



THE SIENNA COMPANY
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Consultants

Project

Ocean View
 Plaza

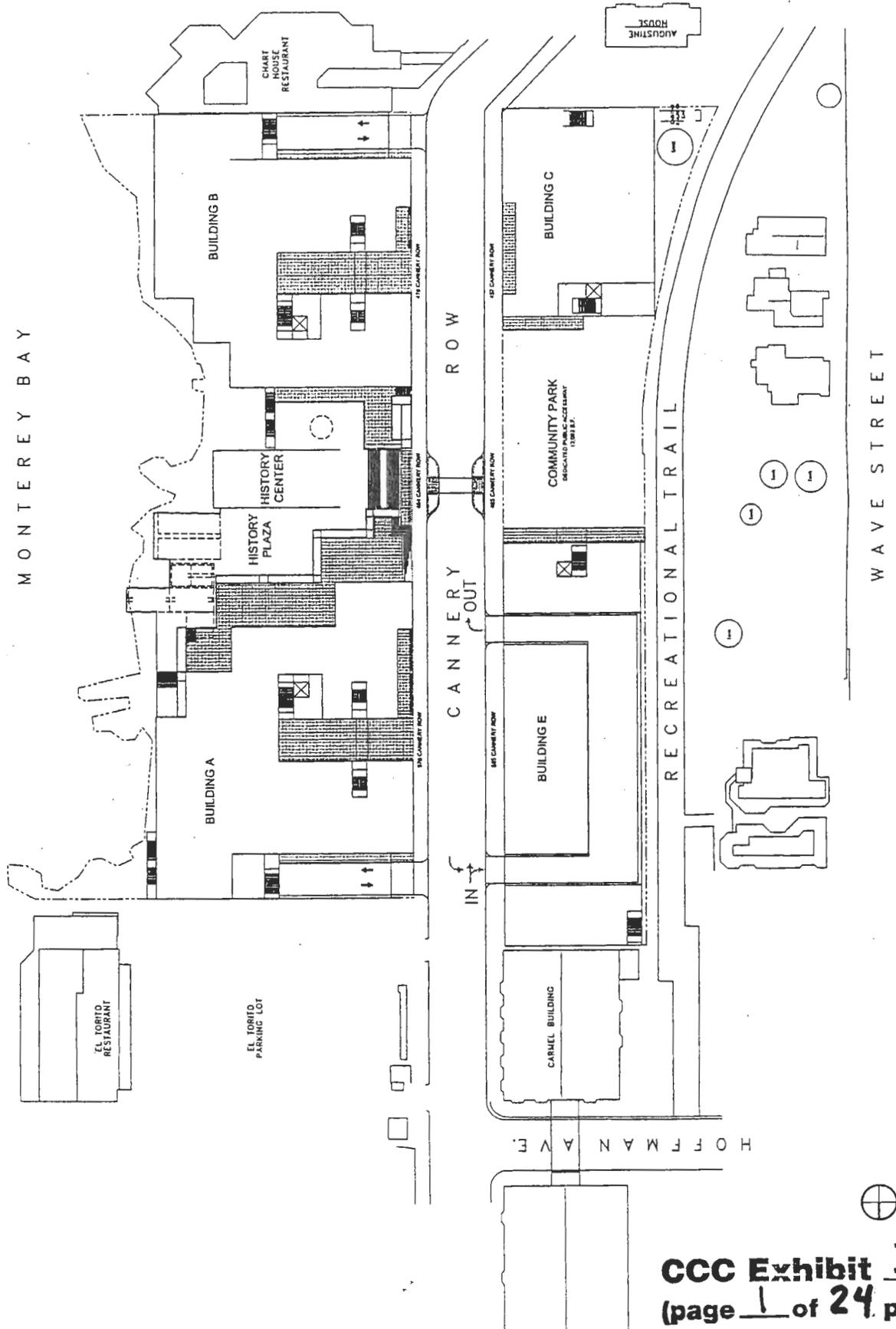
Project Location
 Cannery Row
 Monterey, CA 93940

Project No. D401 001
 Issue Date October 6, 2013
 Revisions

Drawing Scale 1"=10'-0"
 Sheet Title
 Street Level
 Site Plan

C102

MONTEREY BAY



01 Street Level Site Plan

CCC Exhibit 3
 (page 1 of 24 pages)

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Covered Improvements

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Tel: 831-441-0002

Comments

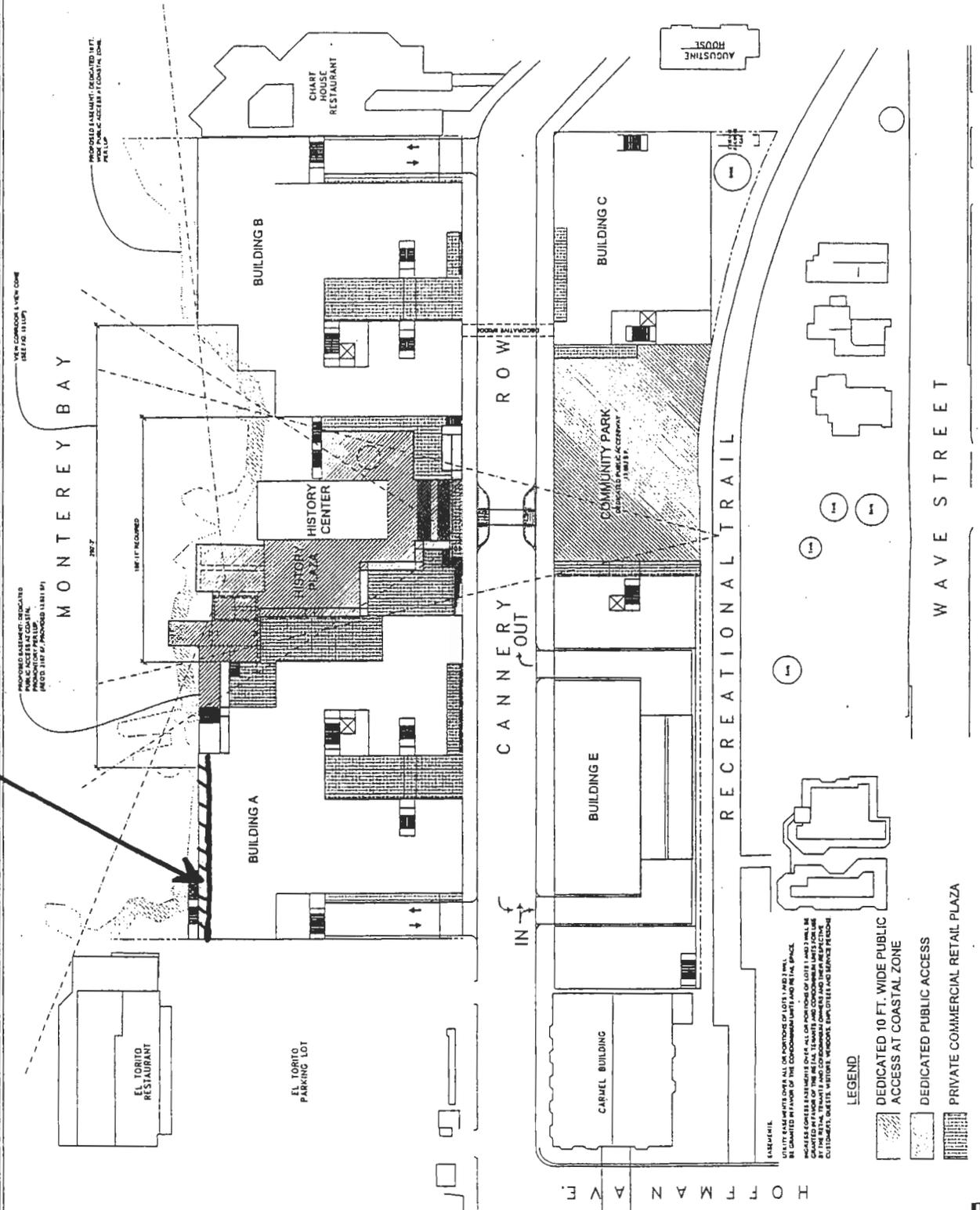
Project
Ocean View
Plaza

Project Location
Cannery Row
Monterey, CA 93940

Project No. B401.001
Issue Date October 9, 2003
Revisions

Drawing Scale 1"=30'-0"
Sheet Title
Public Access Plan
& View Corridor

C103



CCC Exhibit 3
(page 2 of 24 pages)



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Project
Ocean View Plaza

Project Location
 Cannery Row
 Monterey, CA 93940

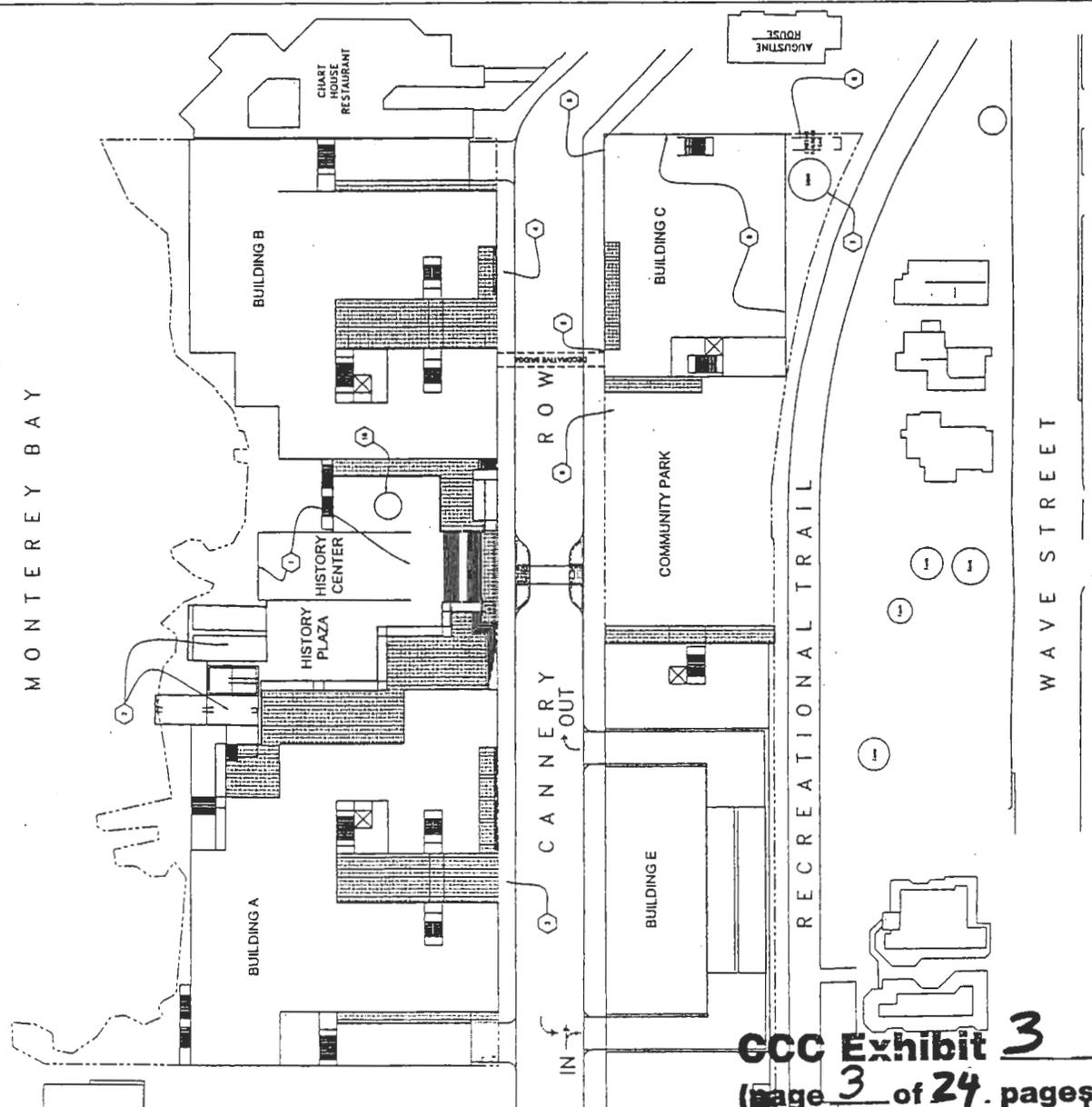
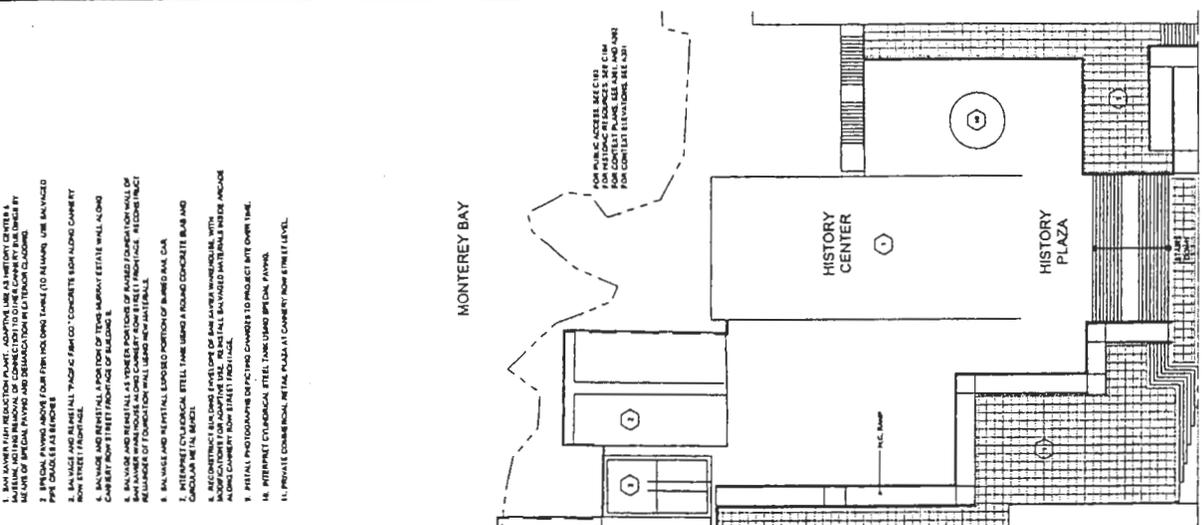
Project No. 0401.001
 Issue Date October 9, 2013
 Revision

Drawing Scale 1"=15'-0"
 Sheet Title
Historic Resources Interpretive Site Plan

C104

- REVISIONS:**
1. SANITARY MAIN REDUCTION PLANT, ADAPTIVE LINE AS HISTORY CENTER & HISTORY PLAZA. ADDITIONAL SANITARY MAINS TO BE INSTALLED TO SERVE BY MAINS OF BUILDING PLANS AND DEMONSTRATION IN LOT TRACK CLASSING.
 2. SPECIAL PAVING ABOVE FOUR FORM HOLDING TANKS (TO REMAIN), USE SANITIZED PIPE DRAIN, 8" AS BENCH.
 3. RAILING AND PLANT TANKS/C/F FIRM CO. CONCRETE SIGN ALONG CANNERY ROW STREET FRONTAGE.
 4. REMOVE AND REINSTALL PORTION OF TOWER MURRAY ESTATE WALL, NADING CONCRETE FROM STREET FRONTSIDE OF BUILDING.
 5. REMOVE AND REINSTALL PORTION OF TOWER MURRAY ESTATE WALL, NADING CONCRETE FROM STREET FRONTSIDE OF BUILDING.
 6. REMOVE AND REINSTALL PORTION OF TOWER MURRAY ESTATE WALL, NADING CONCRETE FROM STREET FRONTSIDE OF BUILDING.
 7. RAILING AND PLANT TANKS/C/F FIRM CO. CONCRETE SIGN ALONG CANNERY ROW STREET FRONTAGE.
 8. RAILING AND PLANT TANKS/C/F FIRM CO. CONCRETE SIGN ALONG CANNERY ROW STREET FRONTAGE.
 9. INTERPRET CYCLOGRAPHIC ETTEL TANK USING A ROUND CONCRETE SIGN AND CIRCULAR METAL SIGN.
 10. RECONSTRUCT BUILDING ENVELOPE OF SANITARY WAREHOUSE, WITH CONCRETE SIGN ALONG CANNERY ROW STREET FRONTAGE.
 11. INTERPRET CYCLOGRAPHIC ETTEL TANK USING A ROUND CONCRETE SIGN AND CIRCULAR METAL SIGN.
 12. INTERPRET CYCLOGRAPHIC ETTEL TANK USING A ROUND CONCRETE SIGN AND CIRCULAR METAL SIGN.
 13. INTERPRET CYCLOGRAPHIC ETTEL TANK USING A ROUND CONCRETE SIGN AND CIRCULAR METAL SIGN.
 14. INTERPRET CYCLOGRAPHIC ETTEL TANK USING A ROUND CONCRETE SIGN AND CIRCULAR METAL SIGN.
 15. PRIVATE COMMERCIAL RETAIL PLAZA AT CANNERY ROW STREET LEVEL.

FOR PUBLIC ACCESS SEE CITY OF MONTEREY HISTORIC RESOURCES INTERPRETIVE SITE PLAN FOR CONFLICT SITUATIONS. SEE 431.



CCC Exhibit 3
 (page 3 of 24 pages)



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Project
**Ocean View
Plaza**

Project Location
Cannery Row
Monterey, CA 93940

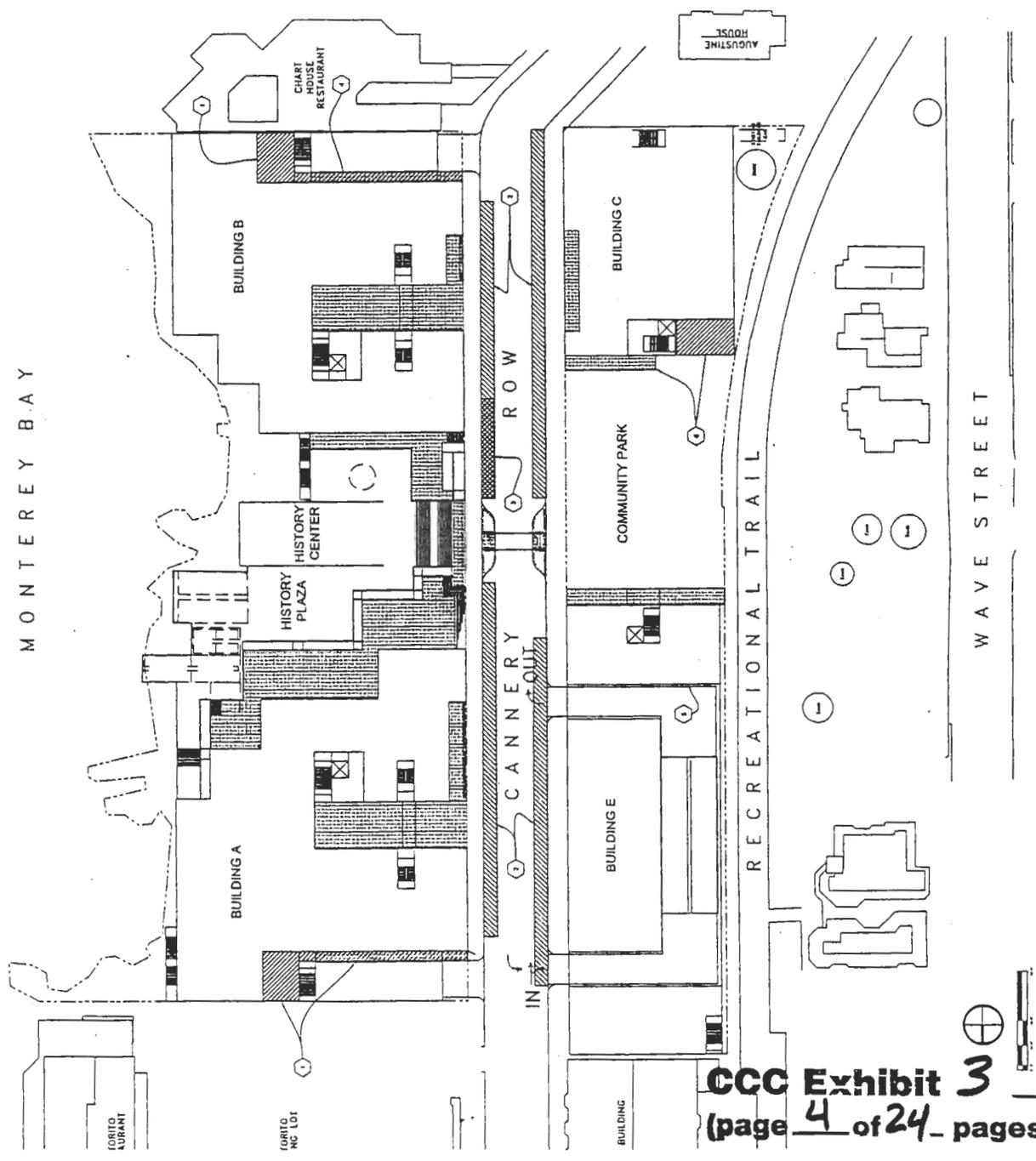
Project No. 0411 001
Issue Date October 5, 2013
Revisions

Drawing Scale 1"=100'
Sheet Title
Service Plan

C105

DESIGN NOTES:

1. ALL TRASH AND DEBRIS SHALL BE REMOVED FROM THE PROJECT SITE AND DELIVERED TO THE MONTEREY COUNTY TRANSFER STATION. TRASH SHALL BE SERVICED FROM 8 AM TO 4 PM, MONDAY THROUGH FRIDAY. SERVICE SHALL OCCUR PRIOR TO 11 AM ON SATURDAY. TRASH SHALL BE SERVICED FROM 8 AM TO 4 PM ON SUNDAY. TRASH SHALL BE SERVICED FROM 8 AM TO 4 PM ON HOLIDAYS ONLY. SUBJECT TO COORDINATION WITH THE CITY OF MONTEREY.
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3. ALL TRASH AND DEBRIS SHALL BE REMOVED FROM THE PROJECT SITE AND DELIVERED TO THE MONTEREY COUNTY TRANSFER STATION. TRASH SHALL BE SERVICED FROM 8 AM TO 4 PM, MONDAY THROUGH FRIDAY. SERVICE SHALL OCCUR PRIOR TO 11 AM ON SATURDAY. TRASH SHALL BE SERVICED FROM 8 AM TO 4 PM ON SUNDAY. TRASH SHALL BE SERVICED FROM 8 AM TO 4 PM ON HOLIDAYS ONLY. SUBJECT TO COORDINATION WITH THE CITY OF MONTEREY.
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7. ALL TRASH AND DEBRIS SHALL BE REMOVED FROM THE PROJECT SITE AND DELIVERED TO THE MONTEREY COUNTY TRANSFER STATION. TRASH SHALL BE SERVICED FROM 8 AM TO 4 PM, MONDAY THROUGH FRIDAY. SERVICE SHALL OCCUR PRIOR TO 11 AM ON SATURDAY. TRASH SHALL BE SERVICED FROM 8 AM TO 4 PM ON SUNDAY. TRASH SHALL BE SERVICED FROM 8 AM TO 4 PM ON HOLIDAYS ONLY. SUBJECT TO COORDINATION WITH THE CITY OF MONTEREY.
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9. ALL TRASH AND DEBRIS SHALL BE REMOVED FROM THE PROJECT SITE AND DELIVERED TO THE MONTEREY COUNTY TRANSFER STATION. TRASH SHALL BE SERVICED FROM 8 AM TO 4 PM, MONDAY THROUGH FRIDAY. SERVICE SHALL OCCUR PRIOR TO 11 AM ON SATURDAY. TRASH SHALL BE SERVICED FROM 8 AM TO 4 PM ON SUNDAY. TRASH SHALL BE SERVICED FROM 8 AM TO 4 PM ON HOLIDAYS ONLY. SUBJECT TO COORDINATION WITH THE CITY OF MONTEREY.
10. ALL TRASH AND DEBRIS SHALL BE REMOVED FROM THE PROJECT SITE AND DELIVERED TO THE MONTEREY COUNTY TRANSFER STATION. TRASH SHALL BE SERVICED FROM 8 AM TO 4 PM, MONDAY THROUGH FRIDAY. SERVICE SHALL OCCUR PRIOR TO 11 AM ON SATURDAY. TRASH SHALL BE SERVICED FROM 8 AM TO 4 PM ON SUNDAY. TRASH SHALL BE SERVICED FROM 8 AM TO 4 PM ON HOLIDAYS ONLY. SUBJECT TO COORDINATION WITH THE CITY OF MONTEREY.



