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HABITAT PROTECTION PLAN
MONTEREY BAY SHORES
ECO-RESORT

Sand City, California

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PREPARED FOR
Security National Guaranty (SNG)

October 2008

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MONTEREY BAY SHORES ECO-RESORT

Habitat Protection Plan

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1.0

INTRODUCTION

1.1 PROJECT AND SITE CONDITIONS OVERVIEW

This Habitat Protection Plan (HPP) for the proposed Monterey Bay Shores eco-resort has been prepared as an update to a 1997 version prepared by Zander Associates.

The existing dune habitats on the Monterey Bay Shores project site presently remain highly disturbed as a result of 60 years of sand mining, but represent remnants of the Monterey sand dune complex that extends from the Salinas River south to the Municipal Wharf.

The HPP evaluates and seeks to avoid or minimize take and mitigate potential impacts to the actual and potential presence of special status biological resources including the federally endangered Smith's blue butterfly (*Euphilotes enoptes smithi*), the federally threatened western snowy plover (*Charadrius alexandrinus*) and the federally threatened Monterey spineflower (*Chorizanthe pungens* var. *pungens*).

The following documents were reviewed during the preparation of this revised HPP:

- Draft Addendum to the Final Environmental Impact Report, Monterey Bay Shores Resort (City of Sand City 2008)
- Final Environmental Impact Report, Monterey Bay Shores Resort (City of Sand City 1998)
- Final Environmental Impact Report for The Sands of Monterey (EIP 1990)
- Biotic Assessment, Monterey Bay Shores EIR Addendum, Sand City, California (Zander Associates 2008)
- Annual Western Snowy Plover Surveys and Reports, PRBO/Zander Associates 1994-2008

1.0 INTRODUCTION

- Peer Review, Review of Mitigation Measures for Potential Impacts to the Western Snowy Plover; Proposed Monterey Bay Shores Eco-resort, Sand City, California (Wildlife Science International 2008)
- Peer Review, Monterey Bay Shores EIR Addendum, Sand City, CA (URS 2008)
- Monterey Bay Shores Botanical Survey Update Results (EMC Planning Group, Inc. 2008)
- Landscape Plan for Monterey Bay Shores (Rana Creek 2008)
- Vesting Tentative Map, Monterey Bay Shores (Bestor Engineers 2008)
- Access, Signage, and Lighting Plan (EMC Planning Group, Inc. 2008)

This HPP provides an assessment of the current conditions on the site relative to the species listed above, evaluates the effects of the proposed eco-resort development on those species, and presents a set of management prescriptions for enhancement of the dune complex and preservation of sensitive species habitat on the site in the context of the proposed project.

As explained in the 2008 Addendum to the Monterey Bay Shores Environmental Impact Report (EIR), since certification of the original EIR in 1998 there have been substantial changes in the project design, building layout and size; changes in the distribution of biological resources; and changes in the regulatory environment overseeing the protection of the special status species at issue.

1.1.1 Revisions to the 1998 Project Design

With respect to the project design, building layout and size, the revised project will be set back a substantially greater distance (as discussed in the EIR Addendum) from the ocean than the original layout of the project. Thus, there will be a greater buffer between many of the construction activities and the lower beach, where migratory birds and snowy plovers are most likely to be located. The elimination of these significant construction and operational activities will help reduce the temporary and long-term impacts to any potential plover habitat or breeding activity. The redesign of the project and landscape will also specifically take into account the re-creation of types of habitat on or near the beach and strand that are more likely to attract plover nesting and activity. This will be an improvement over existing conditions, where there is no active landscape management to attract plover nesting. In addition, the revised project has been designed specifically to avoid any take of any seacliff buckwheat plants on the project site, thus preserving habitat for the Smith's blue butterfly.

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1.1.2 Biological Surveys and Updates

Since 1998, there have been numerous additional biological surveys conducted on the project site to update the data on existing conditions. For example, in 2006 and again in 2008, EMC Planning Group, Inc. undertook revised vegetation mapping and directed surveys for Monterey spineflower and seacliff and coast buckwheat – host plants for the Smith's blue butterfly. The changes in the vegetation on site have been taken into account in preparing this HPP.

In addition, beginning in 2005, the City of Sand City has sponsored annual systematic breeding season surveys of the Sand City coastline for the western snowy plover. These surveys were (and are) being conducted by *PRBO Conservation Science*, the consulting branch of the Point Reyes Bird Observatory (PRBO), under contract to Zander Associates. Only one nest, in the northeast corner lower beach area of the site (and outside of the development envelope), has been sighted during that time. Biologists specializing in the habits of western snowy plover have documented that, since the mid-1990s, plover in the area have shifted and focused nesting preferences to the Moss Landing area, which is located about 16 miles to the north. Annual reports by PRBO have indicated a steady decline in nesting western snowy plovers in the north Monterey and Sand City shoreline area, including the project site. For the overall area, PRBO reported a total of 13 plover nests in 1995, 7 nests in 1996, 4 nests in 1997, 4 nests in 1998, and 2 nests in 1999. In 2000, only one nest was reported, but the nesting attempt was unsuccessful (on the Fort Ord Dunes State Park property line). Nesting in the area dropped to zero from 2001 to 2007. In 2008 two nests were identified along the Sand City shoreline, one of which was on the lower beach of the northwestern corner of the project site, and one of which was located south of the project site. Thus, plover nesting has declined markedly during the past 13 years. By contrast plover nesting activity has increased at the Moss Landing Salt Ponds managed by PRBO in recent years. According to PRBO, "the former salt pods at the Moss Landing Wildlife Area have emerged as the most productive habitat for snowy plovers in the Monterey Region." (Page, 1999). Plover nesting also has been observed with higher frequency along the northerly shoreline boundary of former Fort Ord and the City of Marina.

1.1.3 Regulatory Setting

There have been several regulatory changes regarding the sensitive species previously identified on the project site. First, in September 2005, the U.S. Fish and Wildlife Service removed the site's beach, and all of the Sand City coastline within the Monterey critical habitat unit, from the critical habitat designation for the western snowy plover. Second, in December 2007, the U.S. Fish and Wildlife Service determined that the site should not be included in the final revised critical habitat designation for the Monterey spineflower. Third, in January 2008, the California Court of Appeal held that the Sand City Local Coastal Program Land Use Plan (LCP) does not

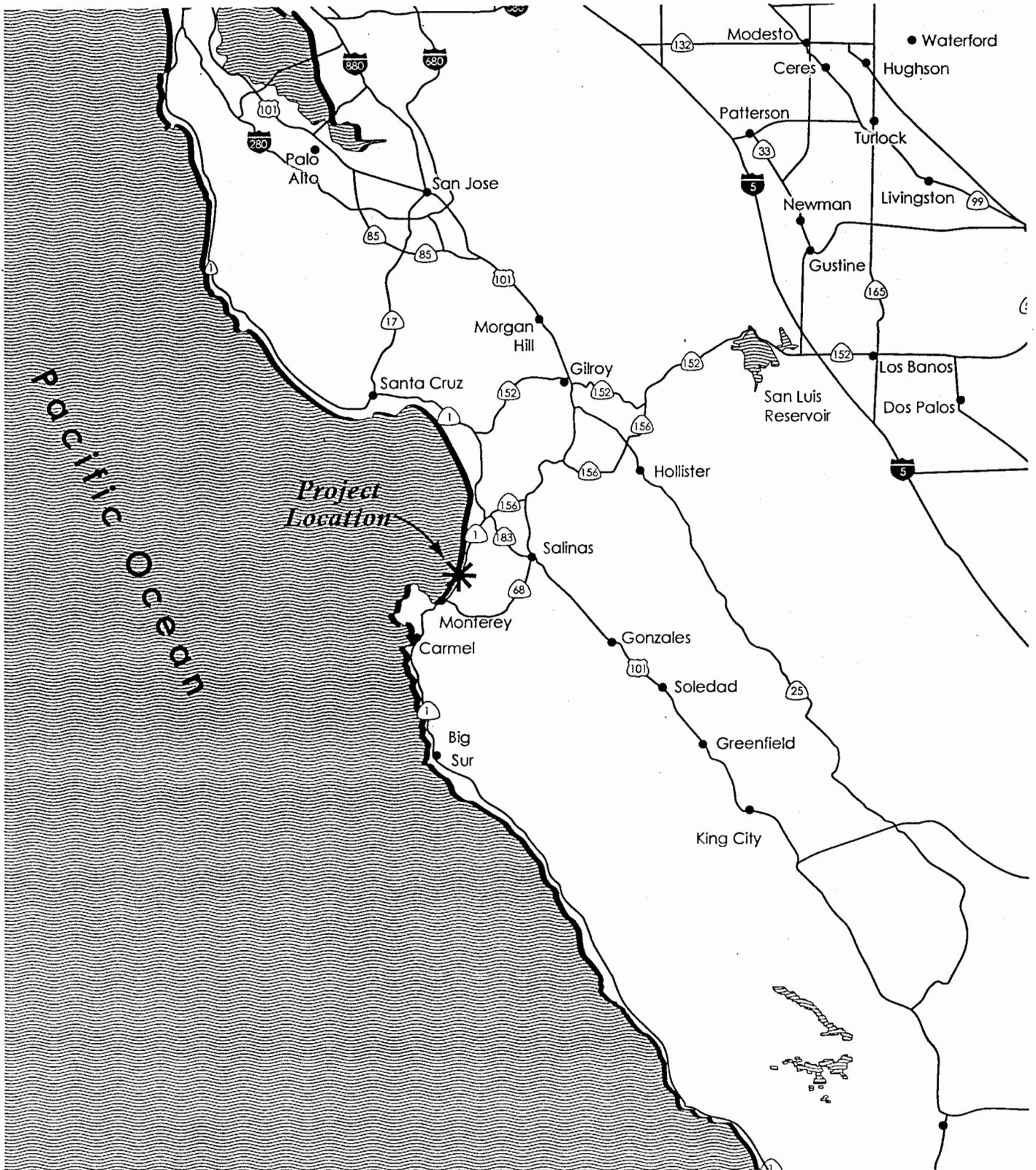
deem the site to be environmentally sensitive habitat area (ESHA) and that the Coastal Commission had exceeded its jurisdiction by declaring the site to be ESHA. (*Security National Guaranty, Inc. v. California Coastal Com.*, 159 Cal.App.4th 402.) The Court further held that in reviewing and approving a development project, a local government is not required to demonstrate that "the conclusions in the LCP still 'relate to current conditions.'" The Court explained that requiring "a reexamination of basic land-use policy with every permit application would impose an unnecessary and wasteful burden on local governments." Finally, the Court remanded the coastal development permit application to the Commission for rehearing, based solely on the standards in the existing LCP, i.e., with no ESHA on site. Therefore, in accordance with the existing, certified Sand City LCP, and the Court of Appeal decision, this HPP assumes that no ESHA exists on site.

The LCP targets areas along the eastern boundary of the property site near Highway 1 as dune stabilization/restoration areas (shown on Figure 7 in the LCP) and encourages the creation of a dune management program concurrent with any development proposal for the property. This HPP is designed to facilitate that planning objective and to restore and protect habitat for special status species on the project site.

1.2 PROJECT AREA DESCRIPTION

The Monterey Bay Shores property (APN 011-501-14) is located along the southern Monterey Bay coastline at the northern city limit line of Sand City, approximately one mile north of Monterey and about 28 miles south of Santa Cruz (Figure 1, Project Vicinity). Lands of the former Fort Ord military base and the City of Marina are to the north, lands owned by park entities, the U.S. Naval Postgraduate School and shoreline portions of the cities of Sand City, Seaside, and Monterey occur to the south, and commercial and residential development exist across Highway 1 to the east.

The beaches and dunes extending from the Salinas River to the mouth of the Monterey Harbor once formed an extensive complex that has been heavily affected by industrial use and development for decades. Sand mining, military use, and all have affected the continuity and integrity of this shoreline dune complex. In recent years, however, there has been a trend toward restoration and preservation of substantial portions of the remaining dune habitats and the sensitive species they support from the National Wildlife Refuge at the mouth of the Salinas River eight miles north of the site to Marina State Beach and the former Fort Ord. Sand City's redevelopment plan seeks to encourage restoration of the dunes as part of coastal development.



Not to Scale

Source: EMC Planning Group Inc. 2008



Figure 1
CCC Exhibit Project Location
 Monterey Bay Shores Habitat Protection Plan
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1.3 PROJECT DESCRIPTION

The proposed revised project includes the construction of a 340-unit mixed-use "eco-resort" with a residential component designed to integrate development within the existing dune complex. The project site was previously used for approximately 60 years for sand mining by Lonestar Industries. No or minimal reclamation activities have occurred since the mine closure. The site encompasses a gross area of 39.04 acres, of which approximately 32 acres lie above the mean high tide line. The eco-resort will include the following uses:

- A 161-room hotel;
- 46 visitor-serving condominium units (rental pool) located south of the reception area;
- 42 visitor-serving condominium units (rental pool) located north of the reception area;
- 92 residential condominium units;
- Auxiliary facilities including a restaurant, conference facilities and rooms, a wellness spa; and
- Open space, public access and parking, trails, vista point, and habitat and dune restoration areas.

1.3.1 Grading and Site Preparation

The proposed revised project will require substantial grading to recontour the site and stabilize and restore the dunes and will require the removal of 385,000 cubic yards. This represents a reduction of 56.8% compared with the sand removal requirements of the 1998 City-approved project. The excess sand has resulted from moving the project back to the 75 year setback line (exceeding the requirements of the LCP) and the placement of the garages under the structures, in conformance with LCP policy encouraging underground parking. Off-site disposal of excess sand would be accomplished in one of three ways: (i) it would be sold to contractors for construction projects; (ii) provide or sell the sand for projects identified in the *Coastal Regional Sediment Management Plan for Southern Monterey Bay* (PWA 2008) prepared for the Association of Monterey Bay Area Governments and expected to be adopted in a November 2008 Board of Directors meeting; or (iii) to truck the sand off-site to dispose of it in landfills.

Of the site's 32 acres above the mean high tide line, 28.3 acres will be modified by grading, excavation, and recontouring, including rehabilitation, restoration and stabilization of the sand dunes impacted by historical sand mining. The beach area below 20 feet mean sea level (MSL) and the area along the northern property line set aside for buckwheat protection will not be subject to any grading, which will help avoid potential special-status species habitat in those areas.

