

CALIFORNIA COASTAL COMMISSION

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

W8a

Permit Expiration: 3/17/99
Extension Request Filed: 2/24/99
Staff: S. Monowitz
Staff report: 8/25/99
Hearing date: 9/15/99

STAFF REPORT: PERMIT EXTENSION REQUEST

Application number: A-3-SNC- 94-008-E2

Applicant: Bell Trust Agent: Michael Van Zandt

Project location: 500 Tioga Avenue, west of Highway One, Sand City, Monterey County (APN 011-012-05)

Project description: Commercial health resort/hotel with 136 guest rooms, 135 seat restaurant and lounge, 4000 square feet of conference and retail space, and 234 car subterranean parking garage. The project also includes the extension of Sand Dunes Drive, public access improvements, restoration of an on-site sand dune, and site grading.

File documents: Sand City certified Local Coastal Program; Coastal Development Permit A-3-SNC-94-08; Coastal Development Permit Extension A-3-SNC-94-08-E1; Final EIR for the Sterling Project (City of Sand City, July 1993); Staff Report for Coastal Development Permit A-3-SNC-98-114 (SNG Development Company) dated 4/22/99; Draft EIR for the Fort Ord Reuse Plan, Fort Ord Reuse Authority, May 1996; Draft SEIS for Fort Ord Disposal and Reuse, U.S. Army, December 1995; EIR for the Sand City North of Playa Redevelopment Project, September 1995.

Procedural Note

Section 13169(a)(1) of the Commission's regulations provide that permit extension requests shall be reported to the Commission if:

- 1) The Executive Director determines that due to changed circumstances the proposed development may not be consistent with the Coastal Act, or
- 2) Objection is made to the Executive Director's determination of consistency with the Coastal Act.

In this case, the extension request is being reported to the Commission because the Executive Director has determined that there are changed circumstances affecting the project's consistency with the Coastal Act. Section 13169(a)(2) of the Commission's regulations provide that if three (3) Commissioners object to an extension request on the grounds that the proposed development may not be consistent with the Coastal Act, the application shall be set for a full hearing as though it were a new application. If three objections are not received, the permit will be extended for an additional one-year period.

**California Coastal Commission****September 15, 1999 Meeting in Eureka**

Staff: S. Monowitz Approved by: C.F.L. 9/24/99

A-3-SNC-94-008-E2 (Sterling Extension) Staff Report for September 1999 Hearing.doc (8/25/99)

Executive Summary

This is the second proposal to extend Coastal Development Permit A-3-SNC-94-008 for a resort project in Sand City known as the Sterling Center, located on a disturbed site west of Highway one and immediately north of Tioga Avenue. The project approved by the Commission in 1994 was a 136-unit hotel with restaurant and conference facilities, the development of which is subject to conditions that, among other things, require a redesign of the project to address height and setback issues.

A one-year extension of this permit was previously granted in April 1998. Since that time, Commission staff has had meetings with City staff and developers interested in constructing the project. Both the City and the applicant are interested in moving forward with the project, and while progress towards complying with the conditions of the permit has been made, the conditions remain to be satisfied.

The standard of review for a permit extension request, established by Section 13169 of the Commission's Administrative Regulations, is whether there are changed circumstances that affect the project's consistency with the California Coastal Act. By virtue of the fact that Sand City has a certified Local Coastal Program (LCP), this standard requires an assessment of any changed circumstances regarding project compliance with the LCP. In addition, because the project is located between the first public road and the sea, any changed circumstances with respect to Coastal Act public access and recreation policies must also be considered. If the Commission determines that there are changed circumstances regarding the project's conformance with these standards, the application must be set for a full hearing as if it were a new application.

Staff recommends that the Commission deny the extension request, and set the application for a De Novo hearing, based on the Executive Director's determination that there are changed circumstances affecting the project's consistency with the Sand City certified LCP and the public access and recreation policies of the Coastal Act. These circumstances include:

- changes in the status of environmentally sensitive habitats surrounding the project site (e.g., Federal listing of the Western snowy plover as a threatened species) and the evolution of habitat protection and management principals applicable to the implementation of LCP habitat protection standards;
- reductions in the availability of water available to serve the project;
- increased growth in the project vicinity (e.g., construction of the Edgewater shopping center, reuse of Fort Ord) that has adversely impacted roadway capacities necessary to serve the project and accommodate coastal access and recreation; and,
- changes in the ownership and land use planning status of the area (e.g., acquisition of the adjacent site by the Sand City Redevelopment Agency, proposed development and implementation of a Habitat Conservation Plan for all areas of the City west of Highway One, designation of the Monterey Bay State Seashore).



Extension A-3-SNC-94-008-E2 Staff Report

Sterling Center, Sand City

Page 3

Staff Report Contents

1. Staff Recommendation.....	4
2. Recommended Findings and Declarations.....	4
A. Project Background, Description, & Location	4
B. Changed Circumstances	5
1. Environmentally Sensitive Habitats	5
Applicable Standards.....	5
Project Impacts and Mitigation Measures	6
Analysis of Changed Circumstances	6
Conclusion.....	9
2. Water Supply	9
Applicable Standards.....	9
Project Water Demand and Supply	10
Analysis of Changed Circumstances	10
Conclusion.....	11
3. Public Access and Recreation	11
Applicable Standards.....	11
Traffic Generation and Mitigation Measures	12
Analysis of Changed Circumstances	12
Conclusion.....	16
4. Land Use.....	16
Applicable Policies.....	16
Project Relationship to Other Land Uses	17
Analysis of Changed Circumstances	17
Conclusion.....	18

Exhibits

Exhibit 1: Regional Location

Exhibit 2: Site location

Exhibit 3: Correspondence

Appendix A

Adopted staff report for A-3-SNC-94-008



California Coastal Commission

1. Staff Recommendation

Staff recommends that the Commission **DENY** the permit extension request by concurring with the Executive Director's determination that there are changed circumstances affecting the development's consistency with the Coastal Act and adopting the following motion.

MOTION

I move that the Commission grant a one-year extension to Coastal Development Permit A-3-SNC-94-008 because there are no changed circumstances that affect the project's consistency with the Coastal Act.

Staff recommends a **NO** vote. Pursuant to Section 13169 of Title 14 of the California Code of Regulations, three Commissioners must object to the extension of the permit in order to deny the extension request and require rescheduling of the application as if it were a new application.

2. Recommended Findings and Declarations

The Commission finds and declares as follows:

A. Project Background, Description, & Location

The Sterling Center project has a long history with the Commission, beginning with the denial of a larger 229-unit City approved project on the site in 1986, a decision that was upheld by the Superior Court on March 16, 1987 (*Sand City vs. California Coastal Commission*, Case No. M 16952). The City subsequently approved a smaller 136-unit project in 1989, which was also appealed to the Commission. However, the City's approval was nullified before the Commission acted on the appeal, due to a lawsuit challenging the City approval's compliance with the California Environmental Quality Act. After complying with the Court Order, the City approved a similar project in November 1990, which again was appealed to the Commission. After the Commission approved the project with Special Conditions in April 1991, the Superior Court of Monterey County issued a Minute Order Ruling on Return Peremptory Writ of Mandamus, finding that the Supplemental Environmental Impact Report (SEIR) prepared in response to Case M 16952 was not properly circulated, and did not adequately address comments submitted in response to the draft SEIR. The City responded to this Order with an updated environmental document in July 1993, then re-approved the project.

On June 9, 1994, the Commission heard the appeal of the Sterling Center project approved by the City in 1993, which was basically the same project previously reviewed by the Commission in 1991 and which included a 136-unit hotel/resort with a 135 seat restaurant and bar; an on-site desalination and water treatment facility; 4000 square feet of conference and retail space; 234 car subterranean garage; an extension of Sand Dunes Drive; public access improvements; and, dune restoration. The Commission approved the project with special conditions that required, among other things, an increase in setback distances; reductions in the height of the proposed structures and the length of the proposed roadway extension; grading and dune stabilization and restoration plans; and, a sand replenishment program. The



conditions of Commission approval also required the applicant to eliminate the proposed desalination plant from final project plans, and provide evidence that an alternative water source is available to serve the project. The conditions provide that should the applicant demonstrate that no alternative water source is available, then the proposed desalination plant must be reviewed by the Commission either as an amendment to the permit or through a separate permit application. The adopted staff report for the Commission's approval is attached to this report as Appendix A.

The project is located at 500 Tioga Avenue, on the west side of Highway One (please see Exhibit 1). Tioga Avenue provides an overpass above Highway One, connecting the inland portion of the City to the largely undeveloped western dune area. The 7.9-acre project site is bordered by Tioga Avenue to the South, the Pacific Ocean to the west, three parcels owned by the Sand City Redevelopment Agency and proposed for future development to the north, and Highway One to the east.

B. Changed Circumstances

1. Environmentally Sensitive Habitats

Applicable Standards

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].

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.

LCP Policy 4.3.20 requires, in relevant part, that environmentally sensitive habitat areas 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 areas.

Project Impacts and Mitigation Measures

It is recognized that the Sterling site is a highly degraded in terms of habitat, by virtue of previous sand mining activities, and the fact that a large portion of the site is currently paved and used for temporary storage of construction equipment. In fact, environmentally sensitive habitat issues did not appear to play a significant role in the Commission's 1994 consideration of the project; there were no findings regarding this issue contained in the adopted staff report (attached as Appendix A).

Notwithstanding the disturbed condition of the site, it represents restorable dune habitat (especially in the northern portion of the site that is currently undeveloped open space) that may be an important component to region wide habitat protection and enhancement. Moreover, the relationship of the project site to adjacent sensitive dune habitats and the overall Monterey Bay Dune System is an important consideration in determining the project's consistency with the above referenced policies. For example, sensitive dune species such as the Western snowy plover, Smith's blue butterfly, and Black legless lizard are known to exist within the dune areas in close proximity to the project, and may be adversely affected by increased use of the dunes by project guests.

Analysis of Changed Circumstances

New information regarding the sensitivity and rareness of Monterey dune habitats and the biological resources dependent upon such habitat, as well as the management strategies necessary to protect and enhance such resources, warrants reconsideration of the project's compliance with LCP policies protecting environmentally sensitive habitats. Since the approval of the Sterling project, an understanding of these changed circumstances has contributed to the Commission's (and other resource agencies') evolving approach to sensitive habitat protection.

The western snowy plover was listed as federally threatened on April 5, 1993. While this listing occurred prior to the City and Commission's approval of the project, the measures necessary to effectively protect this species and facilitate its recovery, had yet to fully understood. Only recently has it been recognized, as a result of various efforts to protect this resource (including those that have been undertaken by the Department of Parks and Recreation in nearby dune areas), that effective protection of the Snowy plover is dependent not only upon addressing site specific issues, but in managing off-site impacts to adjacent habitat areas as well (see below for more detail).

The implications of introducing numerous new visitors to the area, and the impacts that this will have on adjacent dune habitats that provide nesting areas for the Western snowy plover, were not considered



Extension A-3-SNC-94-008-E2 Staff Report

Sterling Center, Sand City

Page 7

during the original review of the Sterling project. No provisions for managing the use of beach and dune areas generated by the Sterling project, in manner that addresses the habitat needs of the Western snowy plover, are included as part of the approved project or required by the current coastal development permit. As a result, the current project currently may not comply with LCP requirements calling for new development to protect natural resources and allow for the continuance of adjacent sensitive habitats (LCP Policies 3.3.1 and 4.3.20). Nor does the project, as previously approved, include standards necessary to protect other sensitive habitat values of adjacent dune areas, including those that support other rare plants and animals endemic to the region. Thus, the requirements of LCP Policy 4.3.21 may not been satisfied either by the project or the conditions of the existing permit.

As noted above, new information and environmental data regarding the unique and threatened nature of the Monterey Dune system has become available since the 1994 approval that has led to an evolution in sensitive dune habitat management and protection principals. In essence, this information has led to the recognition that effective habitat protection and preservation necessitates a system wide approach. As applied to the Monterey Dune System, this evolving approach to habitat protection involves the understanding that previously degraded areas of the dunes represent restorable habitat that play an important role in the long term biological continuance of dune resources.

As detailed in the recent staff report on the proposed Monterey Bay Shores Resort project (Coastal Development Permit Application No. A-3-SNC-98-114), 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.

Since 1994, the potential to restore and enhance the dune's unique biological resource values in degraded areas has become well recognized. Several major dune restoration programs have recently been undertaken in the vicinity of Sand City. For example, following the approval of the Sterling project, a significant restoration effort took place on a former dump site that was acquired and remediated by the Monterey Peninsula Regional Park District. Also following the approval of the Sterling Center, State Parks has developed plans to protect and restore 700 acres of dune habitat on the nearby dunes of the former Fort Ord.

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 that 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, evolving scientific information and resource data shows that as the natural dune system has been reduced and fragmented, the risk of extinction has increased for several species. This has led to the recognition that each new impact within the dunes system contributes 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



California Coastal Commission

(*Arctostaphylos pumila*), Eastwood's ericameria (*Ericameria fasciculata*), coast wallflower (*Erysimum ammodendrum*), 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, and has been listed in the Federal Register as an endangered species (U.S. Fish & Wildlife Service notice of February 14, 1994).

As previously noted, the U.S. Fish & Wildlife Service listed the Western snowy plover as a threatened species on April 5, 1993. 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, and have been the focus of significant conservation efforts by the State Dept. of Parks and Recreation. 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.

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 environmentally sensitive habitat.

The recognition that previously degraded areas of the dune system constitute sensitive habitat was initially applied by the Commission in 1994, when it considered residential developments proposed in the City of Monterey's Del Monte Dunes area (Coastal Development Permit No.'s 3-93-62 Sewald, 3-93-63 Boyden, and 3-93-28 Bram), and has been expanded upon in subsequent years. The premise that even disturbed areas of the dunes represent sensitive habitats, and that such areas play an important role



in regional efforts to protect and enhance the unique resources of the Monterey Bay Dune System, was not taken into account in the previous approval of the Sterling project. As a result, no mitigation was provided for the permanent loss of restorable dune area that would result from project construction. Therefore, the coastal development permit for the Sterling project does not acknowledge current scientific recommendations with respect to the preservation of dune habitat, and therefore may not implement the sensitive habitat protection standards embodied by LCP Policies 3.3.1, 4.3.20 and 4.3.21.

Finally, in light of the above circumstances, it has become evident that a City-wide, or preferably a region-wide approach, is needed to address the sensitive dune habitat resources within the project's vicinity. Towards this end, the City has recently initiated a Habitat Conservation Plan (HCP) to address this and other sensitive dune species, which will be subject to the review and approval of the U.S. Fish and Wildlife Service. Clearly, the Sterling site is an important component to this habitat management effort, as it is in the center of the habitat area that will be addressed by the City's HCP. Specific habitat management and protection measures determined through the HCP process will need to be incorporated into the project in order to ensure compliance with LCP sensitive habitat protection policies. Significantly, another desired outcome of the HCP process is the *identification of acceptable locations and intensities of development* throughout the Sand City coastal zone west of Highway One that will allow for the biological continuance of sensitive dune species. Thus, extending the coastal development permit for the Sterling project may directly prejudice opportunities to consider, via the current HCP process, the full range of land use alternatives that are most protective of sensitive dune habitats.

Conclusion

New information regarding the rarity of dune resources such as the Western snowy plover, and improved understanding of dune ecology, has resulted in changed circumstances that must be considered before it can be concluded that the Sterling project complies with Sand City LCP requirements regarding environmentally sensitive habitats. Furthermore, the Habitat Conservation Plan currently being developed by the City provides a new opportunity to assess the full range of land use alternatives that will best address habitat protection needs and enhancement opportunities within the Sand City coastal zone. Extension of the previously approved Sterling permit may prejudice this opportunity, in conflict with the habitat protection and enhancement objectives of the certified LCP.

2. Water Supply

Applicable Standards

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.

LCP Policy 6.4.13 states:



Within the Coastal Zone, permit only new development whose demand for water use is consistent with the available water supply and the water allocation presented in Appendix F¹.

Project Water Demand and Supply

As approved by the City, the Sterling project was estimated to consume 19.91 acre-feet of water per year at 100% occupancy, and 16.92 acre-feet at 75% occupancy. Because this exceeded the LCP's allocation, the applicant proposed to construct a desalination facility capable of generating 20 acre-feet of water per year. The Commission's approval, however, did not include the desalination facility based on concerns regarding the impact to marine resources and the fragmentation of public works facilities. The desalination facility was also eliminated from the project approved by the Commission because, according to the Monterey Peninsula Water Management District, 47.2 acre feet of new water allocation was available to the City (please refer to page 20 of the adopted staff report, attached as Appendix A). The Commission therefore required the applicant to submit evidence that an alternative water source is available to serve the project prior to issuance of the Coastal Development Permit. If the applicant can demonstrate that an alternative water source is not available, the Commission's approval provides that a desalination plant may be considered in the form of an amendment to the permit, or as a separate CDP.

Analysis of Changed Circumstances

The Commission's 1994 approval, which eliminated the proposed desalination plant, addressed the LCP's requirement for adequate water by finding that 47 acre-feet of new water was available from the Monterey Peninsula Water Management District (MPWMD) and could be used to serve the project. The Commission also required, as a condition of approval, that the applicant provide evidence of an adequate source of water (other than the desalination plant), prior to the transmittal of the Coastal development Permit.

As opposed to the water situation in 1994, there does not appear to be enough water currently available to serve the project from the allocation provided to Sand City by MPWMD. However, the City has indicated that a major industrial water user within the City will be ceasing its operations, freeing up 27 acre-feet of water per year from the City's allocation that could be used to serve the project.

Notwithstanding this *potential* source of water, evidence of adequate water, as required by LCP Policy 6.4.11, has yet to be provided. Since 1994, the critical shortage of water available to support new development in the Monterey Peninsula has become more and more evident. For example, issues related to salt water intrusion, impacts of water withdrawals on riparian habitats, controversy surrounding the proposal to construct a new dam along the Carmel River, and other watershed management issues, have recently been brought to the forefront of land use planning constraints within the Monterey area, and remained to be resolved. Heightened concerns regarding the adequacy of the region's water supply has led to the need for specific evidence that water is available to serve new development, in a manner that

¹ Appendix F reflects the method by which the City will distribute water within the allocation program established by the Monterey Peninsula Water Management District, and identifies an allocation of 15.37 acre-feet per year for the Sterling site.



Extension A-3-SNC-94-008-E2 Staff Report

Sterling Center, Sand City

Page 11

will not adversely affect natural resources or other uses, prior to the approval of the new development. The Sterling project has not provided such evidence, and therefore may not be consistent with LCP Policies 6.4.11 and 6.4.13.

Conclusion

As detailed above, their exist changed circumstances regarding the availability of water necessary to serve the previously approved Sterling project. The 47 acre-feet expected to be available to serve the project in 1994 has already been used to serve other projects in the City, and/or is no longer available. Thus, in combination with new information that has been generated since 1994 regarding the critical status of water in the Monterey area, the lack of specific evidence that there is water available to serve the project represents a changed circumstance that may result in project inconsistencies with LCP Policies 6.4.11 and 6.4.13.