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(page 4 of 24 pages)



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Project

Ocean View
 Plaza

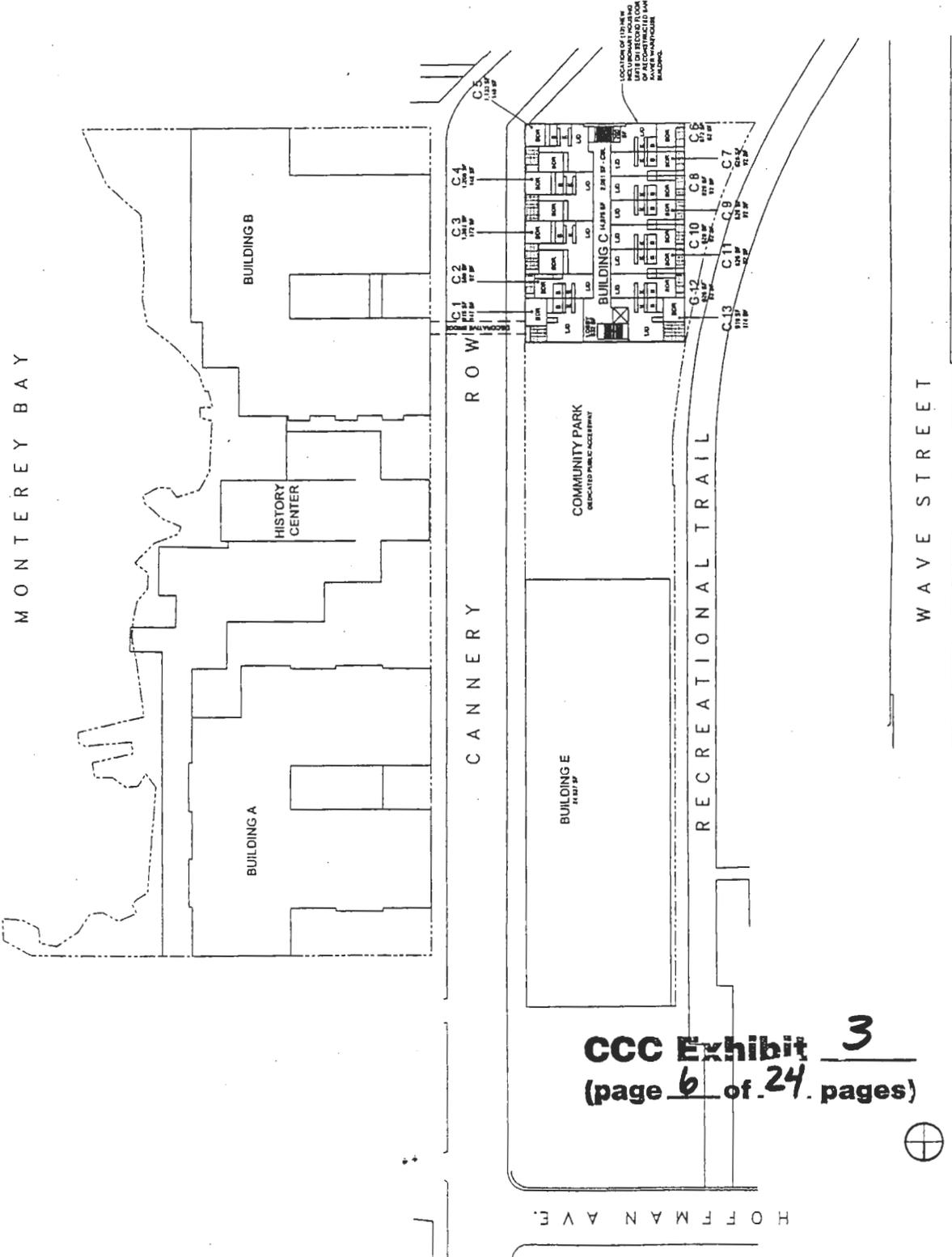
Project Location
 Cannery Row
 Monterey, CA 93940

Project No. 0101 Rev.
 Issue Date October 9, 2001
 Revisions

Drawing Scale 1" = 30'-0"
 Sheet Title
 Inclusionary
 Housing Plan

C107

MONTEREY BAY



CCC Exhibit 3
 (page 6 of 24 pages)



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Project

Ocean View
 Plaza

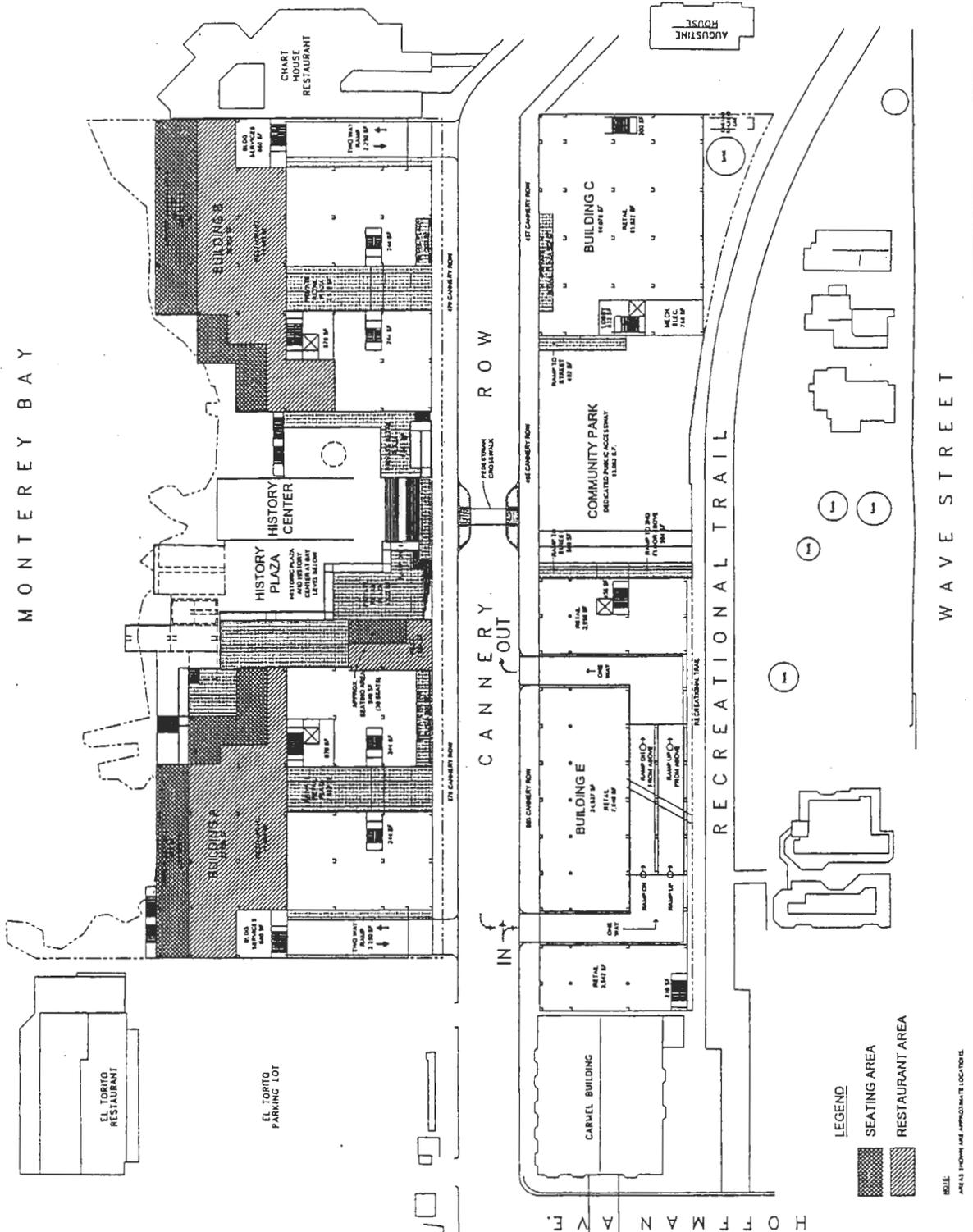
Project Location
 Cannery Row
 Monterey, CA 93940

Project No. 049J 001
 Issue Date October 9, 2001
 Revisions

Drawing Scale 1"=30'-0"
 Sheet Title
 Cannery Row at
 Street Level

A202

MONTEREY BAY



CCC Exhibit 3
 (page 8 of 24 pages)

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Project

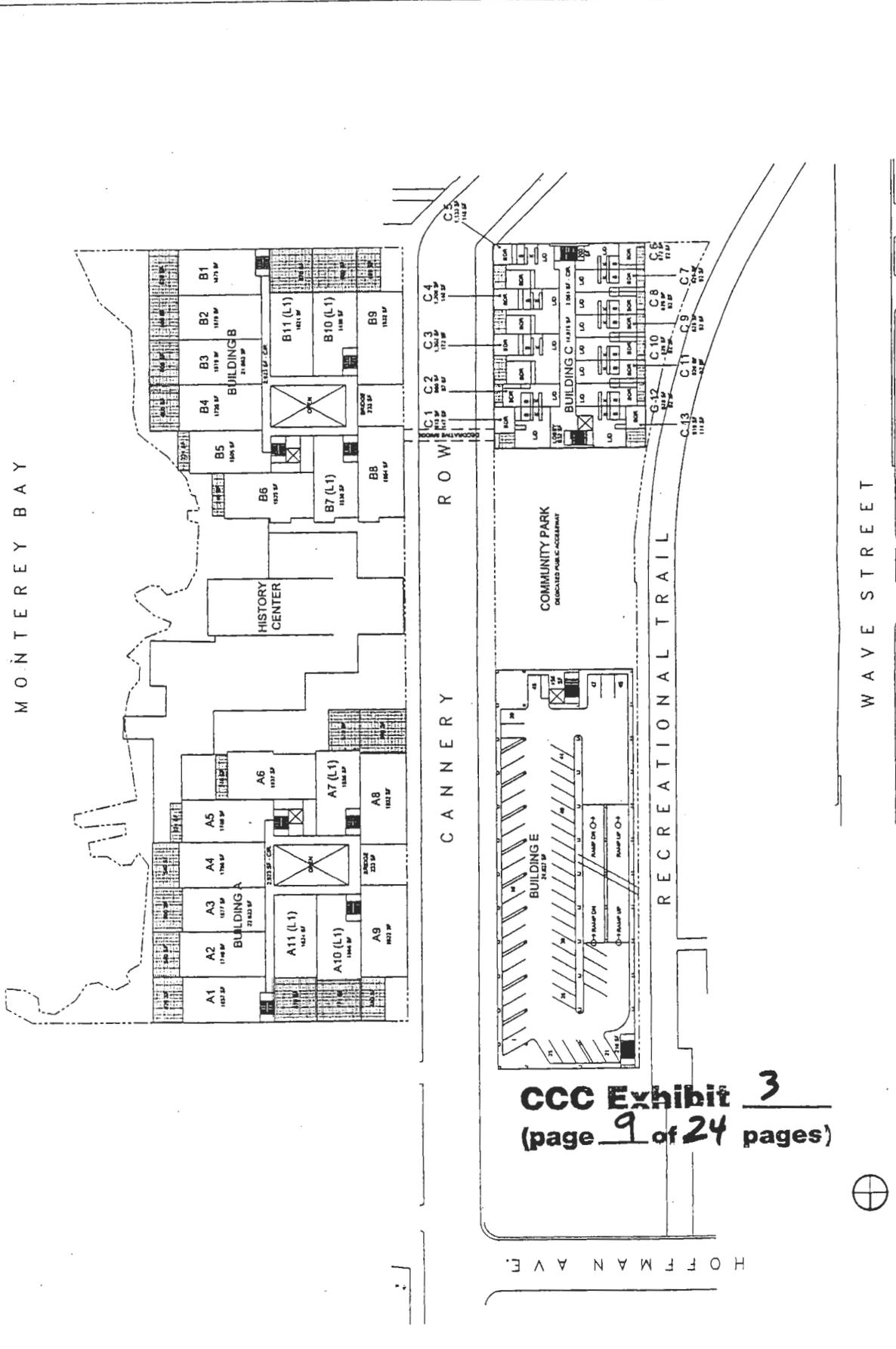
Ocean View
 Plaza

Project Location
 Cannery Row
 Monterey, CA 93940

Project No. 0101.001
 Issue Date October 9, 2003
 Revision

Drawing Scale 1"=30'-0"
 Sheet Title Level 2
 Residential Plan

A203



CCC Exhibit 3
 (page 9 of 24 pages)



01 Level 2 Residential Plan

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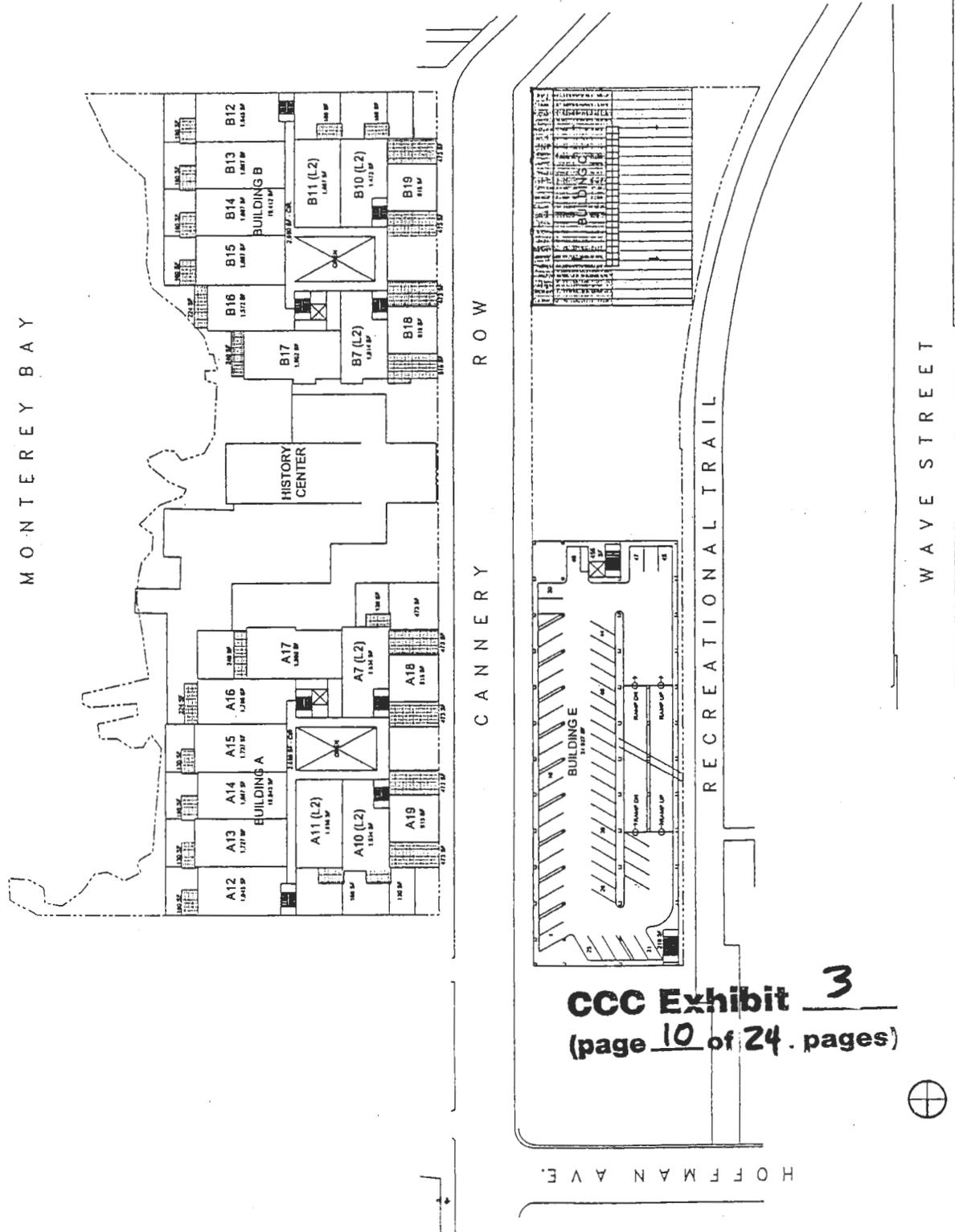
Ocean View
 Plaza

Project Location
 Cannery Row
 Monterey, CA 93940

Project No. 8101.001
 Issue Date October 2000
 Revisions

Drawing Scale 1"=30'-0"
 Sheet Title
 Level 3
 Residential Plan

A204



CCC Exhibit 3
 (page 10 of 24 pages)

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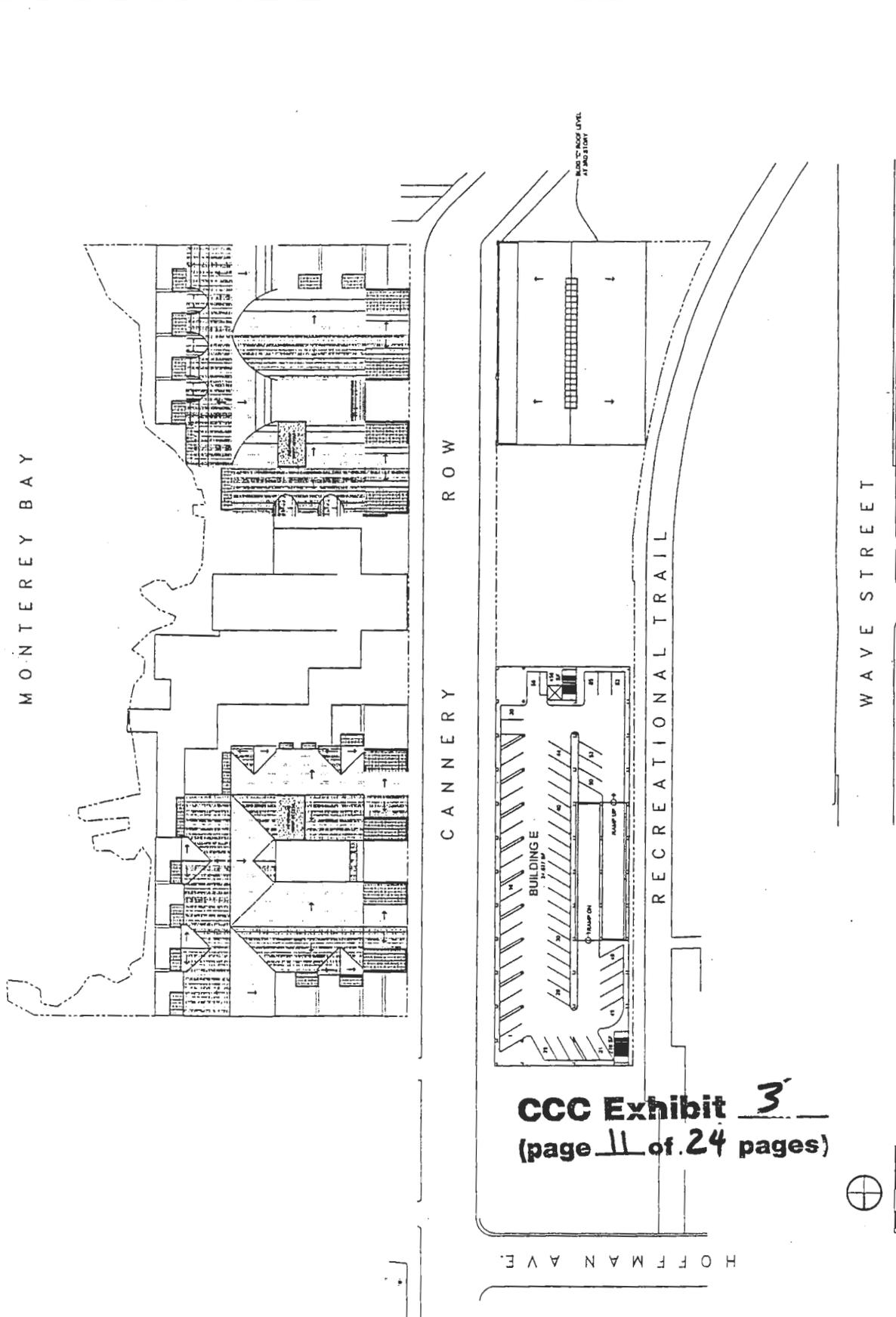
Project
**Ocean View
 Plaza**

Project Location
 Cannery Row
 Monterey, CA 93940

Project No. 001 (01)
 Issue Date October 9, 2003
 Revision

Drawing Scale 1"=30'-0"
 Sheet Title
Roof Plan

A205



CCC Exhibit 3
 (page 11 of 24 pages)



01 | Level 4 & Residential Roof Plan

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CONTENTS

Project

Ocean View
 Plaza

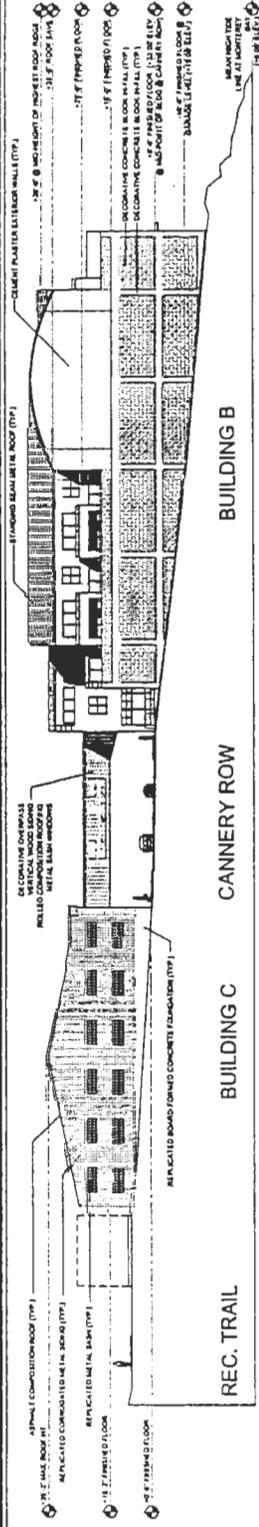
Project Location
 Cannery Row
 Monterey, CA 93940

Project No. 0401.001
 Issue Date October 6, 2003
 Revision

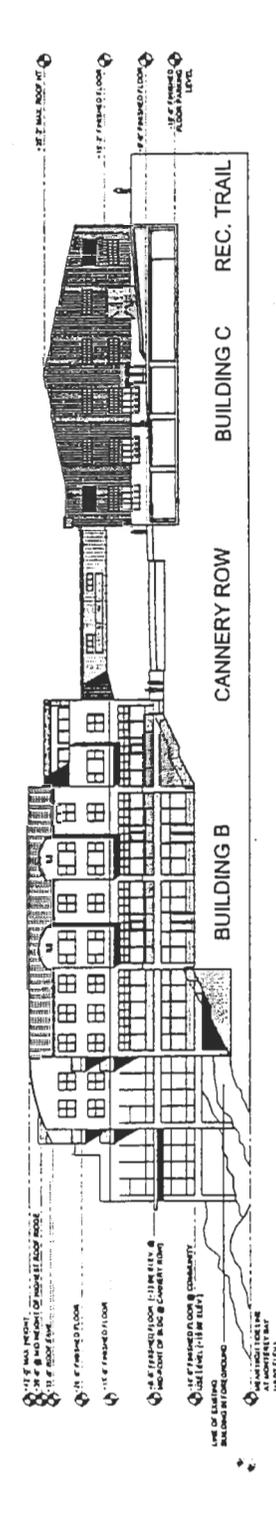
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 Sheet Title Building Elevations

A302

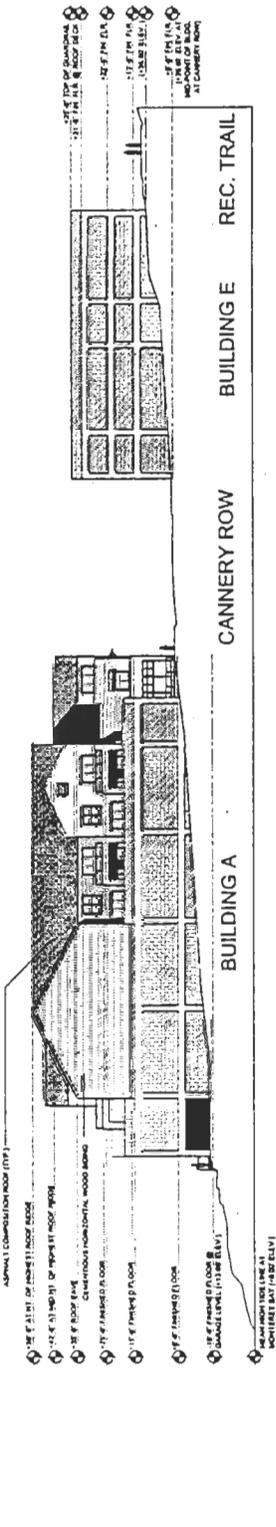
CCC Exhibit 3
 (page 13 of 24 pages)



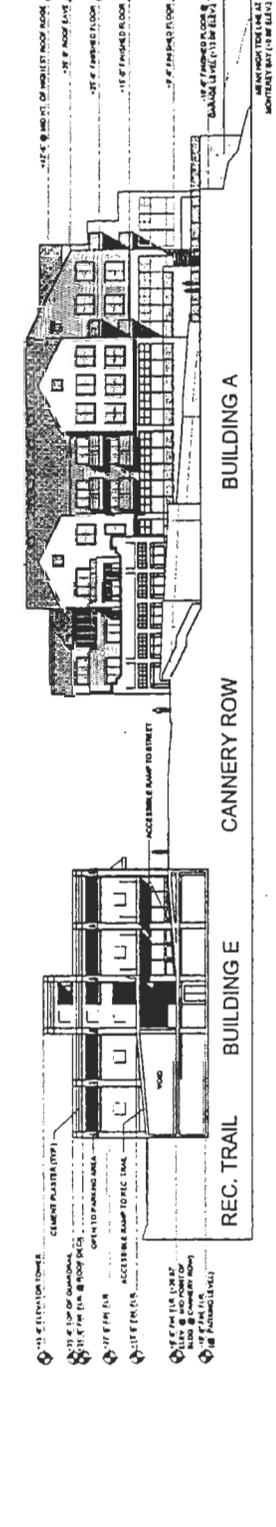
04 South Elevation - Buildings C & B



03 North Elevation - Buildings B & C



02 North Elevation - Buildings A & E



01 South Elevation - Buildings E & A

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Comments

Project

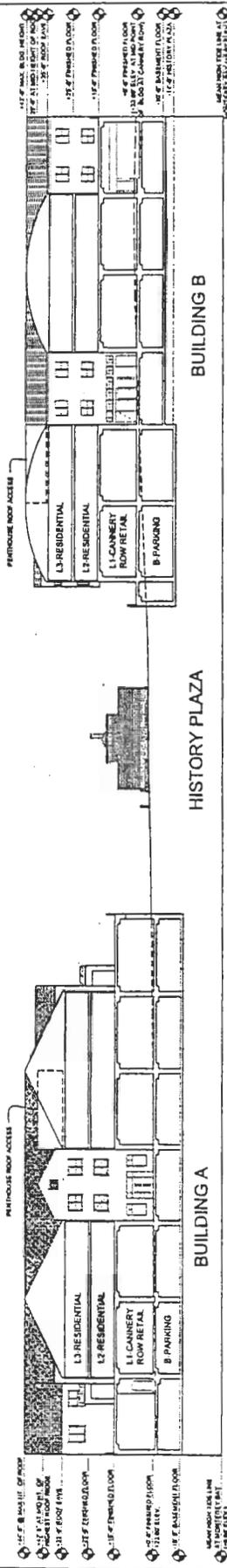
Ocean View Plaza

Project Location
Cannery Row
Monterey, CA 93940

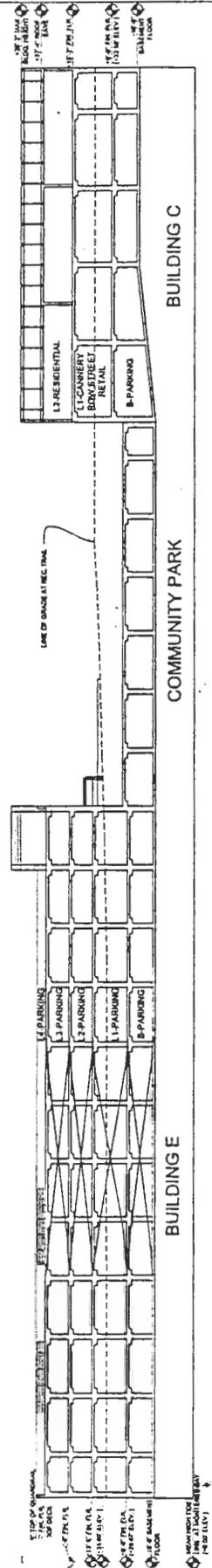
Project No. 0401.001
Issue Date October 9, 2003
Revisions

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Sheet Title Building Sections

