. 12
APPLICATION NO.
A-3-SNC-98-114
Documented Locations
of Special Status Species

LEGEND

-  CHORIZANTHE PUNGENS VAR. PUNGENS-LOW DENSITY
-  CHORIZANTHE PUNGENS VAR. PUNGENS-HIGH DENSITY
-  ONSITE - AREAS WHERE SEALIFF BUCKWEAT OBSERVED IN 1989
-  OFFSITE - AREAS WHERE SEALIFF BUCKWEAT OBSERVED IN 1989
-  OBSERVED NEST LOCATIONS FOR WESTERN SNOWY PLOVER BETWEEN 1989 AND 1994

CALIFORNIA COASTAL COMMISSION

CENTRAL COAST DISTRICT OFFICE
725 FRONT STREET, SUITE 300
SANTA CRUZ, CA 95060
(831) 427-4863



April 16, 1999

David Laredo, Esq.
DeLay and Laredo
606 Forest Ave.
Pacific Grove, Ca. 93950-4221

Subject: **WPWMD Water Distribution Permit Process**

Dear Mr. Laredo,

This letter in reference to a conversation we had last week regarding the Monterey Peninsula Water Management District (WPWMD) requirements for obtaining District permission to distribute water. As I explained to you, we have an appeal before the Coastal Commission of a Sand City project, SNG Development, and one of the principal issues raised is the question of adequate water service for the proposed development. In an effort to learn more about this issue, I have reviewed your District's enabling legislation and regulations as well as having the much appreciated discussion with you. The following paragraphs summarize my understanding of the District's role in water distribution within district boundaries. Please review this summary and let me know if I have characterized the process and standards correctly.

The SNG parcel is located at the northernmost end of the City of Sand City between Hwy. 1 and the sea. The property is within the WPWMD, but is outside the Cal Am Water District, the local public purveyor of water. The applicant has stated that he intends to serve development on his site with water from an on site well. Water service to the various parcels and land uses to be built on the site will be administered by a yet to be formed Mutual Water Company composed of the future owners of the project. It is my understanding that before a Mutual Water Company can be formed, the applicant must obtain a permit to distribute water from the WPWMD. This permit is discretionary and, according to the District's Regulations, requires a hearing and decision by the District Board.

In order to approve a water distribution permit, specific findings must be made according to Rule 22. Rule 22 also outlines minimum standards for the approval of a permit including a Finding that the proposed distribution will not create or increase an overdraft of the basin aquifer or adversely affect the ability of existing systems to provide water to users. The Board must also consider whether the proposed system will cause unnecessary duplication of services, result in the importation or exportation of water from the District and whether there are any significant environmental effects that cannot be mitigated associated with approval of the permit. (Rule 22 (C) When we discussed the permit process, you stated that, ordinarily, a permit could be processed within three to six months of filing a completed application. You also indicated that while local approval of the project for which the water distribution permit was sought was desirable, it was not mandatory and that the WPWMD could process a request without all final land use approvals.

We also discussed the present status of the basin aquifers and you indicated that while the basin was not yet in overdraft, there was little excess capacity to accommodate any additional withdrawals. We also discussed the applicant's position as an "overlying" user as opposed to

EXHIBIT NO. 13, p.1

APPLICATION NO.
A-3-SNC-98-114

Correspondence re.

an appropriative user, such as Cal-Am Water Company. You advised if the WPWMD Board approved a water distribution permit for SNG *and* the effect of the approval caused an overdraft, then the appropriative user, Cal-Am would have to reduce their withdrawals in an amount equal to that approved for the overlying user. In this case, that would mean an approximate reduction of 90 acre feet per year for Cal-Am at present water use projections for the SNG development.

Again, thank you for taking the time to acquaint me with the WPWMD process and I look forward to your response to this summary.

Sincerely,



Diane Landry
Staff Counsel
Central Coast District Office

c.c. Lloyd Lowrey
Tami Grove
Steve Monowitz

A-3-SNC-98-114
Exhibit 13, p. 2

De LAY & LAREDO

Attorneys at Law

606 Forest Avenue

Pacific Grove, California 93950-4221

*Paul R. De Lay
David C. Laredo
Carmela M. Bowns*

*Telephone (831) 646-1502
Facsimile (831) 646-0377*

April 21, 1999

Diane Landry
Staff Counsel
Central Coast District Office
CALIFORNIA COASTAL COMMISSION
725 Front Street, Suite 300
Santa Cruz, CA 95060

RE: MPWMD Water Distribution Permit Process

Dear Ms. Landry:

Your letter of April 16, 1999, summarizing the process and standards followed by the Monterey Peninsula Water Management District in issuing a permit for creation of a water distribution system is accurate.

However, while the District will accept a permit application that does not have final land use approval, the applicant must submit sufficient information to support the findings required by the District Rules. In particular, pump test and water quality information required by the Monterey County Health Department must be provided before an application will be deemed to be complete.

Please let me know if you have further questions.

Sincerely,

De LAY & LAREDO

Carmela M. Bowns
cl

Carmela M. Bowns

CMB:cl

cc: Lloyd Lowrey
Henrietta Stern
Darby Fucrest

A-3-SNC-98-114
Exhibit 13, p. 4

STATE OF CALIFORNIA — BUSINESS, TRANSPORTATION AND HOUSING AGENCY

PETE WILSON, Governor

DEPARTMENT OF TRANSPORTATION

HIGUERA STREET
SAN LUIS OBISPO, CA 93403-8114
TELEPHONE: (805) 548-3111
TDD (805) 548-3259



May 28, 1998

5-Mon-1-80.75
Monterey Bay Shores
DEIR SCH# 97091005

Ms. Marti Noel, Project Planner
Sand City Planning Department
1 Sylvan Park
Sand city, CA 93955

Dear Ms. Noel:

Caltrans District 5 staff has reviewed the Draft Environmental Impact Report (DEIR) for the Monterey Bay Shores Coastal Resort. The following comments were generated as a result of the review:

1. **Page 132** — The assumption that this development can achieve a 15% reduction in vehicle trips is highly questionable. Is there any information regarding similar developments that have achieved this level of trip reduction within Monterey County? Furthermore, without a commitment from Monterey-Salinas Transit, these reductions cannot be assumed.
2. **Page 117** — The existing level of service (LOS) shown for the California Ave./Hwy 1 NB Off-Ramp and the Fremont Blvd./Hwy 1 NB On & SB Off-Ramps conflicts with staff field observations. These intersections are operating at LOS C and F respectively during peak periods with existing traffic volumes. For this reason, Caltrans considers any additional demand to be a significant impact. This proposed development should not be approved until the resulting traffic impacts have been fully mitigated.
3. **Page 118** — In the first paragraph it should be noted that the Edgewater Shopping Center has not yet reached full occupancy.