3. Public Access and Recreation

Applicable Standards

LCP Policy 6.4.11:

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 (emphasis added).

LCP Policy 6.4.23.a:

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:

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

Coastal Act Section 30252:

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



California Coastal Commission

correlating the amount of development with local park acquisition and development plans with the provision of onsite recreational facilities to serve the new development.

Traffic Generation and Mitigation Measures

As stated in the October 1988 Draft Supplemental Impact Report for the Sterling Center, the project would generate 1,180 vehicle trips per day. Based on average daily traffic and corresponding Levels of Service in the project area, which ranged from A to C in 1988, the project was not expected to have a significant impact on traffic. However, in order to address regional traffic issues and cumulative impacts, the City required the applicant to contribute no less than \$120,000 towards regional traffic improvements. Cumulative development within Sand City that was considered in this assessment included the regional commercial center on the east side of Highway One constructed in 1996 and known as the Edgewater Shopping Center; a proposed 211 unit visitor-serving/residential housing development known as the Monterey Bay Village that has not been, and remains unlikely to be constructed; and, the proposed Sands of Monterey, a 560-unit resort previously proposed on the same site as the 495-unit Monterey Bay Shores Resort project recently approved by City, an appeal of which is currently pending with the Commission. The cumulative impact assessment did not consider the additional traffic expected to be generated through the reuse of the former Fort Ord, which, according to the December 1995 Draft Supplemental Environmental Impact Report prepared by the Army to address Fort Ord Reuse Authority's Reuse Plan, may add up to 223,278 vehicle trips per day to local roadways (Draft SEIS, p 5-25).

Analysis of Changed Circumstances

Changes in the transportation network within the vicinity of the Sterling project that have occurred since the 1994 approval include diminished levels of service, and significant increases in the anticipated future demands associated with the reuse of Fort Ord. Table 1 shows the increase in average daily traffic along Highway One in the vicinity of the project that have occurred since the traffic impacts of the project were last assessed (1988), while Table 2 shows the resultant reduction in Levels of Service (definitions for the various Levels of Service are provided as footnotes on page 14 of this report). As shown in Table 1, the 48,000 Average Daily Trip figure for the portion of Highway One between Fremont Boulevard and Highway 218 applied in the environmental analysis of the Sterling project has increased to approximately 68,000. Similarly, the 1988 Levels of Service for this section of Highway diminished from LOS C in 1988 to LOS D and E (or worse) during peak commute hours in 1998.

Increased pressures on the transportation network associated with the civilian redevelopment of the former Fort Ord, which were not anticipated in the 1994 approval, will further reduce roadway capacities necessary to serve the project and accommodate coastal access and recreation. As previously noted, the Army's 1995 Draft SEIS states that the Fort Ord Reuse Plan, under buildout, may add up to 223,278 vehicle trips per day to local roadways. A large percentage of these additional trips can be expected to involve Highway One. The May 1996 Draft EIR prepared by the Fort Ord Reuse Authority provides some more specific information regarding the impacts of reuse on traffic and circulation, estimating that



Extension A-3-SNC-94-008-E2 Staff Report

Sterling Center, Sand City

Page 13

in the year 2015, Daily Volumes along Highway One between Fremont Boulevard and Highway 218 could range between 75,000 and 89,000.

Table 1: Changes in Average Daily Trips

Year	Location	Average Daily Trips	Source
1988	Highway One between Fremont Boulevard and Highway 21	48,000	1988 DSEIR for the Sterling Ceneter
1993	Highway One at 218 Interchange (project exit)	60,000 annually; 64,000 peak month	Caltrans 1993 traffic volume data
1997	Highway One at 218 interchange	68,000 annually; 72,000 peak month	Caltrans 1997 traffic volume data

Table 2: Changes in Levels of Service

Year	Location	Level of Service	Source
1988	Highway One between Fremont Boulevard and Highway 218	LOS C	1988 SDEIR for the Sterling Center
1994	Highway One at 218 interchange	LOS D	EIR for the Edgewater Shopping Center
1998	Highway One, between the Highway 218 interchange and the Fremont boulevard interchange	LOS E in the southbound direction during the morning peak traffic hour ² , and a LOS D in the northbound direction during the evening peak traffic hour.	EIR for the Monterey Bay Shores Resort Project

² Caltrans questioned the Draft 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.



Extension A-3-SNC-94-008-E2 Staff Report

Sterling Center, Sand City

Page 14

Traffic in Sand City, especially along Highway One, has recently approached the critical stage, and as a result has adversely impacted the ability of the public to access the beach. While the Sterling project may not necessarily change existing levels of service, there is clearly a question concerning whether existing roadways are adequate to serve the project and maintain coastal access and recreation opportunities. Following are additional facts reflective of this problem, obtained from the EIR for the Monterey Bay Shores Project:

- The intersections of Fremont Boulevard and the Highway One northbound on-ramp and southbound off-ramp currently operate at a Level Of Service (LOS) of D³ during both morning and evening peak traffic hours. Caltrans comments on the Draft EIR for the Monterey Bay Shores Project states that the intersections of Fremont Boulevard and the Highway One northbound on-ramp and the south bound off-ramp are currently operating at LOS F⁴ during peak periods.
- The intersections of Fremont Boulevard and Military Avenue and Del Monte Boulevard currently operate at LOS E⁵ both during the morning and evening peak traffic hours.
- The intersection of Fremont Boulevard and Playa Avenue currently operate at LOS D during both morning and evening peak traffic hours.

A major contributor to the traffic problem has been the Edgewater Shopping Center, constructed in 1996. Again, according to the Monterey Bay Shores EIR, traffic conditions are expected to get worse as the 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.

³ 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."

⁴ Defined on page 166 of the Final EIR as "Forced flow operations. Speeds are reduced substantially and stopages may occur for short or long periods of time because of downstream congestion."

⁵ 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 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."



Extension A-3-SNC-94-008-E2 Staff Report

Sterling Center, Sand City

Page 15

The Edgewater Shopping Center was approved by Sand City in 1996, and was constructed soon after. In order to address cumulative traffic impacts resulting from this and other projects in the region (e.g., Fort Ord conversion), Sand City entered into an agreement with Caltrans to conduct and fund a "Project Study Report" (PSR), to be reviewed and approved by Caltrans. The purpose of this study is to address appropriate mitigation for the traffic impacts of cumulative development. The PSR covers the area of Highway One between the 218 intersection (the intersections that will be most used by this project) and the Fort Ord Main gate. It is anticipated that the financial contribution for regional transportation improvements required for the Sterling project will be applied towards the roadway projects identified by the PSR.

The PSR, which has yet to be approved by Caltrans, was released 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 218 and the Fort Ord Main Entrance. (The majority of this expansion can be accommodated within the existing Highway median.)
- Widening the existing Fremont Blvd. 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 Fremont boulevard, 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.

In consideration of the above factors, the following traffic circumstances appear to have changed since the Sterling project was approved in 1994:



California Coastal Commission

- There has been an increase of approximately 10,000 average daily trips along the section of Highway One that will be most affected by the project;
- A reuse plan for Fort Ord has been adopted which could add an additional 223,278 vehicle trips per day to existing traffic volumes in the region upon build-out;
- Levels of Service along Highway One have degraded from LOS C to a LOS E or F in the southbound direction during the morning peak traffic hour;
- Local roadways have been significantly impacted by the Edgewater Shopping Center, and are expected to degrade to LOS E and F in certain areas upon build-out of the shopping center; and
- A project study report has been developed in an attempt to address long-term regional transportation needs, that poses impacts to coastal resources that have yet to be resolved and has yet to be approved by Caltrans as adequately addressing transportation needs.

Conclusion

The Sterling project represents one of many projects that, together, will have a cumulative adverse impact on Highway One traffic, and thus, coastal access and recreation. The approval granted in 1994 relied upon a project contribution of \$120,000 to regional transportation improvements. However, the adequacy of this contribution, in light of the increases in traffic that have occurred since 1994, needs to be reconsidered before the project can be found to be consistent with LCP Policy 6.4.11. Furthermore, the details of the necessary transportation improvements which this contribution will be applied towards, and the impacts they pose to coastal resources, have yet to be resolved. As a result, it can not be concluded that the project is currently consistent with the LCP and Coastal Act standards identified above.

4. Land Use

Applicable Policies

LCP Policy 6.4.10 states, in relevant part:

Lot consolidation for residential, visitor-serving residential and commercial uses will be encouraged in areas where small lots may prohibit planned uses through the requirement of a specific plan for development. *Furthermore, planned clustered development will be encouraged in the coastal zone.* Future small lot subdivisions for residential and commercial uses will be prohibited. [Emphasis added.]

Coastal Act Section 30240(b) states:



Development in areas adjacent to environmentally sensitive habitat areas and parks and recreation areas shall be sited and designed to prevent impacts that would significantly degrade those areas, and shall be compatible with the continuance of those habitat and recreation areas.

Project Relationship to Other Land Uses

The Sterling project is one of the 4 large parcels that make up most of the 80 acres of the Sand City coastal zone west of Highway One and North of Tioga Avenue. The Sand City Redevelopment Agency has acquired the three large lots north of the Sterling parcel, known as the McDonald site, and intends to pursue development of the site in the future. North of McDonald is an old garbage dump that has been acquired, remediated, and restored by the Monterey Peninsula Regional Park District, followed by the site of the proposed Monterey Bay Shores project, the northernmost parcel in the City's coastal zone. The area south of Tioga Avenue is comprised of much smaller lots, many of which have been acquired by the Department of Parks and Recreation and the Monterey Peninsula Regional Park District. It is expected that the remainder of the privately owned lots south of Tioga will also be acquired by the park agencies, and developed as public park and open space.

In addition to the land use regulations established by the Sand City LCP, future development west of Highway One is also limited by a Memorandum of Understanding (MOU) between Sand City, the Department of Parks and Recreation, and the Monterey Peninsula Regional Park District. According to this MOU, the three potential envelopes for the development of uses other than parks and open space include the Sterling site, the McDonald site, and the site of the proposed Monterey Bay Shores Resort.

With respect to regional land use issues, the Sterling site, and the area of the City west of Highway One, are components of the Monterey Bay State Seashore, designated in 1994, which extends from Natural Bridges State Beach in Santa Cruz County to Point Joe in Monterey County. The Monterey Bay dune system, within the Monterey Bay State Seashore, extends from the Salinas River National Wildlife Refuge in North Monterey County to Monterey Harbor in the City of Monterey, and is one of the few remaining dune habitat systems in California.

Analysis of Changed Circumstances

Since the Sterling Center was approved in 1994, significant changes in both local and regional land use issues have occurred. One of these changes has been the acquisition of the McDonald property north of the Sterling site by the Sand City Redevelopment Agency, which occurred in January 1995. Although no development proposals for this site have been submitted to date, the City has been working with a private developer on conceptual plans for future development including options for combining development with that approved on the Sterling site. The significance of this acquisition is that it provides an opportunity for future development of the Sterling site and the McDonald site to be consolidated in a manner that would minimize impacts on coastal resources, including dune habitats and scenic resources. LCP Policy 6.4.10 encourages such clustered development.

In terms of city-wide land use issues, the City's recent initiation of consultations with the U.S. Fish and



Wildlife Service, and the associated development of a Habitat Conservation Plan for the entire area of the City west of Highway One, represents another changed circumstance. As previously discussed in the environmentally sensitive habitat findings of this report, there have been changes in the status of sensitive species with habitat in the vicinity of the Sterling project, and the habitat management and protection principals applied to the protection of such resources have evolved since the Sterling project was approved in 1994. As a consequence of these changes, it is clear that the extension of the Sterling permit may not only conflict with LCP habitat protection policies cited on pages 5-6 of this report, but may also jeopardize consideration of the full range of development alternatives that is most protective of such resources during the Habitat Conservation Planning process.

Regionally, the designation of the Monterey Bay State Seashore in September 1994 reflects the increased importance that the State of California has placed on the preservation of the outstanding natural, scenic and recreational values of this open space shoreline area. Public Resources Code Section 5019.62 describes the purpose and intended use of state seashores as follows:

The purpose of state seashores shall be to preserve outstanding natural, scenic, cultural, ecological, and recreational values of the California coastline as an ecological region and to make possible the enjoyment of coastline and related recreational activities which are consistent with the preservation of the principal values and which contribute to the public enjoyment, appreciation, and understanding of those values.

Improvements undertaken within state seashores shall be for the purpose of making the areas available for public enjoyment, recreation, and education in a manner consistent with the perpetuation of their natural, scenic, cultural, ecological, and recreational value. Improvements which do not directly enhance the public enjoyment of the natural, scenic, cultural, ecological, or recreational values of the seashore, or which are attractions in themselves, shall not be undertaken.

Because the designation of the State Seashore did not occur until September 1994, the relationship of the Sterling project to the State Seashore was not considered in the Commission's June 1994 approval of the project. An analysis of this relationship is necessary to determine the project's compliance with LCP and Coastal Act requirements regarding public access and recreation, as well as with those LCP policies protecting scenic coastal views from public areas.

Conclusion

Significant changes in the ownership and land use planning status of the area has occurred since the Sterling project was originally approved by the Commission in 1994, and affects the project's consistency with LCP and Coastal Act policies. The acquisition of the adjacent McDonald site by the Sand City Redevelopment Agency in 1995 provides a new opportunity to consider clustered development, as encouraged by LCP Policy 6.4.10. The recent initiation of the city-wide Habitat



Extension A-3-SNC-94-008-E2 Staff Report

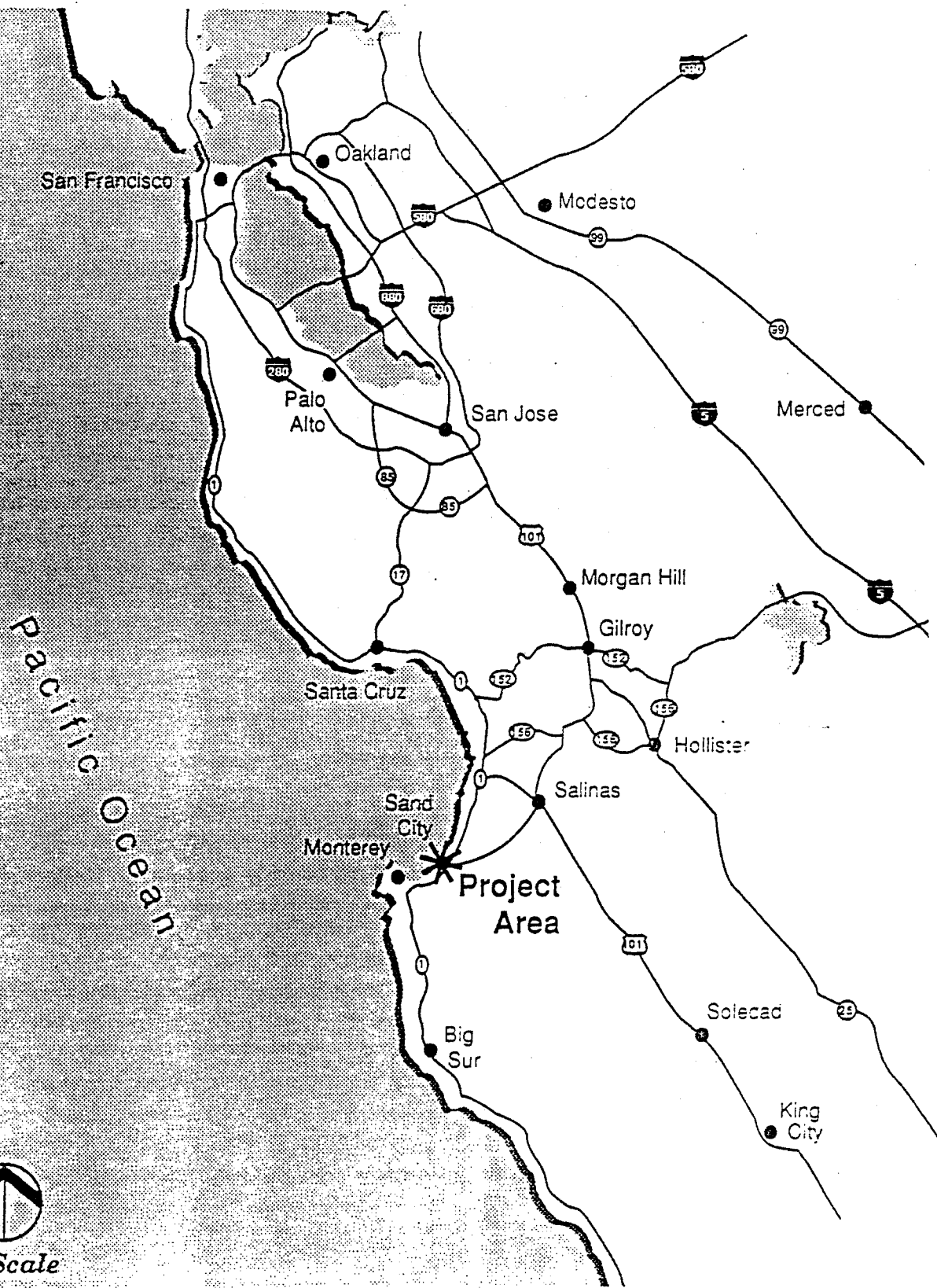
Sterling Center, Sand City

Page 19

Conservation Plan, and the importance of this plan in addressing the sensitive habitat issues that have evolved since the project was approved, necessitates reconsideration of the project's consistency with LCP habitat protection policies. Finally, the compatibility of the project to the Monterey Bay State Seashore designated in September 1994, particularly in terms of protecting coastal recreation opportunities and visual resources, must be analyzed before it can be determined that the project conforms with the Sand City LCP and Coastal Act Section 30240(b).