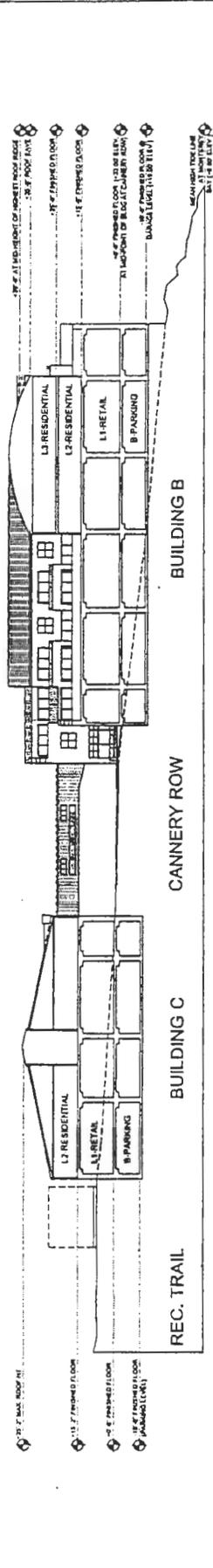
A303



04 Longitudinal Section - Buildings A & B (View towards Monterey Bay from Cannery Row)



03 Longitudinal Section - Buildings E, D, & C (View towards Monterey Bay from the Recreation Trail)



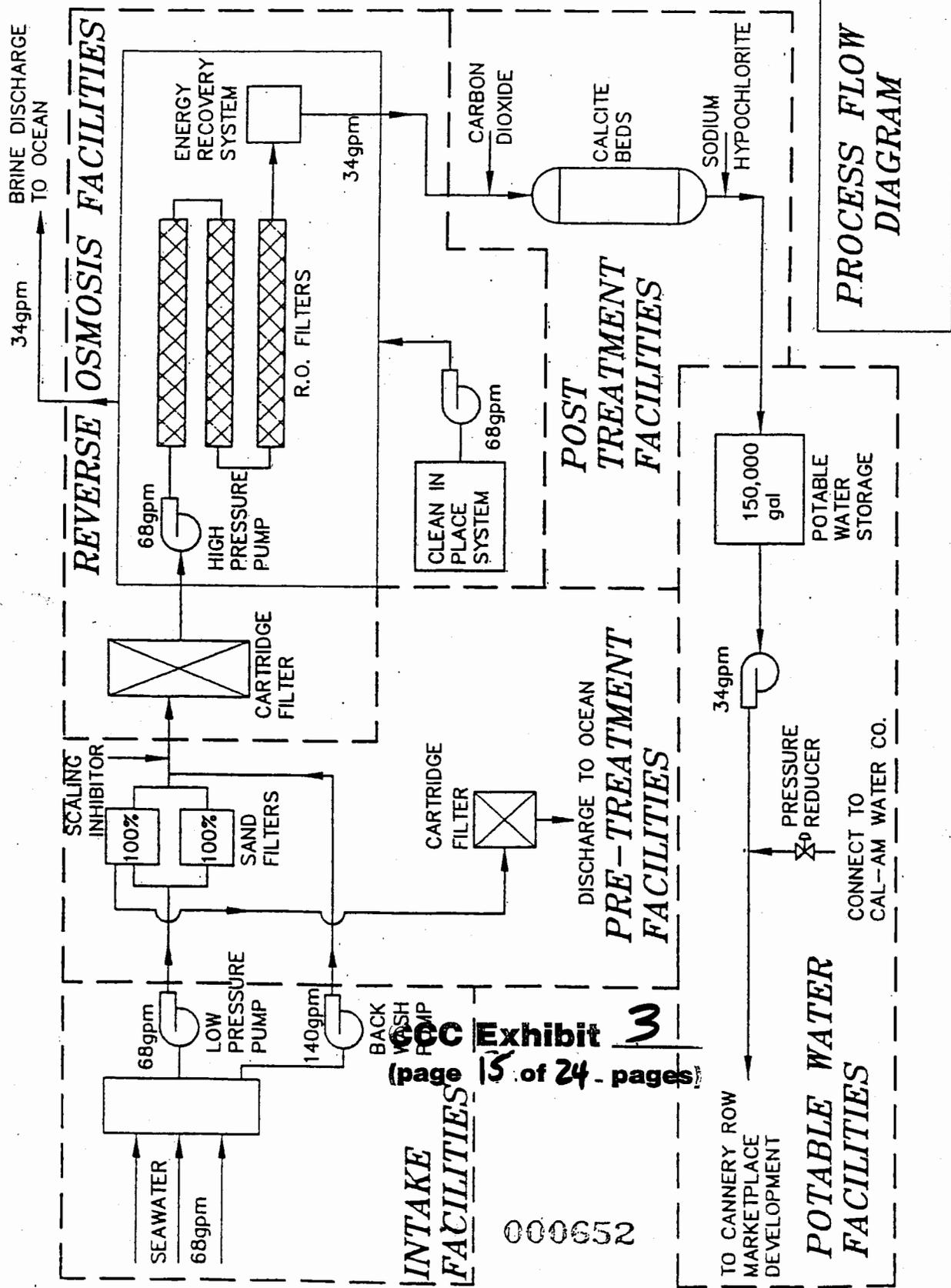
02 Transverse Section - Buildings C & B (View South)



01 Transverse Section - Buildings A & E (View North)

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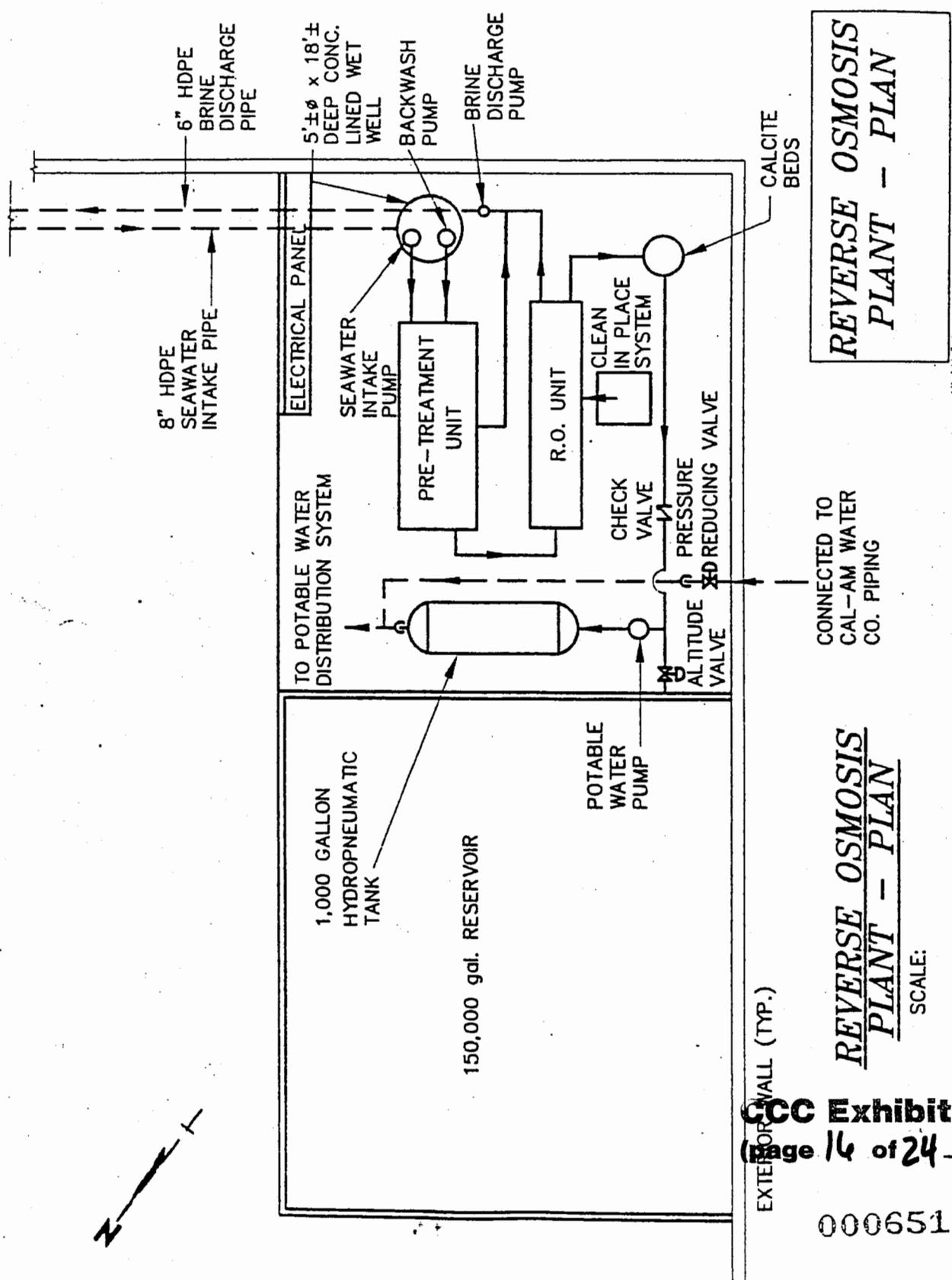
FIGURE 41
DESALINATION
PROCESS FLOW
DIAGRAM



PROCESS FLOW
DIAGRAM

Exhibit 3
(page 15 of 24 pages)

000052



**REVERSE OSMOSIS
PLANT - PLAN**

CONNECTED TO
CAL-AM WATER
CO. PIPING

**REVERSE OSMOSIS
PLANT - PLAN**

SCALE:

EXTERIOR WALL (TYP.)

000651

FIGURE 40
DESALINATION PLAN



SCC Exhibit 3
(Page 16 of 24 - pages)



Technical Memorandum

Evaluation of Alternatives to an Open Ocean Intake

Cannery Row Project

Monterey, California

Introduction

Cannery Row Marketplace LLC (CRM) has engaged PB to perform a feasibility level engineering study to determine if a subsurface (below the ocean floor) intake structure is a feasible engineering alternative to the open ocean intake that is currently proposed for the Cannery Row project. This Technical Memorandum presents our evaluation of this alternative as well as a comparison of this alternative with the currently proposed open ocean intake.

Background

CRM intends to develop the Ocean View Plaza along Cannery Row and to utilize a seawater reverse osmosis (SWRO) system to provide potable water to the development. The required seawater intake capacity of the SWRO system is to be between 80 and 120 gallons per minute (gpm). To meet these feedwater requirements, the intake will likely consist of two parallel 6-inch-diameter high density polyethylene (HDPE) intake pipes connected to a screened intake system. Two intake pipes are being installed to allow for maintenance of one line, while still providing a continuous supply of feedwater through the other line. It is our understanding that CRM intends to use only one intake pipe at a time to supply feedwater. An open ocean intake system is currently proposed for the seawater intake. This open ocean intake design was selected because it is similar to the open ocean intake currently operated by the Monterey Bay Aquarium, which has proven to be a reliable design with minimal impacts to the surrounding marine environment. Nonetheless, CRM has been requested by Coastal Commission staff to evaluate the feasibility of a subsurface or below ocean bottom intake system.

Approximately 45-85 gpm of concentrate or process reject water will be generated as part of the SWRO process. This concentrate will be discharged through a 6-inch-diameter HDPE pipe to an open ocean discharge point located about 1,200 feet offshore and located far enough away from the intake to ensure the effluent is not mixed with intake feedwater. The discharge pipeline will be constructed in conjunction with the intake line.



Horizontal Directional Drilling

The land portion and nearshore subsurface segments of the intake and discharge pipes will be installed via Horizontal Directional Drilling (HDD) methodology. An HDD rig will be located within the project property on the landward side of Cannery Row Street and will be used to advance a "horizontal" borehole through the underlying granite formation to a location about 350 feet from the Cannery Row site, where the horizontal bore will exit the granite formation at a point immediately adjacent to a submarine sand channel (See Figure 1). This exit point is expected to be at a water depth of about 25 feet (MLLW); a profile view of the bore is shown on Figure 2.

The onshore and nearshore portion (extending to the HDD exit point) of the open ocean intake system and the subsurface intake alternative we evaluated will be installed in the following manner. Initially, the HDD rig will drill an approximately 8.5-inch diameter pilot hole, and eventually expand that hole to a final approximately 20-inch-diameter "tunnel" using reaming techniques. The two, approximately 6-inch-diameter intake pipes and the one, approximately 6-inch-diameter discharge pipe will then be bundled together and installed, or pulled into the final HDD bore. At the HDD exit point, permanent collar anchors will be installed around the three pipes, and the seafloor extension sections will be attached by a bolted flange connection.

Starting at the HDD exit point, the HDPE (or comparable material) pipes will be jetted into the surficial sediment of the sand channel and will be anchored in place by concrete weights attached to the pipes. The exact configuration of the weights has not yet been fully defined. From the HDD exit point, the current double pipe intake design will extend offshore approximately 450 feet farther to a depth of about the 40 feet (Figure 1).

The concentrate discharge line with diffuser will be similarly jetted into the sediment but will be extended an additional 400 feet or so offshore to a depth of about 50 feet.

Open Ocean Intake

At the terminus of the intake lines, the open ocean intake will be installed. The intake will consist of a 1 to 3 foot vertical riser that is perforated at the top and is attached by bolted flange connection and fitted with a velocity cap. The risers will be perforated with 1-inch-diameter ports through which the seawater will be drawn; the ports will also be fitted with a screen.



According to the criteria established in the "Ocean View Plaza, Draft Environmental Impact Report, dated April 2001" (the Draft EIR), the perforations (ports) of the open ocean intake would be fitted with a stainless steel screen to reduce entrainment of suspended material and marine debris. The stainless steel screen is to be designed with a mesh size not to exceed 0.125 inches, and would be fitted with a "velocity cap" which would reduce the maximum intake velocity to less than 0.2 feet per second (fps) to reduce entrainment of suspended material and debris and prevent passage of small fish and marine organisms. As described in the EIR, an open ocean intake velocity of less than 0.2 fps would result in insignificant impacts to the marine environment, including those of entrainment or impingement.

Subsurface Intake

PB evaluated the feasibility of constructing a subsurface (below sea-floor bottom) intake to supply seawater to the planned SWRO plant. The main difference between this alternative and the Open Ocean intake is that the intake system will consist of horizontally oriented pipes placed inside well screens buried beneath the sand deposits on the ocean bottom. The overlying sand layer will separate the open ocean from the intake pipes. Our experience indicates that the subsurface intake lines should be continuously buried beneath at least 5 feet of uniform sandy material to be effective.

Jet probing results cited in TEG's "Ocean View Plaza Desalination Plant, Offshore Drilling Program, Cannery Row, Monterey, California" report dated January 2004, indicate that an approximately 6 to 7 foot-thick sand overburden layer is present along the proposed intake alignment in water depths between approximately 36 to 46 feet. At a depth of about 51 feet (about 1,000 feet offshore), the sediment overburden thickness increased to approximately 15 feet. Prior studies indicate that the sand layer appears to be well sorted, with between 92% and 96% of the sediment having a median grain size ranging from 170 to 200 microns in diameter. Based on this grain size range, our preliminary suggestion would be to utilize a well screen that would screen out or exclude grain sizes larger than 140 to 150 microns. To achieve the required intake water supply volume of 80 to 120 gpm utilizing our suggested well screen size, we estimate that the well screens would have to be approximately 30 feet in length. However, the distribution, thickness, and grain size of the sediments are inherently variable throughout the year, and an adequately-thick sand layer must be continuously present to accommodate the successful construction and operation of a subsurface intake system.



Our design concept calls for attaching 20-foot-long sections of 6-inch-diameter perforated pipe onto the end of the intake lines, and inserting these perforated sections into 30-foot-long sections of 8-inch-diameter well screens, as described above. The perforations in the pipe would facilitate seawater inflow. These screened sections would be buried beneath at least 5 feet of marine sand. A schematic cross-section of the two intake pipes inside of well screens is shown as Detail No. 1.

In order to insure as much as possible that sufficient sand cover is maintained over the intake pipes, we recommend that the horizontal intakes be placed within a sand-filled precast pipeline intake chamber. For this alternative, the two intake pipes would extend out to the same location as the proposed open ocean intake (about 800 feet offshore and at a depth of about 40 feet). Eight-foot-long sections near the end of the intake pipes would be perforated to facilitate water inflow. An approximately 3-foot-long unperforated section would be attached on to the very end of the pipes. The perforated sections would be inserted into slotted well screens as described above, and the perforated pipe/well screen assembly would be housed within the pipeline intake chamber.

Our preliminary design calls for the pipeline intake chamber to be a concrete vault that is approximately 15 feet in length, 6 feet wide, and 6 feet high. The vault will be divided into two chambers (one being approximately 10 feet in length and the other being approximately 3 feet in length) separated by a concrete wall with two holes. A schematic diagram of this alternative is shown in Detail 2. The perforated and screened section will be placed in the longer chamber with the unperforated section inserted through the holes into the smaller chamber. A flap valve will be placed at the end of each pipe inside of the smaller chamber.

The part of the pipeline intake chamber housing the perforated/screened section will contain a layer of uniform, well sorted sand material, to about 6 inches from the top of the vault. The well screen slots will have a mesh size that is smaller than the diameter of the sand to minimize sediment intake.

A highly permeable geotextile fabric will be placed on top of the sand layer, and held in place with large rocks or cobbles. This will allow for the removing of finer material that may accumulate on top of the sand intake by water jet, without disturbing sand layer within the vault.

The top of the smaller chamber will be fitted with a removal cover, to allow access to the vault and allow for removal of pigs sent through the intakes for cleaning and maintenance purposes.



The large surface area of the screen (approximately 12 square feet with about 40% of the screen area open) would result in intake velocities of less than 0.1 feet per second. See Detail No. 2.

The pipeline intake chamber can be assembled with the screens and pipe on the surface before it is lowered into place. The depth of the pipeline intake chamber beneath the sea floor sediments needs to be coincident with the depth of the intake pipes extended out to this point.

Conclusions

PB evaluated the feasibility of supplying 80 to 120 gpm of feedwater to the CRM SWRO treatment facility via a subsurface intake and developed a subsurface intake alternative that could meet the SWRO facility supply requirements.

- Based on this evaluation, we believe that because sediment distribution, thickness, and grain size are variable during the course of the year, we cannot confirm that a subsurface intake is feasible at this site. Any subsurface intake should include a submerged pipeline intake chamber to hold and maintain the required thickness of filtering sand material.
- Due to the extremely low intake velocities associated with both the open ocean intake and the subsurface intake alternatives, it is our opinion that there would be negligible benefits, if any, obtained from constructing a subsurface intake rather than the currently proposed open ocean intake relative to the potential for "impingement and entrainment."

x

MONTEREY BAY



NOTES:
 Bathymetric / geophysical data is from a survey conducted by Sea Surveyor, Inc. on 2 December, 1998 and represents the seafloor conditions present on that date.

The hydrographic survey was conducted using Class 2 hydrographic survey methods and accuracies outlined in the Corps of Engineers HYDROGRAPHIC SURVEYING MANUAL (HSM-5), 1985. The survey was performed using a 26' survey boat, an OMANSPACE Model 448 GPS navigation system, an INNERSPACE Model 448 survey-grade fathometer, EDGE TECH 500 kHz side scan sonar and a GEOPULSE Model 5430/5210 shallow seismic system.

Horizontal positions are referenced to the (MAD 1983) California State Plane Coordinate System, Zone 4.

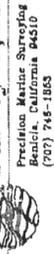
Soundings are in feet below Mean Lower Low Water (MLLW), as referenced to benchmarks located in the Monterey Harbor.

Contours are generated every 10 feet and every 5 feet below 30' MLLW.

Location of ring, disks, sheaves, and other lead features shown on the bathymetric chart are approximate. The size and shape of acoustic targets shown are approximate and may not reflect actual target dimensions.

BASED ON SURVEY PERFORMED BY:

Sea Surveyor, Inc.

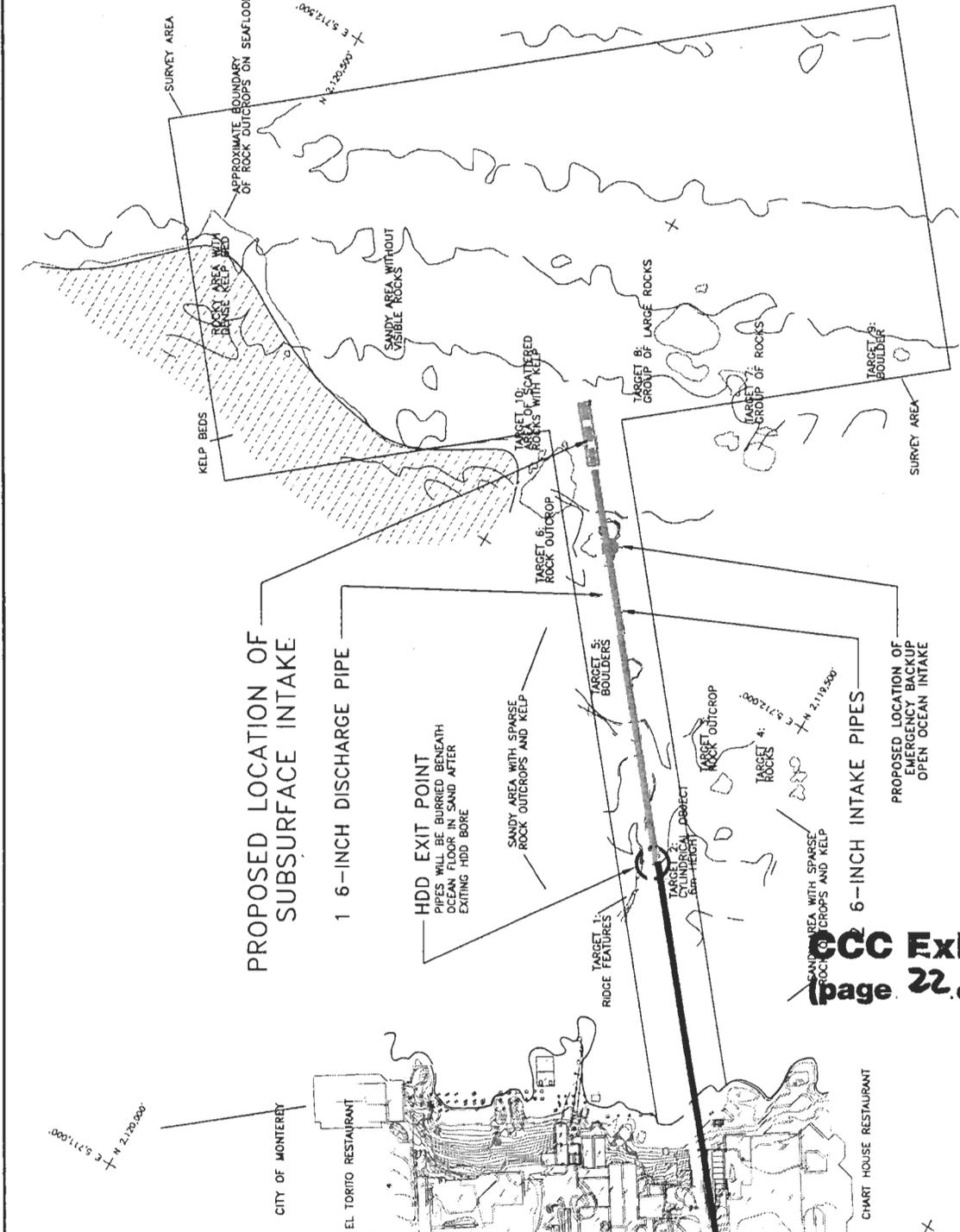


**MONTEREY DESALINIZATION FACILITY
 GEOPHYSICAL SURVEY DECEMBER 1998
 SEAFLOOR FEATURES MAP**

SCALE:
 1" = 150'

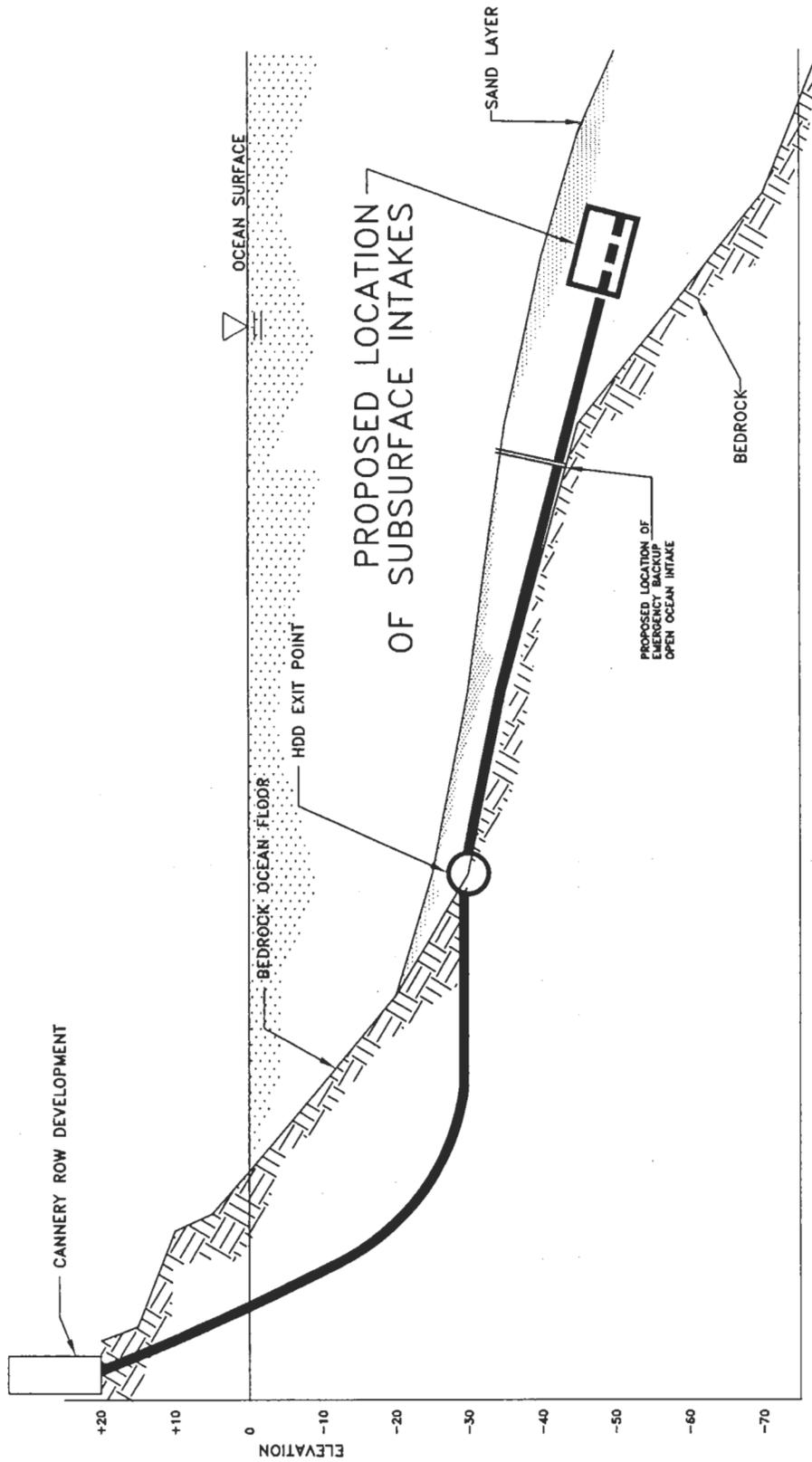
**FIGURE 1
 SUBSURFACE INTAKE
 LOCATION MAP**