The second paragraph states that SR 1 from SR 218 to Fremont Boulevard is operating at LOS E during the AM peak hour. Currently, SR 1 southbound backs up regularly from north of Fremont Boulevard in Sand City to south of SR 218. Again, recent observations indicate that information is inaccurate.

4. **Traffic Study** - Traffic analysis should include existing phasing along with lead/lag phasing as well as account for pedestrian timing. Please make the following changes in the technical appendix:
Hwy 1 NB Off-Ramp & Hwy 1 SB On-Ramp - California Ave. - Please change the phase 2 yellow time to 5.3.
Hwy 1 NB Off-Ramp & Hwy 1 Ramps - Fremont Blvd. - Please make the following changes for all alternatives:

phase 7 is Lagging, recalled to maximum during coordination
phase 4 is Lagging, change yellow time to 5
phase 3 is Leading
phase 8 is leading, change yellow time to 5.

EXHIBIT NO. 14, p4
APPLICATION NO. A-3-SNC-98-114
Caltrans Comments
on D-CL-512

Ms. Marti Noel
May 28, 1998
Page 2

Caltrans has great concerns over this or any other development that will generate additional traffic on this section of SR 1 or the Coe Avenue Interchange. Furthermore, until improvements to SR 1 are built, the LOS in this region will continue to decline. One of the objectives of the recently enacted Senate Bill 45 is to transfer transportation decision making responsibility to those who are closest to the problems. Project selection for 75% of State and Federal Highway funding for transportation projects will now be decided at the regional level. Consequently, local agencies should consider their land use approvals in concert with regional transportation decisions. This requires a strong commitment from the Cities to ensure that their perspective with regard to congestion is represented to the Transportation Agency for Monterey County (TAMC). Caltrans urges the City to work together with the TAMC to develop traffic mitigation such as a traffic impact fee program in order to maintain an acceptable regional transportation network. It is for this reason we believe it would be a prudent land use decision to delay making a determination on this project until the proposed Project Study Report for the Route 1 Corridor between the junction of SR 218 and the Fort Ord Main Entrance is completed.

Thank you for your consideration of our comments on this proposed project. We request that the city include Caltrans in the development of the FEIR with respect to our concerns mentioned herein. We would be happy to meet with you to discuss these issues.

Please send us a copy of the Final Environmental Impact report when it is available (Ref: California Environmental Quality Act of 1970, Section 21092.2). If you have any questions, please contact me at (805) 549-3131.

Sincerely,



Charles Larwood
District 5
Intergovernmental Review Coordinator

CDL:cd/

attachments

cc: D Winn, SCH
N. Papadakis, AMBAG
J. Lopez, TAMC
File, S. Chesebro, S. Strait, D Murray, D Heumann, A Delgado, J Ponce, J Gonzalez,

A-3-SNC-98-114
Exhibit 14, p. 2

CALIFORNIA COASTAL COMMISSION

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FAXING IMPAIRED: (415) 904-5200



October 6, 1997

Steve Matarazzo
Community Development Director
City of Sand City
One Sylvan Park
Sand City, CA 93955

RE: *Notice Of Preparation of an Environmental Impact Report for the Proposed
Monterey Bay Shores Project*

Dear Mr. Matarazzo:

Thank you for the opportunity to comment on the above referenced document. As you know, the proposed project requires a Coastal Development Permit from the City of Sand City, which is appealable to the California Coastal Commission. The standard of review for this permit will be the Sand City certified Local Coastal Program (LCP), and the Public Access and Recreation Policies of the Coastal Act (Coastal Act Section 30604). Our comments on the Notice of Preparation are intended to assist the City in identifying the information and analyses that should be a part of the Environmental Impact Report (EIR) for the project in order to adequately address relevant LCP and Coastal Act policies.

In general, the following comments request that the EIR provide the specific environmental information needed to determine project compliance with applicable LCP and Coastal Act policies. Where potential inconsistencies with the standards can be identified, the EIR should suggest project alternatives that would avoid and/or reduce the environmental impacts of the proposed project. To ensure that the full range of alternatives are explored, we request that the EIR contain more than one alternative that contemplates changes to the proposed project's intensity, siting, design, and other variables which would prevent and minimize environmental impacts. The alternative that the site be purchased by a public agency for habitat protection, dune restoration, and public recreation purposes should also be considered by the EIR.

1. Site Reclamation

In many instances, the application of LCP Policies relates to the specific characteristics and constraints of the site on which development is proposed. As a previous mining site, the parcel on which the subject project is proposed is subject to a reclamation plan. The provisions of this reclamation plan, and its affect on site characteristics, should be documented by the EIR. In particular, the EIR should identify reclamation plan requirements, the status of its implementation, and the characteristics of the site that can be anticipated upon completion of site reclamation. The determination of environmental impacts should take these issues into account.

EXHIBIT NO. 15, p. 1

APPLICATION NO.
A-3-SNC-98-114

Commission Staff

2. Sensitive Habitat Protection

A thorough analysis of project impacts to environmentally sensitive habitat areas on and adjacent to the project site must be provided by the EIR. In addition to site specific impacts, this analysis should evaluate potential impacts to sensitive areas adjacent to the project site associated with the significant increase in human presence that will result from project implementation. It would be useful and appropriate for the EIR to suggest a "carrying capacity" which equates to the number of units or people which can be accommodated on the site without adversely impacting sensitive habitats on the site and surrounding areas.