California Coastal Commission



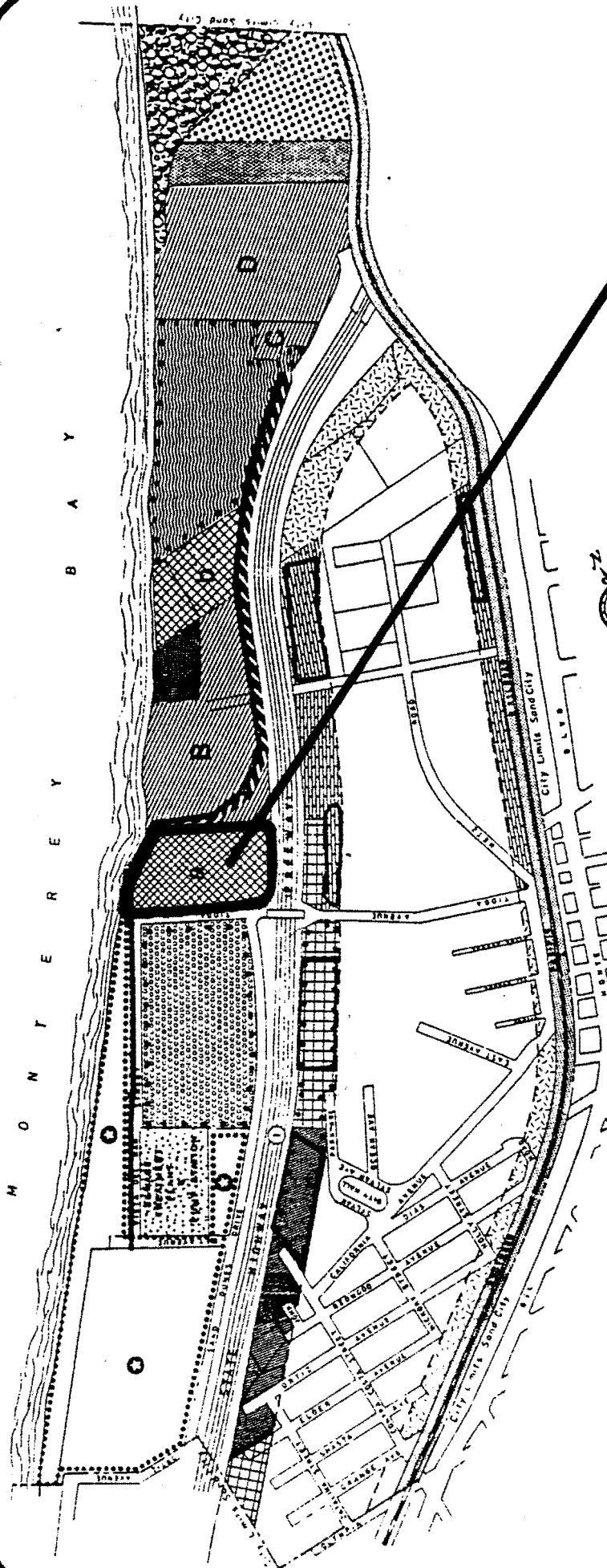
No Scale

Source: California State Automobile Association and EMC Planning Group Inc.

EXHIBIT NO. 1

APPLICATION NO.
A-3-SNC-94-008-E2

Regional
Location



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

Manufacturing B, C, D, a, b

Park see density standards

creation

COMBINING DISTRICTS

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

CIRCULATION

- Transportation Corridor
- Floating Plan Line
- Bike Path



Sterling Center site

SAND CITY LCP LAND USE PLAN

LAND USE PLAN MAP

Figure 11

EXHIBIT NO. 2

APPLICATION NO.
A-3-SNC-94-008-E2

Site Location

uses 12 and 13 for specific designations for these areas.

and Special Treatment Combining the South of Bay Avenue Land Use Area

76 - (cc) to CLT

A LIMITED LIABILITY LAW PARTNERSHIP
221 MAIN STREET
SIXTEENTH FLOOR
SAN FRANCISCO, CALIFORNIA 94105-1936
(415) 905-0200
FAX (415) 905-0200

McQUAID, METZLER, BEDFORD & VAN ZANDT LLP

FILE NUMBER
DIRECT DIAL 13139-002

RECEIVED

JUL 22 1999

CALIFORNIA
COASTAL COMMISSION
CENTRAL COAST AREA

July 21, 1999

BY FAX AND MAIL

Sterling Center Project
Permit No. A-3-SNC-94-08
Ms. Tami Grove
District Director
California Coastal Commission
725 Front Street, Suite 300
Santa Cruz, CA 95060

Re: Application for Permit Extension

Dear Ms. Grove:

It was a pleasure to meet with you the other day. I appreciated the candor with which you and your staff discussed the various issues concerning the extension of the Sterling Project conditional coastal development permit ("CDP") and I appreciate the opportunity to make an input to your deliberations. I understand the City of Sand City has already sent an input to you and I will not necessarily repeat their points. However, I did want to try to understand the baseline standard you are using to determine when "changed circumstances" would or would not occur for a given project. This will help me provide a meaningful input to you for use in approving the extension.

Of course, the term "changed circumstances" appears in the California Code of Regulations at title 14, as it relates to requests for extensions of CDPs. The "changed circumstances" must relate directly to the consistency determination made by the Executive Director. Thus, the inquiry is whether the circumstances have changed since the approval of the permit such that they may affect the consistency of the project with the local coastal program. "Changed circumstances" are not defined in the Coastal Commission regulations; however, there would seem to be an analogy to changes that might cause a significant impact to the environment under the California Environmental Quality Act ("CEQA"). Section 15064 of the CEQA Guidelines defines significant impacts as direct or indirect physical changes to the environment.

D:\DOCS\13139\002\ccext.ltr

EXHIBIT NO. 3
APPLICATION NO. A-3-SNC-94-008-E2
Correspondence

McQUAID, METZLER, BEDFORD & VAN ZANDT LLP

Ms. Tami Grove
California Coastal Commission
July 21, 1999
Page 2

The determination of whether such changes are significant will depend on the circumstances surrounding the project, such as whether it is in an urban or rural setting.

One way to measure the significance of a change is if some environmental standard is invoked. Another method is to determine if the cumulative impact of the change caused by the project would be significant. The added increment of the project to the cumulative impact must be "considerable," meaning the impact must be considerable when viewed in connection with the effects of past projects, the effects of current projects, and the effects of probable future projects. Speculative impacts are not to be considered and the impacts analysis must be based upon factual and scientific data, evaluated by the careful judgment of the agency. Where a previously approved plan would mitigate against any potential contribution of the project to cumulative impacts, then the change would not be significant. The project's contribution might also be considered not cumulatively considerable because they are so small that the contribution is de minimis in comparison to the considerable impacts from other projects.

This brings us to the three issues you raised in the meeting: 1) traffic; 2) water availability; and 3) habitat.

TRAFFIC

The question for the staff is whether the change in traffic impacts is such that the impacts from the Sterling Project would be considerable when analyzed in the context of the past, present and future projects. The Sterling EIR contains an analysis of the traffic impacts and has set an \$120,000.00 mitigation fee, mainly to reduce anticipated impacts at the Canyon Del Rey interchange off of Highway 1. You have asked the City to provide you information as to whether the traffic mitigation fee is still adequate and they have indicated that it is. One important note in the analysis is that many of the projects proposed for development along the coast in Sand City and Seaside have fallen out and the decision by Sand City not to allow any development, except for Sterling, McDonald and Ghondour militate toward a conclusion that the EIR has overstated the anticipated impacts, even with the redevelopment of Fort Ord. At any rate the factual data demonstrates that the impacts, if any, have lessened due to the fading of many of the proposed developments on the coast. During our discussions, your staff did not point to any factual or scientific data to support their belief that traffic impacts are worsening. Moreover, there is no indication that the contribution of the Sterling Project to these purported impacts is cumulatively considerable. Levels of service at Canyon Del Rey will be mitigated by the traffic impact fees already imposed on Sterling. Therefore, there is no real changed circumstance with regard to traffic.

Ms. Tami Grove
California Coastal Commission
July 21, 1999
Page 3

WATER AVAILABILITY

You have indicated that there is a concern that the source of water for the project is not specifically identified. As you know, this was an issue in the Coastal Commission conditional approval. The Commission specifically excepted the proposed water source for the project from its approval and required the project to submit a water availability report to the Executive Director before the permit would issue. The Executive Director would then either approve the alternative source or if the source was desalination, then the Executive Director would require either a permit amendment or a new permit to address the desalination option. All of this is dealt with in the context of the conditional approval by the Commission. Now it appears that you want the project to answer the water availability issue as a condition of its extension approval. However, that does not really answer the issue of whether there are "changed circumstances." The current situation has not changed since at least 1994, at least in the eyes of the Commission. There is still a lack of sufficient water for all projects in Sand City and the project is still investigating available water sources. I would point out that a change in the policy of the Commission with regard to water availability is not a changed circumstance for purposes of the regulations. These changed circumstances must deal with a direct or indirect physical change to the environment, not a change in Commission policy.

You also expressed concern over whether the desalination plant would be owned and/or operated by the project. This question has been asked many times and answered many times. It is clear from the County ordinance dealing with this subject, that no desalination plant in Monterey County can be owned by any entity other than a public entity. In fact, the plan has always been to have the City of Sand City or the County own any such plant, if it is finally approved. This is not a changed circumstance.

At the meeting, we discussed a number of alternatives for development of water for the site and this situation has not changed since 1994. As time goes on the condition imposed by the Commission may propel private parties to free up some water that can be used for the project. The City is evaluating the Monterey Fish Company as a candidate. There may be others. However, whether such water becomes available, the process set up by the Commission was not to cause the immediate identification of a water source but to cause us to further investigate the availability of alternative water and report back to the Executive Director. This is actively underway and the desires of the Commission with regard to this issue are being fulfilled. Nonetheless, there is no justification for making compliance with one of the conditions now a condition of approving the extension. The status has not changed since 1994 and the issue of water availability seems to have improved. Again, the mitigation required by the Commission was to seek an alternative water source. The project is doing that. Moreover, there is no

Ms. Tami Grove
California Coastal Commission
July 21, 1999
Page 4

cumulative impact on the water source from Sterling because it will either find an alternative or it will propose desalination. Neither of these qualify as changed circumstances.

HABITAT

You have also indicated that the listing of the snowy plover and the possible impacts of the project on the habitat of the snowy plover are changed circumstances. The problem with this observation is that it assumes the Sterling site can be a suitable habitat for the plover. As pointed out by the City, the site is 80% paved and provides no habitat. It is an active industrial site, being used to store, load and transport building material such as stone, sand and other construction materials. As far as I am aware, no survey of the site has discovered any plovers. Therefore, the project can have no impact on the plover, either directly, indirectly or cumulatively. Any such purported impacts are speculative and not based on facts or scientific data. What is clear is that the Commission has imposed a habitat restoration requirement on the project which would address any concerns or possible impacts on the plover. The City has a separate initiative that would place a ranger on site to protect the habitat.

The comment was made that the City may be eliminating some alternatives for its habitat analysis by allowing the Sterling Project to go forward. The City readily answers that it made its choice within the context of the MOU with the Parks Department not to develop 70% of its coastline. Since there is no habitat on the Sterling site, it would not be a good candidate for habitat restoration at any rate. Again the cumulative impacts from not creating habitat at the Sterling site have not changed since 1994 and besides any such impacts are not cumulatively considerable given the beneficial impacts from areas that are currently habitat for the snowy plover. There are no changed circumstances due to habitat considerations based upon the industrial nature of this very disturbed site.

CONCLUSION

We have not been provided with your staff analysis and the facts and science relied upon to evaluate whether changed circumstances do or do not exist at the site. Therefore, it is difficult to provide specific answers to your concerns. However, if you do have any such facts or scientific data to support a conclusion of changed circumstances that may affect consistency with the LCP, then I request that you send that data to me so that we may have our consultants review it.

This project has a long history with the Commission. The Commission has denied the permit once. The Commission has approved it with one set of conditions and then withdrew that

MCQUAID, METZLER, BEDFORD & VAN ZANDT LLP

Ms. Tami Grove
California Coastal Commission
July 21, 1999
Page 5

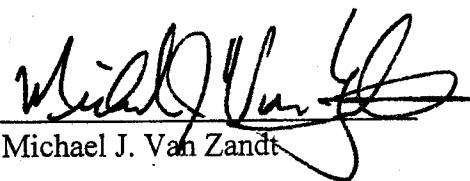
approval and substituted another set of conditions. In order for the project to comply with the conditions, the project must be modified to meet the setback and height restrictions imposed by the Commission. Included within these conditions are at least two of the issues of concern raised by you during our meeting, namely habitat and water availability. It seems obvious that the Commission wanted these issues to be dealt with in the permit compliance process and they are not a precondition to the permit extension approval.

Obviously, the death of the applicant has complicated the process of complying with these conditions. Now as we approach the time for decision on the permit extension, it seems that there is an effort to identify changed circumstances where none really exist. The mere passage of time does not create a changed circumstance. There is also a significant question in my mind as to why in April of 1998 the Commission determined there were no changed circumstances between 1994 and 1998 but suddenly in 1999 there are a number of changed circumstances. What has occurred between 1998 and 1999 to trigger the enhanced review?

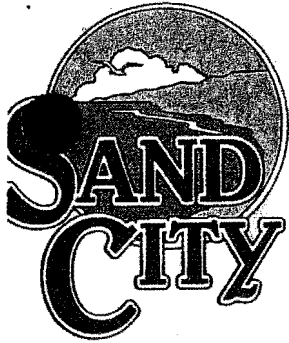
I request that you undertake a hard look at the factual and scientific data associated with the three issues we discussed. I believe you will find that there are no changed circumstances which are being contributed by the Sterling Project. Certainly, there are no changes that would affect consistency and none that could be termed "considerable."

I appreciate your willingness to consider this input and I anticipate your favorable reply.

Sincerely,
MCQUAID, METZLER, BEDFORD
& VAN ZANDT, LLP

By: 
Michael J. Van Zandt

cc: Trustees
John King
Kelly Morgan



July 19, 1999

RECEIVED

JUL 19 1999

CALIFORNIA
COASTAL COMMISSION
CENTRAL COAST AREA

Mr. Steve Monowitz
California Coastal Commission
725 Front Street, Suite 300
Santa Cruz, California 95060

Dear Steve:

A copy of the Sterling certified EIR is transmitted with this correspondence. Please return it to my office when you are finished reviewing it. Some of the traffic information you are looking for is included in tabbed section "F" and its related traffic report appendix. You will note that many of the projects listed under cumulative traffic, particularly those in Sand City, will never occur. While the closure of Fort Ord was not foreseen, the City has prepared a project study report for Highway One which does show increased traffic to the year 2018, based in part, on redevelopment of the former military base. I believe that the recommended improvements to the Canyon Del Rey/Highway One interchange projected by the Higgins traffic report in the EIR are still relevant, and the traffic mitigation fee for the Sterling project would go toward improving that interchange at the appropriate time. I will ask Caltrans to confirm that opinion, if you feel that it is necessary. Please also note that the Higgins report anticipated a full-length Sand Dunes Drive extending northward of the Tioga intersection; and this will no longer occur based on the lack of development potential previously envisioned by the Sand City Local Coastal Program (LCP) prior to the 1996 coastal land use Memorandum of Understanding (MOU) with the park agencies.

City Hall
1 Sylvan Park,
Sand City, CA
93955

Administration
(831) 394-3054

Planning
(831) 394-6700

FAX
(831) 394-2472

Police
(831) 394-1451

FAX
(831) 394-1038

Incorporated
May 31, 1960

Regarding the water situation, the City has been given notice by the Monterey Fish Company that it intends to consolidate all of its operations in Salinas, thereby having up to 27 AFY of water to use for reuse of its Sand City properties and other properties that the City may deem appropriate for water allocation. It is the City's intent to reserve enough of their current water credit for use at the Sterling site. You can confirm their water credit, which is in the process of being "perfected", from the Monterey Peninsula Water Management District (Stephanie Locke, Water Demand Manager).

And, finally, regarding habitat issues, the Sterling site is approximately 80 percent covered with asphalt or concrete. It is also the site of an active construction materials storage operation. This site is also within the Sand City Coastal Habitat Conservation Plan (HCP) area currently under review by the USFWS. Prior to project construction, either the Sterling site will be subject to its own incidental take permit, or it will be part of an area-wide permit resulting from the City's habitat plan. The Sterling permit also requires some interim dune restoration. The City would also be willing to commit to having a full-time biological steward on the Coast to regulate access during snowy plover nesting season should the development be completed prior to the Service's approval of our HCP.

A-3-SNC-94-008-EZ
Exhibit 3, p. 6

Things have changed since the Sterling permit was finally issued in 1994. Some have been environmentally beneficial like the reduction in the number of units from the approved 136 to 97, the Sand City MOU reducing the development potential of the Sand City LCP by at least two-thirds, and the drafting of the Project Study Report and the City's coastal HCP. Some things have required more coastal resource and infrastructure protection such as the listing of the snowy plover as a threatened species and the increased traffic on Highway One since 1994. However, on balance, I believe that the special conditions imposed by the Commission in 1994 and the City's coastal land use policy changes since that time, should provide enough positive evidence to deem that one final extension of the Sterling permit is consistent with the Coastal Act.

The extension would also be consistent with the fifteen years of environmental policy evolution which has transpired since the original development permit application was filed with the City.

Sincerely,



Steve Matarazzo
Community Development Director

C: City Administrator
City Council
Michael VanZandt

RECEIVED

JUL 19 1999

CALIFORNIA
COASTAL COMMISSION
CENTRAL COAST AREA

A-3-SNC-94-008-EZ
Exhibit 3, p. 7

A LIMITED LIABILITY LAW PARTNERSHIP
221 MAIN STREET
SIXTEENTH FLOOR
SAN FRANCISCO, CALIFORNIA 94105-1936
(415) 905-0200
FAX (415) 905-0202

MCQUAID, METZLER, BEDFORD & VAN ZANDT LLP

LE NUMBER 13139-002

IRECT DIAL

April 22, 1999

RECEIVED

APR 26 1999

BY OVERNIGHT COURIER

Mr. Steve Monowitz
California Coastal Commission
Central Coast Division
725 Front Street, Suite 300
Santa Cruz, CA 95060

CALIFORNIA
COASTAL COMMISSION
CENTRAL COAST AREA

Re: The Sterling Project Coastal Development Permit
Extension

Dear Steve:

You have asked for my input to inquiries concerning changed circumstances dealing with the traffic circulation and the Sterling Project. More specifically, you indicated the issue of impacts from the State University at Fort Ord and the Sand Dollar Shopping Center may have caused changed circumstances that impact the Sterling Project. I have spent the last couple of weeks retrieving some of the historical documents dealing with the traffic issue and now believe I have a good understanding of the situation. It is my belief that there are no traffic circulation issues that would cause changed circumstances with the Sterling Project. In actuality, because of the limitations the City of Sand City has placed on its coastal development through the Memorandum of Understanding with the Park agencies, the amount and intensity of traffic will actually decrease from the projections of a few years ago.

As the City has informed you, the Sterling project is obliged to pay \$120,000.00 to offset traffic impacts from the project. Moreover, the project has as a part of its proposed action, the requirement to improve Sand Dunes Drive, Tioga Avenue and the Canyon Del Rey/Hiway 1 Interchange. I am including the Resolution of the City approving the combined development permit along with its CEQA certification. In addition, I am including the Project Consideration Package in which the various conditions

D:\DOCS\13139\002\MONOWITZ.LTR

Staff Note: Attachments to this letter are
available upon request and
will be brought to the hearing.

A-3-SNC-94-08-E2
Exhibit 3, p. 8

Mr. Steve Monowitz
April 22, 1999
Page 2

related to traffic are imposed on the project. (Exhibit 1.)