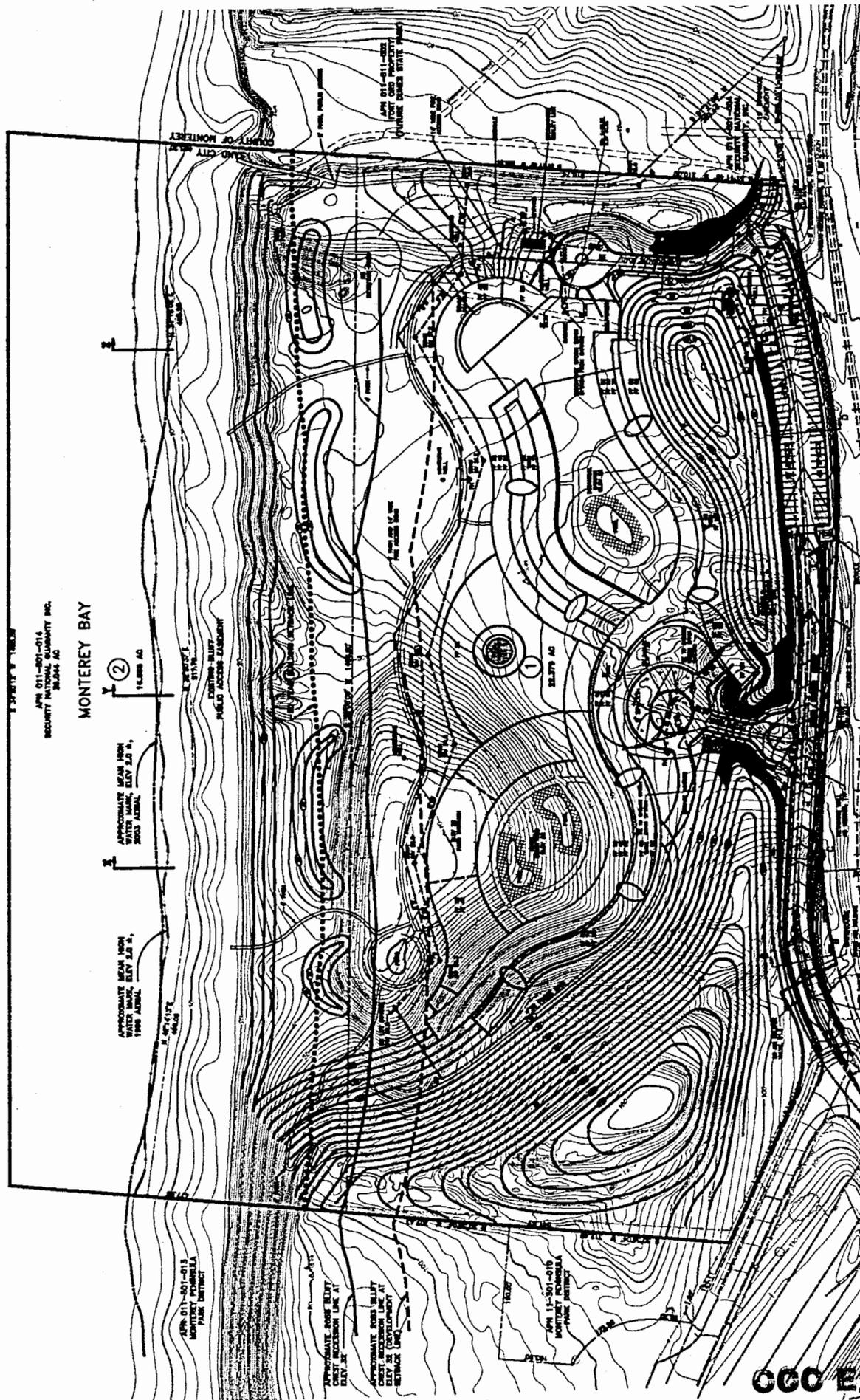
The remainder of the site will be recontoured for construction of the proposed buildings and infrastructure, the restored and stabilized sand dunes, and the restored coastal habitat, as shown in Figure 2, Site Plans. At project completion, the maximum elevation on the site will be 145 feet above MSL at the southeast corner of the site, which will be recontoured for dune stabilization. The highest sand dune on the site currently is 161 feet MSL. Another sand dune will reach 105 feet MSL on the northeast portion of the project site, replacing an existing sand dune which is approximately 126 feet above MSL. Dunes at the northeast corner of the site will be slightly modified to conform to the elevation of dunes north of the site, on the State Parks' property, in order to re-establish a contiguous system of dunes in this area.

1.3.2 Project Design Objectives

The design objective of the Monterey Bay Shores eco-resort is to utilize an ecologically innovative approach to the built environment and to coastal development, which integrates an understanding of the site conditions and site capacity into an ecological design that sets high standards in sustainability. Dune topography, plant assemblages and ecological functions will be restored on the site to counteract decades of degradation due to mining operations. The proposed development will be located centrally on the project site (subject to an expanded setback from the mean high tide line) and oriented toward Monterey Bay. Physical conditions that influenced the layout of the project include the desire to meet or exceed the required shoreline setback requirements and goals, topography of the site, dune stabilization, restoration requirements and goals, and the locations of sensitive dune habitat. In addition, the site design took into account the land use regulations and policies set forth in the LCP, which require the provision of public access to the shoreline and public recreation opportunities, open space, establishment of dune stabilization and habitat restoration areas, limitations on the height of the structures, and protection of specific views of Monterey Bay.

The revised project emphasizes visitor-serving uses, as those are a priority in the LCP. The eco-resort is also consistent with the LCP policies which encourage facilities that provide services to address a range of visitor needs and in a way that is consistent with preserving and enhancing the natural coastal resources.

The proposed development will be built "into the dunes" in order to mimic the dune environment, reduce the project's impacts to views of the site and of the Monterey Bay, and reduce noise impacts to the project, all of which are consistent with the policies of the LCP. Architectural forms are intended to conform to the topography, shore orientation, and scale of natural dune formations. The proposed hotel, resort, and condominium units all will be integrated into what appears as one building. The proposed buildings on the site will be constructed in a stepped fashion to fit the dune topography (Figure 3, Proposed Building Cluster Design). The elevation of the main entry and reception area will be at 62 feet above MSL,



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Source: EMC Planning Group Inc. 2008, Bestor Engineers 2008

Figure 2
 Site Plans

Monterey Bay Shores Habitat Protection Plan

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Source: EMC Planning Group Inc. 2008, BSA Architects 2008

Figure 3

Proposed Building Design

Monterey Bay Shores Habitat Protection Plan

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providing access both to the residential portion on the north and hotel/resort portion on the south of the building. The highest building elevation, a living roof, will not exceed 112 feet above MSL. The residential units and visitor-serving residential units will be located on the northern end of the proposed buildings and the hotel/resort units will be located in the central and southern portions of the proposed buildings.

Building and Facility Layout

Each of the buildings located at an elevation of 62 feet above MSL provide for vertical circulation, daylighting and ventilation towers. A small biofiltration pond is located on the east side of the parking garages. A retention pond will be located between the residential complex and the public trail to the beach.

Site Access and Parking

Vehicular access to the project site will be provided via an extension of Sand Dunes Drive. The main entrance to the proposed building will be located approximately 436 feet from the current terminus of California Avenue. The main entrance will provide access to the building lobby and two underground parking garages, one located to the south and one to the north. A second parking garage access, as well as delivery truck access, will be provided on the north end of the site.

The proposed underground parking garage on the southeast portion of the site will be located behind and below the hotel and visitor-serving condominium units. This parking garage will provide approximately 220 parking spaces for the proposed development. The second, larger parking garage will be located on the northeastern portion of the site. This 473-space parking garage will be two levels and located below the residential and visitor-serving condominiums. Nine additional parking spaces will be located along the roundabout at the main entry to the building. An additional 70 public parking spaces will be located along the private driveway on the northeast side of the project site. The revised project was designed to be consistent with the LCP, with roads and pathways that conform to the natural contours of the site. The revised project also provides maximum covered and underground parking, which fulfills the LCP policy of encouraging a layout that buffers parking from Monterey Bay.

Public Access

A public access easement is proposed over the private driveway and parking areas on the east portion of the site. A public access pathway, with a vista point, will be provided from the parking areas to the beach. Access ways are designed away from the large dune areas that are proposed for stabilization and/or restoration. Pathways will be created to avoid and protect restored vegetation. A public easement will cover the entire beach area below 20 feet MSL to ensure

1.0 INTRODUCTION

lateral access along the coast on dry sand. Vertical access to the shore has been provided at three locations on the site to prevent crowding and overuse of coastal resources. Public access will be coordinated and controlled based on recommendations of an on-site biologist to avoid or minimize impacts to biological resources. A bike path is also proposed along the eastern property boundary of the site adjacent to the Sand Dunes Drive extension, which would connect to the regional bike path. The project proposes a 5.69-acre public access easement on the site that would connect the public parking area at the northeast corner of the site with the beach and vista point through a trail located along the northern property line. A 13.85-acre conservation easement will surround the proposed buildings on the site. Visitors will be allowed within some areas of the conservation easement associated with public access, subject to restrictions needed to protect biological resources, as described herein.

Utilities and Infrastructure

The proposed project will obtain utility services from the Seaside County Sanitation District, California American (Cal-Am) Water Company utilizing SNG's water rights and allocation, Pacific Gas & Electric and other service providers. An eight-inch sanitary sewer line will be located along the ocean side of the proposed project and will connect with a sewage lift station in the southwest portion of the project site. The lift station will connect with a four-inch sanitary sewer force main through the project site out to the Sand Dunes Drive extension. The sanitary sewer line will be extended in California Avenue to an existing six-inch main sewer line at the Edgewater Shopping Center. Once the project site is annexed into the Cal-Am service area, water lines will be extended from the Edgewater Shopping Center to the project site.

The revised project will use cutting-edge energy demand-reducing technologies as well as incorporate on-site alternative energy sources in order to reduce overall energy use, decrease fossil fuel use, and decrease the project's carbon footprint. The project proposes to generate electricity on the site using solar photovoltaic panels and high efficiency ground-mounted horizontal-axis wind turbines as well as geothermal energy. The low profile, horizontal mounted, wind turbines will rest on the living green roofs in selected areas. The turbines are noise and vibration free, and are designed to be safe for birds through the use of protective enclosures around the slow-moving blades.

The revised project proposes to capture stormwater for on-site use and allow infiltration on the site. The revised project includes cisterns and two retention ponds, one located on the northwest portion of the site and one located on the east portion of the site adjacent to Sand Dunes Drive. A bioswale will be located adjacent to the retention pond on the northwest portion of the site. Storm drainage lines ranging from 12 inches to 24 inches will be located throughout the site. Since the project is designed to avoid stormwater runoff, the project will not connect with off-site storm drainage lines and will not discharge stormwater from the site. These storm drainage lines instead will be directed to the on-site retention ponds and cisterns.

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2.0 EXISTING CONDITIONS AND EXPECTED IMPACTS

2.1 EXISTING CONDITIONS

The biological resources on the project site have been well documented in several studies conducted for the City of Sand City and for previous project applications. Habitat assessments for the Smith's blue butterfly have been conducted on the site and throughout Sand City by LSA Associates (1988), Dr. Richard Arnold (1987, 1991, 2006), and Zander Associates (1995, 1997). The Sand City Draft Habitat Conservation Plan (1990), included the Monterey Bay Shores property and proposed city-wide conservation strategies for Smith's blue butterfly, black legless lizard (*Anniella pulchra nigra*), sand gilia (*Gilia tenuiflora* ssp, *arenaria*), sandmat manzanita (*Arctostaphylos pumila*), Monterey ceanothus (*Ceanothus rigidus*), Monterey spineflower, and Eastwood's golden fleece (*Ericameria fasciculata*).

The Point Reyes Bird Observatory (PRBO) has monitored the breeding success of snowy plovers on Monterey Bay since 1984, with specific surveys for the City of Sand City (including the project site) since 2005 under contract to Zander Associates.

Surveys for the black legless lizard were conducted on the site by Theodore Papenfuss, Ph.D. and Robert Macy in 1987 and by EIP Associates in 1988.

Thomas Reid Associates, EIP Associates, and EMC Planning Group, Inc. completed focused surveys for sensitive plant species in 1987, 1988, and 2008, respectively, and vegetation mapping was conducted in 1997 by Zander Associates and in 2006 by EMC Planning Group, Inc.

An EIR was prepared for a previous project application on the Monterey Bay Shores property by David Powers Associates and approved and certified by the lead agency, the City of Sand City (Sand City/David Powers 1998). A draft addendum was completed in August 2008 to update

this EIR based on a revised design and smaller project (Sand City/David Powers 2008). To update the biological resources section of the EIR, Zander Associates prepared a biotic assessment to compare the findings for the previous project with the impacts of the revised project and to identify any substantial changes in impacts or requirements for new mitigation measures. Additionally, two independent peer reviews of the proposed plover mitigation strategy were conducted (URS 2008, Wildlife Science International 2008).

All of the previous studies characterized the habitat on the Monterey Bay Shores property as highly disturbed, consisting of areas of bare sand or non-native iceplant, and generally devoid of any native plant communities Figure 4, Aerial Photograph. Notwithstanding the site's degraded condition, portions of the site have served as actual or potential habitat for the Smith's blue butterfly, western snowy plover and Monterey spineflower. Surveys for the California black legless lizard, Monterey ceanothus and sandmat manzanita yielded negative results. The vegetation types described in the following sections are based in part on past work but have been updated as a result of more recent surveys conducted by Zander Associates in February 1995 and March and May 1997, and by EMC Planning Group Inc. in 2006 and 2008.

2.1.1 Vegetation Types

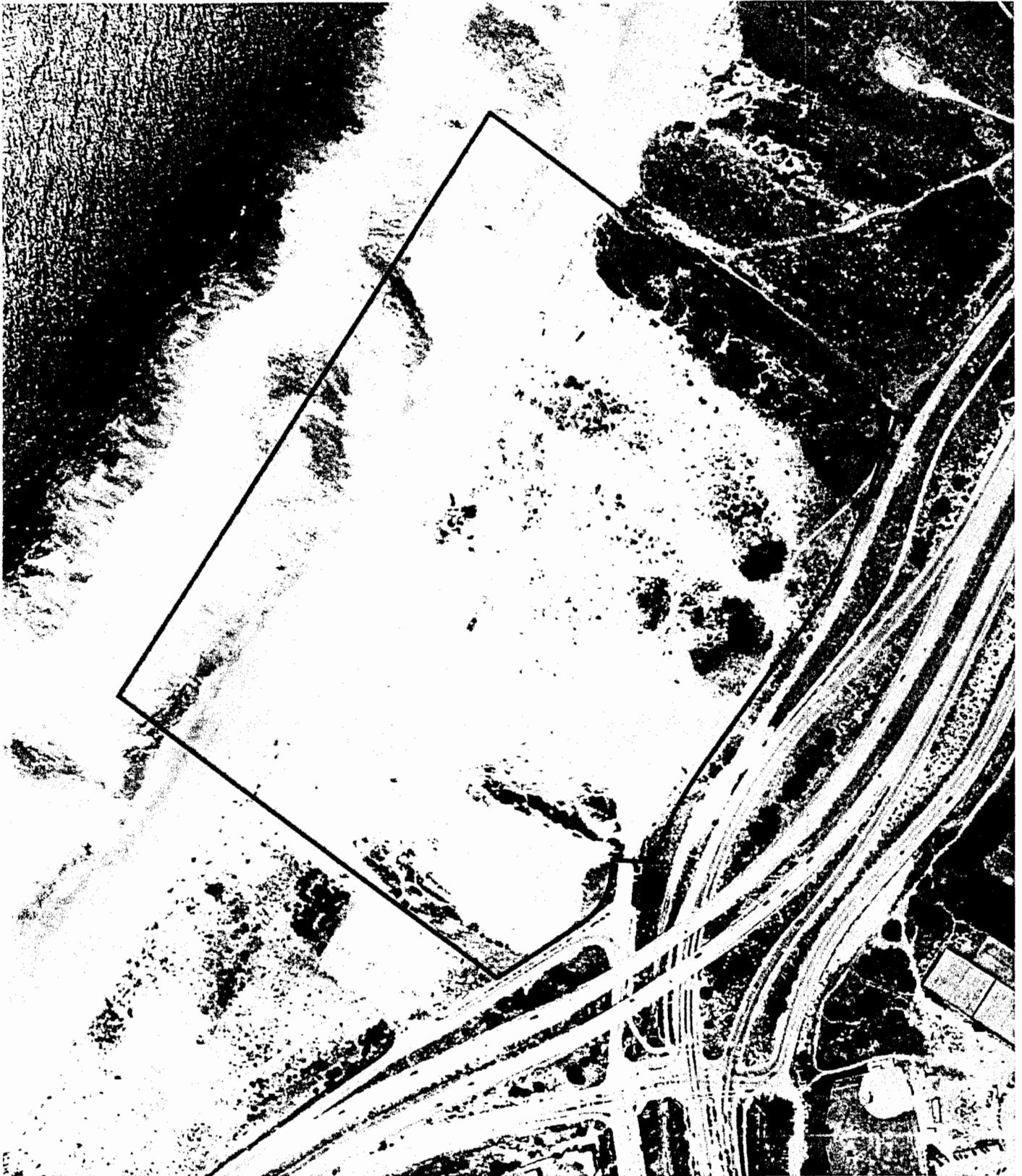
Although the nature and extent of the vegetation has changed only slightly from the time of the 1998 EIR, those changes have mostly resulted in the degradation of habitat due to the increased invasion of non-native iceplant throughout the site. Iceplant has encroached into areas formerly identified as pioneer dune and bare sand and has caused a reduction in the extent of coastal scrub species.