In documenting the impacts of the project on environmentally sensitive habitat areas, the EIR should identify project impacts on disturbed or degraded dune areas that have the potential to be restored, either naturally or as a result of human effort, to productive native dune habitat. This is especially important due to the fact that disturbed dunes are important components to the regional restoration effort necessary to ensure the continued biological productivity of the Monterey Dunes system. To adequately evaluate this issue, the EIR should provide an analysis of the project's impacts upon the entire Monterey Dunes complex. This includes the cumulative impacts associated with other approved and anticipated development in the area, as well as any growth inducement or precedent that may be set regarding appropriate levels of development on the remaining private parcels within this unique and sensitive ecosystem.

Only limited areas of Sand City are mapped by the LCP as environmentally sensitive habitat areas; these represent only the least disturbed habitat areas found at the time of LCP adoption. Whether within the mapped environmentally sensitive habitat areas or not, the EIR should respond to the sensitive habitat protection requirements contained in the LCP. The LCP defines environmentally sensitive habitat areas as "Any area in which plant or animal life or their natural habitats are either rare or especially valuable because of their special nature or role in an ecosystem and which could be easily disturbed or degraded by human activity and developments". Under this definition, and in light of the important habitat values contained in open space dune areas (regardless if they are disturbed or degraded), the entire site should be considered as an "environmentally sensitive habitat".

In order to address the habitat protection requirements of the LCP, the EIR must provide detailed and accurate information regarding the biological resources within and adjacent to the project site. Use of the site and adjacent areas by the Western Snowy Plover, and the identification of areas where native dune vegetation provides habitat for other rare and endangered species, will be critical components of the EIR. In addition to the biological data provided by the biological consultant for the project, the EIR should include the full range of biological information regarding the area available from a wide variety of sources (e.g., previous habitat conservation planning efforts, monitoring data from the Department of Parks and Recreation and Point Reyes Bird Observatory, information available from the National Biological Survey division of the U.S. Fish and Wildlife Service, etc.) to ensure that habitat values are accurately accounted for. The fact that these habitat areas may not be in the same location over time, and may vary in health and extent annually, should be addressed by the EIR.

Finally, the specific measures that will comprise the habitat protection plan required by the LCP, accompanied by an evaluation of their ability to effectively preserve existing and restored

A-3-SNC-98-114
Exhibit 15, p. 2

habitat values within and adjacent to the project site, should be included within the EIR. As required by LCP policy 4.3.20.e, new development must be compatible with the continuance of such areas.

From the project information provided to date, the Commission staff is particularly concerned about the project's conformance with LCP policies protecting sensitive habitat areas due to its sheer intensity; the development of 597 units in an area of the coast which is currently subject to very low use by the public would appear to have a significant adverse impact on biological resources of the area that will be very difficult, if not impossible, to mitigate. In addition, we are concerned that the proposed removal of 880,000 cubic yards of sand from the site may significantly reduce the existing and potential habitat values of the site, and is potentially inconsistent with LCP Policy 4.3.21 which restricts land disturbance to the minimum necessary for structural improvements. As a result, the determination of an appropriate "carrying capacity", and an analysis of habitat impacts associated with sand removal, will be important features of the EIR. The EIR should also identify a project alternative which limits the project intensity and amount of sand removal to that which will have an insignificant affect on sensitive habitat areas within the project vicinity.

3. Dune Restoration Requirements

The Sand City LCP delineates a dune stabilization/restoration area on the project site. The EIR should therefore analyze project conformance with LCP requirements for such areas. The current proposal to construct roadways through this area appears to conflict with LCP requirements which prohibit grading in dune stabilization/restoration areas except in conjunction with an approved habitat restoration activity (LCP Policy 4.3.24). In order to address this issue, it may be necessary to either: submit an LCP amendment for Commission certification which resolves this issue; or, eliminate all development (other than restoration activities) from within the dune stabilization/restoration area.

4. Visual Resources

The EIR should address the visual resource protection requirements contained in the LCP, from the general requirement that new development be regulated to enhance and protect views of Sand City's coastal zone (LCP Policy 5.3.1), to the specific requirements regarding the designated view corridor on the site and height limitations. In order to adequately address these issues, the EIR should provide a wide range of visual analysis and photo documentation, including views from various points along Highway One, the beach, Monterey Bay, and any where else that the development may be visible to the general public. The Commission staff are available to provide suggestions regarding the specific locations and methodologies for such an analysis.

Again, the Commission staff is concerned that the intensity of the proposed development raises significant issues regarding conformance with the policies of the Sand City LCP protecting visual resources. In particular, we question the proposed project's consistency with the specific height limits established by the LCP, which allow for a maximum height of 45 feet above existing grade for the proposed hotel use on this site, and 36 feet from existing grade for all other proposed structures (LCP Policy 6.4.5); the current proposal includes the removal of extensive quantities of sand from in front of the buildings to achieve heights of up to about 100

A-3-SNC-98-114
Exhibit 15, p. 3

feet. In addition to potential inconsistencies with height regulations, this raises the issue of whether or not the project conforms with the LCP's direction that new development be "compatible to its surroundings" and the LCP requirement that "All buildings should be designed and scaled to the community character as established by new development" (LCP Policy 5.3.4.a.). Other potential inconsistencies with LCP Visual Resource policies include the proposal to install a stormwater percolation basin within the designated view corridor, which is required to remain free of new structures pursuant to LCP Policy 5.3.3.

In order to address these issues, we recommend that the EIR include a project alternative which reduces project height (without increasing the project's footprint) in order to minimize visual impacts and comply with the 45 foot height limit established by the LCP. We also recommend that an alternative location for the proposed stormwater percolation basin, outside of the designated view corridor and public recreation area be pursued.