The 1985 EIR contained an extensive analysis of the traffic impacts and this situation was reanalyzed in the three subsequent reviews of the project by the City. Although traffic impacts were a concern, the potential impacts were easily alleviated through the road improvements and impact fees. The City believes that impacts from the development of Fort Ord are speculative due to the delayed timetable for any future development. However, the recent Monterey Bay Shores Environmental Impact Report discusses the cumulative impacts from a number of different projects including the Sterling Project. (Exhibit 2.) In that report, the authors conclude that Fort Ord traffic was considered in the cumulative analysis but was too far north to have any impact. In fact, there does not appear to be any impact from these projects in combination that would lead one to believe there are changed circumstances that would change the analysis of the Sterling Project.

The important thing to note is that as presently configured, the Sterling Project exit on Hiway 1 is Canyon Del Rey. None of the traffic analyses indicate that there will be any change in level of service on the freeway. Moreover, since the traffic intersection most affected by the Sterling Project is Canyon Del Rey and Hiway 1, it is important to note that it is isolated from the effects of the McDonald site, the Monterey Bay Shores site and the Shopping Center. The only other potential intersection that could be impacted by the Sterling Project is Tioga Avenue and Del Monte Boulevard. The Monterey Bay Shores EIR looked at the potential cumulative impacts from that intersection and determined that the Level of Service remained at level B with and without the cumulative projects. (Exhibit 3.)

All of the information I have reviewed indicates that there will be no change in the level of service at intersections impacted by the Sterling Project. For this reason, I believe you can conclude that there are no changed circumstances with regard to the issue of traffic and the Sterling Project.

McQUAID, METZLER, BEDFORD & VAN ZANDT LLP


Mr. Steve Monowitz
April 22, 1999
Page 3

If you have any questions, please call. I also appreciate the opportunity to make an input to the process. Let me know when the Sterling Project will be reported to the Commission.

Very truly yours,

McQUAID, METZLER, BEDFORD
& VAN ZANDT, L.L.P.

By


Michael J. Van Zandt

Enclosures

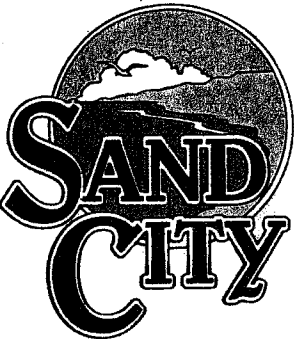
cc: Trustees
King Ventures
Steve Matarazzo
Roger Metzler, Esq.
Ladd Bedford, Esq.

TG/CL/DL/SM

RECEIVED

APR 12 1999

CALIFORNIA
COASTAL COMMISSION
CENTRAL COAST AREA



April 9, 1999

Mr. Steve Monowitz
California Coastal Commission
Central Coast District
725 Front Street, Suite 300
Santa Cruz, California

Dear Steve:

In response to your concern regarding potential "changed circumstance" having some bearing on traffic impact of the proposed Sterling Center, the following information is offered.

The Sterling EIR process began in 1985 and concluded as a result of several iterations in court and at least one supplemental EIR. The court finally certified the EIR in 1994 and it remains a "legally adequate" document in accordance with that ruling. The supplemental information contained in the EIR evaluates cumulative traffic impacts from anticipated projects including the Sand Dollar Shopping center, the Embassy Suites Hotel, a 192-unit timeshare project known as Monterey Bay Village (the old dump site) and the Sands of Monterey project at 375 hotel units and 185 condominiums (the current Monterey Bay shores site). It also includes discussion of the extension of Sand Dunes Drive to the Fremont interchange. It does not, however, anticipate the closure of Fort Ord and its ultimate conversion to civilian uses. And, the traffic impact report is based on a 136-unit project, not the proposed 100-unit project which is the subject of the permit extension. The estimated trip generation rate of 1,180 is therefore reduced to 870 trips with 10% being assigned to the peak hour, or 87 trips.

Based on project traffic impacts, including cumulative impacts, Higgins and Associates suggests a traffic impact fee of \$120,000 be exacted from the project. The City has included this fee as a condition to its coastal development permit approval. Now, with the elimination of the Sand Dunes Drive extension, all of that funding can eventually be earmarked to the improvement of the Canyon Del Rey (Route 218)/Highway One interchange, currently operating at a satisfactory level of service, (not the Fremont/Highway One interchange, which is the current problem requiring the project study report). The EIR also suggests that a regional traffic agency coordinate the implementation of such regional traffic impact fees. The City would consider transferring the traffic impact funds to the Transportation Agency For Monterey County (TAMC) at the point in time they establish a regional traffic impact assessment fee. Absent such an event, the City will hold the funds in an interest-bearing trust account for eventual use by Caltrans.

City Hall
1 Sylvan Park,
Sand City, CA
93955

Administration
(831) 394-3054

Planning
(831) 394-6700

FAX
(831) 394-2472

Police
(831) 394-1451

FAX
(831) 394-1038

Incorporated
May 31, 1960

A-3-SNC-94-008-E2
Exhibit 3, p. 11

Regarding future Fort Ord redevelopment, the timing of completion of its reuse is speculative. Conversion is going slower than anticipated due to the need to upgrade infrastructure throughout the entire former base, adding significantly to development costs. And, delays have been encountered due to legal problems in the conveyance process. Even so, the Fort Ord Reuse Authority (FORA) base reuse plan includes a requirement that all future development pay traffic impact fees based on their respective traffic generation rates.

In conclusion, the City believes that traffic impacts of the current project, at the current time, remain adequately addressed. Furthermore, it should be noted that two important factors initiated by the Commission and the City have now taken place: (1) the project traffic impacts have been reduced due to the special conditions imposed by the Commission in 1994; and (2) the ultimate build-out of Sand City's coastal area has been substantially reduced as the result of the 1996 Memorandum of Understanding (MOU) with the park agencies.

Sincerely,

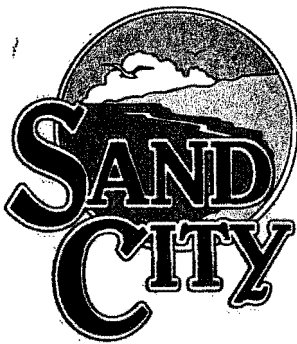


Steve Matarazzo
Community Development Director

SM:s

cc: City Administrator
M. Van Zandt
King Ventures

A-3-SNC-94-008-E2
Exhibit 3, p. 12



February 24, 1999

Ms. Tami Grove
Deputy Director
California Coastal Commission
725 Front Street, Suite 300
Santa Cruz, California 95060

RECEIVED

FEB 26 1999

CALIFORNIA
COASTAL COMMISSION
CENTRAL COAST AREA

Dear Tami:

The City of Sand City supports the extension of the Sterling Coastal Development Permit to March 17, 2000. As you can see by the enclosed City resolution, we extended our related permits to that date in recognition of the death of Sterling's developer and with the knowledge that transferring interest in the project would likely take some time.

It is our understanding that a prospective new developer for the project has been working very effectively with coastal staff on a design that addresses the added conditions imposed by the Coastal Commission in 1994. We hope you will extend the permit so that the new developer can proceed in a timely manner with the completion of this project. We also hope that you would agree with our conclusion that the changed circumstances since the 1994 issuance of the permit have all fostered more environmental protection and coastal access in the Sand City coastal zone (e.g, the 1996 MOU and completion of the coastal bike path project).

• City Hall
1 Sylvan Park,
Sand City, CA
93955

Administration
(831) 394-3054

Planning
(831) 394-6700

FAX
(831) 394-2472

Police
(831) 394-1451

FAX
(831) 394-1038

Incorporated
May 31, 1960

Sincerely,

David K. Pendergrass, Mayor
City of Sand City

DKP:sm

Enclosure:

A-3-SNL-94-008-EZ
Exhibit 3, p. 13

A LIMITED LIABILITY LAW PARTNERSHIP
221 MAIN STREET
SIXTEENTH FLOOR
SAN FRANCISCO, CALIFORNIA 94105-1936
(415) 905-0200
FAX (415) 905-0202

MCQUAID, METZLER, BEDFORD & VAN ZANDT LLP

FILE NUMBER 13139-002

DIRECT DIAL

February 23, 1999

RECEIVED

FEB 24 1999

BY OVERNIGHT CARRIER

Ms. Tami Grove
District Director
California Coastal Commission
725 Front Street, Suite 300
Santa Cruz, CA 95060

CALIFORNIA
COASTAL COMMISSION
CENTRAL COAST AREA

Re: Sterling Center Project
Permit No. A-3-SNC-94-08
Application for Permit Extension and Approval of Assignment of Permit

Dear Ms. Grove:

By this letter, the Trustees of the Bell Trust request an extension of coastal development permit no. A-3-SNC-94-08 for the Sterling Center Project in Sand City, California. Enclosed with this letter is a check in the amount of \$400.00, a completed application for extension of the permit (Exhibit "A"), and documentation supporting the request.

First, please note that the original permittee for this coastal development permit, David Bell, after long suffering very poor health, met his untimely death in November 1997. Mr. Bell's passing has materially affected progress on this Project. At the time of his death, Mr. Bell had transferred his interest in the coastal development permit and his interest in the lease of the Project real property to the Bell Trust, by operation of the Trust instrument, subject to approval by Sand City and the Coastal Commission. David Parker, David Lloyd and Leann April Weibert act as trustees. Both the Commission and Sand City have subsequently approved the assignment of the permit. See Exhibits "B" and "C" to this Application.

As a result of the untimely death of Mr. Bell and of negotiations with the Commission staff regarding pre-conditions to receiving the permit, development of the Project site has not yet commenced. Only a "Notice of Intent to Issue Permit" has been issued to date. A true and correct copy of this Notice is attached as Exhibit "D" to this

A-3-SNC-94-008-E2
Exhibit 3, p. 14

District Director
California Coastal Commission
February 23, 1999
Page 2

letter. The death of Mr. Bell has disrupted continued progress on this permit because there is no one person who has been able to replace Mr. Bell on a full time basis. Two of the trustees are already employed and the third is distanced from California. Much of the effort in the past year has centered on finding a responsible venture partner to develop the project; however, the Asian financial crisis and the complexities of developing on the coast of California have elongated the process. Meanwhile progress is being made on reformulating plans to accommodate the conditional permit approval and in the study of alternative water supplies.

Current progress by the Bell Trust toward meeting the pre-conditions includes investigating the potential for alternative water sources, obtaining proposals and estimates for preparation of the dune restoration plan (discussed at length below), contracting with a firm to prepare the grading plan on the site, and working with the original architect to reformulate the site drawings after analyzing the Commission conditions. In addition, the Bell Trust is engaged in extensive negotiations to sell its permit and the underlying real property rights to a third party. Several parties have expressed interest in the permit and land but until now they have not reached the stage where a viable project could be proposed. These negotiations have now reached the point where there is a current Letter of Intent between the Bell Trust and a responsible third party to purchase the land and the conditional coastal development permit for the site. In order to finalize the permit and to initiate development of the site, an additional one year extension of the permit is needed.

Development could not commence because the permit has not yet been issued (see Standard Condition No. 1). In order to obtain the extension in a timely manner, we are submitting this request in advance of the permit expiration date.

The Sterling Center Project remains the same project which was unanimously approved by the Commission on June 7, 1994. There are no changed circumstances which would affect the consistency of the project with the California Coastal Act. As discussed below, the Commission's findings of project consistency with the Coastal Act are equally applicable today.

Background.

This project has been approved by the Coastal Commission on two different occasions, in 1991 and in 1994. Throughout, the basic project concept has remained unchanged: the creation of a commercial health resort/hotel with 136 guest rooms, a restaurant and lounge, conference and retail space, and a subterranean parking garage.

District Director
California Coastal Commission
February 23, 1999
Page 3

The project is located in an area identified by the Local Coastal Program for Sand City as particularly appropriate for such a facility.

The project was found to be fully consistent with the Coastal Act and was approved in 1991. Intervening CEQA litigation initiated by third parties necessitated demonstrating compliance with that Act and resulted in a second approval of the Sterling Center Project by Sand City. The modified project was also found to be fully consistent with the Coastal Act, and thereafter was approved in 1994.

The project's coastal benefits and environmental programs will restore the site from its present deteriorated and unsightly condition, caused by past use as a concrete batch processing facility. The project includes various public access trails and works that do not currently exist, and that will significantly improve public access to this area of the beach. Extensive mitigation measures and a dune protection plan are included to preserve the natural dunes and landscape of the area. The project's sensitivity to the site is ensured by carefully planned building and pathway siting to avoid environmentally sensitive areas, by the dune protection measures, and by numerous other on-site and off-site mitigation measures set forth in the project's record with the Commission.

Consistency with the Coastal Act

The project retains the coastal benefits which won it original approval in 1991, and re-approval in 1994, including the restoration of a long-damaged and unsightly coastal resource, the creation of new and significant public coastal access, the provision of high quality public recreational opportunities, and a dune protection program.

The Commission's previous findings verified the project's conformity with all applicable Coastal Act policies and with the Local Coastal Program for Sand City, as summarized below, and those findings remain applicable today:

Coastal Access: Ideally suited for access and recreation, a new visitor-serving resort, new and improved public access, and the assortment of project recreational opportunities including an extension of Tioga Avenue, pedestrian boardwalks and pathways, and two blufftop vista points, a restaurant and dining facility, public parking spaces, removal of industrial debris including concrete blocks and structures, and various dedication requirements as well as the improvement and extension of Tioga Avenue. These facts led the Commission in 1994 to find this project in compliance with all Coastal Act sections and provisions of the certified LCP governing public access.

District Director
California Coastal Commission
February 23, 1999
Page 4

Habitat Protection and Enhancement: Once used as a concrete batching plant, and long subject to neglect, the site's natural topography has been altered significantly, leaving only a small area of the project — a highly degraded and impacted dune habitat — as an existing sensitive habitat for native vegetation. The applicant is currently obtaining the services of a firm to prepare a "dune restoration plan" intended to protect this habitat from adverse effects, consistent with the special conditions of the Coastal Commission permit. Moreover, the Sterling Project habitat program will be consistent with the City of Sand City's comprehensive habitat planning effort in order to ensure sensitive areas identified in the certified environmental impact report for the project ("EIR") are protected. The Commission found in 1994 that formation and implementation of the dune restoration plan ensures the project's compliance with the provisions related to sand dunes and environmentally sensitive habitats contained in the certified LCP.

Visual Resource Protection: The architecture and siting of the project were designed to preserve and enhance the view corridor designated in the certified LCP over the project site. In addition, the improvement of Tioga Avenue and the construction of a new public boardwalk at the terminus of Tioga Avenue provide vista points along the bluffs and shoreline of the project site. Finally, the permit conditions require that no part of the project construction extend above the level of Tioga Avenue, thereby further protecting visual resources over the top of the project. These facts and conditions resulted in the Commission's 1994 finding that the project is consistent with Coastal Act sections 30251 and 30254, and with the applicable policies of the certified LCP.

Geologic Protection: The project's grading and fill plan, location of the structures and public access development behind the bluff setback, the dune restoration plan described above, and the construction standards of the Uniform Building Code ensure the compliance of this project with Coastal Act section 30253. A considerable amount of time, effort and resources were expended both by the permit holder and the City of Sand City to comprehensively study and understand the dynamics of coast erosion issues, culminating in the Moffat-Nichols Study.

LCP Compliance: The project site is designated in the Sand City certified LCP as an area zoned for "visitor serving commercial" development. Both Sand City and the Commission found the project to be consistent with the extensive and detailed policies set forth in the certified LCP for Sand City.

Project Condition Compliance: As stated above, progress toward meeting the conditions imposed by the Commission in its 1994 permit approval has been impeded by

District Director
California Coastal Commission
February 23, 1999
Page 5

the poor health and unexpected death of Mr. Bell. Construction could not commence and other condition compliance could not go forward during the pendency of the litigation because it would have been impracticable to go forward without a ruling from the court. Once the litigation terminated, the applicant began to move immediately toward compliance under the permit. Unfortunately, it was difficult, if not impossible to obtain funding for the project while the initial extension request was pending. Once the initial extension request was approved by Sand City and the Commission, the applicant sought the assistance of a venture partner to bring the project to fruition.

As discussed above, current progress toward meeting the pre-conditions includes investigating alternative water supply sources, obtaining estimates for preparation of the dune restoration plan, contracting to prepare the grading plan, and reformulating the drawings after analyzing the Commission conditions. Soil testing in accordance with Commission conditions must wait for ground breaking on the site. In addition, the Bell Trust is actively engaged in negotiations to sell its permit and the underlying real property rights to a well-known developer that has proven its ability to work with the Coastal Commission staff on projects of this nature.

Architectural consultants have reviewed the new conditions imposed by the Commission in 1994, and have identified areas to be redesigned to compensate for the additional setbacks and height restrictions. This is being accomplished in an attempt to preserve the maximum number of rooms and adhere strictly to the approved footprint of the project. Environmental consultants for the project have reviewed the Coastal Commission conditions with a view toward preserving and restoring existing dunes and ensuring the debris on the site is properly disposed of and the bluffs restored. These same consultants have received proposals and estimates from coastal and dune restoration companies to prepare a plan for the protection of dunes on this site.

Particularly considering the many obstacles along the way, the applicant and his successor the Bell Trust have undertaken substantial work and expense in reliance on the Coastal Commission approval.

City Of Sand City Efforts

Besides the efforts of the permit holder, the City of Sand City has engaged in considerable effort to try to bring this project to fruition. Among the many actions taken by the City, many of them have been at great expense and effort in order to secure for the City the very best project possible with the least impact on the California Coast. The City of Sand City spent many years preparing a comprehensive, certified environmental

District Director
California Coastal Commission
February 23, 1999
Page 6

impact report ("EIR") for this project, and with some minor revisions, successfully defended that report in court. In conjunction with the EIR, the City studied the potential environmental impacts from the project and required an extensive mitigation and monitoring plan. When the EIR was supplemented, the City went much further than required and produced a comprehensive study of the coastal erosion effects. The engineering results of the Moffat-Nichols Report have been incorporated into the design of the site.

Sand City has some of the most beautiful and precious coastal areas in the State of California. In recognition of this, much pressure has been placed on the City to develop its areas near the coast. The City has attempted to approach development in a responsible and sensitive way to ensure that the very special areas within the City are not destroyed. In keeping with this philosophy, the City has entered into a Memorandum of Understanding ("MOU") with the Monterey Peninsula Regional Parks District and the State of California that allows development on only three sites along the coast within the confines of the City. These sites are the Sterling Site (the instant project), the McDonald Site, and the Lonestar Site. The City was willing to relinquish the opportunity to develop any other sites along the coast because it recognized the sensitivity of any larger scale development and it realized that it would be able to support its tax base needs adequately if it limited development to the three sites. However, the City must allow development of the three sites in order to fulfill its part of the MOU. Without development of the three sites, the MOU's dune restoration benefits will be minimized.