REV.
 1 OF 2
 0

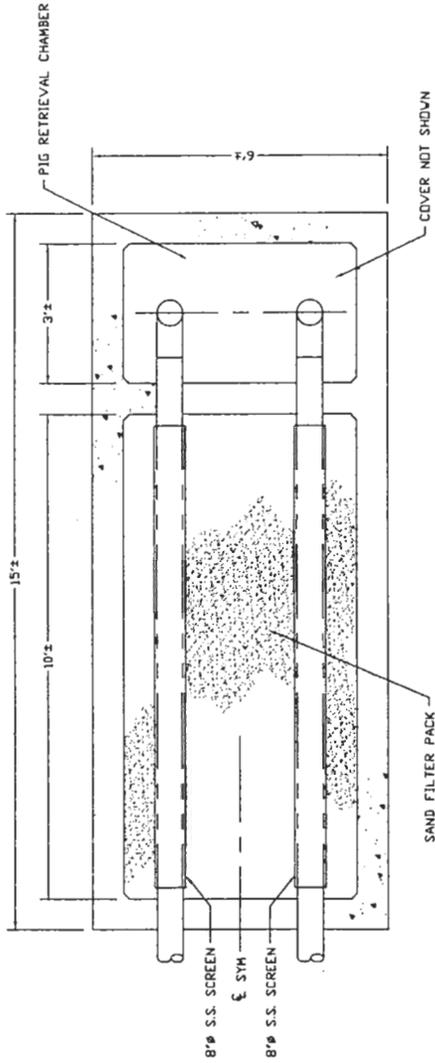


CCC Exhibit 3
 (page 22 of 24 pages)

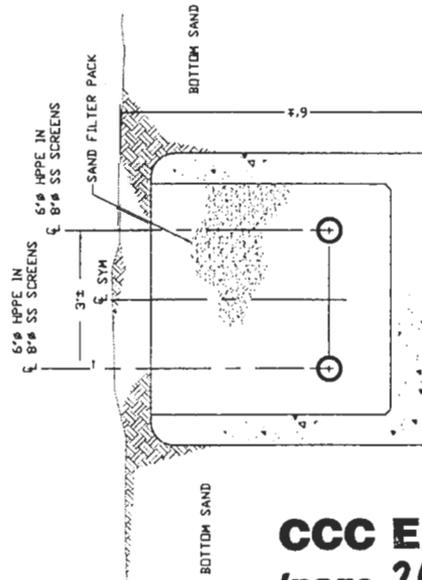
SUBSURFACE INTAKE PROFILE



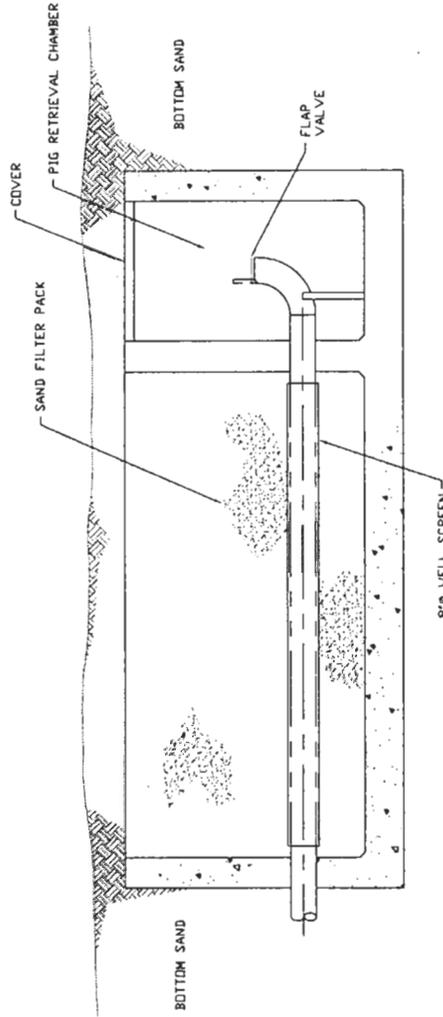
DETAIL 2 SUBSURFACE CONCRETE BOX INTAKE CONTAINING AN ENCASED PIPELINE



PLAN VIEW



TYPICAL CROSS SECTION



LONGITUDINAL SECTION

NOT TO SCALE

JUNE 2008

TABLE 8
SUMMARY OF SITE UTILIZATION FOR THE
PROPOSED PROJECT AND ALTERNATIVES

| Use | Proposed Project | Alt.1 | Alt.2 | Alt.3 | Alt.4 | Alt.5 | Alt.6 | Alt.7 |
|----------------------------|------------------|----------------|------------------------------------|-------------------------------------|--------------------------------|--------------------------------|--------------------------------|--------------------------------|
| | | No Development | Reasonably Foreseeable Development | Previously Approved by City Council | Reduced Density and Redesign A | Reduced Density and Redesign B | Reduced Density and Redesign C | Historic Resource Preservation |
| Retail/ Restaurant (sf) | 101,366 | - | 148,554 | 92,623 | 87,362 | 85,000 | 78,800 | 82,116 |
| Residential (sf) | 109,395 | - | 127,208 | 100,065 | 102,517 | 40,100 | 36,500 | 56,495 |
| Total Floor Area (sf) | 210,758 | - | 275,762 | 192,688 | 189,879 | 125,100 | 115,300 | 138,611 |
| Market Rate Units | 26 | | 36 | 24 | 38 | 25 | 22 | 21 |
| Inclusionary Units | 4 | - | 0 | 6 | 13 | 5 | 4 | 4 |
| Total Dwelling Units | 30 | - | 36 | 30 | 51 | 30 | 26 | 25 |
| Parking Spaces | 377 | 74 existing | 193 | 381 | 377 | 384 | 178 | 299 |

CCC Exhibit 4
(page 1 of 1 pages)



PLANNING PERMIT

August 24, 2004

Phil Taylor
Cannery Row Marketplace LLC
535 Cowper Street, 2nd Floor
Palo Alto, CA 94301

Subject Property: 470, 565, 570 Cannery Row (Ocean View Plaza)
Permit Number and Type: Use Permit 00-019 and Vesting Tentative Map

In the matter of the above-described application, the City Council of the City of Monterey, on June 1, 2004, approved the granting of the above noted permit subject to the Conditions of Approval set forth on the back of this Permit.

Qualifications

1. Signatures - The permit shall not become effective until signed and dated by both the applicant and the property owner and returned to the Community Development Department.
2. Nullification - The permit shall become null and void if not exercised or extended within twenty-four (24) months of the date of granting hereof. It is the applicant's responsibility to track the 24-month expiration date and to request any extensions prior to that date. No renewal notice will be sent.
3. Revocation - The permit shall be subject to revocation for failure to comply with all Conditions of Approval stated on the back of this form.

Please return the enclosed original permit, signed and dated by the applicant and the property owner (if other than you) to the City of Monterey Planning Department within ten (10) days. (Retain the white copy for your records.) The permit will not be valid until we have received a signed copy and will be subject to revocation if not received.

If you have any questions, please feel free to contact us.

Cannery Row Marketplace LLC

Cannery Row Marketplace LLC

Phil Taylor
Applicant's Signature

Phil Taylor
Property Owner's Signature

8/31/2004
Date

8/31/2004
Date

Enclosures

cc: Building Department (Copy of Permit and Site Plans)
Code Enforcement (Copy of Permit)

CCC Exhibit 5
(page 1 of 11 pages)

470, 565, 570 CANNERY ROW
OCEAN VIEW PLAZA

CITY COUNCIL

CONDITIONS OF APPROVAL

1. PERMITS: Use Permit 00-019 and Vesting Tentative Map are approved subject to these conditions.
2. APPROVED PLANS: Use Permit and Vesting Tentative Map are granted for a Mixed Use Project consisting of: 87,362 square feet of retail and restaurant use; 30,000 square feet of restaurant use including 10,500 square feet of seating area and 700 restaurant seats; 8,408 square feet of Coastal/Community use; 38 market condominiums; 13 inclusionary housing units and 377 parking spaces; building height over 35 feet; construction of an on-site desalination plant; rehabilitation of the San Xavier Fish Reduction Plant at its existing location on 484 Cannery Row; reconstruction of the San Xavier Warehouse with the exception of the Cannery Row elevation at 435 Cannery Row, replication of a utility bridge between San Xavier Warehouse and Building B and development of a Community Park between San Xavier Warehouse and Building E located and developed substantially as shown on the May 24, 2004 site plan, floor plans and elevations. The Community Park must be developed prior to any occupancy.
3. PUBLIC ACCESS: The applicant shall prepare a detailed public access plan for the project for review and approval by the Planning Commission. The plan shall specify areas of dedicated public access, any quasi-public access and private access areas along with hours of operation, the design and other restrictions on the use of the dedicated public access and quasi-public access areas.

Dedicated public access easements shall be provided: 1) from the Recreation Trail to Cannery Row Street through the Community Park; 2) from Cannery Row Street to the waterfront between Buildings A and B including the entire Historic Plaza; and 3) the Coastal Promontory and lateral access along the shoreline between Chart House Restaurant and El Torito Restaurant. All dedications shall be reviewed and approved by the Public Works Department prior to approval of Final Map.

4. RECREATION TRAIL: Prior to occupancy, the applicant shall:
 - a. Widen the Recreation Trail from the property line to the existing paved trail 50 feet in length and installation of trailscape improvements adjacent to the two (2) public access ways to Cannery Row Street.
 - b. Prepare a Landscaping Plan and install landscaping on the Recreation Trail adjacent to Project buildings and access walkways to soften their appearance as viewed from the Recreation Trail. The Landscaping Plan shall be reviewed and approved by the Architectural Review Committee and the Parks Superintendent.
 - c. That the Recreation Trail be kept open during construction of the project and closed only during widening of the Recreation Trail.

CCC Exhibit 5
(page 2 of 11 pages)

- d. There shall be no access from businesses directly to the Recreation Trail.
- e. Lighting of rooftop parking on Building E shall be directed downward and include cutoff shields as necessary to limit spillover of lighting and glare to the Recreation Trail and beyond the project boundaries. A Lighting Plan for the rooftop parking shall be prepared by the applicant and reviewed and approved by the Architectural Review Committee.

5. PARKING:

- a. The proposed shared parking is approved subject to:
 - 1.) Submission of a written agreement between the landowner(s) and the City, in a form satisfactory to the City Attorney for review and approval by Planning Commission. This agreement shall be in the form capable and subject to being recorded to constitute a covenant running with the land and shall include:
 - a.) A guarantee that there will be no substantial alteration in the uses that will create a greater demand for parking;
 - b.) A guarantee among the landowner(s) for access to and use of the shared parking facilities;
 - c.) A provision that the City may require parking facilities in addition to those originally approved upon findings by the Planning Commission that adequate parking to serve the use(s) has not been provided; and
 - d.) A provision stating that the City, acting through the Planning Commission may for due cause and upon notice and hearing, unilaterally modify, amend or terminate the agreement at any time.
- b. The parking areas shall provide physical separation between residential parking, employee parking and other retail parking areas as reviewed and approved by the Public Works Department.

6. TRAFFIC: Prior to occupancy, the applicant shall:

- a. Make a fair share contribution as determined by the Public Works Department to the City of Pacific Grove towards the installation of a traffic signal at Central Avenue (Lighthouse) and Eardley.
- b. Make a fair share contribution as determined by the Public Works Department towards the installation of a traffic signal at the intersection of Foam and Drake.
- c. The applicant shall update the Employee Transportation Management Program (TMP) and implement the TMP trip reduction measures.
- d. Contribute fair share funding as determined by the Public Works Department towards the installation of a changeable message sign on Highway 1

CCC Exhibit 5
(page 3 of 11 pages)

- e. Contribute additional funding as determined by the Public Works Department for the expansion and operation of the WAVE shuttle service.
- f. Contribute fair share funding as determined by the Public Works Department for the addition of a third eastbound through lane by converting the right turn lane to a shared through/right turn lane on Del Monte Avenue at El Estero.
- g. Contribute fair share funding as determined by the Public Works Department for the addition of an eastbound right turn lane on Del Monte Avenue at Camino Aguajito.
- h. Contribute fair share funding as determined by the Public Works Department for the addition of a third eastbound through lane on Del Monte Avenue at Sloat.
- i. Contribute fair share funding as determined by the Public Works Department for the addition of a second southbound left turn lane and convert the shared through/left turn lane to a through lane and, in order to maintain the proper lane alignment, the northbound approach should be widened and restriped with the same lane configuration as the southbound approach at the intersection of Camino Aguajito/Fremont.
- j. Contribute fair share funding as determined by the Public Works Department for the addition of a southbound right turn (or striping, if feasible) at Olmstead Road/Highway 68.
- k. Contribute fair share funding as determined by the Public Works Department for the addition of a second westbound through lane at Highway 218/Highway 68.
- l. Prepare a Curb Management Plan to reduce the incidence of project service trucks double parking on Cannery Row for Public Works Department review and approval.
- m. As determined by the Public Works Department, fund the addition of a left turn lane on the northbound approach (Foam Street) to the Foam/Reeside intersection.
- n. (See Condition #39.)

7. HISTORY:

- a. Prior to Architectural Review Committee Preliminary review, the applicant shall prepare and submit a revised Historic Resources Treatment Plan (based on comments from Chattel and Associates, FEIR Page 69-71) for review and approval by the Historic Preservation Commission. The Plan shall address the 11 identified historic resources and shall implement FEIR mitigation measures F.1.b, F.2, F.3.b, F.4a, F.5 and F.6.b.
- b. Prior to Architectural Review Committee Preliminary review, the applicant shall submit a Historic Documentation Program to Historic Preservation Commission for review and approval.

CCC Exhibit 5
(page 4 of 11 pages)

- c. The upper floor windows and openings on the San Xavier Warehouse reconstruction shall be specifically reviewed for appropriateness in the Historic Resources Treatment Plan.
- d. The treatment of the History Plaza around the San Xavier Reduction Plant shall use appropriate materials and include preserved or relocated elements from the existing foundations, so that the San Xavier Reduction Plant has a setting representative of the historic setting.
- e. The treatment of the four Fish Holding Tanks (Mitigation F.2.) shall provide a level of historic protection and information potential equivalent to that proposed in Mitigation F.2. but need not be the specific mitigation proposed by the EIR. If preservation is not feasible, the reasons shall be submitted to the Community Development Department staff for review and approval and the tanks shall be documented consistent with the Secretary of the Interior's Standards.
- f. The treatment for the Cylindrical Steel Tank next to the San Xavier Reduction Plant, Large Steel Tank adjoining San Xavier Warehouse and Partially Buried Railroad Tank Car shall be the Secretary of the Interior's Standards for Preservation. If preservation is not feasible, the Secretary of the Interior's Standards for Reconstruction shall be used. This condition fulfills Mitigation F.4.a, F.5, and is consistent with the applicant's proposal for the partially buried rail car.
- g. Mitigation measures for the underwater pipeline and archaeology (F.7 and G.1. a-d) as proposed.
- h. Permanent exhibits in the History Plaza shall be subject to Historic Preservation Commission review and approval.
- i. The San Xavier Warehouse foundation shall be reconstructed using Secretary of Interior Standards for Reconstruction. The foundation shall replicate the existing board formed concrete foundation and the section of foundation including the imbedded granite rock shall be retained.
- j. The San Xavier Warehouse reconstruction shall follow the Secretary of the Interior's Standards for Reconstruction. The south, north and west elevations shall be reconstructed as submitted by the applicant. The Cannery Row Street elevation shall conform to the HABS drawings with the exception of Cannery Row first floor windows and doors and that alternative openings for residential balconies may be used. The upper floor windows on the Cannery Row and Recreation Trail elevations shall be specifically reviewed by Historic Preservation Commission for appropriateness in the Historic Resources Treatment Plan. The first floor windows and doors on the Cannery Row Street elevations are conceptually approved subject to final design review and approval by Architectural Review Committee for conformance to LUP design standards. The Historic Resources Treatment Plan shall include details of the salvaged materials from the San Xavier Warehouse deconstruction to be used in the reconstruction.
- k. The Tevis Murray wall shall be preserved and restored in its original location except for the area needed to provide automobile access to Building B. If reconstruction of the non-salvaged portion of wall is not feasible, at least a 15-

foot long section of the wall should be salvaged and reinstalled and the non-salvaged sections of the existing wall should be recorded to HABS standards.

- l. The applicant shall provide a bridge across Cannery Row between the San Xavier Warehouse and Building B. The bridge may be for pedestrian use or it may be a utility bridge only, subject to review and approval of the Historic Preservation Commission and Architectural Review Committee.
- m. Construction Drawings shall include provisions for protection of the San Xavier Reduction Plant and other historic resources during construction. The applicant shall provide a Historic Monitor when required by staff.
- n. A qualified historic professional shall identify, inventory and salvage historic artifacts from the site and identify a treatment program for the artifacts in the Historic Resources Treatment Plan.
- o. Any change to the History Center use and Coastal Related Retail or Community use (Figure 6A Bay Level Plan) will require Planning Commission approval.
- p. Prior to any building occupancy of the project, the exterior of the San Xavier Fish Reduction Plant shall be rehabilitated to the Secretary of Interior Standards for Rehabilitation.

8. ARCHAEOLOGY:

- a. A professionally qualified archaeological monitor experienced in prehistoric and historic archaeology shall be present during all foundation removal, demolition and soil disturbance activities on the project site except at the paved parking lot on the inland side. If human remains or prehistoric or historic cultural features are discovered during these activities, work shall be halted within 50 meters (150 feet) of the find until it can be evaluated by the monitoring archaeologist and appropriate measures formulated and implemented as described in Mitigation G.1.b of the Draft Environmental Impact Report.
- b. If intact prehistoric and historic archaeological materials are discovered at the site, secondary archaeological testing shall be conducted to determine the nature, extent and significance of the cultural deposit under the provisions of Section 21083.2(j) of the Public Resources Code and CEQA Guidelines Section 15064.5.
- c. Following the test excavation, if required, a Preliminary Archaeological Report and Archaeological Mitigation Plan shall be prepared.
- d. Following preparation of the Preliminary Archaeological Report, if required, a Final Technical Report shall be completed within one year of completion of the archaeological fieldwork. This report shall be submitted to the City of Monterey and to the Regional Information Center at Sonoma State University.

9. DESIGN:

- a. Architectural Review Committee review shall consider improvements and structures that are proposed within the view corridor area such as, but not limited

CCC Exhibit 5

(page 6 of 11 pages)

to, umbrellas, kiosks, signs, tables and benches and the design features of the building walls located adjacent to the corridor and the design and treatment of paving and landscape features in the view corridor.

- b. Detailed review by the Architectural Review Committee at Concept and Preliminary review of landscaping on and adjacent to the Recreation Trail and building details and finishes facing the Recreation Trail shall be required.
- c. Detailed review of the buildings by the Architectural Review Committee at Concept and Preliminary review shall be required to determine full compliance with architectural requirements. The Applicant's Concept presentation to the Architectural Review Committee shall include photographs and drawings to document and show typical window patterns, materials, offsets, roof parapets, trim, paving, lights and signs that were evident and commonly used in Cannery Row during the 1920's and 30's period. The Architectural Review Committee shall use these photographs and drawings in their review of the building details to ensure that the finished detailing on the building conforms to the architectural character required in the LUP.
- d. The appearance of continuous uniform predominantly glass storefront does not conform to LUP Guidelines. Prior to Preliminary Architectural Review Committee approval, the applicant shall submit a plan that specifically includes changes or tenant improvement programs that will introduce variety in the storefronts and reduce the uniform appearance.

10. WATER SUPPLY:

- a. The applicant shall obtain permits for the desalination facility from the following agencies, if required:

Monterey Peninsula Water Management District, Monterey County Environmental Health Department, Regional Water Quality Control Board (Central Coast), California Coastal Commission, U.S. Army Corps of Engineers, National Oceanographic and Atmospheric Administration, Monterey Bay National Marine Sanctuary.

- b. If the applicant fails to obtain permit approval for the desalination facility, he will be placed on the City water waiting list. The applicant shall proceed at his own risk that water may not be available at the time he submits building plans to the Building Department. No Building Department approvals will be given if water is not available to this project.
- c. The location of the desalination facility intake riser and discharge port shall be marked by buoys, as required and indicated on nautical charts.

11. WATER QUALITY and MARINE ECOLOGY: A Storm Water Pollution Prevention Plan and a Construction Water Quality Plan shall be prepared by a registered civil engineer and submitted to the Public Works Department for review and approval.

12. WAVE HAZARD:

CCC Exhibit 5
(page 7 of 11 pages)

- a. The project shall incorporate engineering design and construction materials and methods to withstand wave impacts from a 100 year storm event at the lower (parking) level of Buildings A and B subject to flooding and impact damage by storm waves or a combination of storm waves and tsunami.
- b. The applicant shall implement Draft EIR Mitigation Measure A.4. which would provide appropriate warning signs and access provisions at the lower level promenade, the coastal access stairs or the rocky shoreline at the project site for persons at risk during a storm or tsunami.
- c. The project shall subscribe to a tsunami warning system such as the Emergency Managers Weather Information Network (EMWIN) or comparable system that is available to non governmental entities and develop an emergency response plan for warning users of the lower accessway and shoreline as well as residents and other users of the site in the event of a tsunami. The plan should be designed so as not to conflict in any way with (but rather to complement at the project level) the City' Disaster Plan.

13. HAZARDOUS MATERIALS:

- a. Prior to site preparation activities, the applicant shall conduct additional soil sampling and testing as follows: 1) additional evaluation of lead in soil adjacent to former and existing structures, including solubility analyses to determine whether the concentrations of lead previously detected exceed soluble hazardous waste limits; 2) evaluation of oil-impacted soils for the presence of polychlorinated biphenyls (PCBs) and polynuclear aromatic hydrocarbons (PAHs).
- b. Prior to site preparation activities, the applicant shall prepare and obtain regulatory approval of a Risk Management Plan (RMP) for the project site which provides a protocol for the appropriate treatment of contaminants and contaminant sources encountered during grading and excavation for the project.
- c. Prior to site excavation and grading for the project, the applicant shall implement the cleanup plans prepared for the Stohans building and the tanks to the extent that they do not conflict with the historic resource mitigation alternatives selected for these structures. In the event that any cleanup plan conflicts with a selected historic resource mitigation, such cleanup plan is to be amended and implemented in a manner, which removes this conflict.
- d. During site grading and excavation for the project, the applicant shall implement the provisions of the approved Risk Management Plan to ensure that all contaminants and contaminant sources are addressed in a manner that removes the health hazards from the site, in accordance with applicable regulations.
- e. The applicant shall be required to obtain and implement the provisions of a Hazardous Materials Storage Permit for the proper use, handling and storage of chemicals on the project site.

14. CURB GUTTER AND SIDEWALK: The applicant is to construct new City standard curb, gutter and sidewalks along the entire frontage of all parcels. Sidewalks conform to Cannery Row Streetscape study requirements. All privately owned utility vaults are to be positioned within the applicant's property.

CCC Exhibit 5
(page 8 of 11 pages)

15. **STREET IMPROVEMENTS:** Prior to occupancy, the requirements and standards of the Public Works Department shall be complied with for the design and construction of street improvements on Cannery Row.
16. **STREET PAVEMENT:** Prior to occupancy, the ocean side of Cannery Row Street shall be patched after utilities are installed with non uniform concrete paving to match the existing pavement. All repaving shall conform to Cannery Row Streetscape Study requirements.
17. **TRASH/RECYCLING:** Prior to construction, the applicant shall prepare a Trash/Recycling Management Plan and submit it to Public Works Department for review and approval. The Plan shall address the proper sizing and location for trash/recycling areas and containers for all buildings. The Plan shall specify routes and vehicles to be used for transfer of trash between buildings, curb cuts in front of enclosures and management practices for maintaining trash and recycling areas. Trash/recycling enclosures shall include a hose bib and a drain to the sanitary sewer.
18. **TYPE OF CONSTRUCTION:** The type of construction will need to be specified as part of construction documents.
19. **ENCROACHMENT PERMIT:** The applicant shall obtain an encroachment permit from Public Works Department for the proposed bridge.
20. **BRIDGE CLEARANCE:** The bridge across Cannery Row Street shall maintain a 14 foot 3 inch clearance.
21. **HANDICAPPED PARKING:** The applicant shall provide the required number of handicapped parking spaces in the parking structure, Building E and approved underground parking as reviewed and approved by the Building Division.
22. **FIRE SPRINKLERS:** All buildings shall require fire sprinklers, including the parking structure, Building E.
23. **DRAINAGE PLAN:** A drainage plan for the site shall be provided for review and approval by the Public Works Department.
24. **CODE REQUIREMENTS:** The applicant shall comply with the requirements of the Fire and Building Departments.
25. **SIGNAGE:** Prior to occupancy, the applicant shall prepare and submit an exterior sign program to the Architectural Review Committee for review and approval.
26. **TIDELANDS:** No new structures or improvements of any kind shall be constructed upon City of Monterey land, right of way, tidelands except with express approval and review by the City of Monterey. The applicant shall submit such written documents and agreements to the Housing and Property Manager for review and approval.
27. **AFFORDABLE HOUSING AGREEMENT:** Prior to issuance of a Building Permit, the applicant shall execute and record an agreement with the City to provide 13 affordable housing units in the project.

28. UNDERGROUND UTILITIES: All public utilities including service laterals shall be placed underground along the frontages of all buildings.
29. CONSTRUCTION TRAFFIC: Prior to construction, the applicant shall prepare and submit a plan for traffic control during project construction for review and approval by the Public Works, Fire and Police Departments. Two lane, two way traffic shall be maintained as much as practicable on Cannery Row Street. Any lane closures shall be approved by the City Traffic Engineer. The plan shall also address construction worker parking demand in the area during construction.
30. AIR QUALITY: The applicant shall prepare and implement a dust abatement program subject to review and approval by the Public Works Department. The applicant shall locate kitchen exhaust vents in accordance with accepted engineering practice and shall install filtration systems or other accepted methods of odor reduction subject to review and approval by the Building Department.
31. NOISE: In addition to adhering to all applicable Building and Fire Code requirements, the applicant shall provide mechanical ventilation for the residential uses to allow residents to close doors and windows as desired to achieve additional acoustic isolation. The applicant shall prepare and implement a Noise Mitigation Plan subject to the review and approval of the Building Department to mitigate construction noise impacts.
32. BLASTING: Blasting is prohibited for any reason on this site.
33. POLICE: Prior to occupancy, the applicant shall submit a security program for review and approval by the Police Department. The applicant shall also design parking area driveways to minimize vehicular/pedestrian conflicts as reviewed and approved by the Police Department.
34. VESTING TENTATIVE MAP: The Vesting Tentative Map is approved substantially as shown on the February 2000 map, subject to:
 - a. All appropriate conditions of Use Permit 00-019 shall be fulfilled prior to filing the final map.
 - b. Prepare for review and approval by the City Attorney, CC&Rs for the project prior to filing the final map.
 - c. Prepare for review and approval by the City, an easement agreement for the public access areas, which, at a minimum, will address 1) maintenance, 2) hours of use, and 3) use restrictions.
 - d. Prior to filing the final map, the subdivider must prove to the City's satisfaction that clear title to the project site is held by the fee owner.
35. EXPIRATION: This permit shall become null and void if not exercised or extended within two (2) years of the date of granting by the City Council. It is the applicant's responsibility to track the two-year expiration date and request permit approval extensions prior to the permit expiration date. No renewal notice will be sent to the applicant.