5. Shoreline Setback

The EIR should evaluate whether or not the project has been appropriately sited to avoid natural hazards. This should include an evaluation of the project's conformance with applicable LCP Policies (4.3.8 through 4.3.18). While the LCP requires that "setbacks be based at least on a 50-year economic life for the project" (LCP Policy 4.3.9.b.; emphasis added), the Commission staff believe that a 100 year economic life is more appropriate in the case of such a large scale development proposal.

6. Public Access and Recreation

In addition to evaluating project conformance with LCP requirements for public access and recreation, the EIR should analyze the project consistency with the public access and recreation policies contained in Chapter 3 of the Coastal Act. One of the primary considerations should be providing public access in a manner that will be consistent with the continuance of the biological values associated with the site. It is therefore recommended that the EIR identify the specific management provisions that will be implemented in order to ensure that project guests, residents, and the visiting public do not reduce the biological productivity of the area; this information should be compiled within an "access management plan" for the project.

The EIR should also consider the project's relationship to public access and recreation facilities planned for the areas adjacent to the project site, such as the Sand City bike path and the hiking trails planned at the former Fort Ord. The provision of on-site public access and recreation facilities which complement these plans (such as a continuous lateral coastal access trail along the bluff top, and a bicycle path connecting the Sand City and Fort Ord/State Park bike paths) will enhance project compliance with these standards. As previously noted, the provision of public access and recreation facilities must be accompanied by a management measures that will ensure that such access occurs consistent with the continuance of sensitive habitat areas within the project area.

One potential inconsistency with public access and recreation standards apparent in the Notice of Preparation is the proposal to locate a stormwater percolation basin in the public recreation area designated for the site; this does not appear to be an allowed use in such areas according to the LCP. Another public access and recreation issue is the provision of adequate public

A-3-SNC-98-114
Exhibit 15, p. 4

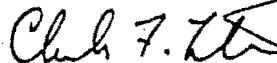
Sand City Community Development Director
Mr. Steve Matarazzo
Page 5

parking. The LCP requires 10% above the total parking required for the project to be dedicated for public use (LCP Policies 2.2.11 and 3.3.8), while project information we have reviewed to date indicates only 12 public access parking spaces out of a required 1,102 spaces.

In summary, the Commission staff requests that the EIR for the Monterey Bay Shores project contain the specific environmental information that will be necessary to determine project consistency with applicable LCP and Coastal Act standards. In particular, the EIR should provide detailed information regarding direct, secondary, and cumulative project impacts on the existing and restorable environmentally sensitive habitats of the Monterey Bay Dunes system. Of equal importance is detailed information regarding the visual impacts of the project, as well as its conformance with setback standards, dune restoration requirements, and public access and recreation provisions specified by the LCP and Coastal Act. The EIR should attempt to resolve any potential inconsistencies with these standards by establishing project alternatives which avoid significant adverse environmental impacts and strictly conform with LCP and Coastal Act requirements.

Thank you for the opportunity to comment, and for your continued coordination with the Commission staff. If you have any questions, or wish to discuss this project further, please contact me, or staff analyst Steve Monowitz.

Sincerely,



Charles Lester
District Manager

cc: Ed Ghandour, SNG Development Company
Mary Wright, Department of Parks and Recreation
Gary Tate, Monterey Peninsula Regional Park District
Katherine McCalvin, U.S. Fish and Wildlife Service
Bruce Elliot, Department of Fish and Game
Michael Houlemard, Fort Ord Reuse Authority

A-3-SNC-98-114
Exhibit 15, p. 5

CALIFORNIA COASTAL COMMISSION

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SANTA CRUZ, CA 95060
(408) 427-4863
HEARING IMPAIRED: (415) 904-5200



November 24, 1997

Mr. Ed Ghandour
SNG Development Company
50 Santa Rosa Ave., Suite 503
Santa Rosa, CA 95404

RE: *Proposed Monterey Shores Project - Follow Up to Our Meeting of 11/14/97*

Dear Mr. Ghandour:

Thank you for meeting with Coastal Commission and Sand City staff on Friday November 14, 1997, to discuss the proposed Monterey Shores project. We appreciate your efforts to facilitate early review of the project by Commission staff, so that coastal issues can be identified, and hopefully addressed during project development and local review. Towards this end, this letter is intended to follow up on the outstanding issues discussed at our meeting. In addition, we are providing additional feedback based upon our further consideration of the visual analysis provided at the meeting.

As you know, one of our primary concerns relates to the visual impact of the proposed development, and conformance with applicable LCP policies protecting scenic resources (e.g., policies 5.3.1, and 5.3.4.a.). Our review of the visual analysis provided at the November 14th meeting has heightened this concern, due to the project's visual prominence from the beach and Highway One, its blockage of ocean views, and its overall affect on scenic values of the Monterey Dunes. For example, our review of the submitted visual analysis indicates that the project would intrude upon the southbound view corridor specifically protected by the LCP.

In addition, we reiterate that the Sand City LCP requires that the project be scaled and designed in a manner that protects the visual resources of the Sand City coastal zone, and that is compatible with its surroundings and the community character. In referring to "new development" as establishing community character, the LCP calls for the project to be compatible with new or recently approved development in the Sand City coastal zone. For this reason, the height and scale of the Sterling project, as approved by the Commission in June 1994, can be used for comparison purposes; the Commission conditioned the Sterling project so that it would not be visible from Highway One or exceed the elevation of Tioga Avenue at any point. With respect to project compatibility with its surroundings, it would also be appropriate to compare the project's design and scale with other existing and approved development within areas of the Monterey Dunes complex, such as the Marina Dunes Resort, as approved by the Commission in December, 1996. We strongly encourage you to explore alternative, smaller scale designs, that address these LCP requirements.