Right from the start of this project, the City incorporated the maximum public access attributes into the design. Not only does the project allow for views of the beautiful Monterey Bay and the Santa Cruz and Monterey coastlines, but access to the site for the public is an integral feature. Parking is provided for the visiting public and a public access boardwalk will be maintained throughout the life of the project. The public will have complete and unrestricted access to the pocket beach on the site and to the beaches to the north of the property. Moreover, the City will design its coastal bike path to traverse the project site in such a manner that the public can have easy access to the site and enjoy the vistas while riding along the bike path.

The permit holder and the City are committed to the preservation, remediation and enhancement of the natural environment. This site has long been an eyesore and a hazard. The project will bring much needed improvements to the site and will enhance its overall aesthetics. Currently a large area of the site is covered with a concrete floor. The area near the bluff is covered with concrete rubble. All of this unsightly debris will

District Director
California Coastal Commission
February 23, 1999
Page 7

be removed and the beach and bluff area restored to its natural condition. The dunes on the site will be protected and restored so that they provide the special habitat which is fast disappearing from our coastal areas. The City will be conducting its own habitat conservation studies of the area and will be developing a comprehensive plan to preserve offsite areas for any species that are in need of protection. The Sterling habitat plan will be consistent with and complement the City's comprehensive efforts. Obviously this will require a significant commitment of resources on the part of the City.

The City of Sand City has placed much of its future on the development of the Sterling Project along with several other key projects in the City. The extension of the Sterling permit will ensure that the City's efforts to prepare for the future are successful.

Changed Circumstances

Apart from the relatively minor changes occasioned by the Commission's 1994 conditions, as described above, the project today is exactly the same project that the Commission approved in 1994, and remains fully consistent with the Coastal Act. There are no changed circumstances that would affect the project's consistency with the Coastal Act.

Applicant's Continued Legal Interest in the Real Property to be Developed Under the Permit: The permit entitlement and the underlying real property interest were transferred by Mr. Bell, the original applicant, now deceased, to the Bell Trust. The Bell Trust is the current owner both of the permit entitlement A-3-SNC-94-08 and of the interest in the Project real property to be developed under that permit. See Exhibits "E" & "F."

Review of Extension Request: We would appreciate it if you would make your determination on our extension request as soon as possible. We understand that upon submittal of this request for an extension, the time period for permit expiration is automatically extended.

If you have any questions regarding our extension request or about the project, please contact us and we will provide you with whatever information or documentation is necessary. We will call you in a few weeks to determine the status of this request.

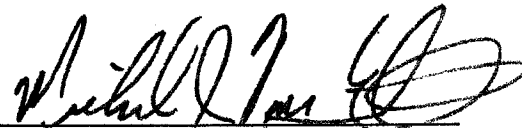
District Director
California Coastal Commission
February 23, 1999
Page 8

Thank you for your consideration.

Very truly yours,

McQUAID, METZLER, BEDFORD
& VAN ZANDT, LLP

By:



Michael J. Van Zandt
Attorneys for the Bell Trust

Enclosures

cc: Peter Douglas, Executive Director of the Coastal Commission
Joseph C. Rusconi, Deputy Attorney General
Kelly Morgan, City of Sand City
David Lloyd
David Parker
Leann Weibert
Roger Metzler, Esq.

CALIFORNIA COASTAL COMMISSION

SOUTH CENTRAL COAST AREA
800 SOUTH CALIFORNIA ST., 2ND FLOOR
VENTURA, CA 93001
(805) 641-0142



W 6a

June 6, 1994

TO: Commissioners and Interested Persons

FROM: CALIFORNIA COASTAL COMMISSION
South Central Coast Staff

SUBJECT: Addendum to Item 6a, A-3-SNC-94-8 (Sterling Ctr.), for the
Commission Meeting of June 8, 1994.

The following are revisions to the staff report.

1. Make the following clarification change to Special Condition #1, Revised Plans on page 5:

a. Special condition 1(a) shall read as follows:

(a) All structures other than public access improvements in the southern portion of the site containing the existing bluff shall be set back a minimum of fifteen (15) feet landward of the 50-year erosion line established by Moffatt & Nichol as generally depicted on Exhibit 1.

b. The following sentence shall be added to Special Condition #1 as #1(b):

(b) All structures in the northern portion of the site containing the sandy pocket beach shall be set back a minimum of 193 feet landward of the identifiable beach scarp as generally depicted on Exhibit 1 as the revised setback line.

c. Special condition 1(b), 1(c) and 1(d) shall be reordered to 1(c), 1(d) and 1(e):

2. Make the following typographical correction to page 5, Special Condition #2, Grading and Dune Restoration, first line:

a. "submittal" shall be changed to "transmittal".

3. Make the following typographical correction to page 6, Special Condition #4, Sand Replenishment:

a. "submittal" shall be changed to "transmittal".

Appendix A, p.1

001128

4. Make the following clarification change to page 7, last sentence paragraph (d), to read as follows:
 - a. The amount of sand placed on the beach shall be the equivalent necessary to establish the bluff and/or sandy beach to the estimated morphology accounting for total irreversible conditions [natural recession and sea level rise (88 feet)], as set forth in the Moffatt-Nichol estimated 50 year low risk erosion rate.
5. Make the following clarification change to page 11, second full paragraph, last sentence:
 - a. The setback line is therefore measured from a projected future bluffcrest position where sandy beach exists. With respect to the existing identifiable bluff area, the applicant has not submitted final grading plans and it appears that the setback line is measured from the top of of the recontoured bluff.
6. Make the following clarification change to page 14, last full paragraph, last sentence:
 - a. The Commission finds that only as conditioned, is the proposed development consistent with the access policies of the certified LCP and the applicable shoreline erosion and natural hazards policies contained in the certified LCP.
7. Add the following CEQA findings to page 20, following the last paragraph:
 - a. G. California Environmental Quality Act

Section 13096(a) of the Commission's administrative regulations requires Commission approval of a Coastal Development Permit application to be supported by a finding showing the application, as conditioned by any conditions of approval, to be consistent with any applicable requirements of the California Environmental Quality Act (CEQA). Section 21080.5(d)(2)(i) of CEQA prohibits a proposed development from being approved if there are feasible alternatives or feasible mitigation measures available which would substantially lessen any significant adverse impact which the activity may have on the environment.

As stated in the section regarding the project background, the project has been the subject of various environmental review. A supplemental environmental impact report was certified by the San Diego City Council on July 18, 1989 and was later revised following a court ruling in 1990. Most recently, the City prepared and circulated on July 26, 1993 the Sterling Center Project Response to Minute Order and all Relevant Past Environmental and Technical Documents, County of Monterey Superior Court, Case No. M21299.

Appendix A, p. 2

001129

The proposed project as conditioned, to limit the seaward extent of the structure, to reduce the height, to eliminate the construction of a desalination plant from the project plans, to establish a sand replenishment program, to restore the sensitive dune habitat, to remove excavated fill material and concrete rubble and to ensure future provisions of public use at the site mitigate any potential adverse impacts resulting from the project. The proposed project, as conditioned will not have significant adverse effects on the environment, within the meaning of the California Environmental Quality Act of 1970. Therefore, the proposed project, as conditioned to mitigate the identified impacts can be found consistent with the requirements of the Coastal Act to conform to CEQA.

8. Exhibit 1, depicting the revised project setback line should be replaced with the attached Exhibit 1, which correctly identifies the revised setback line.

1030M

Appendix A, p. 3

001130

JHW
JAMES H. WATSON
ARCHITECTS AND PLANNERS
1705 CANNERY ROW
SUNNYVALE, CA 94089
408/647-1701

MHW

THE COMPANY NOW
OWNED BY C. A. 9140
AND 6-1-1911

new corridor

**THE
STERLING
CENTER**
SAND CITY CALIFORNIA

OWNER:
MR DAVID GEL-MER
THE STANLEY CENTER
PO BOX 412
MOUNTAIN VIEW, CA 91350

10/10/10 10:10 AM

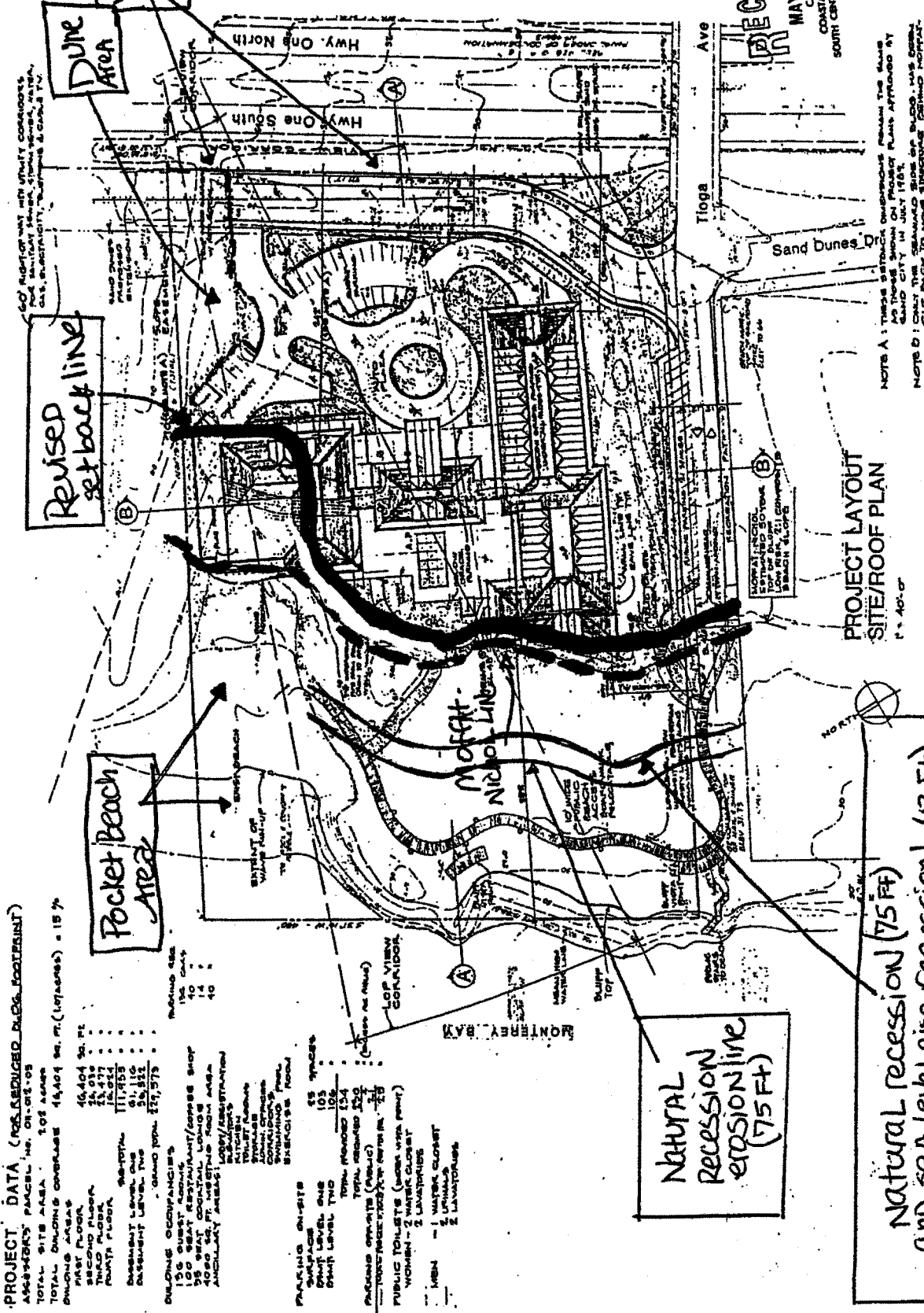
4/2/63/CA
6/2/63/13

RECEIVED

MAY 25 1994

CALIFORNIA
COASTAL COMMISSION
SOUTH CENTRAL-OCEANIC DISTRICT

1A



Natural recession (75 Ft)
and sea level rise recession (13 Ft)
50 yr erosion line as estimated
by Moffatt - Nichol

CALIFORNIA COASTAL COMMISSION

CENTRAL COAST AREA
89 SOUTH CALIFORNIA ST., 2ND FLOOR
VENTURA, CA 93001
(805) 641-0142

Filed: 2/17/94

49th Day: 4/7/94

180th Day: N/A

Staff: R. Richardson *RR*

Staff Report: 5/23/94

Hearing Date: 6/7/94

Commission Action:

STAFF REPORT AND RECOMMENDATION ON APPEAL

LOCAL GOVERNMENT: City of Sand City

DECISION: Approval with Conditions

APPEAL NO.: A-3-SNC-94-08

APPLICANT: David Bell

PROJECT LOCATION: 500 Tioga Avenue, west of Highway 1, Sand City,
Monterey County, APN 011-012-05

PROJECT DESCRIPTION: Commercial health resort/hotel with 136 guest rooms, 135 seat restaurant and lounge, 4000 square feet of conference and retail space and 234 car subterranean parking garage. The project also includes the extension of Sand Dunes Drive, public access improvements, restoration of an on-site sand dune, installation of a desalination and water treatment facility, and an unknown amount of grading, primarily excavation, to set the structures into the site and construct roads.

APPELLANT: Ventana Chapter of Sierra Club, Monterey Peninsula Regional Park District, and Commissioners Gwyn and Cervantes

SUBSTANTIVE FILE DOCUMENTS:

1) Sand City Local Coastal Program; 2) Sterling Center Project Consideration Packet, November, 1993; 3) JWH Drawings for the Sterling Center, Revised October 29, 1990; 4) Sterling Center: EIR and Supplemental EIR; 5) Final Shore Erosion Study, Moffatt and Nichol, December, 1989; 6) Response to Minute Order (Including All Response to Comments) and All Relevant Past Environmental and Technical Documents, County of Monterey Superior Court Case No. 21299, July 1994; 7) Coast Recession and Wave Runup on Sand City Site A.P. #11-012-05, Southern Monterey Bay, Warren C. Thompson, November 13, 1984; 8) Plan View and Cross Section Map, Haro & Kasunich, October 16, 1993; 9) Report to the City of Sand City/Periodic Review, June 1990; 10) California Coastal Commission Staff Reports of 3/16/94, 1/24/91 and 4/9/91.

Appendix A, p. 5

SUMMARY OF STAFF RECOMMENDATION:

The staff recommends approval of the proposed development with additional special conditions regarding structural setback, height restrictions, final approval of grading and dune restoration plans, project water resources, sand replenishment and public access.

NOTE: The Commission found that there was substantial issue with respect to the grounds on which the appeal was filed at its public hearing on 3/16/93.

I. APPELLANT'S CONTENTIONS:

The City's action to approve the proposed development has been appealed by the Ventana Chapter of the Sierra Club, Monterey Peninsula Regional Park District, and Commissioners Gwyn and Cervantes. A summary of their concerns follows:

A. The Sierra Club contends that:

1. The erosion setback for the northern wing of the Sterling Project structure is inconsistent with LUP Policy 4.3.9(a).
2. The grading plan for the beach area is inconsistent with public access LUP policies 2.3.1., 2.3.10, and 2.3.4(d)(e).
3. The building design and grading plan are inconsistent with coastal visual resource protection policy 5.3.
4. The desalination component of the project is inconsistent with marine and water resources policies 4.3.28-4.3.32.
5. The project is inconsistent with circulation policy 6.4.23.

B. Commissioners Gwyn and Cervantes contend:

1. Shoreline Erosion Setbacks: LUP Policy 4.3.9(a) requires setbacks to be 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. 4.3.9(b) requires setbacks based on at least a 50 year economic life for the project.

There is a small pocket beach with no beach scarp located on the northerly third of the site. The setback of the building, and of all the public access improvements does not accommodate storm wave runup.

2. Landform Alteration and ESH Restoration: A series of policies (4.3.1a-4.3.27) give direction to dune stabilization/restoration, and habitat restoration. A portion of an existing dune is on the project site and is designated by Policy 4.3.24(a) and Figure 7 as one of those stabilization/restoration areas. However, the northerly extension of Sand Dunes Drive up to this designated dune restoration puts the required restoration at risk of a future planned road

Appendix A, p. 6

extension. Since there is no grading plan as of yet, it remains impossible to evaluate if the future grading will protect that dune and be consistent with the LCP.

3. Visual Resources:

Policies 5.3.1, 5.3.2 and 5.3.3 establish criteria and standards for any proposed development to meet. Since the city re-approved the 1990 project and did not revise the project elevations to meet Coastal Commission Special Conditions of its April 1991 decision, an issue remains that the city complied with all of the components of Policy 5.3 of the LUP.

4. Marine and Water Resources Policies 4.3.28-4.3.32 protect marine resources and ocean water quality, and require private wells for water supply to complete adequate water analysis in order to prevent impacts on Cal-Am wells in the Seaside Aquifer. The project proposes a private, on-site desalination system, a system that has not yet been proposed nor analyzed by the city. Sand City receives an allocation of water from the Water Management Agency. The project as proposed exceeds that water allocation, the deficit being made up only from the proposed private on-site desalination system.

C. The Monterey Peninsula Regional Park District contends:

1. The erosion setback for the northern wing the Sterling project structure is inconsistent with LUP policy 4.3.9(a) and (b).

II. LOCAL GOVERNMENT ACTION:

On December 7, 1993 the City Council of Sand City re-approved a coastal permit for the proposed development with special conditions and a mitigation monitoring program. The City's decision was appealed to the Coastal Commission on February 17, 1994 by the Ventana Chapter of the Sierra Club, on February 25, 1994 by the Monterey Peninsula Regional Park District, and on February 28, 1994 by Commissioners Gwyn and Cervantes. The appeals were received within the required 10 working day appeal period established by the Coastal Act and all of the appellants have proper standing as required by the Administrative Regulations in Section 13111.

III. APPEAL PROCEDURES:

After certification of a Local Coastal Program (LCP), the Coastal Act provides for limited appeals to the Coastal Commission of certain local government actions on coastal development permits. Projects within cities and counties may be appealed if they are located within the mapped appealable areas. The project is located between the first public road and the sea or within 300 ft. of the mean high tide line. The grounds for appeal are limited to those contained in Section 30603(b) of the Coastal Act. Those grounds are that the development does not conform to the standards set forth in the certified Local Coastal Program or the access policies set forth in the Coastal Act.

Section 30625(b) of the Coastal Act requires the Commission to hear an appeal unless the Commission determines that no substantial issue is raised by the

Appendix A, p. 7

appeal. If the staff recommends "substantial issue" and no Commissioner objects, the substantial issue question will be considered moot, and the Commission may proceed directly to a de novo public hearing on the merits of the project. The applicable test for the Commission to consider is whether the proposed development is in conformity with the certified Local Coastal Program pursuant to Section 30604(b) of the Coastal Act.

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

At the "substantial issue" stage of the appeal process the only persons qualified to testify before the Commission are the applicant, persons who opposed the application before the local government (or their representatives), and the local government. However, at the time of the de novo hearing, any person may testify during the specified time of the proceedings.