CCC Exhibit 5
(page 10 of 11 pages)

36. **REVOCAION AND TRANSFERABILITY:** This permit will be revoked if the applicant does not meet the deadlines specified in these conditions including the deadlines and conditions for the Vesting Tentative Map. If ownership of this property is transferred, the new owner(s) must comply with these conditions and their timetable for implementation.
37. **OCEAN OUTFALL:** The applicant shall apply for an Encroachment Permit for the ocean outfall pipes to support the on-site sea water desalination plant.
38. **STRUCTURAL SUPPORTS:** The applicant shall address to the satisfaction of the City Engineer that the condominium owners will have adequate property rights for the support of their structures. This includes land rights as well as rights to the supporting structure and utilities with the ability to operate all the necessary supporting structures and utilities separately from the owners of the development or their successors.
39. The applicant agrees to front the amount of \$2,000,000 for traffic improvements to the Lighthouse Corridor subject to a legally acceptable agreement that is reviewed by the City Attorney and approved by the City Council. The legal agreement shall specify when the \$2,000,000 will be deposited to the City. Any unused funds from the \$2,000,000 may be applied to other required traffic improvements (Conditions 6a-m).

City Council
June 1, 2004

CCC Exhibit 5
(page 11 of 11 pages)

OCEAN VIEW PLAZA

CITY COUNCIL

STATEMENT OF OVERRIDING CONSIDERATIONS

THE CITY COUNCIL OF THE CITY OF MONTEREY adopts and makes this statement of overriding considerations concerning the Project's unavoidable significant impacts to explain why the Project's benefits override and outweigh its unavoidable impacts.

WHEREAS the San Xavier Warehouse is being reconstructed consistent with the HABS drawings of the original San Xavier Warehouse except for the Cannery Row street elevation at 435 Cannery Row. The proposed use of the first floor is Commercial Retail, which was not the historic use. The Project provides for Commercial Retail, which requires display windows and multiple access for multiple retailers. This is consistent with other retail buildings on Cannery Row.

WHEREAS it is not feasible to fully preserve the San Xavier Warehouse foundation because it does not meet structural and seismic standards for the proposed replication of the San Xavier Warehouse, the adaptive reuse of commercial retail and the provision of thirteen affordable housing units. Portions will also be removed because underground parking will be constructed beneath it.

WHEREAS it is not feasible to preserve the Pacific Fish Company Foundation as it cannot be preserved, stabilized and maintained in its current ruinous state. The foundation does not meet structural and seismic standards for the Project's proposed uses and as a result must be removed.

WHEREAS it is not feasible to fully preserve the Tevis Murray Wall, as the Project must provide automobile access to Building B.

WHEREAS it is not feasible to preserve the four Fish Holding Tanks because Building B will be constructed in this location. However, the tanks will be documented consistent with the Secretary of the Interior's Standards.

WHEREAS the Cylindrical Steel Tank next to the San Xavier Reduction Plant, the Large Steel Tank adjoining San Xavier Warehouse and Partially Buried Railroad Tank Car may not be fully preserved due to their deteriorated condition. However, these resources will be treated subject to the Secretary of the Interior Standards for Preservation. If preservation is not feasible, Secretary of the Interior Standards for Reconstruction shall be used.

WHEREAS the cumulative historic impacts (identified in the EIR as impact F.8) cannot be fully mitigated because the mitigations set forth in the EIR (F.1.b, F.3.b and F.6.b) do not allow full mitigation of the identified historic impacts. However these impacts are mitigated to the maximum extent feasible with the project as proposed.

WHEREAS the Cannery Row/Prescott Avenue Intersection will operate at LOS D during the Saturday peak hour and the addition of Project traffic would cause the intersection operations to incrementally degrade. Although, LOS F is acceptable for this Intersection since it

serves significant tourist destination traffic in Cannery Row, traffic speeds are low and few accidents are experienced.

Seven project alternatives were analyzed in the Supplemental EIR. One of the alternative projects, Alternative 4: Reduced Density and Redesign "A" is approved as it reduces impacts while providing significant social and economic benefits. Any of the above stated significant impacts are overridden by the unprecedented substantial benefits this Project brings to the City of Monterey, as set forth below.

Social Benefits

The Project's impacts are outweighed by the social benefits the City will receive in the form of historic preservation and rehabilitation on the Project site of the San Xavier Reduction Plant and reconstruction of the San Xavier Warehouse on the site. The San Xavier foundation will be replicated using Secretary of Interior Standards for Reconstruction. That is, the foundation will replicate the existing board formed concrete foundation and retain a section, including the imbedded granite rock. These resources significantly contribute to the Cannery Row Conservation District and satisfies a primary interest of the City in preservation of the one potentially historic building on the site and reconstruction of the San Xavier Warehouse, that otherwise might not be reconstructed.

Further, a significant portion of the Tevis Murray wall (at least fifteen feet) will be preserved by the Project. The Stohans Building will be made available and used as the Cannery Row Museum and will be run by private funds, which will contribute to the preservation and enhancement of Cannery Row's history as well as the history of the Project site and the resources which were impossible to salvage. The nonsalvaged foundation, fish tanks and portion of the wall will be recorded to HABS standards. Interpretive markers explaining the former use will be installed. Historic Resources and their historical context will be preserved by the Project yet Bay views and access to the Bay will be preserved for public use and enjoyment through the creation of a public park in the former location of proposed Building D and through the public plaza surrounding the Stohans Building.

With its preservation of the San Xavier Reduction Plant, preservation of a significant portion of the Tevis Murray Wall, reconstruction of the San Xavier Warehouse and construction of a new Cannery Row Bridge across Cannery Row Street, the project has contributed to the preservation and enhancement of Cannery Row's history. The resources identified in these impacts have primary value for information potential and the information potential for these resources is preserved by the proposed mitigation measures. The balance of all and partial mitigations preserves the historic context of the Conservation District, provides a continuity of resources for interpretation from Monterey Bay to the Recreation Trail, and provides a strong connection to the Wave Street portion of the District. Further, this treatment is consistent with the response from the State Historic Preservation Office, which indicates that a combination of partial retention, recordation and interpretation of resources such as foundations is an appropriate treatment for such resources.

Economic Benefits

The Project will provide traffic and parking benefits to the City of Monterey. No traffic signal nor traffic control officer will be required to mitigate the impact caused by the Project at the Cannery Row/Prescott Avenue Intersection. This intersection serves Cannery Row, a tourist destination that is typified by narrow local streets, tourist commercial traffic volumes and

a low level of service in contrast to collectors and arterials that convey traffic to and through an area. The project complies with the Zoning Ordinance parking requirements. Economic benefits are unprecedented in that the Project has offered to front the amount of \$2,000,000 for traffic improvements to the Lighthouse Corridor, traffic improvements in the City of Pacific Grove, other traffic improvements in the City of Monterey and expansion and operation of the WAVE shuttle service.

The City of Monterey receives further economic benefits by the Project providing both market rate and thirteen units of affordable housing, which will address Monterey's fair share contribution to regional housing needs and provide market and affordable housing to Monterey citizens,

The City will also obtain economic benefits in the form of property tax and sales tax that have been foregone by the non-use of the site for many years.

Conclusion

ACCORDINGLY, based on the economical and social benefits set forth above, a statement of overriding consideration is appropriate pursuant to CEQA Guidelines Section 15093. Each benefit constitutes an overriding consideration warranting approval of the Project, independent of other benefits, despite each and every unavoidable impact.

KATE MCKENNA, AICP
Executive Officer

CERTIFICATE OF COMPLETION

Pursuant to Government Code Section 57200, this Certificate of Completion is issued by the Executive Officer of the Local Agency Formation Commission of Monterey County, California.

1. The short term designation, as determined by LAFCO, is "Ocean View Community Services District."
2. The name of each district or city involved in this change of organization or reorganization and the kind or type of change of organization ordered for each city or district are as follows:

| <u>City or District</u> | <u>Type of Change of Organization</u> |
|---|---------------------------------------|
| Ocean View Community Services District | Formation |

3. The above listed district is located entirely within the City of Monterey in Monterey County.
4. A description of the boundaries of the above cited change of organization or reorganization is shown on the attached map and legal description, marked Exhibit A and B by this reference incorporated herein.
5. The territory is **uninhabited**.
6. This change of organization/reorganization has been approved subject to the following terms and conditions, if any: **See attached Resolution 05-27.**
7. The resolution ordering this change of organization/reorganization without election was adopted by Resolution No. **05-27 on December 27, 2005** by the Local Agency Formation Commission of Monterey County.

I hereby certify that I have examined the resolution cited above including any terms and conditions, and the map and legal description and have found these documents to be in compliance with LAFCO Resolution No. 05-27, adopted on December 27, 2005.

CCC Exhibit 9
(page 1 of 9 pages)

Date: December 27, 2005 Signature: Kate McKenna
Kate McKenna, AICP, Executive Officer

THE LOCAL AGENCY FORMATION COMMISSION
OF MONTEREY COUNTY

RESOLUTION NO. 05-27

**RESOLUTION OF THE LOCAL AGENCY FORMATION COMMISSION OF
MONTEREY COUNTY MAKING DETERMINATIONS AND APPROVING THE
PROPOSED OCEAN VIEW COMMUNITY SERVICES DISTRICT FORMATION**

RESOLVED, by the Local Agency Formation Commission of the County of Monterey,
State of California, that

WHEREAS, a Resolution of Application of the City Council of the City of Monterey requesting the Local Formation Commission of Monterey County to take proceedings for the formation of the Ocean View Community Services District, was heretofore filed and accepted for filing by the Executive Officer of this Local Agency Formation Commission, on December 1, 2005, pursuant to Title 6, Division 1, commencing with Section 56000, et seq. of the Government Code; and

WHEREAS, the affected territory is uninhabited, and the property owners have consented to the proposed formation and a waiver of protest proceedings; and

WHEREAS, the Executive Officer, pursuant to Government Code Section 56828, set December 27, 2005 as the hearing date for this proposal and gave the required notice of hearing per Government Code Section 56157; and

WHEREAS, the public hearing by this Commission was held upon the date and at the time and place specified in said notice of hearing and in any order or orders continuing such hearing; and

WHEREAS, the Executive Officer, pursuant to Government Code Section 56833, has reviewed this proposal and prepared a report, including recommendations thereon, and has furnished a copy of this report to each person entitled to a copy; and

WHEREAS, this Commission, on December 27, 2005, heard from interested parties, considered the proposal and the report of the Executive Officer and considered the factors determined by the Commission to be relevant to this proposal, including, but not limited to, factors specified in Government Code Section 56841; and

WHEREAS, the City of Monterey certified a Final Environmental Impact Report and approved the Ocean View Plaza project in June 2004 with conditions, and an on-site desalination plant to provide water service was considered in the project scope; and

WHEREAS, the City of Monterey filed a Notice of Exemption with the State Office of Planning and Research and the Monterey County Clerk on, or around July 28, 2005, for purposes of forming a Community Services District to own and operate a desalination plant and related water distribution infrastructure, which states that the City's action to initiate proceedings for the formation of a Community Services District will not result in any change to the physical environment that was not previously evaluated in the Ocean View Plaza environmental documents; and

CCC Exhibit 7
(page 2 of 9 pages)

WHEREAS, pursuant to the California Environmental Quality Act, the Commission, acting as a responsible agency under the law, and based on its independent judgment of the environmental information, agrees and finds that the environmental impacts of the Desalination Plant were fully evaluated in the *Ocean View Plaza Environmental Impact Report* (Clearinghouse #2000041035) (this includes the April 2001 Draft, August 2001 Final, December 2001 Supplement, March 1, 2002 Final Recirculated EIR, March 2004 Alternatives Analysis Supplement, and May 2004 Response to Comments), and certified by the City Council in June 2004; and

WHEREAS, the Commission, acting as a responsible agency under the law, and based on its independent judgment of the environmental information, agrees and finds that the formation of the Community Services District will not create a need for facilities or activities outside of the scope of the Ocean View Plaza Environmental Impact Report, or otherwise result, either directly or indirectly, in any potentially significant adverse environmental impacts, and that the formation of the Community Services District does not have the potential to result in any physical change in the environment, either directly or indirectly, beyond those potential impacts that have already been analyzed and mitigated as necessary in the Ocean View Plaza Environmental Impact Report, it is considered exempt from further CEQA evaluation (CEQA Guidelines Section 15060(c)(3) and 15061(b)(3)); and

WHEREAS, the developer for the proposed project shall construct the desalination plant in accordance with all applicable federal, state, and local laws and regulations, which the developer shall dedicate to the Community Services District at no cost to the Community Services District pursuant to such terms and conditions set forth in Section 5 below; and

WHEREAS, the operation of the Community Services District shall be financed through the collection of rates from the residents and tenants of the proposed project; and

WHEREAS, the purpose of the formation of the Community Services District is as follows:

1. To create a public agency that will own and operate the desalination plant and to provide residential and commercial water service to the proposed project; and
2. To provide a reliable water source for the future residents and tenants of the proposed project because existing agencies cannot feasibly provide the needed service or services in a more efficient and accountable manner; and

WHEREAS, the subject territory is uninhabited as defined in Government Code Section 56046, and all owners of real property within the proposed boundaries of the proposed Community Services District have consented to the formation of the proposed Community Services District; and

WHEREAS, pursuant to Government Code Section 56301, no existing agency can feasibly provide the needed water service in a more efficient or accountable manner; and

WHEREAS, pursuant to Government Code Section 56001, the proposed Community Services District would provide for the orderly growth and development that the City has recognized is so important to its social, fiscal and economic well-being; and

WHEREAS, the Terms and Conditions contained in the City of Monterey Resolution 05-189 are incorporated herein by reference and included in the LAFCO staff report associated with this Resolution as Terms and Conditions; and

WHEREAS, the Community Services District, rather than Cannery Row Marketplace LLC (the project applicant), will own and operate the desalination plant to provide water service to the Ocean View Plaza project, and

WHEREAS, the regular County assessment roll will be used to carry taxes and assessments that may be levied within the Community Services District; and

WHEREAS, the Commission will adopt a Resolution of Intent to adopt a Sphere of Influence for the proposed Community Services District.

NOW, THEREFORE, the Local Agency Formation Commission of the County of Monterey does HEREBY RESOLVE, DETERMINE, AND ORDER as follows:

Section 1. The affected territory contains no registered voters and the landowners have consented in writing to the proposal.

Section 2. The Commission, acting as a responsible agency under the law, and based on its independent judgment of the environmental information, agrees with the conclusions in the environmental documents prepared for the Ocean View Plaza project (Clearinghouse #2000041035) and the Community Services District Notice of Exemption.

Section 3. The boundaries of the territory proposed to be formed are hereby approved as described in Exhibit "B" of the December 27, 2005 staff report attached hereto and made a part hereof. Said territory is said to be uninhabited, and is assigned the following distinctive short form designation: "Ocean View Community Services District".

Section 4. *Population and population density; land area and land use; per capita assessed valuation; topography, natural boundaries, and drainage basins; proximity to other populated areas; the likelihood of significant growth in the area, and in adjacent incorporated and unincorporated areas, during the next 10 years (Gov. Code § 56668(a).)*

This proposal supports and is consistent with the City's zoning and land use plans. The proposal will allow for a valuable infill development project for the City, ensuring appropriate population density without creating growth-inducing impacts. The project will restore to productive use approximately 4.27 acres of blighted property in the middle of Cannery Row, increasing the value of the surrounding properties and furthering the region's economic development goals.

Section 5. *Need for organized community services; the present cost and adequacy of governmental services and controls in the area; probable future needs for those services and controls; probable effect of the proposed ... formation ... and of alternative courses of action on the cost and adequacy of services and controls in the area and adjacent areas. (Gov. Code § 56668(b).)*

The project as proposed will allow for the provision of water service where no other supply of water is available. The project will allow an adequate and feasible supply of water to the area, which already has available to it all other necessary governmental services. The water supply provided by the Community Services District will remain available for as long as such service will be necessary. Without the project no water will be available and the current, blighted condition of the area will continue indefinitely.

CCC Exhibit 1
(page 4 of 9 pages)

Section 6. *The effect of the proposed action and of alternative actions, on adjacent areas, on mutual social and economic interests, and on the local governmental structure of the county. (Gov. Code § 56668(c).)*

The project will have a beneficial impact on and will support the economic development of the project area and adjacent areas by restoring approximately 4.27 acres of currently blighted territory to productive use. In addition to the mutual social benefits provided by restoring the blighted area and the economic development benefits provided through the increased property and sales tax base, the project will provide 13 new inclusionary housing units, \$2,000,000 in additional road improvement monies and public open space and plaza areas as well as a museum site.

The project will complete the current governmental structure by creating a water supplier able to serve the project area. There are no feasible alternatives that would provide water to the area, so any alternatives to the project would prevent development and maintain the blighted condition of the area.

Section 7. *The conformity of both the proposal and its anticipated effects with both the adopted commission policies on providing planned, orderly, efficient patterns of urban development, and the policies and priorities set forth in Section 56377. (Gov. Code § 56668(d).)*

The project is essential to allowing for planned, orderly and efficient patterns of urban development, by creating an alternative water supply in light of Cal-Am's present inability to serve the area. By creating a water supplier to the area, the project allows for valuable infill development, restoring a blighted area and preventing urban sprawl, consistent with the policies and priorities set forth in Government Code section 56377.

Section 8. *The effect of the proposal on maintaining the physical and economic integrity of agricultural lands, as defined in Section 56106. (Gov. Code § 56668(e).)*

By creating a source of water which will allow infill development to take place, the project maintains and supports the physical and economic integrity of the region's agricultural lands.

Section 9. *The definiteness and certainty of the boundaries of the territory, the nonconformance of proposed boundaries with lines of assessment or ownership, the creation of islands or corridors of unincorporated territory, and other similar matters affecting the proposed boundaries. (Gov. Code § 56668(f).)*

The boundaries are definite and certain and consistent with assessment lines and ownership. The project creates no islands or corridors, nor does it create otherwise irregular boundaries.

Section 10. *Consistency with city or county general and specific plans. (Gov. Code § 56668(g).)*

The project is consistent with the City's general plan, zoning ordinance and the local coastal program.

Section 11. *The sphere of influence of any local agency which may be applicable to the proposal being reviewed, consistency with spheres of influence of the affected local agencies. (Gov. Code §§ 56375.5, 56668(h).)*

The project is consistent with all applicable spheres of influence. The Community Services District, once formed, will need its own sphere of influence, which will be coterminous with the Community Services District boundaries.

Section 12. *The comments of any affected local agency. (Gov. Code § 56668(i).)*

The City is the applicant and strongly supports this project.

Section 13. *The ability of the newly formed ... entity to provide the services which are the subject of the application to the area, including the sufficiency of revenues for those services following the proposed boundary change. (Gov. Code § 56668(j).)*

The Community Services District will be able to provide water service through the desalination plant and infrastructure, which is to be constructed by the project developer at the developer's cost and dedicated without charge to the Community Services District. Water service costs will be recovered by the Community Services District through rates charged to water customers and, as necessary or appropriate, through other financing mechanisms available to the Community Services District.

Section 14. *Timely availability of water supplies adequate for projected needs as specified in Section 65352.5. (Gov. Code § 56668(k).)*

The project will create sufficient water for its service area. By so doing, the project will have no adverse impact on existing or planned future demands on the regional water supply.

Section 15. *The extent to which the proposal will affect a city or cities and the county in achieving the Environmental Impact Report respective fair shares of the regional housing needs as determined by the appropriate council of governments consistent with Article 10.6 (commencing with Section 65580) of Chapter 3 of Division 1 of Title 7. (Gov. Code § 56668(l).)*

By allowing the development project to go forward through the provision of water by the Community Services District, this project will improve the City's ability to achieve its fair share of the regional housing supply by allowing for the housing component of this project to be completed, which includes a total of 13 additional inclusionary housing units which otherwise could not be built.

Section 16. *Any information or comments from the landowner or owners. (Gov. Code § 56668(m).)*

The project developer is the sole landowner within the Community Services District boundaries. The project developer supports the project and has provided its written consent, which has been provided to LAFCO.

Section 17. *Any information relating to existing land use designations. (Gov. Code § 56668(n).)*

The project is consistent with local land use designations, as set forth in the City's application for the Community Services District formation.

Section 18. *Whether existing agencies can feasibly provide the needed service or services in a more efficient and accountable manner, or reorganization with other single-purpose agencies that provide related services. (Gov. Code §§ 56301, 56886.5.)*

For the reasons set forth in the letter from the City's Special Counsel, Tom Gibson of Best, Best & Krieger LLP dated December 7, 2005, no existing agency can feasibly provide the needed service for which the Community Services District is being formed, nor can a reorganization with another single-purpose agency feasibly provide this service.

Section 19. *The property tax to be exchanged by the affected local agency pursuant to this section. (Gov. Code § 56810(a)(2).)*

As described in the letter from the City of Monterey Special Counsel, Tom Gibson of Best, Best & Krieger LLP dated December 2, 2005, there is no property tax to be exchanged as a part of this project.

Section 20. The "Ocean View Community Services District" is approved subject to the following terms and conditions:

- a. The following terms and conditions (the "Formation Terms and Conditions") are hereby included in and deemed an integral part of the approval for the formation of the Community Services District. The City of Monterey ("City") has recommended the Formation Terms and Conditions in order to provide appropriate guidelines for the Community Services District's provision of water to the Ocean View Plaza project (the "Project") and to address the City's franchise agreement ("Franchise Agreement") with California-American Water ("CAW") by creating an alternate means of providing water service until such time as CAW is willing and able to provide water service to the Project.

- (1) The Community Services District service area shall be restricted to the property area described in the City's resolution of application ("Property"), which is the property area of the Project. There shall be no expansion of the Community Services District service area within the CAW service area for any new development or to otherwise serve any already existing CAW service.

- (2) The Community Services District's authorization and authority to provide water service to the Project shall be expressly limited to the period of time commencing with the date on which the Project developer ("Developer") has completed construction of, and dedicated to the Community Services District, the desalination plant and related water system (the "Project Water System") and continuing until such time as CAW provides a "will serve" notice to the Community Services District

and the Developer, plus such additional time as is necessary for CAW, to provide hookups and commence water service to the Project on the same terms as CAW provides service of potable water to the balance of the service area covered by the Franchise Agreement ("CAW Water Service"). The authorization for the Community Services District to provide water to the Project shall not be deemed to remove the Project or the Property from the CAW service area.

(3) The members of the City Council of the City shall be appointed as the board of directors of the Community Services District.

(4) The Community Services District's governing board shall apply to LAFCO for dissolution of the Community Services District at such time as either of the following conditions ("Dissolution Conditions") has occurred:

(a) Within three months following the date of LAFCO's determination of formation of the Community Services District (the "Confirmation Period") LAFCO has received a copy of a written notice from CAW that CAW has not obtained all internal and external approvals required of CAW for the waiver of the CAW Exclusive Service Right for the limited purpose of permitting the Community Services District to provide water to the Project on the terms and conditions outlined in proposed conditions (1), (2) and (3) above; provided however, that the Confirmation Period may be extended by agreement of CAW, City and Developer; or

(b) CAW has commenced CAW Water Service for the entire Project.

(5) The Community Services District shall (a) accept dedication of the Project Water System from the Developer only pursuant to a dedication agreement that, among other things, requires the Community Services District to apply to LAFCO for dissolution of the Community Services District at such time as CAW has commenced CAW Water Service for the entire Project, and (b) cause the desalination plant to be decommissioned and the on-site equipment that is part of the Project Water System to be removed by Developer within ninety (90) days following commencement of CAW Water Service for the Project, unless the Community Services District, Developer and CAW otherwise agree in writing to an alternate disposition of the desalination plant and equipment.

All references in these conditions to CAW shall be deemed to mean and refer to Cal-American Water Company and its successors and assigns under the Franchise Agreement or under any franchise agreement subsequently entered into by the City to replace the Franchise Agreement for the provision of water to the service area currently covered by the Franchise Agreement.

- b. The effective date of the formation of the Ocean View Community Services District will occur upon execution of the Certificate of Completion by the LAFCO Executive Officer before December 31, 2005.
- c. The Community Services District boundary is conditioned on review and approval of the Monterey County Surveyor prior to adoption of a Sphere of Influence for the District. The affected territory includes 25 parcels consisting of approximately 4.27 acres.

Section 21. The District's Initial Appropriations Limit is set at \$150,000 for the first year which can be adjusted in future years based on population and cost of living increases within the District.

Section 22. The Local Agency Formation Commission is authorizing waiver of its conducting authority as the subject property is uninhabited.

Section 23. The Executive Officer is hereby authorized and directed to mail certified copies of this resolution in the manner and as provided in Section 56853 of the Government Code.

Section 24. The applicant agrees as a condition of the approval of this proposal to defend at its sole expense any action brought against LAFCO, the Commission and its staff, because of the approval of this application. The applicant will reimburse LAFCO for any court costs and attorneys' fees which may be required by a court to pay as a result of such action. The LAFCO may, at its sole discretion, participate in the defense of any such action; but such participation shall not relieve applicant of its obligations under this condition. The obligation on the part of the applicant to indemnify LAFCO is effective upon the adoption of this resolution and does not require any further action.

UPON MOTION OF Commissioner Gourley, seconded by Commissioner Costello, the foregoing resolution is adopted this 27th day of December 2005 by the following vote:

AYES: Commissioners Gourley, Costello, Calcagno, McGowan, and Perkins
NOES: Commissioner DiMaggio
ABSENT: Commissioners Armenta, Caballero, and Smith
ABSTAIN: None

ATTEST: I certify that the within instrument is a true and complete copy of the original resolution of said Commission on file within this office.