The following vegetation types and wildlife habitats are found on the Monterey Bay Shores site: 1) coastal strand/submerged land; 2) pioneer dune vegetation; 3) coastal scrub/iceplant mix; 4) iceplant dominated; 5) ruderal/disturbed; and 6) bare sand. These vegetation and habitat types are discussed below. The distribution of each of these types on the site is mapped on Figure 5, Vegetation Map, which was prepared in 2006 to update the extent of vegetation present. This map was created based on an aerial photograph taken in 2003 and verified in the field.

Coastal Strand/Submerged Land

The Monterey Bay Shores property includes approximately 11 acres of area west from the coastal bluffs. While about 4.2 acres of this area is beach and coastal strand, the majority of the area (6.8 acres) is located in the Pacific Ocean, below the mean high water mark elevation. The beach and coastal strand area consists primarily of bare sand with scattered pockets of sea rocket (*Cakile maritima*), beach bur (*Ambrosia chamissonis*), and other pioneer species that are typical of the first stage of plant succession in the bare sand.

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0 300 feet

Source: EMC Planning Group Inc. 2008, Digital Globe 2007

Figure 4



Aerial Photograph

Monterey Bay Shores Habitat Protection Plan
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LEGEND

Pioneer Dune Vegetation
with Ice Plant Mix

Coastal Scrub/Ice Plant Mix

Ice Plant Dominated

Ruderal/Disturbed

Coastal Strand

Monterey Spineflower
(Low Density, ~0-1 plts. per sq. m)

Monterey Spineflower
(Medium Density, ~2-4 plts. per
sq. m)

Monterey Spineflower
(High Density, ~5+ plts. per sq. m)

Seacliff Buckwheat



Source: EMC Planning Group Inc. 2006, 2008

Figure 5
Vegetation Map
Monterey Bay Shores Habitat Protection Plan

The coastal strand along the western boundary of the property provides habitat for feeding and nesting of marine and shore birds. The bay waters provide foraging habitat for Pacific loons (*Gavia arctica*), willets, sanderlings and caspian terns (*Sterna caspia*), and flocks of gulls rest and preen on the beach.

Pioneer Dune Vegetation

The area on the property identified as pioneer dune vegetation includes approximately 8.2 acres north of the abandoned sandpit. The area contains asphalt roadway remnants and bare sand that has been highly compacted as a result of past sand mine operations. The area of pioneer dune vegetation mapped on Figure 5, Vegetation Map contains scattered clusters of native pioneer species that occur on approximately 50% of the area. The plants identified in these clusters include: pink sand verbena (*Abronia umbellata*), beach bur, sea rocket, beach evening primrose (*Camissonia cheiranthifolia*), and silver bush lupine (*Lupinus chamissonis*). Since 1997, however, non-native hottentot fig (*Carpobrotus edulis*) and sea fig (*Carpobrotus chilensis*) have begun to spread beyond the extent of the native vegetation (visible in the aerial photograph in Figure 5, Vegetation Map and in Appendix A, Site Photographs). Various other non-native plant species such as New Zealand spinach (*Tetragonia tetragonioides*), riggut brome (*Bromus diandrus*), and common sow thistle (*Sonchus oleraceus*) also occur in patches throughout this Pioneer dune areas can provide habitat for a variety of insects and reptiles adapted to exposed dune areas with relatively sparse vegetative cover. The insect fauna of the sand dunes is well developed and includes numerous species of bees, wasps, flies, butterflies, and moths (LSA 1988). Reptiles found in this habitat type include the western fence lizard (*Sceloporus occidentalis*) and northern alligator lizard (*Gerrhonotus coeruleus*). Birds expected to occur in this habitat include killdeer (*Charadrius vociferus*), California gulls (*Larus californicus*) and western gulls (*L. occidentalis*). EIP (1990) also reported the occurrence of several mammals on the site, including black tailed jackrabbit (*Lepus californicus*) and deer mouse (*Peromyscus maniculatus*).

Coastal Scrub/Ice Plant Mix

This habitat type is present in two distinct stands in the northern and southeastern portions of the site. The northern stand comprises approximately 0.2 acres and the southeastern stand is about 0.9 acre. Vegetation in these areas consists of plant species typical of the coastal scrub community that are gradually being out competed by ice plant. Native scrub species identified in these areas include mock heather (*Ericameria ericoides*), California coffeeberry (*Rhamnus californicus*), seacliff buckwheat (*Eriogonum parvifolium*), coast buckwheat (*Eriogonum latifolium*), poison oak (*Toxicodendron diversilobum*), and sandmat (*Cardionema ramosissimum*).

2.0 EXISTING CONDITIONS AND EXPECTED IMPACTS

The coastal scrub component of the coastal scrub/ice plant mix community provides foraging or nesting habitat for small birds such as the white crowned sparrow (*Zonotrichia leucophrys*) and wrentit (*Chamaea fasciata*). Common reptiles such as the western fence lizard, and small mammals such as the deer mouse, are also found in this habitat. Because the coastal scrub vegetation is relatively sparse in most areas on the site and is intermixed with ice plant, this community provides only marginal habitat value for wildlife.

Ice Plant Dominated

Several areas of dense ice plant mats occur throughout the site, but the most contiguous areas of dense mats are found mainly in the southern and eastern portions of the site, on and around the dunes near the sand pit and along the northern boundary. In 1997, only 2.1 acres of this vegetation type was present, however by 2006 these areas of dense ice plant comprise approximately 7.8 acres of the property, an increase of approximately 370 percent (Figure 5, Vegetation Map). Although ice plant mats usually exclude establishment of other vegetation, occasionally there are plants that can coexist within the matted areas. Other plants observed within the ice plant dominated areas on the site include Bermuda buttercup (*Oxalis pes-caprae*), ripgut brome, and wild radish (*Raphanus sativa*).

Ice plant dominated areas are highly degraded biotic communities that provide relatively low habitat value for wildlife. Ice plant provides little forage value, however, signs of burrowing rodents such as the California ground squirrel (*Spermophilus beecheyi*), valley pocket gopher (*Thomomys bottae*), Norway rat (*Rattus norvegicus*) and/or house mouse (*Mus musculus*) were observed within the dense growth of ice plant.

Ruderal/Disturbed

The ruderal/disturbed areas occur along the eastern property boundary and covers approximately 0.6 acres of the site. These areas are characterized separately from bare sand or ice plant mats in that they contain portions of an old paved access road and railroad spur associated with previous mining activities, and are dominated by ruderal plant species but include few ice plant mats. The ruderal species common in this vegetation type include ripgut brome, red-stemmed filaree (*Erodium cicutarium*), wild radish, common groundsel (*Senecio vulgaris*), bur clover (*Medicago polymorpha*), and stock (*Matthiola* sp.). Several individual Monterey cypress trees (*Cupressus macrocarpa*), probably planted as windbreaks or landscaping for the former sand mining operation on the site, also occur in this area. The northernmost area of ruderal/disturbed vegetation contains sporadic, low-density occurrences of Monterey spineflower, a known colonizer of disturbed areas.

The ruderal/disturbed areas on the property support wildlife species tolerant of human disturbance. Characteristic species include the Brewer's blackbird (*Euphagus cyanocephalus*) California ground squirrel, deer mouse, and the non-native red fox (*Vulpes vulpes*). Feral cats (*Felix domesticus*) also occur in these areas.

Bare Sand

This habitat type covers approximately 6.1 acres of the project site and is considered distinct from the coastal strand in that it contains areas of bare sand on the property that are inland of the coastal bluffs, including the area of the abandoned sand mining pit and other areas on the property that are generally devoid of vegetation. Some of the bare sand areas may contain occasional small patches of ice plant and native and non-native dune plants, however because of the highly unstable shifting dune sand these areas are not conducive to the establishment of vegetation.

Bare sand dunes away from the shoreline provide little foraging value for wildlife, although some ground nesting shorebirds may use these areas for nesting. However, bare sand areas along the shoreline provide foraging habitat for certain shorebirds, which feed on the abundant invertebrates in the intertidal zone. Characteristic species found in this habitat include the California gull, western gull and sanderling (*Calidris alba*).

2.1.2 Wildlife

Wildlife occurring on the project site are characterized as species uniquely adapted to sand dune and ruderal plant communities. Burrowing rodents such as the California ground squirrel (*Spermophilus beecheyi*), pocket gopher (*Thomomys umbrinus*), Norway rat (*Rattus norvegicus*) and the house mouse (*Mus musculus*) live in the dense growth of ice plant. In more open regions reptiles such as the western fence lizard (*Sceloporus occidentalis*) and northern alligator lizard (*Gerrhonotus coeruleus*) can be found. Songbirds such as Brewer's blackbird (*Euphagus cyanocephalus*), white crowned sparrow (*Zonotrichia leucophrys*), and killdeer (*Charadrius vociferus*) would also be expected. EIP (1990) also reports several mammals on site including the black tailed jackrabbit (*Lepus californicus*), deer mouse (*Peromyscus maniculatus*), and feral cat (*Felix domesticus*).

2.1.3 Special Status Species

When conducted, surveys have documented the occurrence of the Smith's blue butterfly, western snowy plover, and Monterey spineflower on the Monterey Bay Shores property at times during the past 18 years. As described herein, occurrences of snowy plover have not been frequent or

2.0 EXISTING CONDITIONS AND EXPECTED IMPACTS

consistent in the past 8 years. Focused surveys for the California black legless lizard, Monterey ceanothus, sandmat manzanita, and coast wallflower have also been conducted on the site but none of these species were found to occur (Zander 1997). During an October 2000 site visit by Zander Associates, a burrowing owl (*Athene cunicularia*), a California species of special concern was observed using burrows on the Edgewater Shopping Center property and in adjacent areas on former Fort Ord. Since that sighting eight years ago, additional observations have not been recorded, although protocol surveys for this species have not been conducted.

The species considered in this HPP include: federal- or state-listed, proposed, and candidate species that are known to occur on the project site; listed, proposed and candidate species or other special status species that may have occurred on the project site, or be introduced to the site as a result of proposed restoration efforts. The target species considered in this HPP include:

- Smith's blue butterfly (*Euphilotes enoptes smithi*)
- Western snowy plover (*Charadrius alexandrinus*)
- Monterey spineflower (*Chorizanthe pungens* var. *pungens*)
- California black legless lizard (*Anniella pulchra nigra*)¹
- California burrowing owl (*Athene cunicularia*)
- Sand gilia (*Gila tenuiflora* ssp. *arenaria*)
- Sandmat manzanita (*Arctostaphylos pumila*)
- Monterey ceanothus (*Ceanothus rigidus*)

Previous studies have documented the occurrence of the western snowy plover, and Monterey spineflower, and a few examples of Smith's blue butterfly on the Monterey Bay Shores property. Additional special status species listed above have not been observed on the Monterey Bay Shores property but are known to occur in the vicinity and are therefore included in this HPP. Through dune stabilization and restoration activities, it is anticipated that habitat for all of these

¹ In 1998, the U.S. Fish and Wildlife Service (Service) withdrew its proposed rule to list the black legless lizard (*Anniella pulchra nigra*) as an endangered species under the Endangered Species Act of 1973. The Service concluded that the black legless lizard is known to occur in a much wider variety of habitat than previously thought, and the threats to its survival have decreased. The Installation-Wide Multispecies Habitat Management Plan (HMP) for former Fort Ord, now provides preservation and habitat management on 1,366 acres of coastal and interior dune sheets occupied by the black legless lizard. Elsewhere, a large proportion of the remaining habitat of the black legless lizard is already protected from urbanization and commercial development on public lands.

species will be created. The biological data, description of presence on the project site and discussion of project effects for each of the target species follows.

2.2 EXPECTED IMPACTS

The revised eco-resort project will modify approximately 28 acres above the mean high tide line through grading, excavation, and recontouring. As noted in the 1998 FEIR and above, much of this area is degraded and non-native iceplant has continued to encroach into more native habitats.

Most of the existing vegetation will be removed during construction except in the northern portion of the site where avoidance of seacliff buckwheat plants is a priority. The revised grading envelope will ensure that the existing buckwheat plants are avoided entirely in order to preserve their potential to support Smith's blue butterfly.

Habitat restoration is a major component of the revised project. Approximately 23.2 acres will be restored to foredune, secondary dune, back dune, wetland and coastal bluff habitat. This includes approximately 4.3 acres of living "green roof" (dune coastal plant community) that will emulate coastal bluff habitat by having shallow soils and plants that are adapted to wind and salt spray. Of the 23.2 acres to be restored to native habitat, approximately 14 acres around the periphery of the development will be placed in a conservation easement and protected in perpetuity. A public access easement will be designated on approximately six (6) acres of the site, primarily to provide public access to the vista point, beach, and coastal strand areas. Three trails, one public and two associated with the eco-resort, will direct access out to the beach in a similar configuration as proposed by the previously approved plan.

The revised project will include on-site alternative energy generation facilities. These facilities will be incorporated into the structural and design elements of the buildings and geothermal units will be underground. Roof-mounted, low profile, horizontal wind turbines will be installed in protective enclosures to reduce potential impacts to birds and other wildlife.

Approximately 1.4 acres of coastal dune scrub habitat (including the area where seacliff buckwheat plants will be avoided during construction) to provide suitable opportunities for use by Smith's blue butterfly. Iceplant that is currently encroaching on the existing buckwheat plants will be eradicated and approximately 400 buckwheat plants, propagated from seed collected on site or nearby, will be established. Monterey spineflower will also be reestablished over approximately 3.4 acres of the restoration areas. Prior to grading and construction, seed will be collected from plants to be removed in the development area and reseeded into appropriate restoration areas on completion of grading.

2.0 EXISTING CONDITIONS AND EXPECTED IMPACTS

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3.0

BIOLOGICAL DATA AND EXPECTED IMPACTS ON SPECIAL STATUS SPECIES

3.1 SPECIAL STATUS SPECIES KNOWN TO OCCUR ON THE SITE

The federally-listed endangered and threatened species addressed in this HPP include:

- Smith's blue butterfly (*Euphilotes enoptes smithi*), endangered;
- Western snowy plover (*Charadrius alexandrinus nivosus*), threatened; and
- Monterey spineflower (*Chorizanthe pungens* var. *pungens*), threatened.

The biological data, history of recorded occurrences on the site, and discussion of the effects of the project on each of the covered species follows.

3.1.1 Smith's Blue Butterfly

Biological Data

The Smith's blue butterfly is a small lycaenid butterfly, which, as an adult has a one-inch wingspan. Larvae are slug-shaped and vary from cream to pale yellow or rose in color, changing with the color of the flower heads on which they are feeding (USFWS 1984).

This subspecies is found along the coastal dunes just south of the Salinas River in the north (Monterey County) to San Carpoforo Creek (San Luis Obispo County) in the south. Inland populations are found in Camel Valley. The larvae (caterpillar form) feed on two species of buckwheat: the seacliff buckwheat, generally found in the southern portion of their range, and

3.0 BIOLOGICAL DATA AND EXPECTED IMPACTS ON SPECIAL STATUS SPECIES

the coast buckwheat, generally found in the northern portion of their range. Populations of Smith's blue butterfly within Sand City utilize both species of buckwheat.