IV. STAFF RECOMMENDATION ON APPEAL:

The staff recommends that the Commission adopt the following resolution:

Approval with Conditions

The Commission hereby grants a permit for the proposed development, subject to the conditions below, on the grounds that, as conditioned, the development will be in conformity with the provisions of Chapter 3 of the California Coastal Act of 1976, will not prejudice the ability of the local government having jurisdiction over the area to prepare a Local Coastal program conforming to the provisions of Chapter 3 of the Coastal Act, and will not have any significant adverse impacts on the environment within the meaning of the California Environmental Quality Act.

II. Standard Conditions

1. Notice of Receipt and Acknowledgment. The permit is not valid and development shall not commence until a copy of the permit, signed by the permittee or authorized agent, acknowledging receipt of the permit and acceptance of the terms and conditions, is returned to the Commission office.
2. Expiration. If development has not commenced, the permit will expire two years from the date on which the Commission voted on the application. Development shall be pursued in a diligent manner and completed in a reasonable period of time. Application for extension of the permit must be made prior to the expiration date.
3. Compliance. All development must occur in strict compliance with the proposal as set forth below. Any deviation from the approved plans must be reviewed and approved by the staff and may require Commission approval.

Appendix A, p. 8

4. Interpretation. Any questions of intent or interpretation of any condition will be resolved by the Executive Director or the Commission.
5. Inspections. The Commission staff shall be allowed to inspect the site and the development during construction, subject to 24-hour advance notice.
6. Assignment. The permit may be assigned to any qualified person, provided assignee files with the Commission an affidavit accepting all terms and conditions of the permit.
7. Terms and Conditions Run with the Land. These terms and conditions shall be perpetual, and it is the intention of the Commission and the permittee to bind all future owners and possessors of the subject property to the terms and conditions.

VI. Special Conditions

The proposed development is subject to all special conditions of Coastal Development Permit NO. CP-90-05 (City of Sand City) except as modified and added below.

1. Revised Plans

Prior to transmittal of Coastal Development Permit the applicant shall submit, for the review and approval of the Executive Director, revised plans which indicate or incorporate the following changes:

- (a) All structures other than public access improvements shall be set back a minimum of fifteen (15) feet landward of the 50-year erosion line established by Moffatt & Nichol as depicted on Exhibit 1.
- (b) The maximum height of the building which parallels Tioga Avenue along the southern portion of the property and that portion of Sand Dunes Road perpendicular to Tioga Avenue within the southern portion of the property shall not exceed the height of Tioga Avenue running east to west at any point.
- (c) The maximum height of all structures and of the Sand Dunes Drive extension located within the designated view corridor as indicated on the project plans dated 10/29/90 shall not exceed an elevation of 50 feet above mean sea level.
- (d) The northern extent of Sand Dunes Drive shall not encroach into the large dune located at the northeast corner of the project site as depicted on Exhibit 1.

2. Grading and Dune Restoration

Prior to submittal of Coastal Development Permit the applicant shall submit, for review and approval of the Executive Director:

- (a) Final engineered grading plans which indicate that no grading or landform alteration shall take place within the sand dune formation

Appendix A, p. 9

located in the northern portion of the site or the pocket beach located in the northwestern portion of the site as depicted in Exhibit 1.

- (b) Dune stabilization and restoration plans for the sand dunes in the northern portion of the site identified as a dune restoration area on the project plans dated 10/29/90 in conformance with special conditions 25 and 26 of CP-90-05. Said plans shall be prepared by a biologist or landscape architect with expertise in dune vegetation and restoration and shall include native plant species suitable for dune habitat as recommended by the biologist or landscape architect.

Additionally, the applicant shall submit, for the review and approval of the Executive Director: 1) a written agreement stating that the applicant agrees to begin implementation of the above stated Dune Restoration Program, within 30 days of the start of the next rainy season upon completion of the proposed project; 2) a final revegetation plan that includes a maintenance and monitoring program which provides for the ongoing maintenance of the revegetated dunes and the removal of any exotics that may begin habitation of the dunes on a yearly basis for a minimum of three years following the commencement of the Dune Restoration Program; and, 3) an agreement that in the event that the native vegetation has not been established, that the necessary measures will be taken to ensure that dune restoration occurs.

3. Project Water Services

Prior to transmittal of Coastal Development Permit the applicant shall submit revised plans to delete the construction of a desalination plant and shall submit, for the review and approval of the Executive Director, evidence of an alternative available water source to serve the proposed project. Only upon the applicant's demonstration to the Executive Director that an alternative water source is not available to supply the project, either in part or in whole, will the Commission review the construction of a desalination plant in the form of an amendment to permit A-3-SNC-94-08 or through a separate coastal development permit, as determined by the Executive Director.

4. Sand Replenishment

Prior to the submittal of Coastal Development Permit the applicant shall submit, for the review and approval of the Executive Director a sand replenishment program based upon the following criteria;

- (a) Establishment of an average Mean High Water (MHW) elevation contour as the present shoreline (between 5/94 and permit issuance) for both the man-made bluff profile that occupies the southern portion of the site and the sandy beach profile that occupies the northern portion of the site.
- (b) Establishment of a permanent bench mark location and a base line survey. The base line survey shall identify the location of the hotel structure (as revised in Special Condition #1), the Mean High

Appendix A, p.10

Tide Line and the Moffatt-Nichol estimated 50 year low risk erosion line as depicted in Exhibit 1.

- (c) Semi-annual measurement of the bench mark location either in the early summer and early winter or a time when the project's certified engineer anticipates that the shoreline position would be most representative of a storm and calm season at a semi-annual repeatable rate.
- (d) Submittal of a written agreement to institute a sand replenishment program whenever there are two consecutive semi-annual recessions of the bluff area or sandy beach landward of greater than 88 feet as measured from the Mean High Tide Line measured in the base line survey. The replenishment program shall restore the bluff or the sandy beach area to eighty eight (88) feet (at the minimum) as measured for the Mean High Tide Line identified in the base line survey prior to the next monitoring period. The amount of sand placed on the beach shall be the equivalent necessary to establish the bluff and/or sandy beach to the estimated morphology as set forth in the Moffatt-Nichol estimated 50 year low risk erosion rate.

5. Excavated Material

Prior to the issuance of the permit, the applicant shall submit, for the review and approval of the Executive Director:

- (a) Evidence of the review and approval by the U.S. Army Corps of Engineers of the grain-size suitability of the excavated Calabrese-fill material for either purposes of beach replenishment or for other use on the site in any area seaward of the Moffatt-Nichol estimated 50 year low risk erosion rate.
- (b) Evidence that the excavated Calabrese-fill material has been tested for toxicity and of review and approval by the California Regional Quality Control Board of testing methodology and testing results of the contaminant levels of the material to ensure the suitability of the material for beach replenishment.

In the event that the material does not meet these suitability tests, it shall be removed from the site.

- (c) Evidence of authorization from the State Lands Commission to remove the concrete rubble located west of the bluff. Subsequent to such authorization, the applicant agrees to remove the concrete rubble from the site.

6. Public Beach Access Areas

The applicant shall agree in written form to relocate the Public Access Boardwalk and public access areas landward at such time when erosion extends within 10 feet of the site's public access. The relocation of comparable public access areas shall occur within three (3) months of the said erosion.

Appendix A, p. 11

VII. FINDINGS AND DECLARATIONS

The Commission hereby finds and declares:

A. Project Description and History

The current development approved by the City consists of a 136 room resort hotel, 135 seat restaurant and lounge, 4000 square feet of conference and retail space and a 234 car subterranean parking garage. The hotel and conference facilities are located in three buildings consisting of two one-story structures and one six-story building (including two subterranean stories). The maximum height of the structure is \pm 50 feet above finished grade. Total building coverage of the 7.02 acre site is 46,404 square feet or 1.07 acres (15%). Total building enclosed area is 229,573 square feet including both subterranean levels. The portion of the project located in the northern 100 foot section of the site is located seaward of the designated 50-year erosion line as measured from the beach scarp. The remaining development, other than public access improvements and proposed dune restoration, is located inland of a designated 50-year erosion line.

The project site is located seaward of Highway One which forms the eastern boundary of the project and the Pacific Ocean and Monterey Bay bounds the site on the west. Tioga Avenue is located immediately south of the project site and the property to the north once was the site of a sand mining operation (Monterey Sand Co.) now shut down. In addition, the northern portion of the site contains a sand dune which is proposed to be restored as part of the proposed development.

Other components of the proposed project include circulation improvements, public access improvements and dune restoration. Circulation improvements include the extension of Sand Dunes Drive to a point near the northern property boundary and improvements to Tioga Avenue including the provision of 21 public parking spaces. Public access will be provided to and along the sandy beach including a 10 foot wide boardwalk and a dune restoration and landscaping plan is proposed on the site. The project also includes the installation of a water desalination facility to provide potable water for the proposed development. In addition, an unknown amount of grading will be necessary to accommodate the proposed structures and roads. No grading plans have been submitted for the development either in 1990 or 1993.

Background

A larger development on the site consisting of a 229 room hotel, 275 seat restaurant and lounge, concrete seawall and other similar improvements was approved by the City in 1985. The project was subsequently appealed to the Coastal Commission which, after finding that the City's approval raised a substantial issue with the certified LCP and access and recreation policies of the Coastal Act, overruled the City's approval and denied the project in April, 1986. The Commission's decision was upheld by the Superior Court on March 16, 1987 (Sand City vs Coastal Commission, Case No. M. 16952).

The City subsequently approved a scaled down version of the project in 1989 consisting of a 136 room hotel, 135 seat restaurant and lounge, and other

Appendix A, p. 12

Improvements with the exception of a seawall which is very similar to the project before the Commission at present. This project was also appealed to the Coastal Commission. The City's approval was nullified, however, as the result of a lawsuit filed by the Ventana Chapter of the Sierra Club challenging the City's certification of the Supplemental EIR. The Monterey County Superior Court ruled that substantial changes had been made to the project after the SEIR public review period and required the preparation and distribution for public review of a revised SEIR. The changes which warranted this decision involved the relocation of all structures and roadways behind a designated 50-year erosion line to mitigate the project's potential adverse impacts upon beach erosion. After complying with the Court's decision the City approved a very similar project on November 13, 1990 which was appealed by the Sierra Club and Commissioners Gwyn and Giacomini. In addition to the revised SEIR, that submittal also included a Shore Erosion Study (12/89) prepared by the engineering firm of Moffatt and Nichol. These documents were included as supporting material for the project before the Commission in 1991 and are included as supporting material for the project before the Commission today as a result of the City approval and subsequent approval.

Changes between the City's 1989 approval and the 1990-91 project consist of setting all structures and roadways behind a 50-year erosion line established as a point 178 feet landward of the existing shoreline (Mean High Water) based on the Moffatt and Nichol report rather than a distance of 148 feet based on a previous 1984 erosion study (Thompson).

The Commission found substantial issue with the project on February 5, 1991 and the de novo hearing was held on April 9, 1991. The Commission approved the proposed project subject to special conditions regarding: the submittal of revised plans demonstrating structural set back from the estimated 50-year erosion line and height reductions of the buildings; the submittal of grading plans indicating that no grading will take place within the northern sand dune formations; the submittal of dune stabilization and restoration plans; the amendment of the City's certified LCP to prohibit sand mining; and, the applicant's agreement to institute a sand replenishment program when beach erosion encroaches within 10 feet of the base of the bluff. The applicant neither complied with the special conditions necessary to commence construction nor applied for a permit extension and the project's approval expired on April 9, 1993.

On May 24, 1991, the Superior Court of Monterey County issued a Minute Order Ruling on Return Peremptory Writ of Mandamus. The Order stated that the manner in which the Draft SEIR was recirculated was inadequate because it did not include the original Draft SEIR or reference documents. The Order further stated that two comment letters prepared in response to the recirculated Draft SEIR did not adequately address the concerns raised in the responses. As required, the City prepared and circulated on July 26, 1993 the Sterling Center Project Response to Minute Order and all Relevant Past Environmental and Technical Documents, County of Monterey Superior Court, Case No. M21299.

The subject project before the Commission today (A-3-SNC-94-08) as re-approved by the City in 1993 is the same project appealed to the Commission in A-3-SNC-90-127. The applicant did not revise the project to respond to special conditions imposed by the Commission on April 9, 1991. Further, the City's approval of the project did not impose special conditions to reflect the Commission's previous action.

Appendix A, p. 13

The Sand City Land Use Plan portion of its LCP was certified by the Coastal Commission on December 2, 1982. The LCP Implementation Plan was subsequently certified on March 14, 1984 by the Commission with the exception of the Area of Deferred Certification known as South of Bay. Most of the City's Coastal Zone is located between Highway One and the sea and consists of mostly vacant parcels except for a wastewater treatment pumping station. Although the shoreline area has been severely impacted by prior industrial development over the years, a pre-existing natural dune system is slowly re-establishing itself in some areas. Most of the City's Coastal Zone seaward of Highway One is narrow, less than 1000 feet in width, and the beaches and bluffs are eroding. The City's shoreline, which is approximately 1 1/2 miles in length is bordered by the City of Seaside on the south and Fort Ord on the north.

B. Public Access

As indicated, the proposed project includes several public access improvements and dedications as required by the City. Improvements include the provision of 21 public parking spaces and public restrooms in the southern portion of the property adjacent to Tioga Avenue. In addition, boardwalks and pathways extend from the southern portion of the site to the shoreline area. Most of the proposed boardwalk and public dedication area is located seaward of the 50-year erosion line established by the City. Two blufftop vista points are also to be provided.

The Coastal Act requires the provision of maximum access and recreational opportunities for all the people of the State and further provides that development shall not interfere with the public's right of access to the sea in Sections 30210 through 30214 (incorporated by reference).

In addition, the City's certified LCP Land Use Plan contains several policies designed to carry out the public access requirements of the Coastal Act which require the provision of public access by all future shorefront development unless it is not feasible in Sections 2.3.1 through 2.3.15 (incorporated by reference).

Regarding the issue of the 50-year erosion line and proposed access improvements, the City's recent approvals are based on a "Shore Erosion Study" prepared by the engineering firm of Moffatt and Nichol (12/89). As a result of this study the City required all permanent structures and roadways to be sited landward of this line in order to provide compliance with LCP policy 4.3.9 which requires setbacks based on a 50-year economic life for the project. (The City also found that this requirement eliminated the need for a required sand replenishment program recommended by the Supplemental EIR.)

While the City found that the public access improvements and dedications described above were consistent with the Coastal Act and its certified Land Use Plan a concern is raised by the fact that most of the access improvements are located seaward of the 50-year erosion line and may not be available to the public for the life of the project. Because of the gradual erosion of the beach and bluff throughout this period eventually all public access seaward of the structure will be eliminated due to the disappearance of the beach within the established 50-year lifetime of the project. Another concern is the potential impact of future sand mining relative to beach erosion which, if

Appendix A, p. 14

resumed, would add another 32 feet to the established 50-year erosion line. When this project was before the Commission in 1991, the City had passed a resolution to initiate an LCP Amendment to prohibit future sand mining (which is encouraged by the Coastal Commission's 5-year review of the City's LCP). However, this amendment was never acted upon. The City's recent approval indicates that they have been advised by the Monterey Sand Co., Inc. that they intend to halt sand mining. However, the City's certified LCP does not preclude sand mining operations and, therefore, the potential for sand mining operations to resume at some future date exists.

Regarding the issue of the 50-year erosion line and proposed access improvements the City's recent approvals are based on a "Shore Erosion Study" prepared by the engineering firm of Moffatt and Nichol (12/89). The study is not a site specific analysis of wave uprush and does not consider the site's stability. As stated previously, the project includes recontouring of the man-made bluff area to a 2:1 slope. The Commission has not been afforded the opportunity to review such plans though. The man-made bluff consists of Calabrese-fill material and concrete rubble has been placed seaward of this bluff. As indicated by the applicant the fill material will be removed and replaced with a suitable sand material. In addition, the City has indicated that the concrete rubble will be removed. The Commission notes that while the estimated shore erosion as determined by the study does include a safety factor to account for uncertainty, it does not serve to absolve the responsibility to analyze given site and project specific information. In the case of this project, the removal and replacement of the fill and the removal of the concrete rubble will inherently increase the bluff's erosion rate.

The project site contains two beach profiles, a man made bluff along the southern 350 feet of the site and a sandy beach cove on the remaining northern 100 feet of the site. As a result of the above referenced study the City required all permanent structures and roadways to be sited landward of the 50-year erosion line in order to provide compliance with LCP policy 4.3.9 which requires setbacks based on a 50-year economic life for the project. According to the Sterling Center Response to Minute Order County of Monterey Superior Court report, this erosion line was measured by the City's engineer based on the Moffit and Nichol approach which uses the historic shoreline position to project future shoreline positions. After accounting for the future shoreline position an additional horizontal shoreline distance was added to account for the beach scarp in the northern section of the site. The setback line is therefore measured from the top of the bluff, where a bluff is identifiable and from a projected future bluffcrest position where sandy beach exists.

With regard to setback measurements, Policy 4.3.9(a) states:

- 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 storm wave runup;

In its approval the City established the lowest risk erosion rate (highest rate of erosion -178 feet) as the 50-year erosion setback line. This 178 feet estimated erosion consists of both reversible and irreversible conditions. The irreversible occurrences include allowances for natural recession and sea

Appendix A, p. 15

level rise recession. The estimations which comprise the established lowest risk erosion rate are broken down as follows:

Natural Recession	75 feet
Sea Level Rise Recession	13 feet
Safety Factor Recession	25 feet
Extreme Reversible Recession	65 feet

Total Extreme Winter/Storm Recession	<u>178</u> feet
---	-----------------

In addition, the City also found that a setback based on the 50-year economic life for the project eliminated the need for a required sand replenishment program recommended by the Supplemental EIR. As stated previously, the site contains two beach profiles, a man made bluff and a sandy beach area. Given the present beach morphologies and given the explicit direction of the City's certified LCP, the setback line along the northern 100 feet of the site should be redefined to conform with policy 4.3.9(a) as depicted in Exhibit 1. The Commission notes that should the City choose to adopt an alternate, site specific, shoreline erosion study that addresses the site's topography, soil conditions, proposed development and removal of existing concrete rubble or should the City effectively amend their LCP, some derivation of the proposed project could be found consistent with the applicable natural hazards policies of the certified LCP. Any alternative must be supported by sufficient geotechnical analysis.

Additionally, in the City's approval, it was required that all structures and roadways be placed behind this setback line within the original building footprint and that a minimum of 21 public parking spaces be constructed adjacent to Tioga Avenue and 3 public spaces elsewhere. Further, special conditions were required to ensure that vertical access is maintained to the sandy beach and that all public access improvements be maintained throughout the 50-year life of the project. Due to these required changes of the structural setback locations the City eliminated a previous mitigation requirement for a mandatory sand replenishment program.