Witness my hand this 28th day of Dec., 2005

By: Kate McKenna
Kate McKenna, Executive Officer

CCC Exhibit 9
(page 9 of 9 pages)

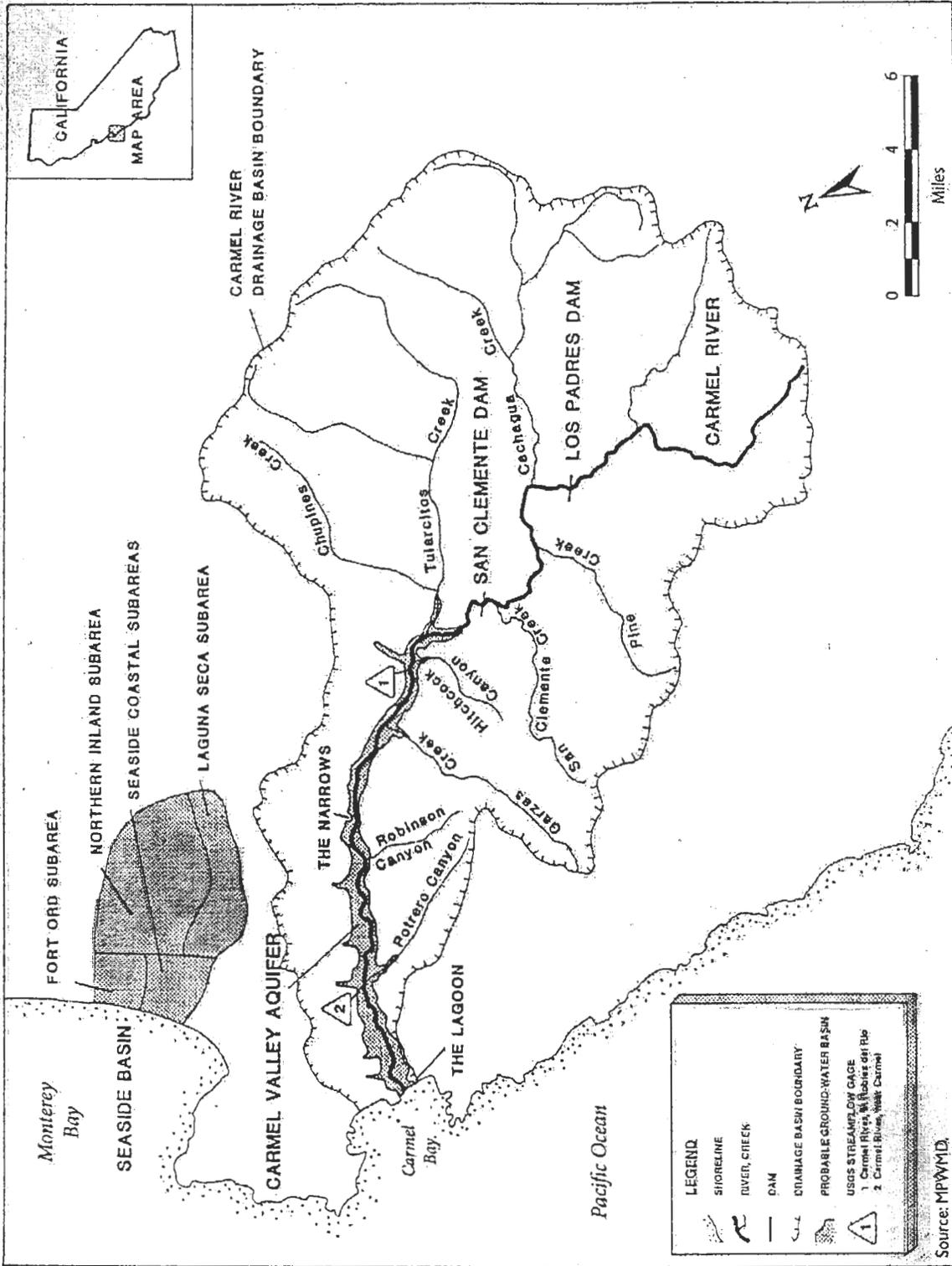
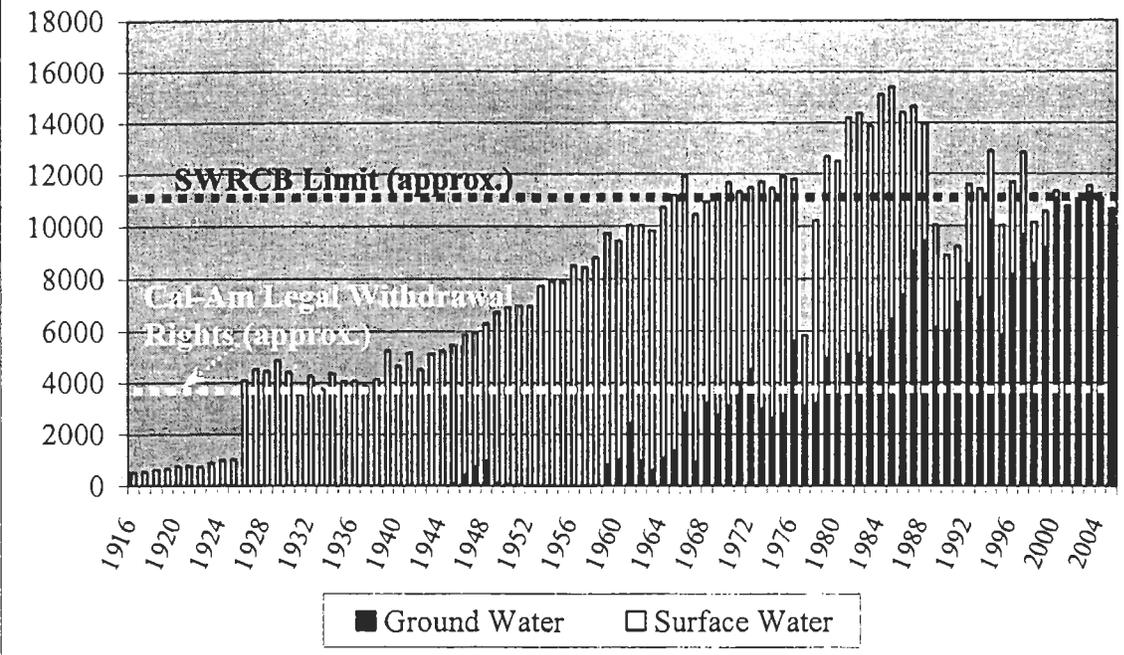


Figure 8-13
Water Resources System for the Monterey Peninsula Area,
Including Carmel River, Carmel Valley Alluvial Aquifer, and Seaside Groundwater Basin

Jones & Stokes

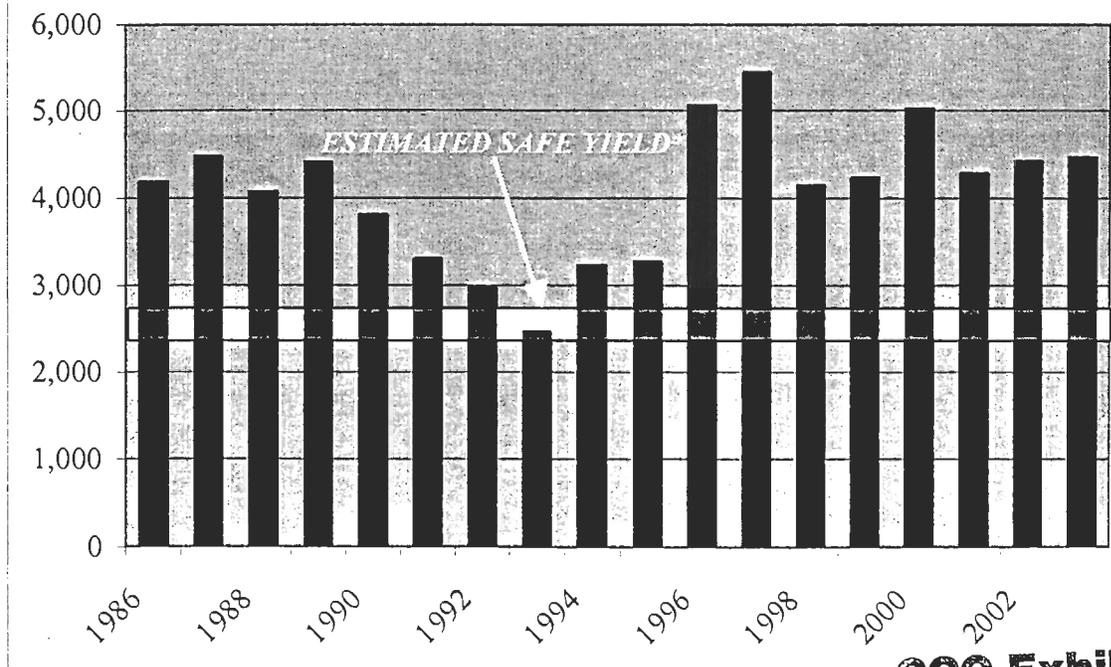
Cal-Am Production (Acre-Feet), Carmel River

Production Data Source: PDP EIR Table G.4-1B



Total Production (Acre-Feet), Seaside Groundwater Basin

Data Source: Yates et al, April 14, 2005, Table 4. Prepared for the MPWMD.



*Estimated Safe Yield from *Cal-Am Water v. City of Seaside*, Monterey County Superior Court Case M66343

STATE OF CALIFORNIA
CALIFORNIA ENVIRONMENTAL PROTECTION AGENCY
STATE WATER RESOURCES CONTROL BOARD

DIVISION OF WATER RIGHTS

In the Matter of Unauthorized Diversion of Water by the
California American Water Company DBA California American Water
Cease and Desist Order WR 2008-00XX-DWR

SOURCE: Carmel River tributary to the Pacific Ocean

COUNTY: Monterey County

YOU ARE HEREBY GIVEN NOTICE THAT:

The State Water Resources Control Board (State Water Board) is authorized under Water Code section 1831 to issue a Cease and Desist Order (CDO) requiring California American Water (Cal-Am) to make further reductions in its unauthorized diversions from the Carmel River. The State Water Board issued Order WR 95-10 (Order 95-10) in 1995, determining that a substantial portion of the diversions made from the Carmel River by Cal-Am is unauthorized. At that time, the State Water Board deferred enforcement action and instead established water conservation goals and other actions Cal-Am could take to reduce the effects of its diversions as it sought to obtain an adequate legal water supply. In the twelve years since Order 95-10 was adopted, Cal-Am has not terminated its unlawful diversions from the Carmel River. Therefore, the State Water Board is authorized to issue a CDO in accordance with Water Code section 1831(d) which states:

The State Water Board may issue a CDO in response to a violation or threatened violation of any of the following:

- (1) The prohibition set forth in section 1052 against the unauthorized diversion or use of water subject to Division 2 (commencing with section 1000) of the Water Code.
- (2) Any term or condition of a permit, license, certification, or registration issued under Division 2 of the Water Code.
- (3) Any decision or order of the State Water Board issued under Part 2 (commencing with section 1200) of Division 2 of the Water Code, section 275, or Article 7 (commencing with section 13550) of Chapter 7 of Division 7 of the Water Code, in which decision or order the person to whom the cease and desist order will be issued, or a predecessor in interest to that person, was named as a party directly affected by the decision or order.

On {ADD DATE}, and in accordance with the provisions of section 1834 of the California Water Code, the State Water Board, Division of Water Rights (Division) provided notice of the proposed CDO against Cal-Am for the violation and threatened violation of the prohibition against unauthorized diversion and use of water.

FACTS AND INFORMATION

The facts and information upon which this CDO is based are as follows:

1. The Carmel River is a central coast California stream that drains a watershed area of 255 square miles and flows into the Monterey Bay. Cal-Am owns and operates the San Clemente Dam and the Los Padres Dam and 21 downstream extraction wells on the Carmel River.
2. San Clemente Dam had an original storage capacity of 2,140 acre-feet (af). Water is stored in this facility under pre-1914 appropriative water rights. Los Padres Dam is operated pursuant to License 11866 (Application 11674A), and authorizes a maximum withdrawal of 2,950 acre-feet per annum (afa). Historically, stored water has been released from Los Padres Dam to the river and re-diverted for use at San Clemente Dam. Cal-Am also has legal rights for 60 acres of riparian land adjacent to the Carmel River.
3. Due to extensive sedimentation in San Clemente and Los Padres reservoirs, the primary source of water supply for Cal-Am's customers is the 21 wells situated downstream of San Clemente Dam on the lower Carmel River. The wells pump subterranean water from the Carmel River for customer use. The wells supply about eighty-nine percent of water needs for Cal-Am customers. The balance of water is supplied by pumps drawing water from the Seaside Groundwater Aquifer.
4. On July 6, 1995, the State Water Board adopted Decision 1632 (D-1632) that approved Monterey Peninsula Water Management District's (MPWMD) Application 27614. Decision 1632 approved water rights for development of the proposed 24,000 af New Los Padres Dam Project.
5. On July 6, 1995, the State Water Board also adopted Order WR 95-10 regarding four complaints filed against Cal-Am. The Order required Cal-Am to terminate unlawful diversions from the Carmel River and to comply with specified conditions. The State Water Board found that Cal-Am has legal rights to divert 3,376 afa of water from the Carmel River, after taking into consideration the reduced capacity of Los Padres Reservoir due to sedimentation. (Order 95-10, p. 25.) Cal-Am's rights to divert 3,376 afa from the Carmel River consist of 1,137 afa of pre-1914 appropriative + 60 afa of riparian + 2,179 afa under License 11866 (Application 11674A).
6. Order 95-10 and D-1632 were both later amended by Orders 98-04 and 2002-02 to allow: 1) direct diversion and diversion to storage throughout the year from the Carmel River at times when flows were physically available over and above fish flow requirements; 2) that the total quantity of water originating in the Carmel River diverted to beneficial use by Cal-Am and MPWMD could not exceed 16,000 af; and 3) that Cal-Am would cease withdrawals of water from the San Clemente Dam and reduce diversions from production well facilities located in Subunit 2 of the Carmel River during low flow periods of the year, except during an emergency. The 16,000 af identified by Order 98-04 includes rights established by License 11866, Permit 7130B, Application 27614, Application 30215, pre-1914 appropriative and riparian rights.
7. In 1995, Cal-Am was diverting about 14,106 afa of water from the Carmel River to supply water to approximately 100,000 people in the greater Monterey Peninsula area. (Order 95-10, p. 1)
8. In Order WR 95-10, the State Water Board found that Cal-Am's diversions were having an adverse effect on: (a) the riparian corridor downstream of river mile 18.5; (b) wildlife dependent upon the corridor; and (c) steelhead and other fish that inhabited the river. (Order WR 95-10, pp. 25-8, 33-34.) There continues to be an annual drawdown or drying of the Carmel River in the area upstream of the Highway 1 bridge. Because Cal-Am is the largest diverter of water on the river, this drawdown of the river is attributable, at least in part, to Cal-Am's illegal diversions from the Carmel River. Cal-Am's pumping from the subterranean stream contributes to the reduction of surface flow. This reduction of flows creates segregated small pools of water that trap and strand steelhead and other fish which inhabit the river. The potential for substantially higher steelhead mortality is mitigated by volunteers from the local community who make two sweeps of the river annually to rescue stranded steelhead. Nevertheless, there are adverse effects on steelhead and other fish caused by the river drawdown.

9. Order 95-10 imposed several conditions on Cal-Am's continued unauthorized diversion from the Carmel River. (Order 95-10, p. 40) Condition number 2 of Order 95-10 states:

*Cal-Am shall diligently implement one or more of the following actions to **terminate** its unlawful diversions from the Carmel River: (1) obtain appropriate permits for water being unlawfully diverted from the Carmel River; (2) obtain water from other sources of supply and make one-for-one reductions in unlawful diversions from the Carmel River, provided that water pumped from the Seaside aquifer shall be governed by condition 4 of the Order which was to maximize production from the Seaside wells to honor servicing the existing connections and honoring existing commitments and to reduce diversions from the Carmel River. (Emphasis added)*

10. Since before 1996 Cal-Am and MPWMD have been attempting to develop other projects to obtain additional water to serve Cal-Am's customers. These projects have consisted of:

- Development and construction of a new Los Padres Dam (1995-1997). The New Los Padres Dam Project was presented to voters in the area in 1997. The project was not approved because of apparent growth inducing concerns in Carmel and the Carmel Valley area of Monterey County.
- Development of the Aquifer Storage and Recovery (ASR) project (2002 to present). Flows of the Carmel River in excess of the National Marine Fisheries Service fishery bypass requirements are proposed to be diverted from the river to underground storage in the Seaside Groundwater Aquifer. The State Water Board, in issuing water right Permit 20808A (Application 27614A) for the ASR project, allows the diversion of up to 2,426 afa of water from the Carmel River when flows exceed the bypass flows necessary for protection of endangered steelhead. Water is to be injected and stored underground in the Seaside Groundwater Aquifer before withdrawn for use.
- Development of the Coastal Water Project (2005-2013). This project proposes a 10,370 afa desalination plant. Three locations are currently being considered for development of the facility.

11. Condition 3(b) imposed by Order 95-10 states:

Urban and irrigation conservation measures shall remain in effect until Cal-Am ceases unlawful diversions from the Carmel River. Conservation measures required by the District shall have the goal of achieving 15 percent conservation in the 1996 water year and 20 percent conservation in each subsequent year. To the extent that the requirement conflicts with prior commitments (allocations) by the District, the Chief, Division of Water Rights shall have the authority to modify the conservation requirement. The base for measuring conservation savings shall be 14,106 afa. Water conservation measures required by this Order shall not supersede any more stringent water conservation requirements imposed by other agencies.

12. In 1996-1997, Cal-Am failed to meet the reduction in diversions from the Carmel River required by Order 95-10 and an Administrative Civil Liability complaint (ACL) was issued. Cal-Am entered into a settlement agreement with the Division in response to that ACL complaint in which Cal-Am agreed to implement additional water conservation measures. In 1998, Cal-Am reduced its diversion of water from the Carmel River from 14,106 afa to 11,285 afa. Since 1998 Cal-Am has submitted quarterly monitoring reports of its monthly water use showing diversions between 9,538 af and 11,178 af of water annually from the Carmel River. During the same period, MPWMD reports Cal-Am's production from the Carmel River between 10,133 afa and 11,179 afa. (MPWMD's Technical Memorandum 2006-02, Table 1) Both of these reported amounts exclude the water diverted from the Carmel River to the Seaside Groundwater Aquifer.

13. MPWMD's Regulation 15, adopted in 1999 and amended in 2005, calls for conservation and rationing of water within the MPWMD/Cal-Am service area in drier years. Since Regulation 15 was adopted, Cal-Am has been operating under Stage 1 Water Conservation guidelines. Regulation 15, as shown below, identifies a plan that can be implemented to reduce water diversion and consumption.
- Stage 1 Water Conservation guidelines call for Cal-Am to maintain its annual production of water from the Carmel River to less than 11,285 afa.
 - Stage 2 Water Conservation guidelines call for Cal-Am to maintain water use under regulatory constraints by implementing Landscape Water Budgets for large irrigators of three acres or more. This conservation level is triggered if Cal-Am fails to meet the end of month target amounts.
 - Stage 3 Water Conservation guidelines call for an immediate additional 7% reduction in water use if Cal-Am's current year to date end of month production amount exceeds the historical average year to date end of month production amount: 1) twice during the November to March period of each year; or 2) once during the April to September period of each year.
 - Stage 4 Water Rationing guidelines call for an additional 15% reduction in water use beginning June 1 or earlier, if on May 1 the total usable storage available to Cal-Am is less than 27,807 af but not less than 21,802 af.
 - Stage 5 Water Rationing guidelines call for an additional 20% reduction in water use beginning June 1 or earlier, if on May 1 the total usable storage available to Cal-Am is less than 21,802 af but not less than 15,615 af. If total usable storage is equal to or greater than 27,807 af on May 1, no water rationing is imposed.
 - Stage 6 Water Rationing guidelines call for an additional 35% reduction in water use beginning June 1 or earlier, if on May 1 the total usable storage available to Cal-Am is less than 15,615 af but not less than 9,610 af. If total usable storage is equal to or greater than 27,807 af on May 1, no rationing shall be imposed.
 - Stage 7 Water Rationing guidelines call for an additional 50% reduction in water use beginning June 1 or earlier, if on May 1 the total usable storage available to Cal-Am is less than 9,610 af. If total usable storage is equal to or greater than 27,807 af on May 1, no water rationing shall be imposed.
14. Since 1995, the population of the Monterey Peninsula area has increased from 100,000 to the current population figure of 112,000. In water year 2006 Cal-Am reportedly diverted 10,540 af from the Carmel River for consumptive use. The record of water diverted from the Carmel River during water year 2007 is incomplete because, as of the date of this action, Cal-Am has failed to file the 2007 fourth quarter report as required by condition 13a of Order 95-10.
15. On May 18, 2007, MPWMD met to discuss the future water needs for the Monterey Peninsula area including Carmel, Monterey and Seaside, The Presidio (Department of Army), Del Rey Oaks, Pacific Grove, Sand City, and the Monterey Peninsula Airport District. Based on the general plans provided by each entity within the service area, MPWMD estimates the total amount of water needed for future development to be an additional 4,545 afa.
16. On November 30, 2007, the State Water Board amended Permit 20808 (Application 27614) with the issuance of Permit 20808A that allows for the diversion of up to 2,426 af of water from the Carmel River for injection into wells located in the Seaside Aquifer as part of the ASR project. Permit 20808A requires that for the protection of the steelhead fishery in the Carmel River, minimum instream bypass flow requirements must be met before diversions from the Carmel River may occur.

17. Order 95-10 condition 2 intended that Cal-Am would make one-for-one reductions in the unlawful diversions from the Carmel River for water obtained from other sources, such as conservation. The current water management strategy used by Cal-Am/MPWMD, however, has not resulted in any significant reduction of unlawful diversions from the Carmel River since 1998. Instead, it appears that water savings resulting from conservation efforts have been redirected to support marginal increases in development.

THE STATE WATER BOARD FINDS:

1. Since 2000, Cal-Am has illegally diverted at least 7,164 afa from the Carmel River. Even with the approval of amended Permit 20808A, Cal-Am will still need to illegally divert between 4,738 afa and 7,164 afa (depending on the type of water year) to meet its current level of water use unless additional conservation measures are mandated and/or alternative sources are utilized. This continued diversion is considered a trespass under Water Code section 1052.
2. Cal-Am's unauthorized diversions continue to have adverse effects on the public trust resources on the Carmel River and should be reduced.
3. In the 12 years since Order 95-10 was adopted, Cal-Am has not complied with condition 2 of that Order which requires Cal-Am to terminate its unlawful diversions from the Carmel River. In fact, Cal-Am received an ACL in 1996-1997 for failure to reduce diversion from the Carmel River and in subsequent years has not made any significant reductions in its diversions beyond the initial 20% reduction required by condition 3(b) of Order 95-10.
4. Cal-Am's failure to reduce its unauthorized diversion along with the continued increase in demand for water within the Cal-Am/MPWMD service area, due to population growth and continued development, demonstrates a substantial risk that Cal-Am will continue its unauthorized diversions unless the State Water Board takes further action.

IT IS HEREBY ORDERED, pursuant to sections 1831 through 1836 of the Water Code, Cal-Am shall cease and desist from diverting water from the Carmel River in excess of its legal rights in accordance with the following corrective actions:

1. Commencing on October 1 of the water year (October 1 through September 30) following the date of this Order, Cal-Am shall reduce its unauthorized diversions from the Carmel River in accordance with the following reduction schedule until all unlawful diversions of water from the Carmel River have been curtailed:

| Water Year* | Percent Reduction** | Max. End of Year Diversion Amount |
|--------------------|----------------------------|--|
| 2008-09 | 15 percent | 9,592 afa |
| 2009-10 | 15 percent | 9,592 afa |
| 2010-11 | 20 percent | 9,028 afa |
| 2011-12 | 20 percent | 9,028 afa |
| 2012-13 | 35 percent | 7,335 afa |
| 2013-14 | 35 percent | 7,335 afa |
| 2014-- | 50 percent | 5,642 afa |

* A water year is defined as October 1 of each year to September 30 of the succeeding year.

**The base line for measuring the percent reduction shall be 11,285 afa.

Water diversion reduction measures required by this Order shall not supersede any more stringent water conservation requirements imposed by other agencies.

2. The State Water Board Deputy Director for Water Rights (Deputy Director) shall have the authority to modify the above reduction diversion schedule upon a showing by Cal-Am or MPWMD that such a reduction would have adverse impacts on public health and safety.
3. Within 90 days of the date of this Order, Cal-Am shall submit a work plan detailing how Cal-Am will comply with the above schedule for reducing water diversion from the Carmel River while developing alternative sources of supply to bring Cal-Am into compliance with its legal water right entitlements. The work plan shall consider all practical measures to reduce Carmel River demand or increase supplies and shall have a time line for achieving these measures. Cal-Am shall modify the plan in accordance with direction from the Deputy Director and shall implement the final work plan after its approval by the Deputy Director.

Upon the failure of any person or entity to comply with a CDO issued by the State Water Board pursuant to chapter 12 of the Water Code (commencing with section 1825), and upon the request of the State Water Board, the Attorney General shall petition the superior court for the issuance of prohibitory or mandatory injunctive relief as appropriate, including a temporary restraining order, preliminary injunction, or permanent injunction. (Water Code, § 1845, subd. (a).) Section 1845, subdivision (b) of the Water Code provides:

- (1) Any person or entity that violates a cease and desist order issued pursuant to this chapter may be liable for a sum not to exceed one thousand dollars (\$1,000) for each day in which the violation occurs.
- (2) Civil liability may be imposed by the superior court. The Attorney General, upon request of the [board], shall petition the superior court to impose, assess, and recover those sums.
- (3) Civil liability may be imposed administratively by the [board] pursuant to section 1055.