Other coastal issues discussed at the November 14 meeting and/or included within our comments on the Notice of Preparation of an Environmental Impact Report that remain to be resolved include:

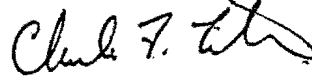
A-3-SNC-98-114
Exhibit 15, p. 6

Mr. Ed Ghandour
SNG Development Company
Page 2

- project inconsistencies with the dune preservation, restoration, and stabilization area designated on the site (i.e., the proposed installation of roadways in this area);
- the ability of the site and surrounding area to sustain the level of use proposed by the project without adversely impacting environmentally sensitive habitat areas;
- the need to minimize the amount of land disturbance to that necessary for structural improvements;
- the appropriateness of locating the proposed stormwater detention basin within the limited portion of the site designated for public access and recreation; and
- the ability of the public to travel laterally across the site when lateral beach access may not be feasible due to seasonal closures, high tides, and storm events.

The above issues have been identified by the Commission staff based upon the materials we have been provided to date; additional issues may arise during subsequent review of the upcoming environmental documentation. Because they may raise a "substantial issue" regarding project conformance with the Sand City LCP and Coastal Act access and recreation policies, we strongly recommend that they be specifically addressed prior to City consideration of a coastal development permit for the project. We would be happy to further discuss ways to resolve these issues with you and City staff. In the mean time, if you have any questions, please contact me, or staff analyst Steve Monowitz.

Sincerely,



Charles Lester
District Manager
Central Coast Area Office

cc: Steve Matarazzo, Sand City Community Development Director

A-3-SNC-98-114
Exhibit 15, p. 7

CALIFORNIA COASTAL COMMISSION

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May 22, 1998

Mr. Steve Matarazzo
Community Development Director
City of Sand City
One Sylvan park
Sand City, CA 93955

RE: *Draft Environmental Impact Report for the Monterey Bay Shores Resort Project*

Dear Mr. Matarazzo:

Thank you for providing the Commission staff with a copy of the Draft Environmental Impact Report (DEIR) for the proposed Monterey Bay Shores project, and for the opportunity to comment. We appreciate your on-going efforts to coordinate the review of the coastal issues raised by this project with the Commission staff.

In light of these efforts, and our numerous discussion and correspondence preceding the DEIR, we are concerned that the DEIR did not address the environmental issues identified in our comments on the Notice of Preparation (e.g., site reclamation requirements, detailed analysis of the number of units or people that can be supported on the site without adversely impacting sensitive habitats). We are also concerned that there is no resolution of other aspects of the project which have been previously identified by Commission staff as being potentially inconsistent with the Sand City certified Local Coastal Program (LCP) (e.g., access roads in dune restoration area, drainage basin in public recreation area). These issues, as well as others, are detailed below, and should receive further attention as part of the project's environmental review.

In general, the following comments reflect our significant concerns regarding the excessive size of the proposed project, its associated impacts on coastal resources, and its questionable conformance with various LCP standards and the public access and recreation policies of the Coastal Act. We strongly recommend that these issues be fully addressed either in a revised DEIR, or in the final EIR, and appropriately factored into the City's coastal development review for this project. Absent such supplemental analyses, the Commission staff have serious reservations about our ability to recommend that the Commission approve this project (in its present form) if it is appealed to the Commission.

I. Public Access and Recreation

The State Lands Commission should be consulted regarding portions of the project area which may be subject to the public trust. Our understanding is that all areas below the mean high tide line (which is ambulatory rather than fixed) are within the public domain. The DEIR should identify all public trust lands and incorporate this information into the figures and text.

A-3-SNC-98-114
Exhibit 15, p. 8

Mr. Steve Matarazzo
Sand City Community Development Director
Page 2

It is unclear what portions of the site will be available for use by the general public, and what portions are restricted for use by project guests and residents only. The site plan and other applicable figures should clearly designate public use areas, and the terms of such access should be specified by the text.

Consistency with Coastal Act access and recreation policies, as well as with policies of the Sand City LCP, is dependent upon ensuring that vertical access to, and lateral access along the shoreline will be assured in perpetuity. We are concerned that erosion of the site will jeopardize such access, especially lateral access along the shoreline (both on the beach and on the blufftop). This issue should be analyzed by the DEIR, and provisions to ensure that vertical and lateral coastal access will be available to the public throughout the life of the project should be identified and required.

The DEIR should analyze project consistency with LCP Policy 4.3.10(b), which calls for the portion of the site between the Mean High Tide line and the building envelope to be utilized as a public amenity/active recreation zone. The proposed use of this area for private recreation appears to conflict with the LCP designation, and may jeopardize lateral public access after a few years of erosion/sea level rise.

An analysis of the project's consistency with the 7.44 acre Public Recreation land use designation on the site should be provided by the DEIR. The proposed percolation basin does not appear to be consistent with this LCP designation. Similarly, any measures that may be required to mitigate the project's impacts on sensitive habitat areas should not result in the reduction of this public use area.

The DEIR is unclear about how the project relates to the regional bike path. It appears that the project is proposing a Class 2 bike path to the hotel entrance, that would then become a Class 3 bike lane (i.e., one that forces bikes onto the roadway and has no improvements other than signs and a designation on a map). This transition in classes lane not only raises safety concerns, but conflicts with LCP Policy 2.3.14 calling for a bike path, and would significantly detract from the effort and investment that has gone into establishing this important regional bike route.

The DEIR does not identify how LCP requirements for public parking will be met. The LCP requires that public parking be provided in an amount 10% above the total parking spaces required. The DEIR states that 1,158 spaces are required for this project; therefore, it would appear that 116 parking spaces should be provided. However, only 12 public access parking spaces are delineated by the project plans included in the DEIR. The DEIR should resolve this in a manner which ensures that the project provides adequate public parking that truly facilitates coastal access and recreation.

II. Environmentally Sensitive Habitat Areas

In general, large scale, high occupancy projects pose the likelihood of extensive trampling of dune vegetation, both on-site and in nearby parts of the Monterey Bay dune system. Damage to dune vegetation destabilizes dune landforms, and under the influence of the prevailing northwesterly winds, substantial impacts can be expected.