As indicated above, the majority of public access improvements are located seaward of the 50-year erosion line and are, therefore, subject to potential elimination as a result of wave action and erosion within the economic lifetime of the project. The access improvements are considered to be development and their proposed location seaward of the erosion line must be considered in evaluating the project. The issue raised is whether these access improvements should be available for the 50-year economic life of the project in order to be found consistent with the applicable public access policies of the certified LCP and Coastal Act. LCP policy 2.3.1 requires all future shorefront development to provide public access unless it is not feasible. Policy 2.3.2 requires a dedicated easement for dry sand access along sandy beaches for shorefront development (emphasis added). Policy 2.3.3 requires that developed vista points be accessible from a public road or accessway. Policy 2.3.4 establishes guidelines for safe accessways and improvements and provides that access trails not be located in areas of high erosion or other hazards. Policy 2.3.7 requires the provision of public vista points.

Appendix A, p. 16

Based on the above discussion staff recommends that the proposed development be modified so that all development, other than public access improvements on the beach, be set back a minimum of 15 feet landward of the established 50-year erosion line as depicted on Exhibit 1. To insure that public access is adequately maintained, the Commission finds it necessary to require that the Public Access Boardwalk and public access areas be moved landward at such time when erosion reaches 10 feet of the site's public access. The relocation of comparable public access areas shall occur within three (3) months of the said erosion.

In addition, the applicant shall be required to implement a sand replenishment program to insure that beach sand is available for the life of the project. As set forth in special condition #4, the applicant shall be required to establish a mean high water elevation contour and a permanent bench mark location that will be measured on a semi-annual basis. In recognizing that shoreline erosion will occur, the Commission finds that where the erosion rate exceeds the project's estimated natural recession and sea level recession (88 feet as measured from the mean high tide line) for a 50 year time period in two consecutive semi-annual measurements, the applicant will be required to replenish the eroded sand. The Commission finds that only as conditioned, is the proposed development consistent with the access policies of the certified LCP and the applicable access policies of the Coastal Act.

C. Shoreline Erosion / Geologic Hazards

As indicated in the preceding section, the City's recent approval is based on a 50-year erosion line established in a "Shore Erosion Study" prepared by the engineering firm of Moffatt and Nichol. The City required all permanent structures and roadways to be located landward of this line in order to be found consistent with LCP policy 4.3.9 which requires setbacks based on a 50-year economic life of the project. The City's approval established the low risk erosion rate (highest rate of erosion - 178 feet) as the 50-year erosion line. Due to this additional setback a seawall is no longer proposed and the City deleted a prior requirement for a sand replenishment program as a mitigating measure. However, the measurement of this setback is inconsistent with Policy 4.3.9(a) of the City's LCP which states that the setback should be determined from the most inland extent of beach erosion. Empirically, the beach profile of the northern 100 feet of the site contains a beach scarp, which represents the most inland extent of beach erosion.

The Moffatt and Nichol study provided a calculation of erosion rates based on several factors including natural recession, sea level rise, a safety factor, seasonal adjustments, extreme storm adjustments and the lack of sand mining. The 1989 Mean High Water (MHW) line was used as the reference shoreline. The study established three different risk levels based on an estimated minimum erosion rate in Sand City of between 0.5 and 1.5 feet per year assuming no sand mining. (An earlier estimate contained in the draft SEIR indicated an erosion rate of 3 feet per year, similar to the surrounding coastline, with removal of the Calabrese fill.) The highest risk scenario assumes the lower erosion rate while the lowest risk scenario reflects the higher erosion rate and a moderate rate was established for the mean rate. The moderate and low rate scenarios each include a 25 foot "safety factor" to account for the uncertainty in the erosion estimates.

Appendix A, p. 17

An approximately 30 foot high bluff extends across the southern two-thirds of the property which tapers off to a small, sandy beach in the north-west corner of the site. A substantial amount of concrete rubble, tailings, metal debris and scrap has been dumped over the bluff and used as fill over the years which has slowed the erosion rate along the shoreline. This fill is proposed to be removed and the bluff recontoured as part of the project which would allow the native bluff sand to erode at a rate similar to the surrounding coastline. The amount of fill to be removed and grading required to recontour the bluff is not known at this time. The calculation of the erosion setback line assumes the removal of this fill as part of the project.

The City found that the proposed development was consistent with the erosion policies of the certified LCP because all development will be sited landward of the 50-year erosion line established by Moffatt and Nichol (with the exception of proposed access improvements as indicated in the preceding section). As indicated above, however, this setback estimate assumes that no future sand mining will occur on the site. If allowed to resume, sand mining would add another 32 feet per year to the projected erosion rate. As indicated previously, no LCP amendment to prohibit sand mining has been submitted to or approved by the Commission to date.

The most recent SEIR states that "under the low-risk scenario, a portion of the proposed buildings would be affected by erosion within 50 years." An updated site plan demonstrates this fact in figure 3. Additionally, the final project plans submitted as a result of the City's approval (dated 10/29/90) also indicate that a very small portion of the structural development is located within or on the established erosion setback line. The SEIR further states that "whether or not the proposed buildings are actually affected by coastal erosion within 50 years is speculative at this time" and concludes that no other plans have been submitted and it is not clear whether these plans represent the final project or not. The placement of the building on the northerly one-third behind the pocket beach brings to question the adequacy of the setbacks for storm wave runup, and if the building is intended to be used as a "de-facto" seawall.

Based on the above, the Commission finds it necessary to require that the proposed development be modified so that all development, other than public access improvements on the beach, be set back a minimum of 15 feet landward of the established 50-year erosion line as depicted on Exhibit 1. As indicated in the previous section, the applicant shall be required to implement a sand replenishment program to insure that beach sand is available for the life of the project. As set forth in special condition #4, the applicant shall be required to establish a mean high water elevation contour and a permanent bench mark location that will be measured on a semi-annual basis. In recognizing that shoreline erosion will occur, the Commission finds that where the erosion rate exceeds the project's estimated natural recession and sea level recession (88 feet as measured from the mean high tide line) for a 50 year time period in two consecutive semi-annual measurements, the applicant will be required to replenish the eroded sand. The Commission finds that only as conditioned, is the proposed development consistent with the access policies of the certified LCP and the applicable access policies of the Coastal Act.

Appendix A, p.18

D. Visual Resources

The proposed project site is highly visible from Highway One, particularly the southbound lanes, and many points along the Monterey Peninsula including the Monterey Wharf. The protection of public views to and along the shoreline is an important goal of the Coastal Act as well as the certified Local Coastal Program for Sand City. In an attempt to balance the requirements for maintaining public views with the City's goals for visitor-serving and residential development west of Highway One, the Commission found that some obstruction of coastal views would be acceptable if designated view corridors were established in the LCP, and all other visual policies of the LCP are also followed. Applicable view protection policies are found in Section 5.3 of the certified LCP.

Those policies particularly applicable to this site include:

- 5.3.1 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.
- 5.3.2 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. . .

One of these designated view corridors exists through the subject site. Policy 5.3.3 of the certified LCP defines view corridors as follows:

- a) "views across" 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);
- b) "views over development" shall be provided by limiting the maximum height of development to protect views of the sweep of beach and dunes, Monterey Bay, and the Monterey Peninsula. Each development proposed in these corridors shall include an analysis prepared by a qualified professional that demonstrates compliance with this policy, and approved developments will be required to comply with the terms of such analysis. In measuring southbound views, viewpoints shall be assumed to be from the center point of the corridor at an elevation four feet above freeway grade in the southbound traffic lane, to a point at the Coast Guard Station in Monterey. North of Tioga Avenue, approved development shall not intrude upon, or block, an unobstructed view of more than one-third of the lineal distance across the Bay, measured as a straight line between the freeway viewpoint and the landward edge of the Coast Guard Breakwater. South of Bay Avenue, approved development within the view corridors shall not exceed the elevations above sea level illustrated in Figure 13 (the enlarged building envelope map) in order to protect views of

Appendix A, p. 19

Monterey Bay and the distant shoreline as they currently exist in the southbound direction.

This view corridor is graphically depicted in Figure 9 of the certified LCP. Page 1B of the proposed site plan (10/29/90) depicts the view corridor provided by the project which is generally consistent with the corridor identified in the LCP. Because development is proposed within the designated view corridor it is necessary to ensure that the proposed structures do not intrude into the line of sight as viewed from the southbound traffic lanes of Highway One consistent with the requirements of policy 5.3.3. According to the elevations provided on page 1B the road elevation of the southbound lane of Highway One is at elevation 50 feet across the site thereby resulting in a viewing elevation of 54 feet (from which no more than one-third of the available unobstructed view shall be blocked). Therefore, the maximum height of all structures within the view corridor must be below elevation 54. A "line of sight" analysis previously submitted in 1989 as sheet no. 7 of the approved plans, however, indicated an elevation of 56 feet for the southbound lane of Highway One across the project site which would necessitate a viewing elevation of 60 feet rather than 54. No additional "line of sight" analysis has been submitted and no explanation of the discrepancy between the road elevations depicted on the two exhibits has been provided. In its finding to approve the currently proposed development the City found that moving all building structures behind the 50-year erosion line would further reduce visual impacts concerning the view corridor by removing the northern corner of the southern most building from the designated view corridor. Other topographical maps previously provided indicate a varying elevation for southbound Highway One from 52 feet on the north to 50 feet on the south across the project site.

The above discussion demonstrates an uncertainty which exists as to the correct elevation of southbound Highway One across the project site which is critical to determining consistency with policy 5.3.3 of the certified LCP. A miscalculation of only a few feet could make the difference between preserving and obstructing public views of the ocean and the more distant City of Monterey and Cannery Row shoreline. Therefore, in order to insure that views of Monterey Bay over the proposed development from Highway One shall be preserved it is necessary to require the applicant to modify the project to reduce the maximum height of all structures and of Sand Dunes Drive extension within the designated view corridor to not exceed 50 feet above sea level (Exhibit 1). This represents the lowest indicated elevation of Highway One as it crosses the site within the view corridor. The Commission finds that, only as conditioned, is the proposed development consistent with the applicable visual resource protection policies of the certified LCP.

In addition to the established view corridors the LCP contains policies regarding the siting of new development relative to the provision of vista points along the shoreline and blufftops in policies 5.3.7 through 5.3.9:

- 5.3.7 Require new developments to provide vista points along the shoreline and blufftops in conjunction with provisions of public vertical and lateral accessways. Encourage provisions of minor vista points, such as pedestrian plazas in new projects.

Appendix A, p.20

- 5.3.8 In addition to view corridors designated on Figure 9, encourage new development to incorporate view corridors from Highway One to the ocean, within project design, consistent with City standards for view corridors. Such standards for view corridors should include varied roof or building profile lines and visual corridors through, between and/or over buildings to the bay.
- 5.3.9 New development should to the extent feasible, soften the visual appearance of major buildings and parking areas from view of Highway One.

Public access to and along the beach, in the form of a boardwalk, will be provided from the terminus of Tioga Avenue. In addition, 21 public parking spaces will be provided adjacent to Tioga Avenue facing north along the coast as part of the proposed project improvements (Exhibit 1). Tioga Avenue currently provides sweeping views of Monterey Bay west of Highway One as it descends from an elevation of 70 feet at its terminus west. The public parking spaces are located within this corridor. The certified LCP points out that visual access exists at the end of Tioga Avenue where people park their cars to view the ocean and policy 2.3.7 requires the protection of visual access at general points (see Exhibit 6) as part of future developments in these areas which includes Tioga Avenue.

The proposed four story structure (above grade) which is located immediately north of Tioga Avenue and which runs parallel to the street rises to an elevation of approximately 42 feet above existing grade or 72 feet above sea level uniformly along its length which ends immediately adjacent of the terminus of Tioga Avenue (Exhibits 1-3). Therefore, views north along the coast from the street and public parking spaces will be blocked by the structure. These views have historically been available to the public and are designated for protection in the above stated LCP policies. Therefore, the Commission finds it necessary to require the applicant to modify the project by reducing the height of the building located north of and parallel to Tioga Avenue so that it does not exceed the height of Tioga Avenue at any point. Only as conditioned is the proposed development consistent with the visual resource protection policies contained in the certified LCP.

E. Landform Alteration

Prior industrial use of the project site has resulted in significant alteration of the natural topography. Remaining topographical features include dunes along the southern property boundary (which Tioga Road is on) and northern portion of the site and a small beach in the northwestern portion of the site. The bluffs have been significantly altered by dumping of debris as indicated in the previous section.

The certified LCP contains several policies regarding the protection and restoration of sand dunes and environmentally sensitive habitat in policies 4.3.19 through 4.3.27. Regarding the restoration of sand dunes on the subject site in particular, policy 4.3.23 requires the implementation of dune stabilization and/or restoration programs as a part of new developments west of Highway One and provides specific standards. In addition, policy 4.3.24 designates areas especially suitable for dune habitat restoration on a Coastal Resources Map which includes the project site.

Appendix A, p. 21

The proposed development will result in the alteration of the dunes located along the southern boundary and may indirectly result in significant alteration of the dune in the north-eastern portion of the site due to the northward extension of Sand Dunes Drive. The dune formation on the southern portion of the site has been altered to accommodate Tioga Avenue, however, this dune is not designated for protection or restoration by the LCP. The dune formation in the northern portion of the site, however, is identified as a dune stabilization and restoration area in Figure 7 of the certified LCP.

As previously indicated, no specific grading plans have been submitted for the proposed development and the exact amount of grading is unknown. Previous statements by the applicant's representative have indicated that approximately 100,000 cubic yards of grading will be necessary. Although the building footprint appears to avoid the dune in the northern portion of the site, the lack of site specific grading plans makes it impossible to determine whether the dune formation will be adequately protected. Special Condition #5 is required to ensure that any of the excavated Calabrese-fill material placed on the site meets suitability test standards with respect to both grain-size suitability and toxicity. In addition, the applicant must remove the concrete rubble located seaward of the bluff face prior to the recontouring of the bluff slope.

As part of the proposed project Sand Dunes Drive will be extended north from Tioga Avenue paralleling Highway One in order to provide vehicular access to the hotel. The extension may not directly alter the dunes as a result of the project construction because the road will terminate at the edge of the dune. With this proposed alignment, however, the future extension of Sand Dunes Drive will be directly through the dune restoration area. Furthermore, approval of this alignment may imply approval of future extension of the road through the dunes. Therefore, due to the uncertainty associated with the project's impact on the dune formation in the northern portion of the site relative to grading and the extension of Sand Dunes Drive staff recommends that the applicant submit final grading plans and the dune stabilization and restoration program required by the City to the Commission for its review and approval. The grading plans shall clearly indicate no grading within the pocket beach in the northwestern portion of the site or within the sand dunes identified for restoration (unless approved as part of the restoration program). The Commission finds that approval of the proposed development with the northward extension of Sand Dunes Drive does not imply or set a precedent for future extension beyond this point.

The City has imposed special conditions of approval on the project which require dune restoration of the sensitive habitat area. In order to provide that the restoration program adequately stabilizes and enhances the dunes, the Commission finds it necessary to require the applicant to submit a final revegetation plan that includes a maintenance and monitoring program which provides for the on going maintenance of the revegetated dunes. In the event that the native vegetation is not established, the applicant will be required to take the necessary measures to ensure that the dune restoration occurs. As conditioned, the proposed development is consistent with the sand dunes and environmentally sensitive habitat policies contained in the certified LCP.

Appendix A, p. 22

F. Water and Marine Resources

The certified LCP points out that a water allocation system has been adopted by the Monterey Peninsula Water Management District (MPWMD) of which Sand City is a member. The allocation system was adopted by the MPWMD because it is estimated that water demand will exceed supply by 1993 if projected growth continues. The allocation system will prohibit new water connection when a jurisdiction's allocation is used up. The LCP states that presumed buildout in Sand City has the potential to consume over 700 acre-feet per year, nearly twice the allocation of 356 acre-feet per year (1982). Therefore, the City must plan future development with this constraint in mind.

Policy 6.4.11 of the certified LCP states that new development shall be approved only where water and sewer services are available and adequate and policy 6.4.13 states that only new development whose demand for water use is consistent with available water supply and the water allocation presented in Appendix F shall be permitted within the Coastal Zone. Appendix F presents water allocation requirements by Coastal Zone land uses within the City.

Based on these requirements the project water use demand exceeds its water allocation for the site. The City's findings for approval state that the annual water requirements for the project will be 19.91 gross acre-feet per year at 100 percent occupancy or 16.92 acre-feet at 75 percent occupancy which exceeds the demand allocation of the LCP. To mitigate this impact the applicant proposes to construct an on-site seawater desalination facility which provides in excess of 20 acre-feet per year to supply water for domestic use although no plans have been submitted for the facility. The project appears to be largely conceptual at this point. In its approval the City has required that the applicant install a pilot desalinization plant to determine water quality and that a phytoplankton biologist determine the potential hazards to marine life. Further, the facility is subject the provisions of the Monterey County Code relating to the operation of desalinization treatment facilities.

Policies 4.3.28-4.3.32 protect marine resources and ocean water quality, and require private wells for water supply to complete a water analysis in order to prevent impacts on Cal-Am wells in the Seaside aquifer. The proposed private desalination plant has the potential to degrade marine resources. In addition, the City's staff stated that the project's brine disposal will occur on the site. Presently, there is not an outfall located on the site and this would require construction as well. The Commission notes that development such as the construction of an outfall, pipe placement and ocean intake structures would fall within the Commission's area of retained original permit jurisdiction and would require a Coastal Development Permit from the Commission.

The most recent Commission action regarding private desalination facilities established that desalinated water could not be used for development projects designed to serve a single project or geographic area with service boundaries of established public water purveyors (Santa Barbara LCP Amendment 2-93). The approval of an independent facility promotes the fragmentation of public utility services and further scatters coastal dependent public work facilities rather than consolidating them as stipulated in the Coastal Act. Given the limited water availability of the area, public water supplies should be reserved for higher priority coastal dependent uses under the Coastal Act.