STATE WATER RESOURCES CONTROL BOARD

James W. Kassel
Assistant Deputy Director for Water Rights

Dated:

WATER WAITING LIST COMBINED CHART LISTED CHRONOLOGICALLY

| | <u>PROJECT/ NAME</u> | <u>ADDRESS</u> | <u>DATE SUBMITTED</u> | <u>H2O REQUEST</u> | <u>PROPOSED WATER USE (AF)</u> |
|----|----------------------------|---------------------------------|---------------------------|------------------------|--|
| 1 | Sumida, new SFR | 36 Via Castaneda | 2/7/2003 | 0.242 | 0.242 |
| 2 | Beardsley, new Mixed-Use | 201 Cannery Row | 3/25/2003 | 0.84 | 0.975 (3) |
| 3 | St. John's Greek Church | 3051 Monterey/Salinas Hwy | 4/6/2003 | 0.706 | 0.706 |
| 4 | Real, new SFR | 50 Porta Vista Pl | 7/15/2003 | 0.249 | 0.249 |
| 5 | Real, new SFR | 48 Porta Vista Pl | 7/15/2003 | 0.249 | 0.249 |
| 6 | Real, new SFR | 54 Porta Vista Pl | 7/15/2003 | 0.249 | 0.249 |
| 7 | Real, new SFR | 52 Porta Vista Pl | 7/15/2003 | 0.249 | 0.249 |
| 8 | Takigawa, new SFR | 689 Newton St | 7/28/2003 | 0.242 | 0.242 |
| 9 | Tringali, new SFR | 780 Lyndon St | 8/21/2003 | 0.249 | 0.249 |
| 10 | Real, SF Remodel | 46 Porta Vista | 8/26/2003 | 0.043 | 0.154 |
| 11 | Carey Trust, new SFR | 845 Filmore St | 9/14/2003 | 0.201 | 0.201 |
| 2 | Great Beginnings Childcare | 614 Cypress Street | 12/3/2003 | 0.086 | 0.25 |
| 13 | Finn, Cohen & House Prtn | 425 Pacific/426 Calle Principal | 12/17/2003 | 0.28 | 1.62 |
| 14 | Jack Stracuzzi | 798 Wave Street | 4/12/2004 | 0.267 | 0.267 |
| 15 | S. Shaw/Hare on Houston | 578 B Houston Street | 4/30/2004 | 0.057 | 0.034 |
| 16 | Richards, Robt & Richard | 879 Newton Street | 5/7/2004 | 0.245 | 0.245 |
| 17 | Dinner, Chris & Denice | 418 High Street | 2/11/2005 | 0.249 | 0.249 |
| 18 | Hamilton, Maurice & Vivian | 23 Yerba Buena Ct | 2/14/2005 | 0.246 | 0.246 |
| 19 | Cardinale, Frank | 774 Spencer St | 7/11/2005 | 0.039 | 0.166 |
| 20 | Patel, Ramesh | 1300 Murras Avenue | 7/15/2005 | 0.106 | 3.42 |
| 21 | Ocean View Plaza | 457-470-570 Cannery Row | 7/21/2005 | 27.89 | 27.89 |
| 22 | Khalisa, Satkirtan | 643 Ramona Ave | 10/17/2005 | 0.101 | 0.234 |
| 23 | Hallisey, Mary | 747 Filmore St | 2/13/2006 | 0.219 | 0.219 |
| 24 | Ahn, Hyun Sook | 4 Cramden Drive | 3/8/2006 | 0.243 | 0.243 |
| 25 | Fozounmayeh, Farhad | 801 Lyndon St | 3/23/2006 | 0.392 | 0.392 |
| 26 | Mickel, Steve | 78 Via Ventura | 3/24/2006 | 0.164 | 0.164 |
| 27 | Giammanco, Vince | 30 Boronda Lane | 5/30/2006 | 0.074 | 0.181 |
| 28 | Mr. & Mrs. Galt | 119 Montecito | 8/14/2006 | 0.167 | 0.328 |
| 29 | Dr. Jorge Duarte | 499 Webster | 9/1/2006 | 0.058 | 0.274 |
| 30 | Dale & Tracy Hogan | 140 Tide Ave | 6/23/2007 | 0.047 | 0.248 |
| 31 | Aburndale, LLC | 17 Mar Vista Dr | 9/24/2007 | 0.02 | 0.164 |
| 32 | Lavorini Four LLC | 136 Tide Ave | 10/16/2007 | 0.2475 | 0.2475 |
| | | | | | 39.8715 |

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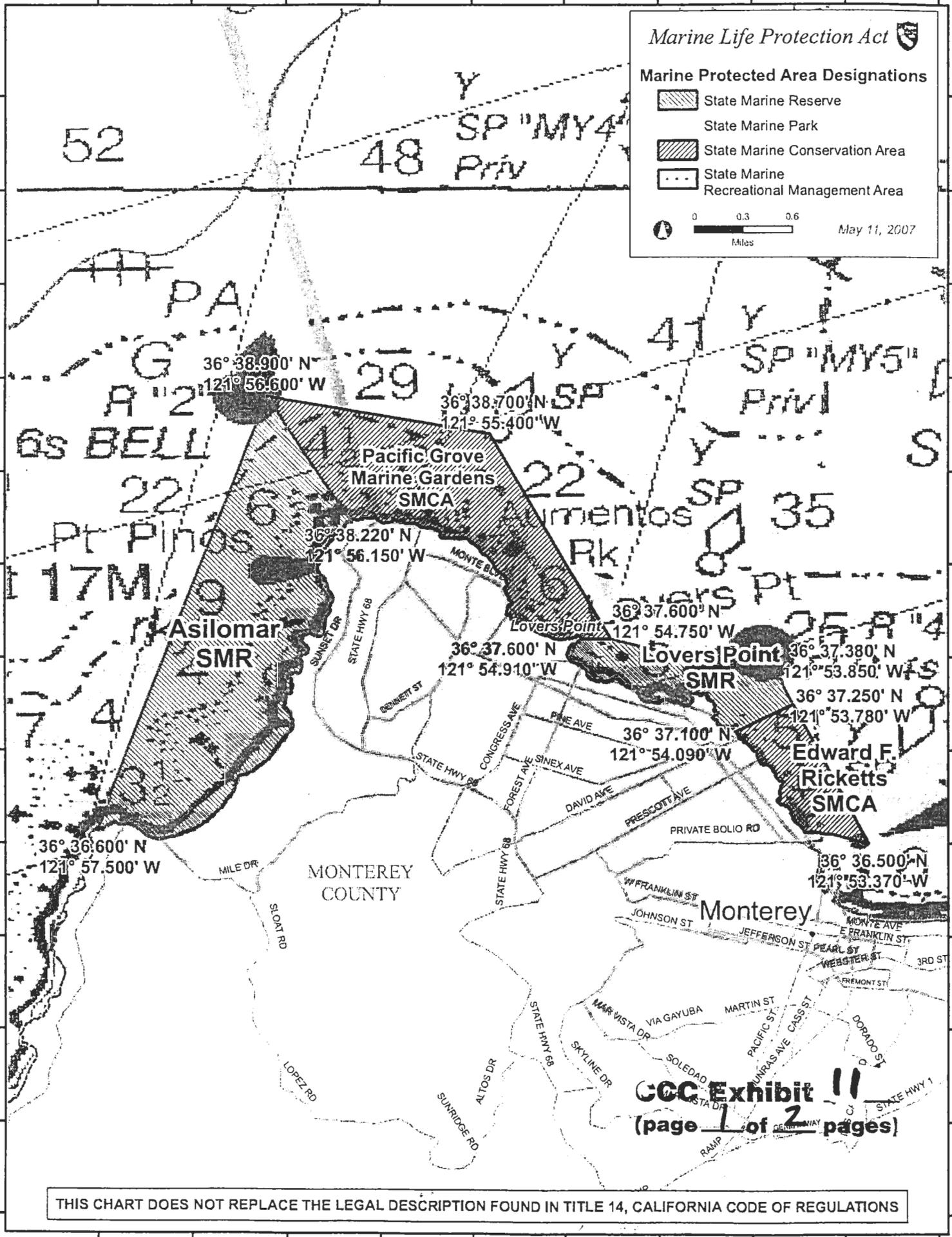
Marine Life Protection Act 

Marine Protected Area Designations

-  State Marine Reserve
-  State Marine Park
-  State Marine Conservation Area
-  State Marine Recreational Management Area

0 0.3 0.6
Miles

May 11, 2007



CCC Exhibit 11
(page 1 of 2 pages)

THIS CHART DOES NOT REPLACE THE LEGAL DESCRIPTION FOUND IN TITLE 14, CALIFORNIA CODE OF REGULATIONS

121°57.5'W 121°57'W 121°56.5'W 121°56'W 121°55.5'W 121°55'W 121°54.5'W 121°54'W 121°53.5'W 121°53'W

**Edward F. Ricketts State Marine
Conservation Area**

[JPEG Chart](#) | [JPEG Image](#) | [PDF Chart](#) | [PDF Image](#)

Boundary: This area is bounded by the mean high tide line and straight lines connecting the following points in the order listed:

36° 36.50' N. lat. 121° 53.37' W. long.;
36° 37.25' N. lat. 121° 53.78' W. long.; and
36° 37.10' N. lat. 121° 54.09' W. long.

Permitted/Prohibited Uses: Take of all living marine resources is prohibited except:

- The recreational take of finfish by hook-and-line is allowed.
- The commercial take of giant kelp (*Macrocystis pyrifera*) and bull kelp (*Nereocystis spp.*) is allowed by hand in the area defined by subsection 165(c)(4)(D) under the following conditions:
 - Any individual kelp harvester with a valid permit issued pursuant to Section 165 may take no more than 12 tons of kelp from the portion of Administrative Kelp Bed 220 within the Edward F. Ricketts State Marine Conservation Area in any calendar month.
 - Duplicate landing records must be kept on board the harvest vessel in accordance with the requirements of Section 165.

CCC Exhibit 11
(page 2 of 2 pages)

AGREEMENT CONCERNING OCEAN VIEW PLAZA PROJECT

This AGREEMENT ("Agreement") is made by and between the City of Monterey, a California municipal corporation ("City"), California-American Water Company, a California corporation ("CAW") and Cannery Row Marketplace LLC, a California limited liability company ("Developer") as of December 1, 2005. City, CAW and Developer are collectively referred to as the "Parties."

Recitals

- A. CAW is a California public water utility regulated by a number of public agencies including the California Public Utilities Commission ("CPUC") and the State Water Resources Control Board ("SWRCB"). The City of Monterey, including the location of the Project described below, is within CAW's certificated service area under the rules of the CPUC.
- B. Developer is developing Ocean View Plaza Project, a multi-use commercial and residential project within the City ("Project"), which is defined by certain project area boundaries set forth on the attached Exhibit "A". Due to regulatory limitations imposed upon CAW under the terms of SWRCB Order WR 95-10, as amended, CAW is currently not allowed to expand its water service, including providing water service to the Project. CAW is working to develop a major water supply project to address SWRCB Order WR 95-10 but such project will not be on line soon enough to meet the deadlines faced by Developer. In the meantime the Project needs an interim, alternative water supply.
- C. City and Developer desire to have CAW provide water service to the Project. However, because CAW is not now able to serve the Project, Developer, CAW and the City have agreed that the City should form or cause to be formed a limited purpose community services district ("CSD") to provide water service to the Project only until such time as CAW is able to do so.
- D. Timely development of the Project is in the public interest.
- E. Nothing in this Agreement is intended to reduce or in any way limit or change the service area of CAW. CAW's service area will continue to include the Project site to allow for future water service when CAW provides written notice (the "Will Serve Notice") to the CSD and Developer that CAW is ready, willing and able to provide water service to the Project on the same terms and conditions that CAW provides water service to the remainder of its service area within the City.
- F. Nothing in this Agreement is intended to reduce or in any way limit CAW's rights

under its existing franchise agreement with the City, except to the extent expressly provided herein.

NOW, THEREFORE, the Parties agree as follows:

1. Recitals. Each of the foregoing Recitals is a part of this Agreement.
2. Formation of CSD.

(a) To address the specific issue of providing water to the Project, City will take all steps necessary to form a CSD for that limited purpose. The CSD shall be created in a fashion that expressly permits the CSD to provide water (i) solely to the Project and within the Project area boundaries and (ii) solely for the time period (the "CSD Water Service Period") commencing with the date on which Developer has completed construction of, and dedicated to the CSD, the desalination plant and related water system (the "Project Water System") until the time that CAW has provided the Will Serve Notice to the CSD and Developer (and such additional period as is necessary for CAW to provide hookups and commence water service to the Project). The formation documents for the CSD shall also expressly include language that will (x) facilitate and allow its dissolution upon the occurrence of any of the dissolution events described in Sections 3 or 5 of this Agreement and (y) require the decommissioning of the desalination plant and the removal by Developer of the on-site equipment that is part of the Project Water System within ninety (90) days following CAW's commencement of water service to the Project, subject to any extensions that may be reasonably required to facilitate the orderly removal of the equipment (the "Equipment Removal Obligation"). The foregoing conditions of formation (the "Formation Conditions") shall be limited to what is permitted by applicable law, and Developer shall provide CAW within ten days of the date hereof with an opinion of legal counsel that the Formation Conditions in the formation documents approved by LAFCO would be enforceable under applicable law, subject to such qualifications and limitations as are typically included in such legal opinions.

(b) In connection with the formation of the CSD and subject to the terms and conditions set forth in this Agreement, CAW agrees:

(i) Not to oppose such action and to support the City's efforts to form the CSD;

(ii) So long as CAW is not able to serve water to the Project, to waive its rights under Chapter 8.5 [Service Duplication], commencing with Section 1501, of the California Public Utilities Code. CAW also agrees that the formation of the CSD by the City for such limited purposes will not be treated by CAW as a basis for any claims against the City, including without limitation any claim based upon violation of CAW's franchise agreement with the City or for inverse condemnation;

(iii) To release the City and the CSD and their respective directors, officers, managers, employees, contractors, agents and representatives from any and all actions, proceedings, claims, damages, losses, obligations, liabilities and expenses, including attorneys'

fees, known or unknown, existing or contingent, based upon, arising out of or relating to (x) the formation of the CSD for the purposes and on the terms and conditions described in this Agreement, (y) the CSD's provision of water to the Project for the CSD Water Service Period on the terms set forth in this Agreement or (z) a claim that matters permitted by this Agreement constitute inverse condemnation and/or an exercise of the power of eminent domain by the City or the CSD or a breach of the franchise agreement between the City and CAW.

3. LAFCO Conditions of Approval. City covenants and agrees with CAW that City will recommend to LAFCO that LAFCO include each of the following conditions in its approval of the formation of the CSD:

(a) That any water service ever provided by the CSD will be limited to the Project and only within the Project area boundaries set forth on Exhibit A;

(b) That the CSD shall provide water service to the Project only during the CSD Water Service Period and shall cooperate with CAW to transition the water service to CAW promptly upon expiration of the CSD Water Service Period;

(c) That the CSD's governing board will be required to apply to LAFCO for dissolution of the CSD at such time as required by Sections 5(a) or 5(b) below; and

(d) That the members of the City Council of City will be appointed as the board of directors of the CSD.

In the event that LAFCO fails to include each of such conditions, or alternative language acceptable to CAW accomplishing the same purpose of such conditions, in its approval of the CSD, or in the event that LAFCO adds other conditions or provisions in connection with the formation of the CSD that are inconsistent with CAW's rights provided in this Agreement, then CAW shall have the right to give notice to dissolve pursuant to Section 5(a) within thirty (30) days of LAFCO approval in the same manner as if a required approval has not been obtained.

4. Developer Covenants. Developer covenants and agrees with CAW that:

(a) Developer shall not dedicate the Project Water System to the CSD in the event that a triggering event for dissolution of the CSD has occurred prior to the date when such dedication would otherwise occur;

(b) Developer shall require in the dedication agreement between Developer and the CSD (the "Dedication Agreement") that conditions to its dedication of the Project Water System to the CSD shall be that (i) CSD shall agree to dissolve in accordance with Section 5(b), (ii) Developer shall be responsible for satisfying the Equipment Removal Obligation in accordance with Section 2(a), and (iii) CSD shall agree that its right to provide water to the Project shall not be assignable to any third party, and the form of the Dedication Agreement shall be provided to CAW at least thirty (30) days prior to its effective date to provide CAW with an opportunity to review and provide input as to the form of the Dedication Agreement in order to provide the protections to CAW contemplated by this Section 4(b).

(c) Developer shall indemnify, defend and hold CAW harmless from and against any actions, proceedings, claims, damages, losses, obligations, liabilities and expenses, including attorneys' fees, known or unknown, existing or contingent, based upon, arising out of or relating to (i) any challenge to CAW's exercise of its rights to provide water service to the Project under the franchise agreement currently in effect between the City of Monterey ("City") and CAW, (ii) any revenue loss to CAW due to the failure of the CSD formed as contemplated by the Agreement to turn over water service for the Project to CAW at such time as a triggering event described in Section 5 below has occurred, or (iii) any claims by water customers in the Project area that they have been required to bear excessive water service fees or costs prior to CAW's commencement of water service to the Project or any duplicative fees or costs of water service resulting from the transition of water service from the CSD to CAW.

(d) As a condition to the sale or transfer of the commercial component of the Project, Developer shall require the buyer or transferee ("Commercial Buyer") and any successors or assigns of the Commercial Buyer to assume the obligations of Developer under this Agreement. No buyer of the residential component or the individual buyers of residential units shall be required to assume the obligations of Developer under this Agreement. At CAW's request, Developer shall execute and record a memorandum to evidence the obligations of Developer and to confirm that such obligations shall run with the land as to the commercial component of the Project and bind any Commercial Buyer or its successors or assigns under this Agreement.

In the event that Developer fails to perform any of its obligations under this Agreement at or prior to the dedication of the Project Water System to the CSD, then CAW shall have the right to give notice to dissolve pursuant to Section 5(a) within thirty (30) days following Developer's failure to cure such breach in the same manner as if a required approval has not been obtained.

5. Triggering Events for Dissolution of CSD.

(a) If, within three months from the date of LAFCO's determination of formation of CSD (the "Confirmation Period") CAW advises City and Developer in writing that (i) any required approvals required by law from the CPUC, the SWRCB or other agency for CAW to be authorized to execute and perform this Agreement have not been obtained, or (ii) any required approvals from CAW's Board of Directors or shareholders have not been obtained, then the City covenants that it shall promptly cause the CSD to apply to LAFCO for the dissolution of the CSD and the City and Developer shall fully support such application, unless the City, Developer and CAW have agreed in writing to extend the Confirmation Period. In the event CAW gives written notice to the City and Developer that (x) CAW's Board of Directors has provided all required approvals (subject to any governmental approvals that may be required), (y) CAW has applied for any governmental approvals deemed by CAW to be required and (z) such application for approval is still pending before the governmental agency, the Confirmation Period shall be deemed automatically extended for an additional ninety (90) day period to obtain such governmental approval. Failure by the City and/or the CSD to take action to dissolve as required herein shall result in the termination of CAW obligations to the City and the CSD pursuant to Sections 2(b)(ii) and 2(b)(iii) and CAW shall have the right to exercise any and all remedies available to it under the law.

(b) At such time as the CSD Water Service Period has expired and CAW is providing water service to the Project, the CSD shall take all steps necessary to apply to LAFCO for permission to dissolve the CSD in accordance with the conditions imposed by LAFCO and in accordance with its contractual obligations under the Dedication Agreement. The CSD shall commence the process to undertake that dissolution within one month of expiration of the CSD Water Service Period, provided that CAW has commenced to provide water to the Project on the same terms and conditions as CAW's service of potable water to the balance of City. Such dissolution shall be undertaken by the CSD as a priority matter and shall be completed within six months, if possible. The City shall support the application to LAFCO to dissolve the CSD. Failure by the CSD to take action to dissolve as required herein, or by the City to support such application, shall be deemed a material breach of this Agreement and shall result in the termination of CAW's obligations to the CSD and/or the City, as applicable, pursuant to Sections 2(b)(ii) and 2(b)(iii) and CAW shall have the right to exercise any and all remedies available to it under the law against the non-performing party or parties, including but not limited to an action for inverse condemnation.

6. Obligations Independent. The rights and obligations of City and Developer with respect to CAW are separate and independent and any breach of this Agreement by Developer shall not result in any termination of City's rights under Section 2.

7. Binding Effect. Without limiting any other provision hereof, the obligations and rights in this Agreement shall be binding upon, extend to, and inure to the benefit of the undersigned Parties and to the benefit of any and all of their respective employees, officers, directors, shareholders, servants, successors, predecessors, assignees, transferees and any and all other persons and entities acting or purporting to act on their respective behalf, and any and all firms, corporations, associations, partnerships, limited liability companies and other entities affiliated with, controlled by or otherwise related to any of the undersigned Parties.

8. Parties in Interest. Except as expressly stated in this Agreement, nothing in this Agreement, whether express or implied, is intended to confer third-party beneficiary status or to confer otherwise any rights or remedies on any third person or entity (hereinafter collectively "third party"); nor is anything in this Agreement intended to relieve or discharge the obligation or liability of any third party to any undersigned Party to this Agreement; nor shall any provision of this Agreement afford any third party any right of subrogation, indemnity, contribution, or set-off.

9. Full Authority. Each of the Parties to this Agreement hereby represents, covenants, and warrants that said Party, and the signatory of said Party, has the full right, power and authority to execute this Agreement on behalf of said Party, and to execute any and all documents as may be necessary to effectuate the terms of this Agreement, and that neither Party, nor any signatory for said Party has sold, assigned, transferred, conveyed, hypothecated, encumbered or otherwise disposed of any rights, titles, interests causes of action or other claims which said Party may have or have had in relation to the transactions or other matters described in this Agreement. CAW further represents to City that notwithstanding the rights reserved to CAW in the event of a triggering event as described in Section 5(a) above, the obligations of CAW pursuant to Sections 2(b)(i), 2(b)(ii) and 2(b)(iii) of this Agreement are enforceable against

CAW, so long as City complies with its obligations under Section 5(a) in the event that any required approvals are not obtained.

10. Informed Consent. Each undersigned Party hereby declares that said Party has received, or had the opportunity to receive, sufficient information, either through said Party's own legal counsel or other sources of said Party's own selection, so as to be able to make an intelligent and informed judgment whether to enter into this Agreement, subject, however, to CAW's right to review of the legal opinion to be provided to CAW pursuant to Section 2(a) above. Each undersigned Party further states that each has read this Agreement in its entirety prior to executing this document, and that each has executed this Agreement voluntarily, with competence and capacity to contract and with knowledge of the terms, significance and legal effect of this Agreement. By executing this Agreement, it is understood by each Party that substantial rights may be compromised and/or waived in their entirety.

11. Attorneys' Fees. If any action, motion or proceeding at law or in equity is instituted to enforce or interpret the terms of this Agreement, the undersigned Parties agree that the prevailing Party therein shall be entitled to an award of reasonable attorneys' fees, costs, and necessary disbursements, as determined by a court of competent jurisdiction, in addition to any other relief to which said Party may be entitled.

12. Further Assurances. The undersigned Parties each agree to execute all documents and perform all acts necessary or appropriate to effectuate the performance of the terms of this Agreement.

13. Severability. It is intended that each portion of this Agreement shall be treated as a separate and divisible covenant, and in the event that any portion is deemed unenforceable, the remainder shall continue to be in full force and effect so long as the primary purpose of this Agreement is unaffected. Provided however, that for the purposes of this Section 13, the Parties agree that any material alteration or deletion of the conditions set forth in this Agreement that would impair the ability of Cal-Am to enforce such conditions would materially and fundamentally frustrate the purpose of this Agreement and that in such event the entire Agreement will become null and void and Cal-Am shall have the right to pursue any rights or remedies it may have under applicable law with respect to water service to the Project, including without limitation, an action under Section 1503 of the California Public Utilities Code.

14. Complete Instrument. This Agreement contains the complete understanding made between or among the Parties with respect to the matters contained in the Agreement. This Agreement cannot be amended or modified in any manner except by a writing executed by each of the undersigned Parties or by their valid successor(s). The undersigned Parties agree and acknowledge that no representations, warranties, covenants, assurances or other promises not specifically set forth in this Agreement have been made by any Party in connection with the subject matter of this Agreement, nor is any Party relying on any such conduct in entering into this Agreement. Any negotiations or other communications between the Parties are superseded by this Agreement and of no force or effect. This Agreement has been negotiated and prepared by and for all undersigned Parties equally and shall not be construed as having been drafted by

any particular Party.

15. Governing Law and Jurisdiction. The enforcement and interpretation of this Agreement shall be governed exclusively by the laws of the State of California.

16. Counterparts. This Agreement may be signed in counterparts and each counterpart shall have the same force and effect as though the signatures were contained in a single document. Counterparts may be executed by facsimile.

17. Notices. Written notices to be given pursuant to this Agreement shall be given in accordance with the provisions of the franchise agreement, provided that any such notices to the City shall include copies to the City Attorney of City at the City's office address and any such notices to CAW shall include copies to CAW's general counsel at its San Diego office address and to its vice-president and general manager at its Monterey office address. Any notice to be given to Developer shall be sent as follows (unless and until such address information is changed by written notice from Developer to the other Parties hereto):

Cannery Row Market Place LLC
535 Cowper Street
Palo Alto, CA 94301
Attn: Philip R. Taylor
Phone: (650) 614-9203
Fax: (650) 833-6903
phil@prtaylor.com

18. Assignment. This Agreement and the rights of City hereunder shall not be assignable by City to any entity other than the CSD. Any rights under this Agreement assigned to the CSD shall not be further assignable by the CSD to any other entity without the prior written consent of CAW, which may be granted or withheld in its sole and absolute discretion. No assignment of the City's rights shall relieve the City of its obligations under this Agreement.

IN WITNESS WHEREOF, each Party has executed this Agreement as of the date first above written.

CITY:

City of Monterey,
a California municipal corporation

By: *Fred Meurer*

Name: Fred Meurer

Title: City Manager

ATTEST:

By: _____

Name: _____

Title: _____

APPROVED BY:
[Signature]
RISK MANAGEMENT

APPROVED AS TO FORM:

BEST BEST & KRIEGER LLP

By: *[Signature]*

Name: GLEN PRICE

[Signatures Continue on the Next Page]

CAW:

California-American Water Company,
a California corporation.

By: 
Name: Steven Leonard
Its: Vice President

DEVELOPER:

Cannery Row Marketplace LLC,
a California limited liability company

By: _____
Name: _____
Its: _____

CAW:

California-American Water Company,
a California corporation.

By: _____

Name: _____

Its: _____

DEVELOPER:

Cannery Row Marketplace LLC,
a California limited liability company

By: Philip R. Taylor

Name: Philip R. Taylor

Its: Authorized Representative

INDEMNIFICATION AGREEMENT

THIS Indemnification Agreement ("Agreement") effective November __, 2005 is made by and between the City of Monterey, a municipal corporation ("City" or "Indemnified Party") and Cannery Row Marketplace LLC, a California limited liability company ("Developer"). City and Cannery Row Marketplace LLC are hereinafter sometimes referred to individually as "Party" and collectively as "Parties."

Recitals

A. The parties desire to form a community services district ("CSD") to serve water to the Ocean View Plaza project ("Project").

B. The City and Developer desire to set forth the terms concerning the construction of the water system which will service the Project and the dedication of such system to the CSD.

C. The City desires Developer to indemnify the City with respect to certain liabilities associated with the formation and operation of the CSD, and to provide for certain cost reimbursements.

D. Developer has obtained from California America Water Co. a waiver and release of any rights that it may have to assert a taking of property by the City in connection with water service provided by the CSD to the Project, a copy of which is attached hereto as Addendum "A" ("Cal-Am Waiver").

E. Developer agrees to undertake the following covenants and obligations in accordance with the terms and conditions of this Agreement

NOW, THEREFORE, in consideration of the foregoing recitals and the covenants and promises set forth herein, the parties hereto agree as follows:

1. Water System. Developer shall provide City with certification from the equipment manufacturers, contractors and providers for the components of the desalination system that the desalination plant and related water distribution infrastructure proposed by Developer to be dedicated to the CSD are sufficient to provide an adequate and reliable supply of water to the Ocean View Plaza project in compliance with all applicable federal, state and local laws and regulations ("Water System"). Prior to commencement of water service to the Project, the Water System shall be dedicated to the CSD in exchange for the obligation of the CSD to provide water service to the Project. The terms of the dedication of the Water System to the CSD shall be as set forth on the attached Addendum "C", unless otherwise agreed to in writing between the Developer and the CSD.