Female Smith's blue butterflies lay their eggs singly on flower heads of the host plants. The larvae hatch in about a week and begin eating the flowering heads of the buckwheat. As larvae grow they molt, passing through five instars (developmental stages). Following the fifth instar the larvae pupate sometime between August and November, and then overwinter in the leaf litter at the base of the plants. As with any other lycaenids, Smith's blue butterfly larvae may have a mutualistic interaction with ants during later instars (Arnold 1983). Arnold also observed predation by spiders and occasionally heavy parasitism by wasps. The role of other species in Smith's blue population dynamics is unknown.

The Smith's blue butterfly is a weakly flying species; therefore, long distance dispersal is believed to occur only rarely. Arnold reported common dispersal of distances of up to a few hundred yards at Fort Ord and at the Marina State Beach (1983 and 1986). Flight usually occurs within one or two meters above the ground. Observations of extended flight, more than a few minutes for an individual butterfly, are rare.

Since the Smith's blue butterfly spends the majority of its time in short flights within patches of buckwheat, any area of non-habitat, such as active mining areas, bare areas, large blow-outs on sand dunes, or extensive dense patches of vegetation which do not contain buckwheat (such as ice plant), act as barriers to dispersal. Where visual continuity of habitat, as with areas of urban development or planting of shrubs or trees, does not exist, the barrier is likely to be significant. Some dispersal may be passive, by the wind, but the typical response of adults under high wind conditions is to avoid flight altogether. Adult Smith's blue butterflies can find basic requirements (mating, nectaring, egg-laying) within a very small area (less than three acres). In locations where host plants are abundant, the local densities of Smith's blue butterflies may vary from year to year, and may shift spatially over a period of years, at least partially in response to declining buckwheat quality (Arnold 1980, 1986).

The populations of Smith's blue butterfly at former Fort Ord, Marina State Beach, Salinas River National Wildlife Refuge and the Naval Postgraduate School are considered important to the recovery of the species (USFWS 1984). Densities of the buckwheat host plants in the Sand City area are substantially lower than at these higher quality habitats for the butterfly (Arnold 1991). Improvement to the habitat quality for the butterfly in Sand City has been demonstrated at the restored Sand Dollar habitat reserve on the east side of Highway 1, approximately 0.5 miles south of the Monterey Bay Shores site.

Due to declines in the population and threats to its habitat, the U.S. Fish and Wildlife Service (Service) listed the Smith's blue butterfly as endangered in June 1976. Critical habitat has not been designated.

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Presence on the Monterey Bay Shores Property

In his *Biological Assessment Report for the Sands of Monterey Project Site in Sand City, California* (Arnold 1987), Dr. Richard Arnold observed approximately 40 individual seacliff buckwheat plants on the project site. This type of buckwheat is one of two food plants for the Smith's blue butterfly that can be found on the Monterey Bay Shores property. It is "patchily distributed" on the northeast edge of the property. The timing of his survey (January 7, 1987) did not allow for observations of larvae or adult butterflies; however, Arnold concluded that the buckwheat plants he observed were of suitable quality for use by both the larval and adult life stages of the Smith's blue butterfly based on the abundance of dried flowers remaining from the 1986 growing season. Arnold revisited the site in July, August and September, 1987 and reported finding four adults and two larvae of the Smith's blue butterfly along the northern border and near the northeastern corner of the property. Because he found such a small number of adults, and only found them on two of his six visits to the site, Arnold assumed the site was not heavily used by the Smith's blue butterfly and concluded that it probably provided habitat for transients that were dispersing from larger established populations to the north.

During July-August, 1988, biologists for LSA Associates, a biological consulting firm, observed a total of about 12 individuals on six separate occasions scattered in the vicinity of the northeastern property boundary. In July 1989, Arnold revisited the site to recount the number of buckwheat plants within the property boundaries. During that site visit, he observed four adult butterflies in the gully along the northern property boundary.

During February 1995 surveys, Zander Associates counted the number of host plants and mapped the locations of these plants on the site. Approximately 58 host plants were observed on the Monterey Bay Shores project site near the north east property line and additional plants were identified immediately adjacent to the southeastern and eastern development site boundary. Reconnaissance surveys in 1997 and again in 2000 and 2005 confirmed that the extent and distribution of buckwheat plants on the Monterey Bay Shores property remains essentially the same as recorded in 1995, although the expansion of invasive iceplant continues to threaten them.

On July 7, 2006, Dr. Richard Arnold surveyed the project site to update previous survey results and the extent of habitat for the Smith's blue butterfly. Approximately 10% of the buckwheat plants were in bloom at the time of the survey and one butterfly was identified on the project site. Additional habitat immediately north of the project site on the Fort Ord Dunes State Park property hosted approximately 40-50 butterflies at the time of the survey. Although not on the project property itself, the close proximity of good quality habitat make the presence of the butterfly likely to continue inside the northeastern boundary of the Monterey Bay Shores project site.

Effect of the Proposed Project on Smith's Blue Butterfly

The proposed project proposes to completely avoid the area where buckwheat plants occur and thus no take of potential host plants will occur. In addition, the project proposes to restore native vegetation and increase the amount of habitat available for Smith's blue butterfly without disturbing the existing buckwheat plants. Restoration of approximately 1.4 acres of coastal dune scrub habitat suitable for use by Smith's blue butterfly is proposed through the collection of seed, propagation, and planting an additional 400 seacliff buckwheat plants.

3.3.2 Western Snowy Plover

Biological Data

The western snowy plover is a small, pale colored shorebird with dark patches on either side of the upper breast. It is typically found along the beach above the high tide limit but is also known to use shores of salt ponds and alkali or brackish inland lakes. The western snowy plover typically nests on flat, barren to sparsely vegetated sandy substrate and nests are frequently located near objects such as grass clumps or pieces of driftwood. The breeding season occurs from mid-March through mid-September and most eggs are laid by mid-July. Males incubate three-egg clutches about 10% of the time during the day and most of the night (Warriner et al. 1986). Females normally desert hatched young within six days and the males attend the young for 29 to 47 days. Females often re-nest with new mates during the same breeding season. The last chicks of the season fledge during the first or second week of September.

The Service listed the western snowy plover as threatened in March 1993.

Critical Habitat and Regulatory Actions

In its designation of critical habitat for the western snowy plover (64 Fed. Reg. 68507 [Dec. 7, 1999]), the Service designated the beaches from former Fort Ord south to Monterey (including a small portion amounting to about ½ acre on the Monterey Bay Shores project site) as critical habitat for the western snowy plover. In response to a legal challenge to the final critical habitat rule filed by Coos County, Oregon and joined by Sand City, California, in U.S. District Court in Oregon, the Service initiated a voluntary remand of the rule to reconsider the designation. The court accepted the voluntary remand and ordered the Service to promulgate a revised final critical habitat rule by September 20, 2005. Pursuant to this order, the Service proposed a revised designation of critical habitat. (69 Fed. Reg. 75607 [Dec. 17, 2004] [Subunit CA-12C]). The Service issued a final rule designating critical habitat on September 29, 2005 (70 Fed. Reg. 56970). In the final rule, the Service excluded all of the Monterey unit, including the Monterey

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Bay Shores beach, from the plover critical habitat on the basis of the Secretary of Interior's authority under section 4(b)(2) of the ESA.

The Service conducted a review of the status of the Pacific Coast population of the western snowy plover during 2005 and 2006. The study is known as a "12-month status review" and examined whether the population of western snowy plovers that breeds in coastal areas in California, Oregon and Washington should retain its current status as a threatened species. The Service made a "not warranted" finding on the petition to de-list the species on April 21, 2006 (71 Fed. Reg. 20607). The species therefore retains its current federal "threatened" status.

Overall Population and Presence in the Monterey Bay Area

The Monterey Bay population of western snowy plovers consists both of year-round resident and migratory (winter resident) birds. A winter flock of 60-70 birds has been documented assembling and roosting annually on the beaches south of the southerly Sand City limits, approximately 1.2 miles from the project site. In-migration of winter residents can begin as early as July. Courting and pre-nesting behavior occurs at the end of the roosting season, typically in early February, followed by residents' establishment of nesting sites for the new year.

Nest activity on the Fort Ord beaches immediately north of the site has been documented as relatively low for the region. Virtually all of the plover nest activity on former Fort Ord occurs north of former Stilwell Hall. For instance, in 2002 snowy plovers fledged more than 210 chicks in the Monterey Bay region (at locations approximately 6 miles or more to the north of the project site). In 2002, the southernmost nesting attempt documented was north of Reservation Road in Marina. Prospecting pairs were observed at Marina State Beach and at Sand City, to the south of the project site, but nesting was not confirmed at these locations (PRBO 2002).

Annual reports by PRBO indicate a steady decline in nesting western snowy plovers in the Monterey North (Sand City shoreline) area, including the Monterey Bay Shores project site. For the Monterey North area, PRBO reported a total of 13 plover nests in 1995, seven nests in 1996, four nests in 1997 and four nests in 1998. Only two plover nest sites (which were not on the Monterey Bay Shores site) were reported from the entire Monterey North area in 1999. The chick-fledging success of snowy plovers in the Sand City area in 1999 was the lowest recorded since monitoring began (Page et. al., 1999). In 2000, only one nest was reported (the nesting attempt was unsuccessful), and by 2005, surveys found no nesting activity along the Sand City shoreline and only one sighting of a snowy plover occurred during the entire survey period (a single juvenile was seen approximately 200 meters south of the Fort Ord boundary). Two nests were identified in Sand City in 2008.

During the past decade and continuing in recent years, plover nesting activity has increased at other Monterey Bay area locations, most notably at the Moss Landing Salt Ponds managed by

PRBO approximately 12 miles north of the project site. "The former salt ponds of the Moss Landing Wildlife Area have emerged as the most productive habitat for snowy plovers in the Monterey Bay region." (Page et. al., 1999). Plover nesting has also been observed with higher frequency along the northerly shoreline boundary of former Fort Ord and the City of Marina. "Appropriate management including access and use restrictions in certain areas, symbolic fencing, educational signage and active stewardship could encourage the re-establishment of plover nests along the Sand City shoreline, especially considering the close proximity of the winter nesting population of plovers on the shoreline just south of Sand City." (Zander 2005)

Presence on the Monterey Bay Shores Property

The Monterey Bay Shores site lies at the northern end of a distinct segment of plover breeding habitat referred to as Monterey North (Monterey Harbor to Stilwell Hall on former Fort Ord) by researchers from the PRBO. The PRBO has actively monitored the Monterey North segment since 1989. For the six year period from 1989 through 1994, 15 snowy plover nests were recorded on the Monterey Bay Shores project site. The majority of plover nesting activity in Monterey North has occurred south of the project site, with the highest number of nests (18) observed on land approximately one mile south of the Monterey Bay Shores property (south of Tioga Avenue).

As noted, plover breeding activity along the Sand City shoreline in general, including the project site, showed a continuous decline from 1998 through 2007. Only one (unsuccessful) nest was observed near the northerly property line of the project site in 2000. In 2005, the Service removed the Sand City shoreline from the designation of critical habitat for the western snowy plover. Since 2000, snowy plover nesting activity was not observed in the area until recently in 2008 when one nest was observed on the northern edge of the project site (on the lower beach). While plover nesting has declined in the Sand City shoreline area since the mid-1990s, the area continues to provide open sandy sites above the high tide line with direct access to the bay and remains a viable outlier for potential plover breeding.

Effect of the Proposed Project on Western Snowy Plover

Project grading will modify some areas of bare sand that provided nesting habitat for the species during the 1990s. Because of the decline in nesting activities during the past 13 years on site, the direct loss of a western snowy plover is not expected. In order to try to attract plovers to the site once construction is completed, the proposed project will incorporate management of the beach, strand, and foredune on the property during the nesting/breeding season to protect nesting snowy plovers, and it will dedicate a conservation easement over the restored habitat outside of the developed area. The revised project proposes a plover mitigation program consisting of the following elements which are described in greater detail in the next section:

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- Pre-Construction Surveys and Construction Monitoring
- Pre-Construction Conference with Equipment Operators and Field Supervisors
- Preservation and Establishment of a Managed 2-Acre Nesting Protection Zone
- Nesting Protection Zone Expansion Per Biologist Recommendation
- Adaptive Management and Access Plan
- Establishment of Conservation Easements
- Annual Review of Resort Operations on Biological Conditions
- Mandatory Employee Biological Resource Education
- Predator Management Plan
- Coordination with Sand City and State Parks on Plover Management
- Ten Percent Allocation of Environmental Trust Funds to Plover Protection

These mitigation measures are discussed in more detail in Section 4.0.

3.1.3 Monterey Spineflower

Biological Data

Monterey spineflower is a small, prostrate annual of the buckwheat family. Monterey spineflower occurs scattered on sandy soils within coastal dune, coastal scrub grassland, maritime chaparral, and oak woodland communities along and adjacent to the coast of southern Santa Cruz and northern Monterey Counties and inland to the coastal plain of Salinas Valley. Former Fort Ord supports the largest populations of Monterey spineflower known and these populations will be protected, managed and enhanced through implementation of the Installation-Wide Habitat Management Plan for former Fort Ord.

The species tends to occur on bare sandy patches devoid of vegetative cover. The species often colonizes recently disturbed sandy soils. Within grassland communities, the plant occurs along roadsides, in firebreaks, and other disturbed sites. In oak woodland, chaparral, and scrub communities, the plants occur in sandy openings between shrubs. In dense chaparral or scrub vegetation, Monterey spineflower typically is restricted to roadsides and firebreaks through these communities.

The Service listed Monterey spineflower as threatened in February 1994. In 2002, the Service designated 18,830 acres as critical habitat for the Monterey spineflower in Santa Cruz and

Monterey counties, and the Monterey Bay Shores project site was previously within this critical habitat. (67 Fed. Reg. 37,498 [May 29, 2002].) On January 9, 2008, the Service issued a final rule revising spineflower critical habitat. That revised critical habitat designation did not include the project site. Therefore, the project site is not considered critical habitat for the Monterey spineflower. (73 Fed. Reg. 1525 [Jan. 9, 2008].)

Presence on the Monterey Bay Shores Property

The Monterey spineflower is a colonizer of the bare sand habitats on the Monterey Bay Shores property. The area occupied by spineflower plants on the project site is relatively small. Patches of Monterey spineflower were delineated based on approximate density where high density was defined as approximately five plants or more per square meter, medium density as approximately two to four plants per square meter, and low density as approximately one plant per square meter. In 2008 approximately 3.39 acres of the project area contained Monterey spineflower, including approximately 0.33 acres of high density, 0.16 acres of medium density, and approximately 2.9 acres of low density Monterey spineflower (EMC Planning Group Inc. 2008).

Effect of the Proposed Project on Monterey spineflower

Project grading will modify areas of that provide habitat for the species. The proposed revised project will reestablish Monterey spineflower at a minimum 1:1 ratio. Monterey spineflower will be reestablished in approximately 3.4 acres of the restoration areas by collecting and propagating seed from plants to be removed in the development area.

3.2 SPECIES WITH POTENTIAL TO OCCUR ON THE SITE

3.2.1 *Black Legless Lizard*

Biological Data

In general, black legless lizards live in a number of habitats in dunes and sandy areas from immediately above high tide, the crest of sand dunes, and the edge of the hind dunes to inland sandy areas associated with oak woodlands, grasslands, maritime chaparral and other habitats (TRA 1987, Hunt and Zander 1997). They are fossorial animals that burrow in sand and leaf litter beneath plants growing in these habitats and feed on insects and other invertebrates. Some plant cover needs to be present as food for insects that, in turn, serve as food for the black legless lizards.