A-3-SNC-98-114
Exhibit 15, p. 9

Mr. Steve Matarazzo
Sand City Community Development Director
Page 3

Therefore, in order to ensure that the proposed project will not have adverse impacts on environmentally sensitive habitat areas, both on-site habitat and to adjoining portions of the dune ecosystem, the DEIR should thoroughly analyze the constraints under which the project must be designed, constructed, and operated. To accomplish this, the DEIR should include a detailed analysis of what level of use, combined with the habitat management provisions provided by the project, can be sustained by the system without adverse impacts to sensitive habitat areas. This analysis should include specific data and information regarding other dune preservation efforts in the region, and an evaluation of the relative success of these efforts, for each particular type of sensitive dune habitat that may be affected by the project, as compared to the levels of use in these example preservation areas.

LCP Policies which support the need for such an analysis include:

- LCP Policy 2.3.9., which states in part:

New improved accessways shall not be made available for public use until public or private agencies responsible for managing the accessway have addressed the following management concerns:

...e) identification of the number of users that can be supported.

- LCP Policy 3.3.1, which provides:

Visitor-serving and public recreational uses are given priority west of State Highway One, as designated on the Land Use Plan Map in Section 6.0. Development of these uses shall be consistent with the protection of natural and visual resources.

- LCP Policy 3.3.9, which states in part:

Ensure provision of adequate public beach recreational areas for public use commensurate with future population growth and development, and compatible with existing development....

- LCP Policy 4.3.20, which states in part:

Environmentally sensitive habitat areas shall be protected as follows:

...e) New uses proposed adjacent to locations of known environmentally sensitive habitats shall be sited and designed to prevent impacts which would significantly degrade such areas, and shall be compatible with the continuance of such habitat areas.

- The text of the certified Land Use Plan, on page 80 states:

The densities presented in the Plan are allowed for gross acreages. However, implementation of other policies within the Plan could serve to prevent future development from building to the maximum density allowed. Specifically, these policies relate to the investigation of natural hazards and environmentally sensitive

A-3-SNC-98-114
Exhibit 15, p. 10

habitats, provision of view corridors, landscaping, buffers and parking, and height restrictions. The extent of these constraints will vary, depending upon the site and the type of development proposal. But, they must be considered in every development proposal, and, as a result, maximum densities may not be attained.

- As amended by LCP Amendment No. 2-97, Policy 6.4.1 states in part:

The described densities, both above and below, represent a maximum. As required by applicable policies of the LCP, permitted development densities shall be limited to those which adequately address constraints including, but not limited to: public access and recreation needs (including adequate public access and recreation facilities inland of the 50-year erosion setback line); natural hazards; dune habitats and their appropriate buffers; and natural hazards and views to the Bay.

The LCP also designates the southeastern portion of the site as a dune restoration and enhancement area, and prohibits grading, other than for restoration purposes, in such areas. The proposed access roads appear to be located in this area, inconsistent with LCP standards. The DEIR should overlay the dune restoration/enhancement area on the site plan and identify how this issue will be resolved.

The DEIR should describe the reclamation requirements for the site, and the status of compliance with these requirements, especially as this issue relates to the project's environmental setting. Specific information regarding the reclamation plan, the associated coastal development permit approved by the City, and the status of compliance with the plan's provisions and the permit's conditions should be detailed by the environmental review. These requirements, especially as they relate to site conditions and contours, should be incorporated into the discussion of the baseline environmental setting for the project.

The DEIR suggests that the large majority of the site, including those portions currently supporting special status plants and animals, will be disrupted by the project. It does not, but should, resolve the apparent inconsistency of this proposal with LUP Policy 4.3.21, which requires that the disruption of environmentally sensitive habitat areas be limited to the minimum necessary for structural improvements.

The DEIR states that most impacts to environmentally sensitive habitat areas will be temporary and insignificant. These conclusions are not supported with adequate data or analyses. To resolve this issue, the DEIR should identify the total amount of potential and existing habitat on the site for each particular special status species that will be impacted by the project, and compare that to the amount of each habitat type that will be provided by the proposed restoration. The DEIR should then analyze the adequacy of this restoration in light of: the potential for restoration efforts to fail; the feasibility of restoring natural conditions (e.g., Snowy Plover nesting sites) after significant alteration to the site; and, the decreased value of restored habitat associated with the dramatic increase in human presence. An analysis of the proposed restoration's effectiveness is required by LUP Policy 4.3.22(b). Specific recommendations regarding this analysis are identified in the first paragraph of this section.

The DEIR states that an environmental steward will prevent the increase in human presence from having significant adverse impacts on sensitive habitat areas, but lacks the necessary

A-3-SNC-98-114
Exhibit 15, p. 11

analyses or data to support this conclusion. What are the specific restrictions that the steward would and could implement, especially with respect to the specific habitat impacts posed by increased human presence? What legal enforcement capabilities will the steward possess? How can one steward adequately protect sensitive habitat areas that are distributed over more than 30 acres on a continuous basis? What are the potential impacts to habitat values associated with increased human presence that could not be controlled by the steward (e.g., noise, lights, domestic animals)? How will they be addressed?

Similarly, the DEIR suggests that the impacts to adjacent park and habitat areas posed by the large numbers of people that will be brought to the area by the project could be mitigated by contributing to park management needs. These proposals overlook the fact that it may not be possible to effectively manage the intensity of use generated by this project without adverse impacts to sensitive habitats. Again, a detailed analysis of the proposed mitigation measures' effectiveness is necessary to determine the proposed project's compatibility with the sensitive habitat values of the surrounding dune environment.

The DEIR identifies revisions to the California Avenue/Highway One intersection as a mitigation for transportation impacts, but does not evaluate the environmental impacts of this aspect of the project. Any such impacts and mitigation measures needed to reduce them to an insignificant level should be identified by the DEIR.