Appendix A, p. 23

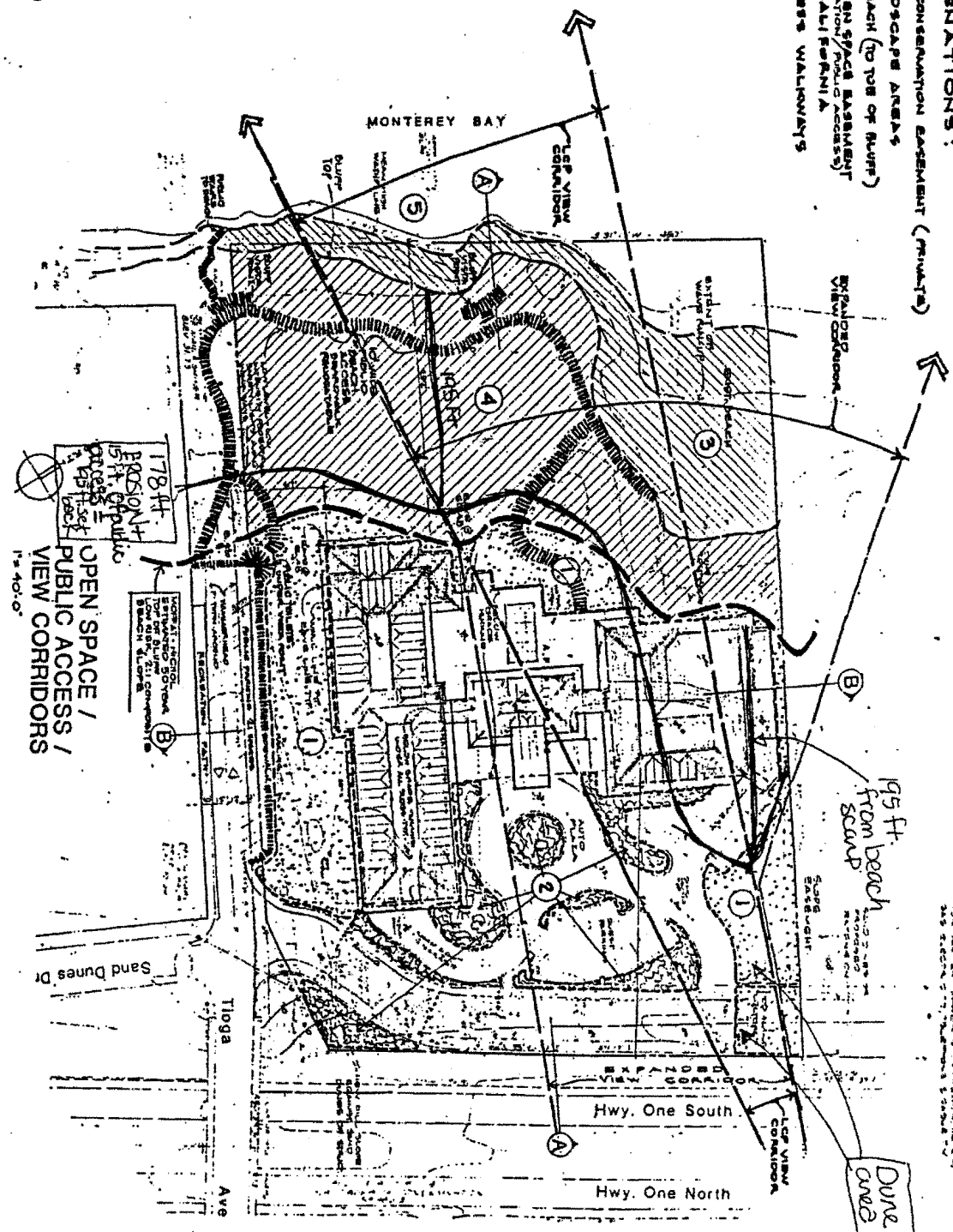
According to the Water Management District, 47.2 acre feet of new water allocation is currently available to the City. Therefore, the Commission finds it necessary to require the applicant to submit evidence of an alternative water source to serve the proposed project. Only upon the applicant's demonstration to the Executive Director that an alternative water source is not available to supply the project, either in part or in whole, will the Commission review the construction of a desalination plant in the form of an amendment to permit A-3-SNC-94-08 or through a separate coastal development permit, as determined by the Executive Director. The Commission notes that in addition to the above required materials, any application submitted by the applicant must also include detailed plans, feasibility studies and approval in concept from the California Regional Water Quality Control Board and the County of Monterey Health Department. Only as conditioned, is the proposed development consistent with the water services policies contained in the certified LCP.

0993M

Appendix A, p. 24

EXHIBIT NO. 1
APPLICATION NO.
A-3-SNC-9408

- AREA DESIGNATIONS:
- ① OPEN SPACE CONSERVATION EASEMENT (Private)
 - ② PROJECT LANDSCAPE AREAS
 - ③ DEDICATED ASHCH (to use of RUPP)
 - ④ DEDICATED OPEN SPACE BASEMENT
 - ⑤ STATE OF CALIFORNIA
 - NEW PUBLIC ACCESS WALKWAYS



JHW

THE STERLING CENTER
SAND CITY, CALIFORNIA

**THE
STERLING
CENTER**
SAND CITY CALIFORNIA

TIOGA AVE

NORTH

EAST

SOUTH

WEST

EXTERIOR ELEVATIONS

6

RECEIVED
MAY 25 1994
CALIFORNIA
COASTAL COMMISSION
COURT CENTRAL COAST DISTRICT

EXHIBIT NO. 2

APPLICATION NO.

A-3-SNC-94-08

Appendix A, p.26

SECTION A EXTENDED
10 = 300'

SECTION A.

SECTION B

EAST ELEV. AT HWY. 1
No. 11-0

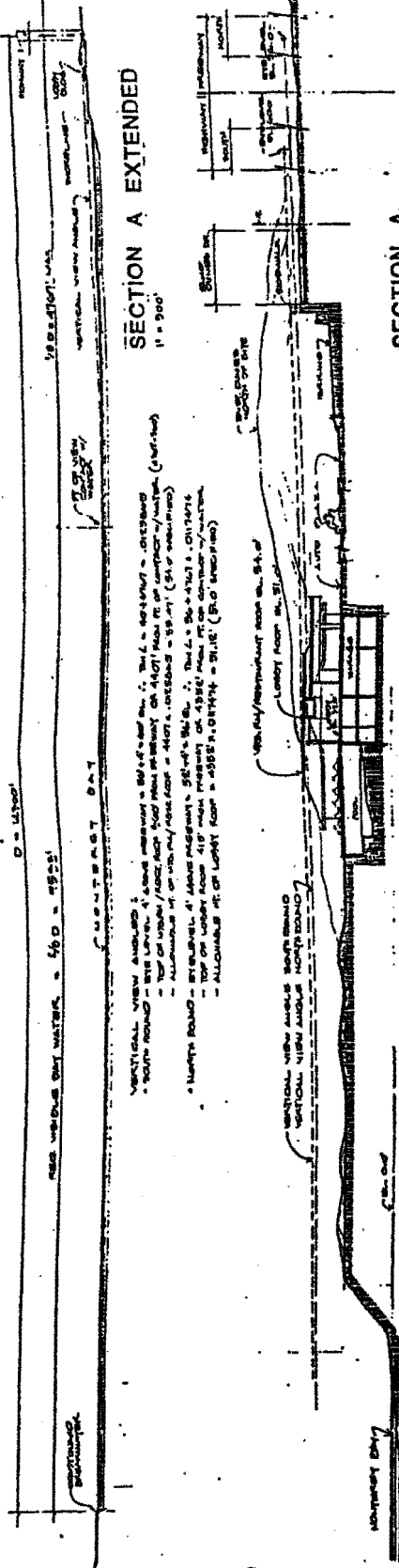
EXHIBIT NO. 3

APPLICATION NO.

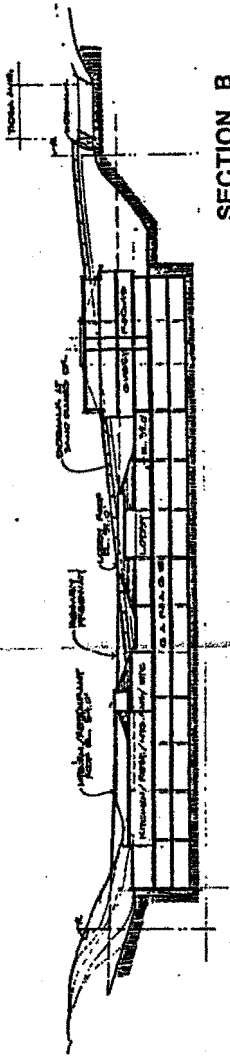
A3-SNC-94-08

Appendix A, p. 27

THE
STERLING
CENTER
SAN JOSE, CALIFORNIA



SECTION A
1" = 3'-0"



SECTION B
1" = 3'-0"

RECEIVED
MAY 25 1994
CALIFORNIA
COASTAL COMMISSION
SOUTH CENTRAL COAST DISTRICT

EAST ELEV. AT HWY. 1
1/4" = 1'-0"

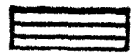
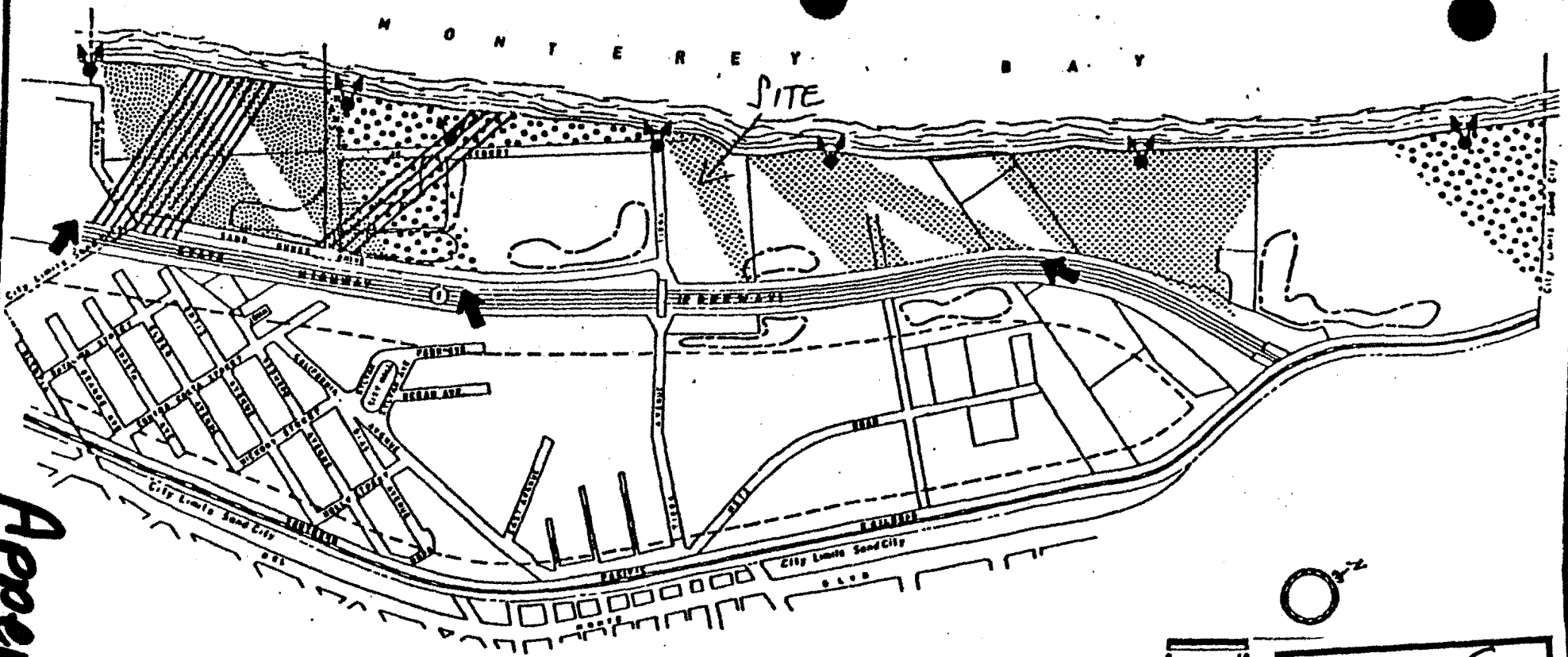
Appendix A, p. 28

EXHIBIT NO. 4
APPLICATION NO.
A-3-SNC-94-08

SAND CITY SHORELINE

M O N T E R E Y B A Y

SITE



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



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



VISTA POINTS



OPEN VIEW CORRIDORS



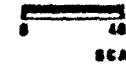
VIEW CORRIDORS OVER DEVELOPMENT



DUNE PRESERVATION, STABILIZATION
& RESTORATION AREAS



KEY COSTAL OVERVIEWS



Note: For more detail south of B

EXHIBIT NO. 5
APPLICATION NO.
A-3-SNC-94-08

SAND CITY LCP LAND USE PLAN

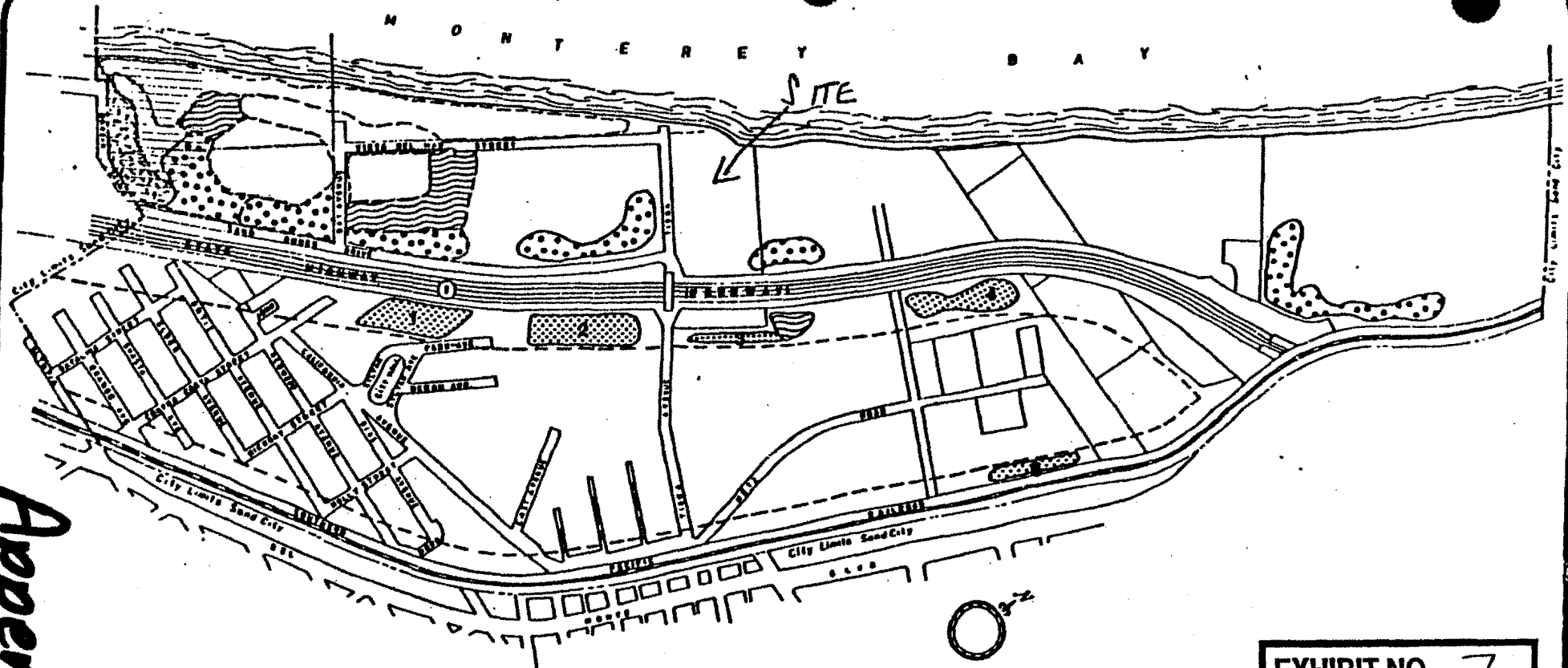
VISUAL RESOURCES

Figure 9

Generalized Views from Hwy. 1 and Vistas

Appendix A, p. 29

Appendix A, p. 31



Legend :





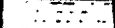
-  **SENSITIVE HABITAT AREAS**
(Generalized Locations)
-  **HABITAT RESTORATION AREAS**
-  **DUNE STABILIZATION/RESTORATION AREAS**
(Within Future Development) Note: For more detail and additional land uses allowed south of Bay Avenue, refer to Figure 12
-  **BUTTERFLY HABITAT RESTORATION ZONE**
-  **AREA OF HIGH ARCHAEOLOGICAL SENSITIVITY**

EXHIBIT NO. 7
APPLICATION NO.
A-3-SNC-94-08

SAND CITY LCP LAND USE PLAN

COASTAL RESOURCES

Figure 7

EXHIBIT NO. 8
APPLICATION NO. F-3-SNC-94-08

ENVIRONMENTAL LAW SERVICES

JANE HAINES
ATTORNEY AT LAW

614 Lighthouse Avenue, Suite

XXXXXX XXXXX

PACIFIC GROVE, CALIFORNIA 93950

FAX (408) 372-0582

TELEPHONE (408) 372-6665

May 24, 1994

Fax transmittal to Rebecca Richardson at (805) 641-1732 - Hard copy to follow

Executive Director Peter Douglas
California Coastal Commission
Attn.: Rebecca Richardson
89 South California Street, Room # 200
Ventura, CA 93001-2801

Re: Sterling Center Project - Sand City

Dear Mr. Douglas:

This is a request to the Coastal Commission to require the applicant for the Coastal Development Permit for the Sterling Center Project in Sand City, David Bell, to disclose and document his legal interest in the property on which the Sterling Project would be located. The Resolution adopted by Sand City for approval of the coastal permit states that "David Bell, Sterling Center, is an owner of an interest in certain property in the City of Sand City designated APN 0011-012-05."

The Monterey County Recorder's Office has no record of such an interest. Its records show that the property designated APN 0011-012-05 at 500 Tioga Avenue in Sand City is owned by Muriel Calabrese; no mention is made of David Bell or the Sterling Center. According to the City-certified "Response to Minute Order", information concerning Mr. Bell's relationship to the property is unavailable: "the Applicant's relationship to the property is not public information and, therefore, not available to this consultant to report." (Sand City's July 1993 "Response to Minute Order", Response to Comment 13, p. xix.)

California Coastal Commission regulation 13063.5 at Title 14 of the California Code of Regulations requires documentation and disclosure of the "applicant's legal interest in all the property upon which work would be performed, if the application were approved, e.g. ownership, leasehold, enforceable option, authority to acquire the specific property by eminent domain." Thus, Mr. Bell must be required to disclose and document his legal relationship to the property.

Mr. Bell and the Sterling Center have no apparent ability to carry out conditions of a coastal development permit. The Sterling Center (David L. Bell, President) is a judgment debtor for \$898,976.48 (Parker v. Sterling Environmental Centers, Inc., Monterey County

Appendix A, p. 32

EXHIBIT NO. 8 (cont'd)
APPLICATION NO.

Mr. Peter Douglas
May 25, 1994
Page 2

Case No. M20952). Several years ago, the California Secretary of State suspended the corporate standing of Sterling Environmental Centers, Inc. for non-payment of taxes. The President of the Sterling Environmental Center, Inc., Mr. David L. Bell, has no listed street address or phone number. The Monterey County Recorder's Office lists no property in his or the Sterling Center's name. Under such circumstances, the Coastal Commission must review Mr. Bell's relationship to the Sterling Project property.

I request the Commission's attention to this request.

Yours truly,

ENVIRONMENTAL LAW SERVICES

Jane Haines
Jane Haines

copy: *Diane Landry, Coastal Commission Staff Attorney*

Appendix A, p. 33