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Black legless lizards are most abundant in dune habitats where native vegetation is present (Stebbins 1985). Although legless lizards have also been found along the edges of ice plant mats within dune ecosystems, ice plant mats are not considered suitable habitat for legless lizards (Papenfuss and Harris 1990). The dense root structure of African ice plant and lack of leaf litter and duff produced by the species appear to provide poor burrowing conditions for legless lizards. Adults feed on small insects, larvae of insects, spiders, and other small food items. They are livebearing and 1-4 young (usually 2) are born in the fall between September and November (Miller 1944). Young and adults spend most of the time underground, but may rest just under the surface of the sand or leaf litter layer.

The activity of legless lizards is controlled by temperature. The optimum temperature is from 15 degrees Celsius to 25 degrees Celsius. Below 13 degrees Celsius the lizards are inactive, although they can stand a temperature as low as 4 degrees Celsius. The lizards bask in the warm sand during the day. They are active and feed in the afternoon and evening.

Potential Presence on the Monterey Bay Shores Property

No individuals have been found on the project site.

3.2.2 California Burrowing Owl

Biological Data

The California burrowing owl is a medium-sized owl with sandy-colored, spotted plumage and long legs. Burrowing owls inhabit open grasslands, deserts, and arid scrublands with low-growing vegetation but have also been observed in back-dune habitats within the City of Sand City (Zander 1997). The availability of rodent burrows or other similar shelters for roosting and nesting is an essential component of this species' habitat. Burrowing owls feed mostly on insects, but may also eat small mammals, reptiles, birds, and carrion.

Potential Presence on the Monterey Bay Shores Property

One burrowing owl has been observed residing in the coastal dune scrub restoration area of the Edgewater Shopping Center on the east side of Highway 1 in Sand City (Zander 1997). Additional surveys for this species have not been conducted.

Burrowing owls typically nest in abandoned ground squirrel burrows and forage in grasslands. Zander Associates observed a limited amount of rodent activity on the project site and few areas for the burrowing owl to nest. No owls have been observed on site. There is a potential for the

species to move onto the site should conditions improve (i.e. increased ground squirrel activity), but the species is not currently present.

3.2.3 Sand Gilia

Biological Data

Sand gilia is a state listed threatened species and a federally listed endangered species. It was listed because of its small number of known populations, limited distribution, and potential harm to its populations from development. The gilia is a small, erect annual plant of the Phlox family. At present the gilia is found in scattered populations in coastal dune scrub and maritime chaparral communities from Moss Landing to the Monterey Peninsula. There is a large population of sand gilia on the Fort Ord property (U.S. Army Corps of Engineers, 1992). Recreational uses, such as off-road vehicles, hiking, and horse back riding, as well as the introduction of African ice plant and European beach grass for dune stabilization, threaten sand gilia populations and potential habitat.

Sand gilia prefer sandy soils in open, yet wind-sheltered areas (Dorrell-Canepa 1994). The low average rainfall (10- 15 inches) and foggy conditions around the Monterey Bay area provide sufficient moisture for gilia to survive. Gilia are most often found in level areas or on shallow slopes (up to 45 degrees), but may also occur on the cut banks of sandy drainages. In steep areas, gilia seed often washes to the bottom of the slope and germinates there. On sand dunes, gilia seem to prefer northern, western, and eastern slopes to southern slopes, which are the hottest and driest in the dunes. Gilia often thrive in slight depressions. These depressions may have higher soil moisture and dead vegetative matter, providing a slight increase in nutrients in otherwise nutrient poor soils. Found in the mid to hind dunes (coastal scrub) and in open pockets of maritime chaparral, gilia can tolerate a small amount of sand burial (probably < 1 cm). Gilia prefer stabilized sands and do not thrive in excessively windy areas. Previous physical disturbance to the sand seems to encourage germination in some areas, and healthy gilia populations may be found along old paths, in old vehicle tracks, or in areas where trenching has occurred. Gilia prefer areas with little plant competition. Associated native species include spineflower (*Chorizanthe* spp.), popcorn flower (*Cryptantha leiocarpa*) beach primrose (*Camissonia cheiranthifolia*), coast and dune buckwheat (*Eriogonum latifolium* and *E. parvifolium*), pink sand verbena (*Abronia umbellata*), sea lettuce (*Dudleya caespitosa*), beach aster (*Lessingia filangifolia*), mock heather (*Ericameria ericoides*), silver beach lupine (*Lupinus chamissonis*) and California poppy (*Eschscholzia californica* var. *maritima*). Associated plant density rarely exceeds 30% cover in dune areas surrounding the gilia populations. In maritime chaparral, gilia survives in open pockets between taller species such as mock heather (*Ericameria ericoides*) and chamise (*Adenostoma fasciculatum*).

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Gilia is a self-pollinating species, but insect pollination by the bee fly has been observed in the related (non-endangered) subspecies, *Gilia tenuiflora* ssp. *tenuiflora* (Dorrell-Canepa 1994). Insect pollination of *Gilia tenuiflora* ssp. *arenaria* was never observed despite long hours in the field during the flowering stage.

Presence on Monterey Bay Shores Property

No individuals of sand *Gilia* have been found on the project site.

3.2.4 Sandmat Manzanita

Biological Data

Sandmat manzanita is a federal species of concern. Sandmat manzanita grows on pre-Flandrian dunes in the central maritime chaparral only around Monterey Bay (Griffin 1978). Sandmat manzanita is a mat- to mound-like evergreen shrub, generally less than 5 ft. tall, in the heath family. It blooms from February to May. Sandmat manzanita is well adapted to shifting sand habitat forming large circular mats and mounds. It appears to be an early to middle successional species in maritime chaparral following burn events or ground disturbance, eventually yielding to taller chamise and shaggy-barked manzanita in older stands. It is typically associated with cropleaf ceanothus (*Ceanothus dentatus*), Monterey ceanothus, deer weed (*Lotus scoparius*), heliotrope (*Heliotropium curassavicum*), and beach mock heather (Zoger and Pavlik 1987a).

Sandmat manzanita prefers windy open areas close to the ocean's sandy soils. Reproduction occurs by seed and layering. The greatest threat to sandmat manzanita, other than development, is crowding out by noxious weeds and taller species within the maritime chaparral community.

Presence on the Monterey Bay Shores Property

During previous environmental studies of the property, sandmat manzanita was not found on the project site. Plants were identified growing immediately southeast of the project site (EIP Associates 1990). In March and May 1997, Zander Associates also observed individuals of sandmat manzanita outside the project site boundary.

Effect of the Proposed Project on Sandmat Manzanita

The project is not expected to remove any individual plants of Sandmat manzanita. Proposed restoration activities will include plantings of sandmat manzanita at the base of the leeward slopes on the stabilized dunes.

3.2.5 *Monterey Ceanothus*

Biological Data

Monterey ceanothus is a federal Species of Concern. Monterey ceanothus is also found on pre-Flandrian dunes and flats within central maritime chaparral (Griffin 1978). This species only occurs in the vicinity of Monterey Bay with the largest population known from Fort Ord (U. S. Army Corps of Engineers 1992). Monterey ceanothus is a medium-sized evergreen shrub with pale to bright blue flowers and is a member of the Buckthorn family. It occurs in maritime chaparral and closed-cone coniferous forests in the southern Monterey Bay region. Plant species associated with Monterey ceanothus are sandmat manzanita, beach sagewort, rippgut brome, cropleaf ceanothus, beach mock heather, and deer weed (Zoger and Pavlik 1987a). Removal of central maritime chaparral habitat for development is the primary threat to this species.

Presence on the Monterey Bay Shores Property

No individuals of Monterey ceanothus have been observed on the project site. Some plants have been observed outside of the eastern property boundary, in the railroad right-of-way area along with sandmat manzanita.

Effect of Proposed Project on Species

The project is not expected to remove any individual plants of Monterey ceanothus. Proposed restoration activities will include plantings of sandmat manzanita at the base of the leeward slopes on the stabilized dunes.

3.2.6 *Migratory Birds*

The federal Migratory Bird Treaty Act (16 U.S.C. §§ 703-712) prohibits killing, possessing, or trading in migratory birds, except in accordance with regulations prescribed by the Secretary of the Interior. This act encompasses whole birds, parts of birds, bird nests, and eggs.

Presence on the Monterey Bay Shores Property

Migratory birds have been observed at the site, or in the vicinity, that nest in the coastal strand area include western snowy plover, killdeer, arctic loon, surf scooter, and western gull.

Effect of Proposed Project on Species

Project construction in the coastal strand could result in the loss of nests of migratory birds, including those specifically protected by the Migratory Bird Treaty Act. The proposed revised project includes the implementation of a pre-construction survey to determine if migratory birds occur on the project site or in the vicinity and determine appropriate setback or avoidance measures if needed. The revised project will be set back a significantly greater distance from the mean high tide line than the previously proposed project. This will result in a greater buffer between the resort buildings and the beach, thus reducing the potential impact to migratory birds including plovers.

3.0 BIOLOGICAL DATA AND EXPECTED IMPACTS ON SPECIAL STATUS SPECIES

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4.0

MEASURES TO MINIMIZE AND MITIGATE IMPACTS TO SPECIAL STATUS SPECIES

Habitat restoration is a major component of the revised project. The HPP management program includes approximately 23.2 acres restored to foredune, secondary dune, back dune, wetland and coastal bluff habitat. This includes about 4.3 acres of living roof that will emulate coastal bluff habitat by having shallow soils and plants that are adapted to wind and salt spray. Of the 23.2 acres to be restored to native habitat, about 14 acres around the periphery of the development will be placed in conservation easements and protected in perpetuity. A public access easement will be designated on approximately six acres of the site, primarily to provide access to the beach and coastal strand areas.

Restoration efforts are intended to minimize the possible take of the Smith's blue butterfly and to minimize and mitigate potential local and cumulative impacts on the western snowy plover and Monterey spineflower. Other coastal dune species are expected to be introduced through restoration of habitat and planting or relocation of individuals of selected species into restored habitat areas.

The following provides a description of restoration goals and techniques and how they will be specifically applied to the Monterey Bay Shores eco-resort. Goals and techniques specific to the retained biologist are called out in Appendix B, Duties of the Retained Biologist.

4.1 BIOLOGICAL GOALS

To establish an effective program to minimize and mitigate impacts to the covered species, objectives and performance standards are presented in Section 5.3. The biological goals of this HPP are as follows:

- Avoid take of Smith's blue butterfly and western snowy plover.

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4.0 MEASURES TO MINIMIZE AND MITIGATE IMPACTS TO SPECIAL STATUS SPECIES

- Avoid or minimize potential adverse impacts of the project on Smith's blue butterfly, western snowy plover and Monterey spineflower survival and recovery.
- Provide and manage nesting, brooding and foraging habitat for the western snowy plover in the coastal strand areas of the project site.
- Contribute to regional recovery efforts for the western snowy plover in the Monterey Bay area.
- Preserve and maintain existing buckwheat plants for use by Smith's blue butterfly.
- Provide and maintain newly-created, high quality, habitat for Smith's blue butterfly in the restored dune areas on the project site, as indicated in the *Landscape Plan*.
- Regulate construction activities to maintain Smith's blue butterfly so that it may expand on to newly created habitat once is available.
- Restore degraded (and create new) plant communities to improve native species composition and increase occurrences of Monterey spineflower and other locally native species on site.

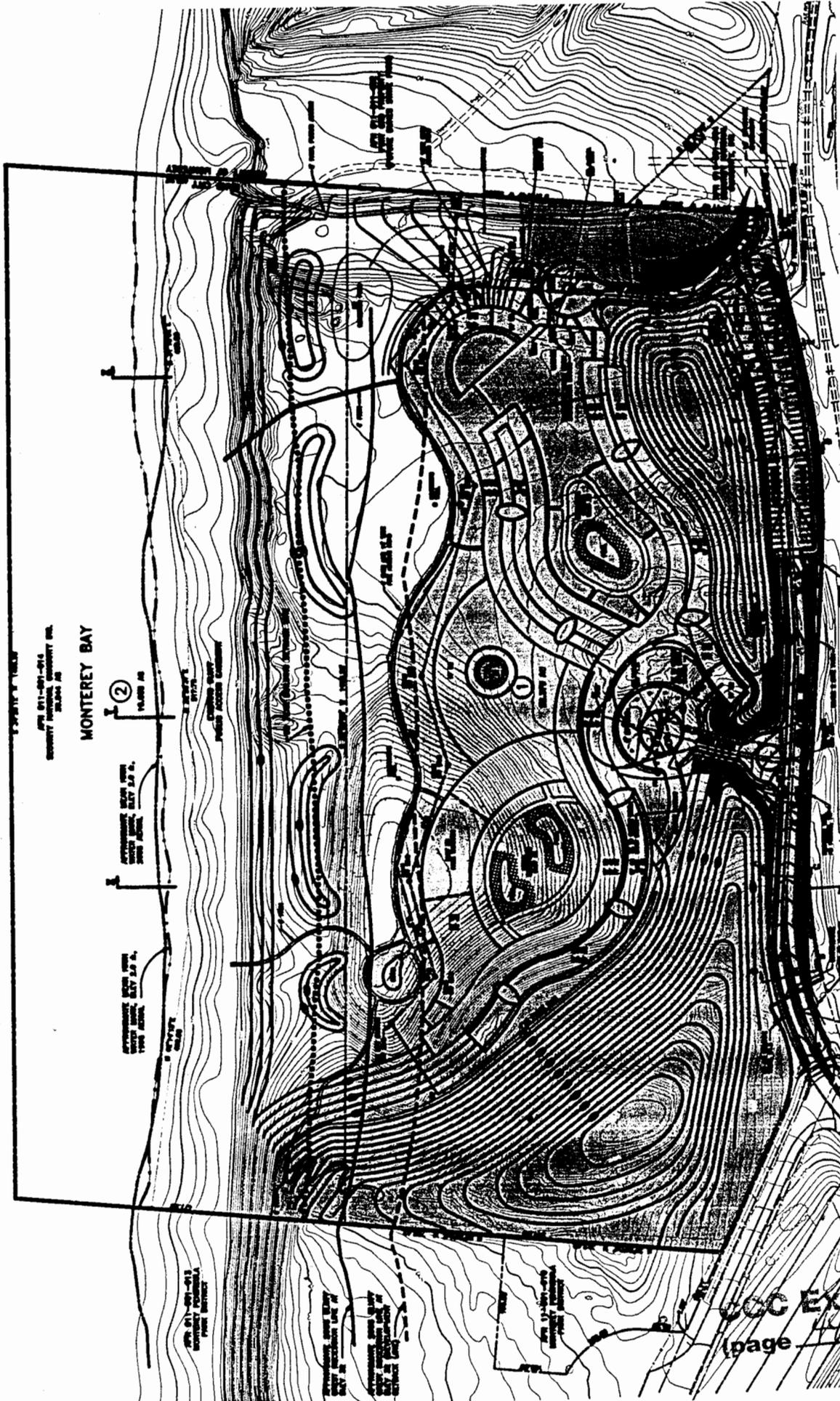
4.2 DELINEATION AND DESCRIPTION OF MANAGEMENT AREAS

Specific management areas have been designated for the project site based on the development plan and the restoration and management goals for specific areas of the site. Management areas have been identified by combining the features identified in the *Landscape Plan, Monterey Bay Shores Ecoresort, Wellness Spa, and Residences* ("*Landscape Plan*," Appendix C, Rana Creek 2008). Four management areas have been designated (Figure 6, Habitat Management Areas). Management Areas 1, 2 and 3 are the focus of proposed restoration activities and Management Area 4 comprises the developed area. A brief description of each management area follows.