Impacts to sensitive habitats posed by the removal of 880,000 cubic yards of sand, and the associated alteration of existing landforms, is not adequately addressed by the DEIR. How will this affect future nesting by the Snowy Plover, both on site and where the sand may be deposited, when the nesting habits of this species may be related to specific physical features of a certain location? What plant seed resources may be impacted by this proposal, and how may this affect the natural regeneration of rare native dune plants on the site as well as the overall genetic strength and survival of these plants? How might the proposed sand removal affect long-term sand supply to the region's beaches if this sand is not used for beach replenishment?

III. Visual Resources

LCP height limits are based upon existing elevations. The DEIR, however, suggests basing project heights, in certain areas of the site, on a "mean pit level". How will this inconsistency with the certified LCP be resolved?

As previously identified, LUP Policy 4.3.21 limits alterations of land forms to the minimum amount necessary for structural improvements. How does the significant landform alterations proposed by the project conform with this requirement?

The DEIR should document the full extent of the visual impacts of the proposed landform alterations (e.g., how will the proposed reduction in bluff height affect the visibility of the project from public beach areas? What views will be disrupted by the proposed dune creation and to what extent?).

The visual analysis contained in the DEIR does not, but should, analyze the visual impacts of the project from the public beach and from the proposed public vista point, looking inland.

A-3-SNC-98-114
Exhibit 15, p.12

Mr. Steve Matarazzo
Sand City Community Development Director
Page 6

The view corridors designated by the LCP, such as the southbound "open view" corridor, is not clearly identified by the DEIR. The DEIR should correlate the photographs with the view corridors protected by the LCP, and include a more detailed analysis of the project's conformance with the specific LCP requirements for each view.

While the computer imagery contained in the DEIR is helpful, we anticipate that the reliability of this method may be questioned. We therefore recommend that the visual analysis be supplemented with data references, such as photographs of story poles, that can be field checked for accuracy.

Details of the proposed measures to mitigate impacts of lighting (i.e., limits on candle power, seasonal restrictions), both on views and habitat, should be specified by the DEIR and analyzed for effectiveness.

While we agree with the Community Development Director's opinion that the design of the project is inconsistent with LCP Policy 5.3.4 (p. 109 of the DEIR), we do not agree that the proposed design revisions reflected in the preferred Alternative C adequately address this inconsistency. The DEIR should contain a detailed visual analysis of the project alternative recommended by the Community Development Director, including an analysis of this alternative with respect to applicable LCP policies.

The DEIR should explain how the project's scale and design are compatible with the surroundings, and consistent with the community character (LUP Policy 5.3.4.a.). More consideration of the open space character of the dune environment surrounding the proposed project should be incorporated into this analysis. Other limitations on the height, design, and density of new development within the Monterey Dune system established by the Coastal Commission in previous actions (e.g., the Marina Dunes Resort appeal) should also be referenced and factored into this analysis.

IV. Hazards

Contrary to LCP policies requiring a geotechnical report for all new development, the DEIR primarily relies on previous geotechnical reports that are over 10 years old, some of which are not specific to the project site. These outdated reports also fail to consider current insights regarding the role of shoreline erosion on the dunes as a factor in beach replenishment and local sand supply. Given the unique elements of the project, particularly the significant alterations to landforms including the coastal bluff, a new and complete geotechnical study is necessary and should be incorporated into the environmental review.

The DEIR should clarify whether the proposed setback is based upon existing site contours or proposed contours.

The technical appendices incorrectly state that the Moffat and Nichol methodology has been adopted as part of the Sand City LCP. While this methodology may be an appropriate way to ascertain the project's consistency with LCP standards regarding natural hazards, it is important to acknowledge that the specific requirements of the adopted policies is the standard of review. The DEIR should contain a detailed analysis of the projects conformance with these policies, supported by up-to-date geotechnical information.

A-3-SNC-98-114
Exhibit 15, p. 13

Mr. Steve Matarazzo
Sand City Community Development Director
Page 7

As previously noted, the impact of erosion on public access and recreation opportunities should be addressed by the DEIR.

V. Water

The DEIR does not contain sufficient information to establish the adequacy of the proposed water source. Current pump tests documenting the quality and safe yield of the well(s) should be incorporated into the DEIR. Other regulatory requirements for the proposed operation of the well(s) should also be identified and analyzed by the DEIR, and preferably resolved prior to the close of the environmental review.

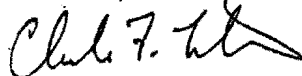
If the formation of a water company is a part of the proposed project, the DEIR needs to describe this proposal in complete detail. This should include a discussion of its relationship to other publicly managed water systems in the area, and a thorough analysis of its environmental impacts. It should be noted that the development of a private water purveyor in the California coastal zone may be problematic depending upon the outcome of this analysis.

VI. Alternatives

The DEIR should identify an alternative that is based upon an intensity of development which can be sustained by the site and surrounding dune environment without adverse impacts to environmentally sensitive habitats. A detailed analysis of habitat mitigation needs and effectiveness, including specific data and information from other dune preservation efforts in the region, should be applied to the determination of appropriate intensity. Commission staff believe that further analysis of this issue will also provide guidance in developing an alternative that appropriately responds to the other Coastal Act and LCP issues identified in this letter.

The Commission staff strongly recommend that the significant environmental and coastal issues identified above be fully addressed either in a revised DEIR or in the final EIR. Again, thank you for the opportunity to comment. If you have any questions, please contact staff analyst Steve Monowitz at (408) 427-4863.

Sincerely,



Charles Lester
District Manager
Central Coast Area Office

cc: Barbara Dougal, State Lands Commission
Katherine McCalvin, U.S. Fish and Wildlife Service
Bruce Elliot, Department of Fish and Game
Mary Wright, Department of Parks and Recreation
Gary Tate, Monterey Peninsula Regional Parks and Recreation District
Monterey Peninsula Water Management District

A-3-SNC-98-114
Exhibit 15, p. 14

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November 10, 1998

Steve Matarazzo
Community Development Director
One Sylvan Park
Sand City, CA 93955

Subject: ***Sand City Council Review of Monterey Bay Shores Coastal Development Permit Application***

Dear Mr. Matarazzo:

Thank you for your continued efforts to coordinate the City's review of the proposed Monterey Bay Shores project with the Commission staff. We understand that the Sand City Council will be considering the Coastal Development Permit application for this project tonight. As a result, we want to reiterate that we have significant outstanding concerns regarding the project's consistency with the Sand City certified Local Coastal Program (LCP). These include, but are not limited to:

Inconsistencies with LCP Policies Protecting Environmentally Sensitive Habitat Areas.