2. Indemnity by Developer. Developer and City hereby agree as follows:

(a) To the fullest extent permitted by law, Developer shall indemnify, defend, protect and hold harmless City, its elected officials, officers, agents, employees, successors and assigns (collectively, the "Indemnified Parties") from and against any and all claims (including, without limitation, claims for bodily injury, death or damage to property), demands, obligations, damages, actions, causes of action, suits, losses, judgments, fines, penalties, liabilities, costs and expenses (including, without limitation, attorneys' fees, disbursements and court costs, and all other professional, expert or consultants' fees and costs) of every kind and nature whatsoever (each a "Claim" and collectively, "Claims") which may arise from or in any manner relate to:

- (i) any action taken by the City in connection with the formation of the CSD, the application to the local agency formation commission in connection with same and any pre-operational activities of the CSD prior to dedication of the Water System;
- (ii) any action taken by the Developer in connection with the formation of the CSD, including preparing materials for or assisting the City with the application to the local agency formation commission and any pre-operational activities of the CSD undertaken by Developer prior to dedication of the Water System;
- (iii) any action taken by Developer (including without limitation, the negligent and/or willful misconduct with respect to acts, errors and/or omissions of Developer, its managers, members, employees, agents, contractors, affiliates, successors and assigns) with respect to the Project, including without limitation, the construction, testing and operation of the Water System prior to dedication of the Water System to the CSD;
- (iv) any defects in the construction of the Water System, including without limitation, any liability from claims by the CSD that the Water System is incomplete, inadequate or insufficient for the CSD to provide water service for the Project, provided, however, that the indemnity of Developer under this section shall survive for a period of twenty-four (24) months following the commencement of regular water service to the Project by the CSD. For the purposes of this agreement, "regular water service" shall mean the date upon which the CSD undertakes daily operation of water service to no less than fifty percent (50%) of the Project and shall not include any testing or idle periods prior to occupancy of the Project. The CSD shall provide written notice to Developer of the date upon which regular water service commences;
- (v) any claims brought by California America Water Co. (notwithstanding the Cal-Am Waiver) alleging a taking of property

by the CSD pursuant to the California Public Utility Code; or any other claim or cause of action alleging a breach of the franchise agreement between California American Water Co. and the City; and

- (vi) any liability to the Indemnified Parties arising as a result of a breach of Developer's obligations under this Agreement.

Notwithstanding the foregoing, nothing herein shall be construed to require Developer to indemnify City from any Claim arising from the gross negligence or willful misconduct of the City or from damages or defects caused by abuse of the Water System, modifications of the Water System not approved by Developer, improper operation or maintenance of the Water System, or normal wear and tear and usage in the operation of the Water System by the CSD following the CSD's commencement of operation of the Water System.

(b) As a condition of sale, the successors in interest and/or assigns of Developer of the commercial component of the Project shall assume the indemnity obligations of Developer specified in paragraph 2 of this Agreement. Said indemnity obligations shall not extend to any successors in interest or assigns of the residential component of the Project. At the City's request, Developer shall execute and record a memorandum of indemnity documenting the foregoing assumption requirement.

(c) The "costs" and "expenses" for which the Indemnified Parties are indemnified and held harmless shall include reasonable attorneys', accountants', investigators' and experts' fees and expenses sustained or incurred in connection with the defense or investigation of any claim or liability; and

(d) The duty to defend hereunder is wholly independent of and separate from the duty to indemnify and such duty to defend exists regardless of any ultimate liability of Developer. Such defense obligation shall arise immediately upon presentation of written notice to Developer of a Claim by any Indemnified Party. Developer's indemnification obligation hereunder shall survive the expiration or earlier termination of this Agreement until such time as action against any Indemnified Party for such matter indemnified hereunder is fully and finally barred by the applicable statute of limitations. Promptly following receipt of any written claim or legal proceeding asserted by a person or entity which is not a party to this Agreement ("Third Party Claim"), the Indemnified Parties shall notify Developer of such claim in writing. Developer shall have a period of thirty (30) days (or such lesser period as may be required to timely respond to a Third Party Claim) following the receipt of such notice to commence the defense thereof. Developer thereafter shall undertake and diligently pursue the defense of the Third Party Claim with counsel reasonably acceptable to the Indemnified Parties; provided, however, that Developer shall not consent to entry of judgment or enter into any settlement agreement without the consent of the City, which does not include a complete and unconditional release of the Indemnified Parties or which imposes injunctive or other equitable relief against the Indemnified Parties. Provided the Indemnified Parties provide timely notice of any Third Party claim to Developer, Developer shall reimburse the Indemnified Parties for any legal expense reasonably incurred by the Indemnified Parties to timely respond to a Third Party Claim prior to Developer assuming the defense thereof. Developer shall keep the Indemnified Parties

regularly informed as to the conduct of the defense of the Third Party Claim. Developer shall include City's attorney on all proofs of service and endeavor to ensure that all other parties to the litigation do the same. Developer's counsel shall provide the City attorney with an advance draft copy of all court filings to be submitted by Developer's counsel at least five days prior to the filing date. If the procedural requirements of the court do not allow for the foregoing time period, then defense counsel shall promptly give notice of the required filing to the City Attorney and the City Attorney shall respond with any comments as soon as reasonably practical, but in no event less than 24 hours prior to the due date for the filing. If there is an ex parte motion requiring a response within 24 hours or less, then defense counsel shall, if reasonably practical, notify the City attorney of the form, nature and substance of the motion and the response. In the event that the City attorney has specific comments on any such filing (other than ex parte motions as described above), then Developer's counsel shall reasonably cooperate with the City attorney to address such comments to the City attorney's satisfaction prior to the filing of the brief or other document. Furthermore, in the event that the City attorney on behalf of the Indemnified Parties provides Developer with written notice of a proposed change in the conduct of the defense or the legal strategy for such defense, Developer shall provide a written response within five days of receipt of such notice of its intended action in response to such request. If the Developer does not respond as required or the City attorney and the Developer's counsel cannot agree on a course of action which is satisfactory to the Indemnified Parties within five days of such written response by Developer, then the City shall be entitled to assume control of the defense of the Third Party Claim. Notwithstanding the exercise by City of its right to take control of the defense of the Third Party Claim, Developer shall continue to be responsible for the timely payment when due of all fees and costs associated therewith. In the event the City assumes control of the defense, the City shall not consent to entry of judgment or enter into any settlement agreement without the consent of the Developer, which does not include a complete and unconditional release of Developer or which imposes injunctive or other equitable relief against Developer. If Developer fails to assume and diligently pursue the defense of a Third Party Claim, the Indemnified Parties may defend against such Third Party Claim in such manner as they may deem appropriate, including without limitation, settlement thereof on such terms as the Indemnified Parties may deem appropriate, and to pursue such remedies as may be available to the Indemnified Parties against Developer.

3. Covenants by Developer. Developer hereby covenants and agrees with City that effective upon the adoption of a resolution of application by the City Council regarding the formation of the CSD, Developer shall take the following actions to mitigate the risk of any claims against the City and to secure its obligations under this Agreement:

(a) Developer shall secure extended warranties which are assignable to and enforceable by the CSD that the materials and equipment used in the construction of the Water System are of good quality and new, unless otherwise permitted or required under the Agreement, and that the Water System will be free from construction defects in the quality or workmanship of the work performed. The Developer shall also provide copies of all the permits required for the construction and operation of the Water System. This Agreement shall not waive any rights of Developer to challenge any requirements of any permitting agencies. Developer hereby represents that the scope of these warranties includes any express warranty that Developer has received from any desalination plant equipment manufacturers, suppliers or distributors in connection with the construction of the subject desalination facility, but shall not

include any remedy for damages or defects caused by abuse, modifications not approved by Developer, improper operation or maintenance, or normal wear and tear and usage. Except as set forth below, said warranties shall be valid for a period of twenty four (24) months ("Warranty Period") following the date of substantial completion of the desalination plant. Other than described above, no other warrants, express or implied, are hereby required or given by Developer. As to any warranties described in this Paragraph 3 for the construction of inflow and outfall pipeline facilities or the vertical shaft that connects the pipelines to the desalination equipment and storage tanks, in the event that the Developer cannot obtain warranty protection for the full Warranty Period, then from the expiration of the actual warranty for such items until the end of the Warranty Period, Developer shall fund a contingency reserve in the amount of twenty percent (20%) of the replacement value of the items which no longer have warranty coverage. The warranty reserve shall cover warranty claims as if the warranty was still in effect and such claims shall be paid out of the warranty reserve prior to the CSD making any claim against Developer under Paragraph 2(a)(iv). The warranty reserve shall be placed in an interest bearing account requiring the signature of Developer and the CSD to make warranty related disbursements. Any excess funds in the warranty reserve following the expiration of the Warranty Period (except for pending warranty claims), shall be released to the Developer. Any disputes concerning warranty coverage shall be resolved by arbitration before a single arbitrator in the County of Monterey in accordance with the rules of the American Arbitration Association.

(b) Developer shall comply with the insurance requirements that are attached hereto as Addendum "B". Notwithstanding the foregoing, this agreement does not require duplicate coverage and to the extent that Developer and/or its contractors obtain or have insurance that is equivalent or better than the requirements on Addendum "B" (including without limitation OCIP or CCIP "wrap" coverage), and any such equivalent coverage shall fulfill Developer's obligations under Addendum "B". In the event that there is an actual conflict between the insurance requirements set forth on Addendum "B" and the insurance requirements of Developer's lender for the Project, that cannot reasonably be resolved without a material increase in the cost of insurance coverage for the Project, then the City shall make a good faith effort to cooperate with Developer to resolve such conflict.

4. CSD Formation and Reimbursable Costs.

(a) The City shall be responsible for the process of forming the CSD, including without limitation, the submission and prosecution of the application to the local agency formation commission and any pre-operational activities of the CSD. Notwithstanding the foregoing, the Developer may take an active role in initiating, scheduling, and preparing documentation for the formation of the CSD to the extent that such role has been approved in writing by the City in advance. Developer and City shall coordinate their actions and each shall cooperate with the other to ensure that the formation process occurs expeditiously, efficiently and in full compliance with all laws, rules and regulations governing such formation. Developer shall be responsible to reimburse City for its actual costs, including the time of City personnel, spent in connection with the formation of the CSD. Time spent by City personnel shall be reimbursed at an hourly rate derived by taking the weekly salary (which shall include an weekly pro-rata allocation of employee benefits) of such personnel divided by the number of hours in a work week. City shall submit monthly invoices to Developer with respect to such time, which invoice shall be paid within thirty (30) days of the date thereof. Under no circumstances shall

invoices be held by City longer than sixty days, which shall constitute a material breach of this Agreement and shall relieve Developer of any reimbursement duties herein.

(b) It is further anticipated that City resources and personnel shall be necessary for initial start-up activities for the CSD prior to the commencement of water service. With respect to such activities, Developer shall cooperate with City personnel and/or personnel selected by the City to operate the Water System for the CSD. At the request of the Developer, the City may, but shall not be required to, agree in writing to allow Developer to undertake certain initial start-up activities which do not require direct City involvement. Although the Parties do not anticipate significant start-up costs during the period following formation of the CSD to the commencement of water service, to the extent that there are such costs (including without limitation, insurance premiums and the set up of billing and other operational procedures), City staff shall submit a budget of anticipated start-up costs to Developer and Developer shall fund such costs up front within thirty (30) days notification from the City. In the event that such costs are expected to exceed the budget, City staff shall provide a revised budget setting forth the excess items in reasonable detail and Developer shall fund such additional costs up front within fifteen (15) days notification from the City. The City shall provide a monthly accounting, with reasonable detail, to Developer of all actual costs applied to the funds on deposit with the City. Staff time shall be calculated in the manner set forth in sub-section (a) above. When all start-up activities have been completed, any excess funds shall be returned to Developer. Start up costs paid by Developer pursuant to this Paragraph 4(b) will be reimbursed to Developer to the extent that such costs are recoverable by the CSD from its ratepayers and the CSD collects such costs. In the event that the Developer abandons or otherwise terminates the Ocean View Plaza project after the formation of the CSD, but prior to the commencement of construction, then Developer shall further reimburse the City for all costs and attorneys fees reasonably necessary to terminate proceedings for the formation of the CSD or dissolution of the CSD.

5. Improvement Security.

(a) Developer shall obtain a surety bond in the amount of one hundred percent (100%) of the cost of completing that portion of the project that is at least sufficient to provide for completion of the Water System (the "Water System Phase"), in such form as may be required by and for the benefit of the lender for the Project. The proceeds of said surety bond shall not be payable for any purpose other than completion of the Water System Phase and shall provide for the City to receive notice of any claim against the bond or the termination or modification of the bond. Developer shall provide City with a copy of the surety bond prior to the commencement of construction of the Project and/or the Water System.

(b) In the event that a bond is not required by the lender for construction of the Water System Phase or the lender requires that the proceeds be available for any purpose other than completion of the Water System, Developer shall provide a surety bond or other alternate security as is reasonably acceptable to the City to ensure completion of at least the Water System Phase, which surety bond or alternate security shall be released by the City as such time as construction of the Water System Phase has been completed by Developer. Such bond or alternate security shall be in place prior to the commencement of construction of the Project and/or the Water System.

6. Authorization. Developer shall provide City with documentation satisfactory to City showing that all action necessary pursuant to Developer's organization documents to authorize the execution and performance of this Agreement by Developer has been duly taken.

7. Termination. This Agreement shall automatically terminate ten years from the date of acceptance of the dedication of the Water System to the CSD.

8. Survival. The obligations of Developer for claims relating to occurrences arising prior to termination pursuant to Paragraph 7 of this Agreement shall survive the termination of this Agreement for the applicable statute of limitations.

9. Incorporation of Exhibits. All exhibits, attachments and addenda attached to this Agreement are hereby incorporated within this Agreement and made a part hereof.

[signature page follows]

IN WITNESS WHEREOF, Developer and City have executed this Agreement.

CANNERY ROW MARKETPLACE LLC,
a California limited liability company

By: Philip R. Taylor
Philip R. Taylor
Authorized Representative

CITY OF MONTEREY

By: _____
Name: _____
Title: _____

APPROVED AS TO FORM:

By: Thomas Gibson
Thomas Gibson of
Best Best & Krieger LLP

RVBUSQWTP686610.10
11/1/05

CCC Exhibit 13
(page 8 of 20 pages)

IN WITNESS WHEREOF, Developer and City have executed this Agreement.

CANNERY ROW MARKETPLACE LLC,
a California limited liability company

By: Philip R. Taylor
Philip R. Taylor
Authorized Representative

APPROVED BY:
[Signature]
RISK MANAGEMENT

CITY OF MONTEREY

By: [Signature]
Name: _____
Title: _____

APPROVED AS TO FORM:

By: _____
Thomas Gibson of
Best Best & Krieger LLP

ADDENDUM "A"

CAL-AM WAIVER

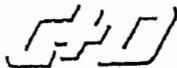
~~See Attached~~

SEE EXHIBIT 16
FOR THIS DOCUMENT

EXHIBIT "A"

Map of Project Area Boundaries

(See attached page)



704020

Legal Description for
Ocean View Community Service District

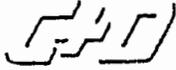
In the City of Monterey, County of Monterey, State of California, and described as follows

A portion of lot 1 and all of lots 2,3,4,5,6,7,8,9,10,11 of Waterfront lots; lots 5,7,9,11,13,15 of Block 2; McClellan Avenue (Abandoned); and lots 1,3,5,7 and a portion of lots 6,8 and 10 of Block 20, and that portion of Cannery Row (formerly Ocean View Avenue between the Waterfront lots and blocks 1 and 20 as shown on the map entitled, "Little's Survey of New Monterey", filed in Volume 1 of Maps, Cities and Towns at page 12, of the Monterey County Records.

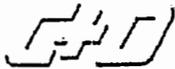
The boundary of said area is described as follows:

BEGINNING AT THE NORTH EAST CORNER OF LOT 7 WITHIN BLOCK 20 WHICH IS IDENTIFIED AS A ¾ IRON PIPE SET WITH A PLASTIC PLUG, RCE 15310,

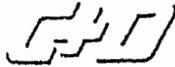
- 1) SOUTH 55°15'00" WEST, 145.29 FEET;
- 2) SOUTH 3°21'05" WEST, 56.84 FEET;
- 3) NORTH 6°22'05" WEST, 56.84 FEET;
- 4) ALONG A CURVE WITH A CENTRAL ANGLE OF 23°56'08", A RADIUS OF 503.0 FEET, AND A LENGTH OF 210.13 FEET,
- 5) NORTH 34°44'41" WEST, 30.00 FEET;
- 6) SOUTH 55°15'00" WEST, 1.25 FEET;
- 7) NORTH 34°44'41" WEST, 329.91 FEET;
- 8) NORTH 55°15'00" EAST, 95.02 FEET,
- 9) NORTH 83°59'41" EAST, 68.43 FEET (CROSSING CANNERY ROW [FORMERLY OCEAN VIEW AVENUE]);
- 10) NORTH 55°15'00" EAST, 253.34 FEET;
- 11) NORTH 83°49'35" EAST, 19.97 FEET;
- 12) SOUTH 36°50'56" EAST, 13.97 FEET;



- 13.) SOUTH 60°34'27" WEST, 12.96 FEET;
- 14.) SOUTH 83°47'16" WEST 10.64 FEET;
- 15.) NORTH 39°56'06" WEST, 9 48 FEET;
- 16.) SOUTH 65°56'44" WEST, 10.56 FEET;
- 17.) SOUTH 20°45'06" WEST, 16.59 FEET;
- 18.) SOUTH 00°53'06" EAST, 13 38 FEET;
- 19.) SOUTH 45°35'41" WEST, 7 97 FEET,
- 20.) SOUTH 82°36'54" WEST, 12 08 FEET;
- 21.) SOUTH 30°14'06" WEST, 11.93 FEET;
- 22.) SOUTH 61°02'12" EAST, 6 01 FEET,
- 23.) SOUTH 01°56'58" WEST, 3 81 FEET;
- 24.) SOUTH 25°21'25" WEST, 8 68 FEET;
- 25.) SOUTH 30°02'40" EAST, 66 60 FEET;
- 26.) SOUTH 70°20'14" EAST, 10 90 FEET;
- 27.) NORTH 01°48'23" WEST, 9 59 FEET;
- 28.) NORTH 50°55'43" EAST, 7 40 FEET,
- 29.) SOUTH 89°25'12" EAST, 10.60 FEET,
- 30.) NORTH 55°33'25" EAST, 10 88 FEET;
- 31.) SOUTH 43°38'14" EAST, 9 67 FEET;
- 32.) SOUTH 42°35'48" WEST, 25 97 FEET,
- 33.) SOUTH 41°49'35" EAST, 7 45 FEET;
- 34.) NORTH 50°21'45" EAST, 29.22 FEET;
- 35.) NORTH 84°02'44" EAST, 5 04 FEET,



- 36.) SOUTH 36°15'03" EAST, 6.35 FEET;
- 37.) SOUTH 41°57'17" WEST, 42.70 FEET;
- 38.) SOUTH 42°26'18" EAST, 36.42 FEET;
- 39.) SOUTH 45°43'11" EAST, 12.43 FEET;
- 40.) SOUTH 27°59'13" EAST, 25.80 FEET;
- 41.) SOUTH 05°46'13" WEST, 10.23 FEET;
- 42.) SOUTH 31°54'28" EAST, 8.74 FEET;
- 43.) SOUTH 83°43'00" EAST, 11.48 FEET;
- 44.) SOUTH 11°05'09" WEST, 17.82 FEET;
- 45.) SOUTH 34°06'02" WEST, 15.98 FEET;
- 46.) SOUTH 09°39'31" EAST, 4.77 FEET,
- 47.) NORTH 78°20'10" EAST, 12.05 FEET;
- 48.) SOUTH 84°16'36" EAST, 15.70 FEET,
- 49.) SOUTH 48°46'45" EAST, 5.11 FEET;
- 50.) SOUTH 28°01'57" WEST, 11.77 FEET;
- 51.) SOUTH 61°22'23" WEST, 6.31 FEET;
- 52.) NORTH 73°42'58" WEST, 7.64 FEET,
- 53.) SOUTH 36°57'16" WEST, 14.79 FEET,
- 54.) SOUTH 06°10'31" EAST, 13.58 FEET,
- 55.) SOUTH 31°46'04" EAST, 32.84 FEET,
- 56.) NORTH 69°45'06" EAST, 7.74 FEET;
- 57.) SOUTH 36°49'00" EAST, 6.56 FEET;
- 58.) SOUTH 54°08'50" WEST, 8.16 FEET;



- 59) SOUTH 49°30'37" EAST, 10.47 FEET;
- 60) NORTH 60°49'07" EAST, 2.53 FEET;
- 61) SOUTH 51°45'28" EAST, 11.81 FEET;
- 62) SOUTH 75°27'20" EAST, 20.14 FEET;
- 63) SOUTH 86°11'55" EAST, 24.94 FEET;
- 64) SOUTH 45°44'18" EAST, 16.27 FEET;
- 65) SOUTH 31°41'16" EAST, 20.89 FEET;
- 66) SOUTH 38°34'51" EAST, 32.78 FEET;
- 67) SOUTH 83°08'08" EAST, 28.75 FEET;
- 68) SOUTH 59°04'44" EAST, 38.50 FEET;
- 69) SOUTH 55°15'00" WEST, 221.39 FEET;
- 70) SOUTH 55°15'00" WEST, 60.00 FEET (CROSSING CANNERY ROW [OCEAN VIEW AVENUE]); TO THE TRUE POINT OF BEGINNING

CONTAINING 4.27 ACRES MORE OR LESS

Assessor Parcel Numbers:

| | |
|-------------|-------------|
| 001-021-010 | 001-022-023 |
| -011 | -024 |
| -012 | -025 |
| -013 | -026 |
| -014 | -027 |
| -015 | -028 |
| -016 | -029 |
| -017 | -030 |
| -018 | -031 |
| -019 | -032 |
| -020 | -033 |
| | -034 |
| | -035 |
| | -036 |
| | -037 |



CCC Exhibit 13
(page 16 of 20 pages)

ADDENDUM "B"
INSURANCE REQUIREMENTS

1. Without limiting Developer's duty to indemnify, Developer shall maintain or cause to be maintained, as required by the terms of this agreement, and at Developer's and/or contractors' sole expense, a policy or policies of insurance (including primary or combinations of primary and excess insurance, and/or OCIP/CCIP/wrap coverages that include the requisite insurance) with the following minimum limits of liability:

(A) Commercial general liability insurance, including but not limited to bodily injury, property damage, personal and products completed operations hazard coverage. If Developer's coverage includes claims for advertising injury, then the City shall further have the benefit of that coverage. Such coverage shall have a combined single limit of not less than \$2,000,000 per occurrence, \$2,000,000 for products completed operations aggregate, and a \$5,000,000 general aggregate. Such insurance shall be maintained until dedication of the Water System and, in the case of completed operations coverage, until three years following dedication of the Water System

(B) Commercial automobile liability insurance including owned, leased, non-owned, and hired automobiles, with a combined single limit of not less than \$1,000,000 per occurrence and \$2,000,000 in the aggregate. Such insurance shall be maintained until dedication of the Water System.

(C) If Developer employs others in the performance of this Agreement, Developer shall maintain/cause to be maintained workers' compensation insurance in accordance with California Labor Code section 3700 and with a minimum of \$1,000,000 per occurrence for employer's liability, for the duration of time that such workers are employed.

(D) Professional liability insurance with limits of not less than \$1,000,000 per claim and \$2,000,000 in the aggregate for the civil engineering work to be performed. Developer will either maintain/cause to be maintained that coverage in full force or obtain extended reporting (tail) coverage (with the same liability limits) for at least three years following the dedication of the Water System. The retroactive date, if any, must be prior to the commencement of the work.

(E) Builder's risk insurance and/or other property insurance insuring 100% of the replacement cost of the improvements (subject to a maximum \$5,000 deductible) under construction. Such insurance shall be maintained until dedication of the Water System.

2. All insurance required by this Agreement shall be either:

(A) placed with carriers authorized by law to transact insurance business in the State of California and with a current A.M. Best rating of no less than A:VI, OR

(B) placed with carriers with a current A.M. Best rating of no less than A:VII

excepting the State Compensation Insurance Fund when not specifically rated.

3. The requisite commercial general liability policy shall:

(A) Provide an endorsement naming the City of Monterey and the CSD as additional insureds, under an ISO CG 20 10 07 04 and ISO 20 37 07 04 or their equivalent.

(B) Provide that such insurance is primary and non-contributing insurance to any insurance or self-insurance maintained by the City or the CSD.

(C) Contain a "Separation of Insureds" provision substantially equivalent to that used in the ISO form CG 00 01 10 01.

(D) Provide for a waiver of any subrogation rights against City or the CSD, via an ISO CG 24 01 10 93 or its equivalent.

4. The workers' compensation policy shall be endorsed with a waiver of subrogation in favor of the City of Monterey and the CSD for all work performed and/or activities conducted under this Agreement.

5. For the general liability, automobile liability, and errors and omissions insurance, Developer shall cause the City to be a certificate holder under such policies. Developer shall cause a certificate(s) of insurance under a standard ACORD certificate of insurance or its equivalent, providing City with direct notice rights from the insurer and copies of required endorsements showing City and CSD as additional insured and waiver of subrogation to be issued to City. Neither the failure of the City to demand, nor the failure of the Developer to cause such certificates to be furnished shall waive the obligation to procure and maintain liability insurance as required by this Agreement.

6. Developer shall not commence work under this agreement until all insurance requirements are met. Developer may, at its option, require that a third party or parties (such as a general contractor) obtain and maintain the above insurance as long as it meets the requirements of this Addendum. City may demand at any time that it be furnished with a copy of any of the above insurance policies.

7. The insurance requirements hereunder, and whether any claim is covered under any insurance, shall not alter Developer's obligations under the indemnification provisions of this Agreement.

8. In the event Developer fails to comply with the insurance requirements stated herein, City may, at its option: (i) acquire and maintain in effect the required policies of insurance, subject to reimbursement of all costs and expenses by Developer; or (ii) pursue any rights and remedies it may have against Developer at law or in equity for the breach of this Agreement. However, before any action by the City, City must provide Developer with 15 days written notice of the claimed deficiency and an opportunity to cure.

ADDENDUM "C"

TERMS OF DEDICATION OF WATER SYSTEM TO THE CSD

- a. The Water System (as defined in paragraph 1 of the Agreement) shall be permitted for construction and operation by any and all permitting and regulatory agencies necessary for the operation of a desalination plant and distribution of water for the uses contemplated by the Ocean View Plaza Project, including but not limited to the following permitting and regulatory agencies, as applicable:
1. State Water Resources Quality Control Board / Regional Water Quality Control Board (Central Coast)
 2. Monterey County Environmental Health Department
 3. National Oceanographic and Atmospheric Administration
 4. Monterey Bay National Marine Sanctuary
 5. U.S. Army Corps of Engineers
 6. California Coastal Commission
 7. City of Monterey
 8. Monterey Peninsula Water Management District
 9. U.S. Coast Guard
 10. U.S. Fish and Wildlife Service
 11. National Marine Fisheries Service
 12. California Department of Fish and Game
 13. California Department of Health Services
 14. California State Lands Commission
- b. Concurrent with the dedication of the Water System, Cannery Row Marketplace LLC shall transfer any and all applicable permits and approvals necessary for the operation of the Water System for the uses contemplated by the Ocean View

Plaza Project as approved by the City of Monterey, without cost to the Community Services District.

- c. Cannery Row Marketplace LLC shall dedicate the Water System to the Community Services District, without cost to the Community Services District.
- d. Concurrent with the dedication of the Water System, Cannery Row Marketplace LLC shall transfer all warranties described in Section 3(b) of the Indemnity Agreement for the benefit of the Community Services District that the Water System has been completed in accordance with the standards and specifications set forth in the certification described in Section 1 of the Indemnity Agreement and that the Water System shall be fully operational upon delivery to the Community Services District.
- e. The dedication of the Water System shall be made pursuant to a written dedication instrument in recordable form which is reasonably satisfactory to the CSD and conforms to the terms of the Agreement and Addendum C.