4.2.1 Management Area 1 *Beach and Strand (3.9 acres)*

This management area includes the beach and strand habitat from the mean high tide line inland to approximately the existing 20-foot elevation contour and is shown on the *Landscape Plan* as "beach." The area currently supports beach and strand vegetation and is accessible through posted lateral beach access. Principally during the 1990s, some snowy plover nesting occurred in

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Source: EMC Planning Group Inc. 2006, Bestor Engineers 2006, SNG 2006, Rana Creek 2008

- LEGEND:
- Management Area 1: Beach and Strand
 - Management Area 2: Foredune / Secondary Dune
 - Management Area 3: Back Dune
 - Management Area 4: Developed

Figure 6
Habitat Management Areas
 Monterey Bay Shores Habitat Protection Plan



this area. An additional unsuccessful additional nest was observed in 2000. Since that time, the number of nesting plovers has steadily declined in this area. No nesting activity was observed in the area in the past 8 years until the spring of 2008 when one nest was observed within this management area on the northwest corner of the project site.

4.2.2 Management Area 2

Foredune / Secondary Dune Area (7.9 acres)

The westerly edge of Management Area 2 is currently comprised of a relatively steep bluff that rises about 20- to 30-feet above the beach and strand toward the bay. At the top of the bluff, the topography transitions to a more level plateau. A portion of the eastern boundary of Management Area 2 contains slopes of the abandoned sand pit, which steeply drops from about the 40-foot elevation contour to the 10-foot elevation contour at near a 1:1 slope. The vegetation types found in this management area include bare sand and iceplant- dominated areas with some pioneer dune vegetation along the level plateau. Management Area 2 will include the following communities identified on the *Landscape Plan*: foredune, secondary dune, and wetland (the wetland community does not currently exist. This community will be established as part of a percolation basin).

Several topographic features existing in Management Area 2 will be modified for the revised project. The topography will be modified by lowering the grade of the level plateau area, filling in the sand pit and creating a more gradual slope rise from the beach and strand to the development area. This modification will result in the inland extension of the beach and strand habitat. Small sand mounds and topographic undulations (no greater than 4 feet) will be incorporated into the gradual slope with the intent of creating planting areas for strand vegetation and providing some newly created refuge for snowy plovers that may use the area for nesting.

This management area also includes three vertical beach accessways, a public vista, and a storm water percolation area.

4.2.3 Management Area 3

Back Dune Area (9.0 acres)

Management Area 3 follows the southern and eastern property boundaries and includes the large dune in the southeast corner of the site as well as additional areas also previously disturbed through sand mining activities. Although the existing habitats in this area are primarily ruderal/disturbed, bare sand and iceplant mats, there are also Monterey cypress trees, remnant coastal scrub species and patches of Monterey spineflower. Several smaller dune formations,

4.0 MEASURES TO MINIMIZE AND MITIGATE IMPACTS TO SPECIAL STATUS SPECIES

impacted by previous mining, also exist. This Management Area is identified on the *Landscape Plan* as "Back Dune."

4.2.4 Management Area 4 Developed Area (8.2 acres)

Management Area 4, the proposed development area, includes most of the sand pit and the plateau north of the pit. Most of the pioneer dune vegetation identified on the site is included in this management area along with bare sand, ruderal/disturbed and iceplant dominated areas. A contiguous strip of coastal scrub/iceplant mix occurs at the northern edge of the property and is included in this management area. The eco-resort project has been created with the intent of minimizing impervious areas and incorporating as much vegetation as feasible. Management Area 4 can be broken down into two parts: 1) planted/landscaped areas, which encompass approximately 6.3 acres and include landscaping, living roof, etc., and 2) impervious areas, which encompass approximately 1.9 acres and include courtyards, a parking area, and the access roads. The topography in Management Area 4 will be modified through a combination of excavation and fill. Management Area 4 includes the following communities identified on the *Landscape Plan*: coastal bluff living roof, hotel and residential landscapes, and living pool.

4.3 BIOLOGICAL OBJECTIVES FOR SPECIFIC MANAGEMENT AREAS

The biological goals of the HPP include restoration of approximately 23.2 acres of area on the Monterey Bay Shores project site, preservation and expansion of habitat and potential habitat for the Smith's blue butterfly and other species associated with coastal scrub habitat, and protect and restore existing and potential nesting/breeding habitat designed to try to attract western snowy plover to the site. The biological objectives for meeting these goals in each management area have been set out in this HPP (and the *Landscape Plan*) and are defined as follows:

4.3.1 Management Area 1

- Initially remove all exotic vegetation within this management area and control exotic plant species so that exotics represent no more than 1 percent of the vegetative cover.
- Replant, restore and establish coastal strand vegetation in accordance with the *Landscape Plan* by collecting native seeds from the project site and within the project vicinity prior to

grading. To encourage establishment, the seedlings will be planted after the first rain event in the fall, and they will be fertilized and watered by hand immediately after planting.

- Following the planting of coastal strand plants in this management area, establishing permanent monitoring transects designed to cover a minimum of 5 % of the revegetated area. To monitor vegetation establishment success, data will be collected annually by the retained biologist using the line intercept method.
- Require the retained biologist to conduct surveys within this management area for snowy plover prior to, and throughout, the breeding season (mid-March through mid-September), prior to, during, and after construction and annually thereafter so long as the Pacific Coast distinct population segment of the western snowy plover remains listed under the federal Endangered Species Act.
- If plover nests are found in this management area during surveys, the retained biologist, in coordination with the construction supervisor, resort manager or property owner, is authorized to restrict access to nesting snowy plover areas through implementation of an adaptive management plan, and through the erection of exclosures and signage to protect such nests during the breeding season.
- In accordance with the *Landscape Plan*, arrange vegetation and 1 to 4 foot high microtopographic contouring designed to attract snowy plovers to potentially use, nest and breed within this management area.

4.3.2 Management Area 2

- Initially remove all exotic vegetation within this management area and control exotic plant species so that exotics represent no more than a 1 percent of the vegetative cover.
- Replant, restore and establish coastal strand vegetation in this management area in accordance with the *Landscape Plan* by collecting native seeds from the project site and within the project vicinity prior to grading.
- Provide irrigation during the vegetation establishment period (estimated to be up to three years).
- Pursue the goal of 20% revegetation cover of this management area, in accordance with the *Landscape Plan*.
- Following the installation of coastal strand plants in this management area, establish permanent monitoring transects designed to cover a minimum of 5% of the revegetated

4.0 MEASURES TO MINIMIZE AND MITIGATE IMPACTS TO SPECIAL STATUS SPECIES

area. To monitor vegetation establishment success, data will be collected annually by the retained biologist using the line intercept method.

- Require the retained biologist to conduct surveys within this management area for snowy plover prior to, and throughout, the breeding season (mid-March through mid-September), prior to, during, and after construction and annually thereafter so long as the Pacific Coast distinct population segment of the western snowy plover remains listed under the federal Endangered Species Act.

4.3.3 Management Area 3

- Initially remove all exotic vegetation within this management area and control exotic plant species so that exotics represent no more than 1 percent of the vegetative cover.
- Maintain the slopes of the restored, rehabilitated or newly created dunes by applying vertical straw mulch to the leeward slopes and applying hydroseed and erosion control mats on windward slopes prior to planting.
- Conduct surveys within this management area for Smith's blue butterfly every two weeks from mid-May through mid-August prior to, during, and after construction and annually.
- Conduct surveys for and document the extent of Monterey spineflower within this management area prior to, during, and after construction and annually.
- Maintain existing buckwheat plants as potential habitat for Smith's blue butterfly.
- Establish coastal dune vegetation to provide new habitat for Smith's blue butterfly and Monterey spineflower in this management area by collecting native seeds within the project vicinity prior to grading, broadcasting seeds and planting seedlings following the installation of straw mulch after the first rain event in the fall, and fertilizing and watering by hand immediately after planting.
- Provide irrigation through the vegetation establishment period (estimated to be up to three years).
- Following the installation of coastal strand plants in this management area, establish permanent monitoring transects designed to cover a minimum of 5% of the revegetated area. The goal for revegetation of this management area is 80% cover. To monitor vegetation establishment success, data will be collected annually by the retained biologist using the line intercept method.

4.3.4 Management Area 4

- Construct eco-resort/residential development, public parking, and access/bike path.
- Encourage use of native dune and coastal scrub species in the development landscape in accordance with the *Landscape Plan*.
- Authorize the biologist to monitor and, in coordination with the construction manager, resort operator or property owner, regulate activities that may significantly and adversely affect the snowy plover during the breeding season (e.g., redirect lighting away from plover nesting).

4.4 MANAGEMENT ELEMENTS AND TECHNIQUES

The following provides descriptions of management techniques that will be used to meet the goals for each management area consistent with the *Landscape Plan*. Techniques applied may be modified or replaced in order to better meet the restoration goals set in this HPP. This adaptive management approach is intended to allow for the identification and correction of problems as they arise. The following management techniques, and the specific prescriptions for each management area are intended to be guidelines and may be modified as monitoring suggests is needed to achieve the management goals and to harmonize those goals with legal obligations and with operation of the resort.

4.4.1 Avoidance of Sensitive Habitat and Potential Habitat

While balancing public access obligations as required by the Coastal Act, the Monterey Bay Shores eco-resort has been planned and designed to minimize direct removal of the most viable potential nesting/breeding habitat for the western snowy plover and for all Smith's blue butterfly habitat. Additional management elements and techniques will be incorporated into project construction activities to avoid disturbance of nesting/breeding plovers, if they are present on or immediately adjacent to the site. Discussions of these management elements and techniques are provided in this HPP.

4.4.2 Dune Creation/Stabilization

In accordance with the LCP, dune creation/stabilization will be achieved through a combination of grading and recontouring, installing erosion control blankets, temporary snow fencing, retaining walls and other physical controls where required, straw plugging or crimping and revegetating. Finished slopes of newly created or recontoured dunes will be designed in

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collaboration with the project geotechnical engineer to ensure that the slopes are in a stable configuration prior to any revegetation work. Steepness of slope, wind direction and soil substrate must all be considered in the design of new dunes and recontouring of existing dunes. Permanent retaining walls may be utilized at the base of some of the newly created dunes to retain desired slope and aspect. Once the dunes are constructed and/or contoured in conformance with the project geotechnical engineer's recommendations, there are several methods that will be considered to stabilize the barren sand depending, in large part, on finished slope and exposure. Initial treatments will follow predetermined guidelines that will be different for the leeward and windward slopes (see Section 4.5). However, to achieve maximum success, the retained biologist will be authorized to implement adaptive management based on monitoring results to allow modifications to the guidelines as the effectiveness of specific stabilization treatments in specific situations can be determined on the ground.

4.4.3 Control of Exotic Species

Iceplant is the predominant exotic plant species on the Monterey Bay Shores site. In order to limit its spread in graded areas and enhance habitat values in proposed restoration areas, iceplant will be treated and eliminated prior to site grading. Several methods are available for removal of iceplant. The most efficient method is to spray with a glyphosate-based herbicide (e.g. Roundup©) and allow the iceplant to die on-site. Dead iceplant mats will be removed in all areas proposed for grading. In restoration areas where no grading will occur (e.g. east-facing slope of large dune), dead iceplant may be left in place to dry, providing mulch for revegetation efforts and a temporary erosion control method to hold soil in place.

Herbicides will be applied by a certified applicator at a rate consistent with label directions. Selective, low-drift spray equipment will be used to decrease the possibility that the herbicide will drift inappropriately. Special care is required in restoration areas not proposed for grading where iceplant and native plants (such as buckwheat) are growing together. The applicator will be informed of the need to protect native plants in such areas, and native plants will be flagged for avoidance. It is necessary to remove iceplant by hand within a one- to two-foot diameter around seacliff buckwheat, coast buckwheat, and Monterey spineflower plants in these areas. Effectiveness of the herbicide will be monitored and, if required, additional applications will be made, but not earlier than six weeks after the previous application. Multiple applications may be necessary to completely eliminate the iceplant.

European beachgrass is not currently present on the Monterey Bay Shores site. However, should it become established, it will also require control and removal to protect native dune vegetation. Removal of European beachgrass will occur as soon as it is observed and will be done by hand. If a stand of European beachgrass cannot be controlled by hand, then spraying may be required.

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Spraying will be done as described for iceplant but will not occur in the beach and strand zones during the nesting/breeding season of the snowy plover.

4.4.4 Revegetation and Habitat Enhancement

To ensure that proposed revegetation efforts will be successful, physical characteristics of the restoration areas must be compatible with the plant species considered for revegetation in the *Landscape Plan* and consider the habitat requirements of the covered wildlife species. These characteristics include topography, soil conditions, hydrology, and microclimatic features. For example, Smith's blue butterfly typically uses buckwheat plants that are located in sheltered locations and are not exposed to the full force of the prevailing winds, therefore, planting of buckwheat on exposed ridgetops or on the windward slopes of dunes will not likely yield as substantial an increase in habitat value for the butterfly as would planting in sheltered depressions. Planting of buckwheat, or other species, may also present difficulties if soil conditions are not suitable for plant survival. Site preparation techniques to improve soil conditions at the project site may include: removal of exotic vegetation, application of fertilizer, raking, and irrigation.

The steps that will be followed in preparation for habitat restoration at the project site include the following:

Seed Collection

Seed will be collected from specified native plants either on site or in nearby areas at least one year prior to being needed for revegetation. Plants considered for seed collection include seacliff buckwheat, coast buckwheat, Monterey spineflower, sand gilia, Monterey ceanothus, sandmat manzanita and a full palette of other coastal strand and dune scrub species. Seed collection techniques for target species will be as follows.

- Buckwheat - Seed will be collected from the seacliff buckwheat and coast buckwheat plants within the project vicinity. Seed collection for this species is typically conducted in late summer.
- Monterey spineflower - Collection of Monterey spineflower seed is typically conducted in June through August. The entire inflorescence is collected when it appears brown and dried. It is not necessary to separate the seeds from the inflorescence.
- Sand gilia - Collection and propagation of sand gilia will follow methods described by Dorrell-Canepa (1994). The seed will be collected when capsules are just starting to dehisce, late April through early June. Bi-weekly visits to the site will ensure proper timing of seed collection. Seed can be collected by inverting the ripe capsules and gently tapping

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contents into an envelope. The seed can be stored without refrigeration for up to four years.

- Monterey ceanothus - Seed collection will be conducted March through May. Cuttings may also be collected in fall or winter but are difficult to propagate and therefore not always a reliable means of providing material for revegetation.
- Sandmat manzanita - Cuttings and seeds of this species can be collected for propagation. Seeds will be collected March through May and cuttings can be taken in fall or winter.

Seeding

Seeding will primarily be applied as hydroseed on to re-contoured dune slopes and crimped in with straw or covered with erosion control blankets. However, as part of the adaptive management concept mentioned above, hand-broadcast seeding may occur in certain areas. Specific seed mixes will be prepared based on the goals of the *Landscape Plan*.

Propagation

Propagation of seed collected for all species will be achieved through germination in stubby supercell containers. Cuttings will be rooted in a suitable medium and transferred to supercell containers as appropriate. Propagation will be the responsibility of an experienced nurseryman or restoration specialist under contract to the property owner or resort operator.

Planting of Seedlings and Cuttings

Planting of seedlings and rooted cuttings will occur in the fall after the first rains and before the onset of heavy winter precipitation. Planting specifications for each management area are provided in a subsequent section of this plan. Each seedling or cutting will be planted by hand, fertilizer will be added to the planting holes, and small wells will be formed around each planting hole to help retain water for individual plants.