Among the many habitat issues that we have discussed, we are extremely concerned about City staff's recommendation to approve the coastal permit for this project prior to completing the Endangered Species Act consultations and Habitat Conservation Plan required for this project. These are essential ingredients to determining the project's consistency with LCP Policies protecting sensitive habitat areas both on and adjacent to the project site, and therefore should be completed prior to City Council action on the Coastal Development Permit. We also reiterate that the proposed location of the project entrance, which is in a dune restoration area designated by the LCP, requires an amendment to the LCP.

Inconsistencies with LCP Policies Protecting Scenic Coastal Resources. The scale of the proposed project greatly exceeds that of any other development within the Monterey Bay State Seashore dune system, and, as a result, is inconsistent with the scale and character of the surrounding community. The visibility of this project from the adjacent public beach will have a significant adverse impact on the scenic resources of the coastline. In addition, the project appears to intrude upon a view corridor specifically protected by the LCP.

Inconsistencies with LCP Policies Regarding Shoreline Hazards. In light of the significant amount of landform alteration and sand removal proposed by the project, it is absolutely necessary to address shoreline hazard issues through an up-to-date, site specific geotechnical assessment, prior to City Council action on the coastal permit.

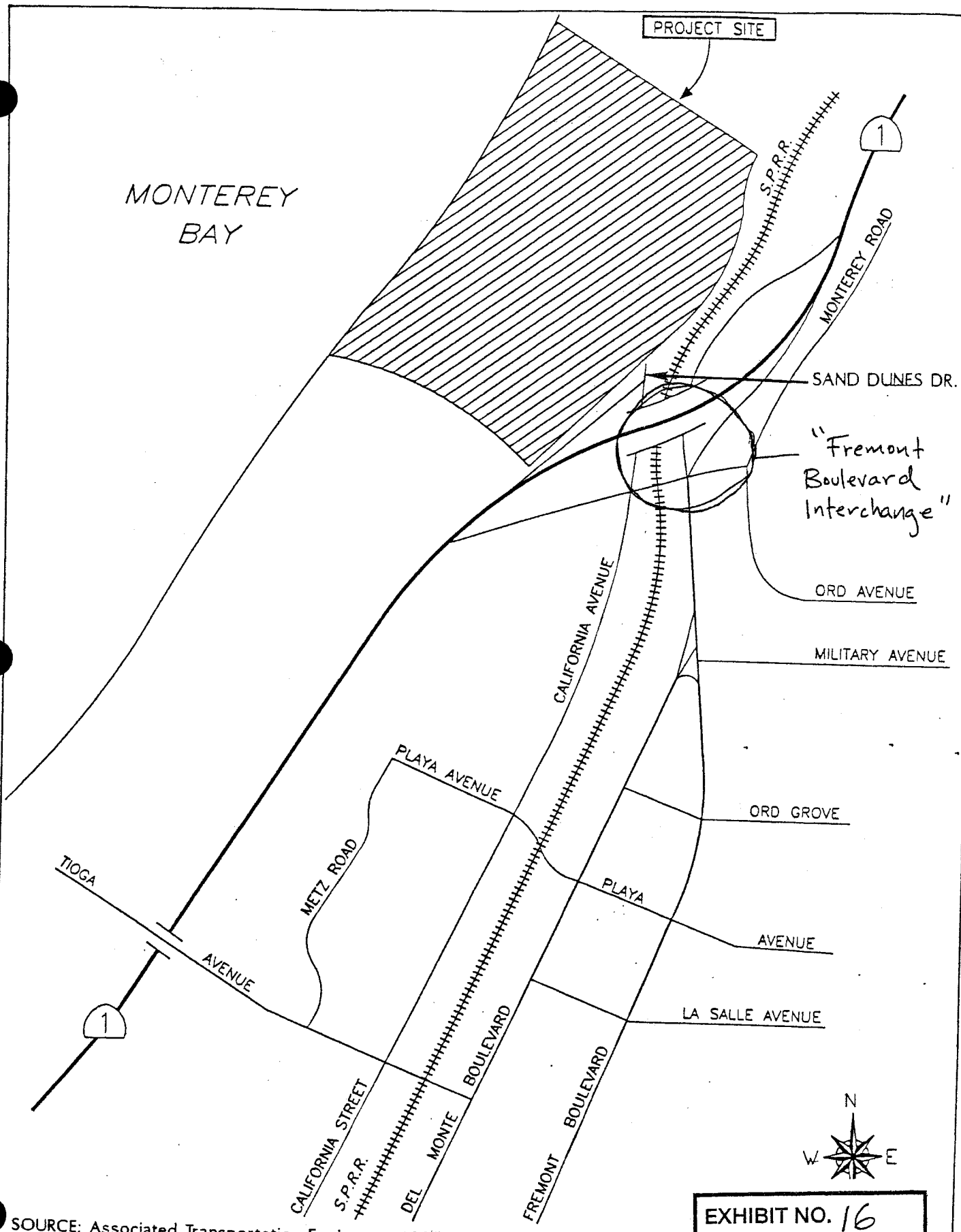
As you know, the above points represent a brief summary of the most significant issues which we believe must be addressed prior to taking action on the Coastal Development Permit application for this project. We trust that you will inform the City Council of our concerns.

Sincerely,

For Charles Lester
District Manager
Central Coast District Office

A-3-SNC-98-114
Exhibit 15, p. 15





SOURCE: Associated Transportation Engineers, 1997

EXISTING ROADWAY NETWORK

EXHIBIT NO. 16
APPLICATION NO. A-3-SNC-98-114
Existing local roadway network