4.4.5 Transplant and Salvage of Plants

Prior to land disturbance on the site, seeds, cuttings and/or salvaged plants of native dune species will be collected and properly stored, or immediately transplanted into restoration areas on the site (or other appropriate receiver sites) not affected by construction activities. Seeds will be collected as described previously. Cuttings from specific species will be collected and propagated for later installation into the restoration areas. Some of the salvaged plants may be transplanted into containers and maintained in a nursery until the created/recontoured dunes on

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the site are prepared for planting. Other plants may be directly transplanted into portions of the restoration areas unaffected by project construction.

4.4.6 Pre-construction Surveys in Developed Areas

Prior to initiation of construction, surveys will be conducted within the areas proposed for disturbance to avoid take of Smith's blue butterfly and the western snowy plover, if present.

Smith's Blue Butterfly

Surveys will be conducted prior to construction to identify and flag each plant of seaciff or coast buckwheat within the areas proposed for development. Known buckwheat plants and any other buckwheat plants located near the proposed construction area will also be flagged.

Western Snowy Plover

Pre-Construction Surveys and Construction Monitoring. Prior to the issuance of a building or grading permit by Sand City for the revised project, the applicant shall enter into an agreement with a qualified biologist approved by the City and the USFWS to provide on-site surveys monitoring for any western snowy plover nests during the nesting season. The retained biologist shall conduct surveys along the sandy beach and strand habitat prior to construction if the construction is expected to begin or continue during prime plover nesting season. If any plover nesting is observed on site, the biologist will immediately establish exclosures around the nesting area during fledging, along with appropriate signage and protective measures to avoid take of the plover. The biologist and construction manager will be responsible for directing construction activities away from beach and strand areas if active nests are found.

Pre-Construction Conference. The retained biologist will hold a pre-construction conference with all construction equipment operators and field supervisors to educate them on western snowy plover and sensitive species sightings, known locations and avoidance. All construction equipment operators and field supervisors will be required to sign an acknowledgement that they have been informed and advised of sensitive species on site and how to address them.

4.4.7 Habitat Protection During Construction

A biologist will be retained to manage special status species and snowy plover habitat or potential habitat. The biologist will be retained prior to initiation of any construction activities on the site and will monitor site preparation and grading activities. When grading is actively in progress, full-time monitoring will occur. The biologist will be present to assist in avoiding any take of special status species and will have the authority, in consultation with the site

4.0 MEASURES TO MINIMIZE AND MITIGATE IMPACTS TO SPECIAL STATUS SPECIES

superintendent, construction manager, and property owner to limit or stop construction activities in the area, if necessary. The biologist will be trained in plover management and protection techniques and empowered to manage access to the beach, impound unrestrained pets and otherwise ensure the HPP is followed. The biologist will use his or her best efforts to work with other land managers or their designees in the Sand City area, if available, to assist in pursuing regional plover management and protection goals.

The biologist will also coordinate and oversee implementation of the following protection measures:

A temporary fence and signage will be erected no more than 10 feet beyond the limit of grading in order to assure that construction activities do not encroach into habitat areas. The biologist will coordinate with the site superintendent, construction manager and/or property owner concerning the placement of these fences and signs. Signs will be placed on the fence at appropriate intervals alerting equipment operators of the presence of sensitive species. Signs will include the following language:

“NOTICE: SENSITIVE HABITAT AREA. GRADING PROHIBITED.”

The biologist will monitor activities of the snowy plover, if any, throughout construction of the project. Work in the beach and strand zone will be restricted in accordance with direction given by the biologist based on observations of plover use of the site, if any, and in the vicinity, in coordination with the site superintendent, construction manager and/or property owner.

4.4.8 Post-Construction Beach and Strand Activity Management Elements, Techniques and Restrictions

The following management elements and techniques will be used protect potential snowy plover habitat in Management Areas 1 and 2, as indicated. The restrictions will be monitored and enforced by the biologist and any noncompliance will be reported to and discussed with the property owner and/or manager to avoid take and minimize or eliminate adverse impacts.

Preservation and Establishment of Dynamic 2-Acre Nesting Protection Zone

Based on consultations with the retained biologist, the applicant will establish (upon opening of the resort) an initial 2-acre “nesting protection zone” on the sandy beach and/or strand in a way designed to attract snowy plovers to nest during the annual nesting season. The area will preserve potential snowy plover nesting habitat. The 2-acre area will be “free-floating” or dynamic, meaning that its location would or could change each nesting season based on recommendations of the retained biologist, balancing public access. The biologist may consider

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past nesting, weather events, predation threats, and on-the-ground biological and habitat conditions and factors in defining the initial area and in deciding whether to divide the 2-acres into different locations and area sizes on the sandy beach and strand.

Dynamic Nesting Protection Zone Expansion Mechanism

If the biologist identifies numerous plover nests, the 2-acre nesting protection zone will be relocated or expanded, if necessary, for the protection of the plover nest(s), balancing public access with the plover protection. In such an event, if necessary, additional expansion area of up to five acres will be provided within the area bounded by the 10 MSL contour line on the sandy beach, the 2058 bluff crest recession line, and the two resort beach trails on the north and south (with a 25 foot buffer), respectively.

Adaptive Management and Access Plan

Based on consultations with the retained biologist and the City of Sand City, the applicant will prepare an adaptive management and access plan for the nesting season, designed to respond to biological conditions as they change on the site from year-to-year, and as the dynamic nesting protection zone shifts and/or expands from year-to-year. The access plan will include strategically-placed educational and directional signage, pet restrictions, provisions for fencing, as necessary, and the creation and establishment, and in-season adjustment of enhanced coastal strand habitat area designed to re-attract plover nesting. Lighting at the resort is being designed to minimize impacts to wildlife, including the plover. Beach-raking will be prohibited and a litter control plan will be implemented. The plan will also include measures to control iceplant or European beachgrass which can interfere with or diminish plover habitat.

Annual Resort Operations Review

The retained biologist will review the resort operations affecting the biological conditions prior to the annual plover nesting season to recommend adjustments, where feasible, in resort operations to promote plover nesting.

Mandatory Employee Biological Education

Upon hiring, each employee will be required to complete an educational seminar on the site's biological resources including the snowy plover and plover protection measures.

Predator Management Plan

Recognizing more recent studies indicating that predators represent a greater threat to plovers than previously thought (and often a greater threat than human activities), the applicant will, in coordination with a biologist, and prior to the opening of the resort, prepare a predator management plan to help ensure that plovers nesting on the site are protected from predation to the extent feasible.

Coordination with Sand City and State Parks on Plover Protection and Management

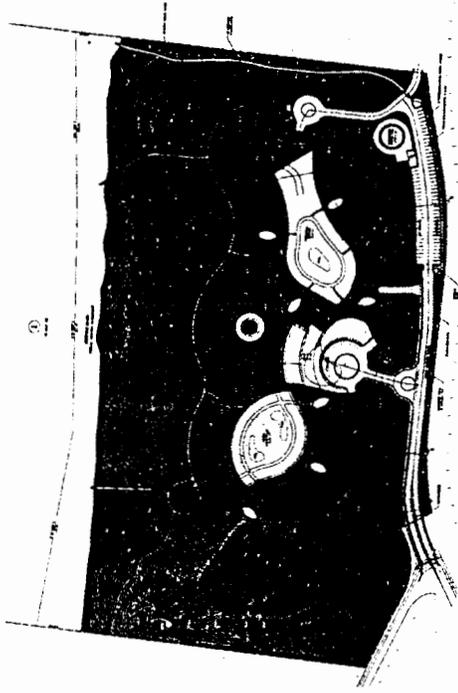
The applicant proposes a coordination program with the City and State Parks for plover protection along the Sand City coastline. Thus, the retained biologist would work with Sand City and State Parks officials to ensure that protection efforts are mutually re-enforcing. Part of the required coordination would include evaluation of obtaining conservation easements or other habitat protection agreements with neighboring landowners designed to enhance the existing plover protection. As noted below, 15 percent of the Monterey Bay Shores Environmental Trust funds would be available to assist the City in covering costs of the coordination effort, including the purchase of additional conservation easements if the City decided after study that such a purchase would be beneficial and feasible.

4.4.9 Permanent Protection of Restored Habitat Areas

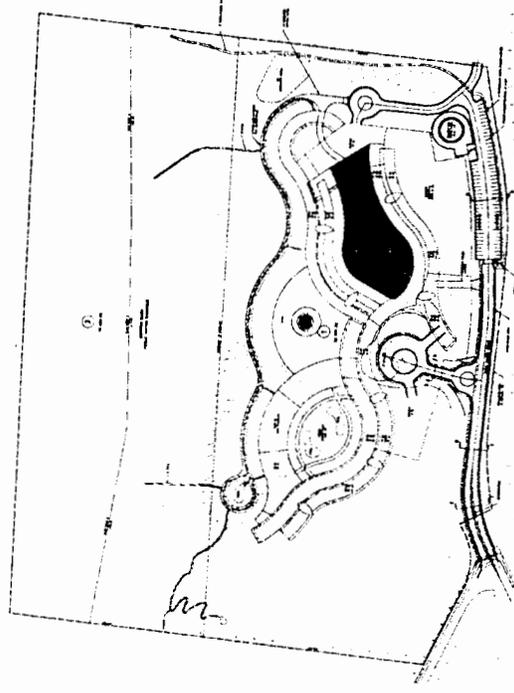
In order to provide for the long-term protection of restored sensitive habitat areas on the project site, the property owner will record conservation easements in perpetuity for dune habitat restoration areas. These areas are shown on Figure 7, Land Use Easements. These conservation easements will permit the use of the areas only for purposes of habitat restoration, enhancement, protection, and activities consistent therewith, and will prohibit further development of those areas. Deed restrictions will be recorded with the County.

Monitoring and Maintenance

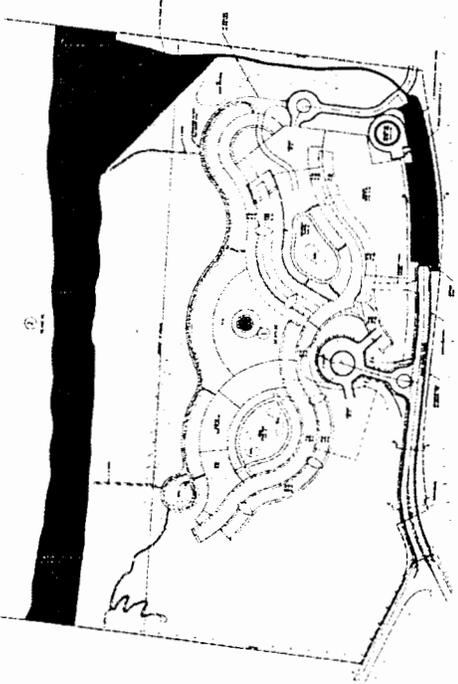
After construction is complete and the project is operational, the Monterey Bay Shores Environmental Trust, its successors and/or assigns will continue to provide funding for the retained biologist for a minimum period of five years to monitor the success of the restoration efforts relative to the snowy plover and perform other functions identified herein. The biologist may participate in the annual monitoring work on the plover conducted by the Point Reyes Bird



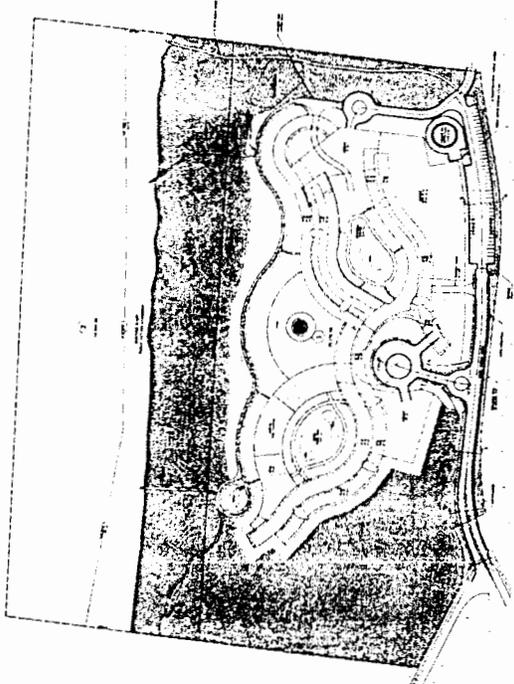
Habitat Restoration 23.22 Acres



Botanic Garden 0.92 Acres



Public Access Easement 5.69 Acres



Conservation Easement 13.85 Acres

Source: EMC Planning Group Inc. 2008, J.D. Powers and Associates 2008, Bestor Engineers 2008

Figure 7
Land Use Easements
 Monterey Bay Shores Habitat Protection Plan



Observatory and may also participate in larger patrol/resource management efforts focused on plover recovery in Sand City and the Monterey region. The biologist may coordinate with adjacent parks to provide similar signage and access directions. The biologist will also track the success of dune restoration efforts and monitor use of the site by Smith's blue butterfly. The goal of placing a biologist on the site is to ensure a quick response to problems that may arise in resource protection.

The biologist will prepare an annual report. Annual reports will be forwarded to the Sand City Planning Department and the Service outlining progress of the restoration efforts, issues or problems encountered, and suggested remedies. Annual reports will include:

1. A brief summary or list of project activities accomplished during the reporting year;
2. A brief description of new project impacts, if any;
3. A brief description of any conservation strategy implemented;
4. A discussion of monitoring results (compliance, effects and effectiveness monitoring) and survey information;
5. A description of circumstances that made adaptive management necessary and what new management approaches have been implemented;
6. A description of any changed or unforeseen circumstances that occurred and how they have been dealt with;
7. A discussion of funding expenditures, balance, and accrual; and
8. A description of any minor or major amendments.

In order to quantify changes in the vegetation cover over time, several permanent line transects will be established in the restoration areas. Data gathered from these transects will provide adequate assessments of the relative success of the restoration activities. Vegetation cover will be assessed using standard line-intercept methods (Canfield 1941). Data collected will include species types, relative cover, species abundance, species diversity, and relative vigor of individual plants. Transect data will be collected prior to any management action to provide a baseline from which to compare future conditions. Data on seacliff and coast buckwheat plants will be gathered by monitoring individual plants, and will include height, relative cover, and health. Data will be collected once a year. Data will be assessed based on the performance criteria set forth in Table 1, Vegetation Performance Criteria:

4.0 MEASURES TO MINIMIZE AND MITIGATE IMPACTS TO SPECIAL STATUS SPECIES

Table 1 Vegetation Performance Criteria

Time After Revegetation	Percent Cover*	Survival Rate of Planted Species
Year 1	30%	95%
Year 5	50%	55%
Year 10	70%	50%
Year 25	80%	40%
Year 30	90%	30%

Note: * Percent Cover Expected is a function of the percent cover goal for each Management Area. For example, the goal for Management Area 1 is only 15% vegetative cover due to the additional habitat goals for western snowy plover, therefore successful revegetation during Year 1 would only be 4.5 %.

Vertical color infrared aerial photographs will be obtained of the project site in the fifth year of the project. These aerials will provide documentation of vegetation cover over the entire site. In addition to aerial photography, six permanent photo points will be established and both color prints and slides of the revegetation areas will be obtained each year for the first five years. Copies of the photographs will be included in the annual progress reports to the Sand City Planning Department.

Surveys to assess use by Smith's blue butterfly of revegetated and enhanced habitat areas will be conducted between May and July each year. Data to be collected will include number of adults observed flying, location of butterfly use, plant species of use (if known), date, time, and weather conditions. Because a goal of this HPP is to increase the habitat use and possible population numbers of Smith's blue butterfly on the site, these surveys will document observable changes in these parameters.

Maintenance activities for Management Areas 1, 2, and 3 will be conducted throughout the monitoring period, as applicable. A maintenance program providing recommended activities for maintaining the habitat areas in perpetuity will be prepared and included in the five-year assessment report referenced above. The property owner(s) shall ensure that long-term maintenance of the habitat is achieved. The types and schedule of maintenance activities for the Management Areas during the five-year establishment period are described in the following section.

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4.5 SPECIFIC MANAGEMENT TECHNIQUES FOR EACH MANAGEMENT AREA

This section provides specific prescriptions for each management area and includes guidelines for applying the various management techniques described previously. In accordance with the adaptive management approach to restoration that will be used for this project, these management area prescriptions are guidelines and may be modified as restoration activities proceed.

4.5.1 Management Area 1: Beach and Strand

Avoidance of Take and Sensitive Habitat

The retained biologist to conduct surveys within this management area for snowy plover prior to, and throughout, the breeding season (mid-March through mid-September), prior to, during, and after construction and annually thereafter so long as the Pacific Coast distinct population segment of the western snowy plover remains listed under the federal Endangered Species Act.

If plover nests are found in this management area during surveys, the retained biologist, in coordination with the construction supervisor, resort manager or property owner, to restrict access to nesting snowy plover areas through implementation of an adaptive management plan, and through the erection of exclosures and signage to protect such nests during the breeding season.

In accordance with the Landscape Plan, vegetation will be arranged and 1 to 4 foot high microtopographic contouring will be built in order to attract snowy plovers to potentially use, nest and breed within this management area.

Control of Exotic Species

Iceplant and/or European beachgrass will be prevented from establishing in this management area through an active eradication program. Plants of iceplant or European beachgrass will be removed by hand or, if necessary, through careful application of herbicide.

Habitat Protection During Construction

The retained biologist to conduct surveys within this management area for snowy plover prior to, and throughout, the breeding season (mid-March through mid-September), prior to, during, and after construction and annually thereafter so long as the Pacific Coast distinct population segment of the western snowy plover remains listed under the federal Endangered Species Act.

If plover nests are found in this management area during surveys, the retained biologist, in coordination with the construction supervisor, resort manager or property owner, will be authorized to restrict access to nesting snowy plover areas through implementation of an adaptive management plan, and through the erection of exclosures and signage to protect such nests during the breeding season.

Beach and Strand Activity Restrictions

- Post signs at points of vertical access requiring pets to be leashed and requiring users to pack out what they pack in to the beach.
- Limit vertical access points, as determined by the biologist in coordination with the construction manager or resort/property manager, during snowy plover nesting season if necessary to protect nesting and breeding by the plovers.
- Place refuse containers with lids that tightly close at all beach access points and regularly clean refuse areas.

Monitoring and Maintenance

The retained biologist will monitor the success of the restoration efforts relative to the snowy plover annually. The biologist will have the ability to direct use of sensitive beach and strand areas accordingly. The purpose of the retained biologist is to facilitate implementation of an adaptive management program and to ensure a quick response to problems. Annual reports will be prepared by the biologist as described in Section 4.4.9 above.

Success Criteria

Success criteria are used to set a minimum standard at which habitat restoration or revegetation activities are able to be self-sustaining or have met a specific goal. For instance, documented use of the restored habitat areas by one successful nesting western snowy plover pair within ten (10) years following completion of construction would meet the specific goal of attracting nesting plovers back to the project site. However, the return of a special status species to an area should

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not be the sole criteria used to judge the success of habitat restoration activities because many special status species, including birds, are highly mobile and may not return to a site for many years regardless of its habitat restoration efforts. Therefore, a second criterion, such as the success of revegetation efforts, can be used to judge the success of habitat restoration activities. For the purposes of this HPP, if snowy plover are not observed utilizing the restored habitat areas within ten (10) years after construction, success will be defined by documenting that the proposed native coastal strand vegetation goals for Management Areas 1 and 2 have been established. If plover does not return to the site, the need for adaptive management may be required.

Permanent Protection

A public access easement with access limitations for resource protection consistent with provisions of the Sand City LCP and the Coastal Act public access provisions will be recorded on the public records for this management area.

4.5.2 Management Area 2: Foredune / Secondary Dune

Avoidance of Take and Sensitive Habitat

The retained biologist to conduct surveys within this management area for snowy plover prior to, and throughout, the breeding season (mid-March through mid-September), prior to, during, and after construction and annually thereafter so long as the Pacific Coast distinct population segment of the western snowy plover remains listed under the federal Endangered Species Act.

If plover nests are found in this management area during surveys, the retained biologist, in coordination with the construction supervisor, resort manager or property owner, to restrict access to nesting snowy plover areas through implementation of an adaptive management plan, and through the erection of exclosures and signage to protect such nests during the breeding season.

In accordance with the Landscape Plan, vegetation will be arranged and 1 to 4 foot high microtopographic contouring will be built in order to attract snowy plovers to potentially use, nest and breed within this management area.

Recontouring of Existing Topography

The existing bluff and coastal plateau in this management area will be graded to create a more gradual slope from the beach to the development areas. Although a percolation pond is also

4.0 MEASURES TO MINIMIZE AND MITIGATE IMPACTS TO SPECIAL STATUS SPECIES

planned for this management area, the design of the pond can be contoured to meet the appropriate habitat restoration goals. Actual use of the percolation pond will only occur during a 100+ year storm event and percolation rates through the sand in this area are very high. Pondered water is not expected to occur unless a 100+ year storm event occurs. Low dunes will be incorporated as micro topography and will range in height from 1-4 feet. The low dunes will be sparsely planted with native coastal dune vegetation as shown in the *Landscape Plan*.

Control of Exotic Species

Iceplant and/or European beachgrass will be prevented from establishing in this management area through an active eradication program. Plants of iceplant or European beachgrass will be removed by hand or, if necessary, through careful application of herbicide.

Habitat Protection During Construction

Construction activities in this management area will be monitored and limited at the discretion of the biologist, in coordination with the construction manager or property owner, if necessary to protect western snowy plover nesting activities.

Revegetation and Habitat Enhancement

The low dunes created in this area and the slopes of the percolation pond will be planted with native coastal strand vegetation per the following specifications.

Site Preparation

Just prior to planting, the low dunes will be sprayed with water to assist in temporarily stabilizing the sand for planting.

Planting Specifications

Install seedlings just after the first rains in the fall and following spraying of the low dunes with water. Seed mixes and installation recommendations shall follow those listed in the *Landscape Plan, Monterey Bay Shores Ecoresort, Wellness Spa, and Residences* (Appendix C, Rana Creek 2008).

Monitoring and Maintenance

A biologist will monitor the success of the restoration efforts relative to the snowy plover for a minimum period of five years. The biologist will have the ability to direct use of sensitive beach and strand areas accordingly, in coordination with the resort/property owner.

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Success Criteria

Documented use of the restored habitat areas by one successful nesting snowy plover pair between the date of the end of construction and ten (10) years following completion of construction would meet the specific goal of attracting nesting plovers back to the project site.

Permanent Protection

A conservation easement will be recorded for this management area. The easement language will allow for maintenance and repairs of the percolation pond, as required.

4.5.3 Management Area 3: Back Dune

Pre-construction Surveys

Prior to initiation of construction, surveys for the Smith's blue butterfly will be conducted during the blooming period of the buckwheat host plants (May through August).

Transplant and Salvage

Prior to construction-related land disturbance in this area, the following activities will be conducted.

- Seed will be collected from Monterey spineflower plants that are within areas proposed for disturbance in June through August one year prior to planting of the restoration areas to allow for propagation.

Recontouring

The windward face of the large dune in the southeast portion of this management area will be recontoured along additional dunes as shown on the project plans.

Slope Stabilization

The leeward slopes of the large dune in southern portion of this management area and the newly contoured leeward slopes of the dunes in the remainder of this management area will be stabilized using vertical straw mulch per the specifications described below under revegetation and habitat enhancement. The windward slopes of these same dune areas will be stabilized using a combination of hydroseeding, erosion control blankets and temporary overhead irrigation per the specifications described below under revegetation and enhancement.

Control of Exotic Species

Any iceplant mats remaining after completion of grading and recontouring activities will be removed by hand and/or through controlled application of herbicide. Dead iceplant may be left in place as mulch. Ongoing control of exotic species is included as a maintenance task.

Habitat Protection During Construction

Habitat protection will be conducted as described in Section 4.4.7.

Revegetation and Habitat Enhancement

Planting will occur on the leeward slopes of the dunes in this management area to establish native coastal dune scrub vegetation, re-establish habitat for the Smith's blue butterfly, increase numbers of Monterey spineflower, and introduce native plant species such as sand gilia, sandmat manzanita and Monterey ceanothus to the project site. Coastal dune scrub elements, including seacliff and coast buckwheat will be planted throughout the area. Monterey spineflower will be planted in stabilized bare sand areas on slopes with north or east aspect. Sandmat manzanita and Monterey ceanothus will be planted at the base of the leeward slopes of the dunes.

Seed mixes and installation recommendations shall follow those listed in the *Landscape Plan, Monterey Bay Shores Ecoresort, Wellness Spa, and Residences* (Appendix C, Rana Creek 2008).

- Seacliff and Coast buckwheat: 400 plants
- Monterey spineflower: spread seed and plant minimum of 1,000 propagules in several areas of bare sand that total 3.4 acres.
- Sand gilia: plant minimum of 800 propagules in same areas as Monterey spineflower.
- Sandmat manzanita: plant 500 propagules near base of leeward slopes
Monterey ceanothus: plant 500 propagules near base of leeward slopes
- Monitoring and Maintenance.

Retained Biologist

The biologist will monitor the success of the restoration efforts for a minimum period of five years. The biologist will monitor the success of the slope stabilization and habitat restoration to determine:

1. If additional stabilization techniques are necessary,

2. If maintenance is required to remove exotic vegetation or improve the success of the plantings or
3. If additional plantings are needed to meet the restoration goals set forth in the Biological Objectives.

Monitoring Transects

Following installation of planting, permanent monitoring transects will be established and the end points of each transect will be marked using rebar. The number and placement of transects will be determined to ensure that a minimum of 5% of the total planted area will be covered by the transect(s) and that the data collected along the transect will provide sufficient information for determining if the success criteria are met. Data will be collected using the line intercept method.

Photo Documentation

Two permanent photo points that capture an aerial view of the management area will be established and photos will be taken annually (in the spring) for comparison. Vertical color aerial photos will be obtained after year five to assess the success of revegetation efforts.

Smith's Blue Butterfly

Use of the habitat by Smith's blue butterfly will be monitored by conducting reconnaissance surveys of the planted buckwheat plants every two weeks from May through July. Numbers of individuals and extent of areas of used will be estimated.

Maintenance

Periodic irrigation through the establishment period (typically up to three years) as required. Control exotic vegetation as needed.

4.0 MEASURES TO MINIMIZE AND MITIGATE IMPACTS TO SPECIAL STATUS SPECIES

Success criteria

Leeward slopes

- 5% cover of native coastal dune scrub species in the planted areas designated on the as-built planting plans
- 50% diversity of species planted minimum 3.4 acres of Monterey spineflower
- Survival of at least 80% of the planted buckwheat plants

Windward slopes

- Slope stability sufficient to support vegetation
- 50% cover of native coastal dune scrub species in the planted areas designated on the as-built planting plans

4.5.4 Management Area 4: Developed

Pre-construction Surveys

Prior to initiation of construction, surveys for the buckwheat host plants for Smith's blue butterfly will be conducted as described in Section 4.4.6.

Landscape Restrictions

Transition planting zones will be established between development areas and the habitat restoration areas. The transition zones will include native species but will contain no sensitive plants. Native plant species will be selected to sustain and recover from periodic disturbance when maintenance or emergency access is required. Development areas will contain a mix of native species compatible with the dune landscape. Species will be drought resistant, conforming to applicable local water conservation policies.

Lighting Restrictions

Lighting at the resort will be designed to minimize impacts to wildlife, including the plover. Possible seasonal limitations may be implemented, to be determined by the biologist in coordination with the resort operator. In general, the project design calls for lighting to be directed away from the beach and foredune.

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4.6 SPECIES-SPECIFIC MITIGATION MEASURES

This section summarizes the various measures that will be used to minimize and/or mitigate impacts on the target species. The methods for implementing these measures are described in the previous sections.

4.6.1 *Smith's Blue Butterfly*

Minimization of impacts

Designation, protection and maintenance of habitat for Smith's blue butterfly during the construction period.

Mitigation for impacts

- Protection of existing buckwheat plants
- Collection of seed, propagation, and installation of 400 seacliff and coast buckwheat plants.
- Monitoring and maintenance of habitat by on-site biologist.

4.6.2 *Western Snowy Plover*

Minimization of Impacts

- Pre-construction surveys for active breeding/nesting on the project site to avoid disturbance of nesting western snowy plover prior to and during the plover nesting season (mid-March through mid-September), if present.
- Establishment of a retained biologist position to monitor western snowy plover activity and construction activities.

Mitigation for impacts

- Expansion of beach and strand habitat in vicinity of project.
- Monitor beach access during breeding/nesting season.
- Lighting restrictions for project facilities within and adjacent to western snowy plover habitat.

4.0 MEASURES TO MINIMIZE AND MITIGATE IMPACTS TO SPECIAL STATUS SPECIES

- Creation of minor dune topography in beach expansion area.
- Establishment of coastal strand vegetation.
- Establishment of a retained biologist position specifically to monitor western snowy plover activity on the site and in the region.

4.6.3 Monterey Spineflower

Mitigation for Impacts

- Revegetation and enhancement of coastal dune scrub habitat.
- Collection and propagation of seed from Monterey spineflower plants in the proposed development areas.
- Re-establishment of approximately 3.4 acres of Monterey spineflower on the project site.

4.7 OTHER MITIGATION MEASURES

Use of Fifteen Percent of Monterey Bay Shores Environmental Trust Fund for Plover Protection

The applicant has committed a portion of the net revenues from the resort to be set aside in a trust administered by local environmental groups and the City of Sand City. The trust funds will be committed to restoring and enhancing the environment of the Monterey Peninsula. The City of Sand City (subject to final City Council approval) has agreed to contribute to the trust an amount equal to ½ percent from the transient occupancy tax to be collected by the City from the resort annually. Fifteen percent of the annual trust funds expended would be restricted to on-site western snowy plover recovery efforts (for as long as the plover remained a species listed under the Endangered Species Act).

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CCC Exhibit 28
(page 75 **of** 70 **pages)**

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5.0 REFERENCES

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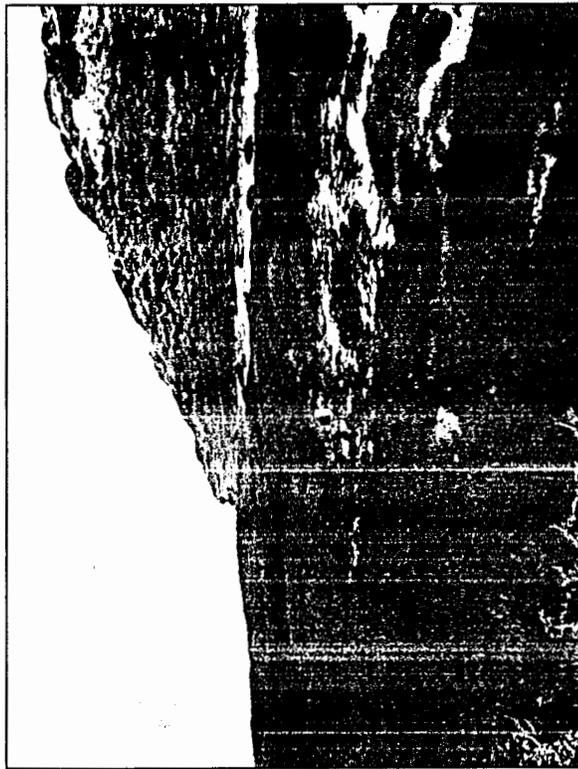
CCC Exhibit 28
(page 77 of 96 pages)

APPENDIX A

SITE PHOTOGRAPHS



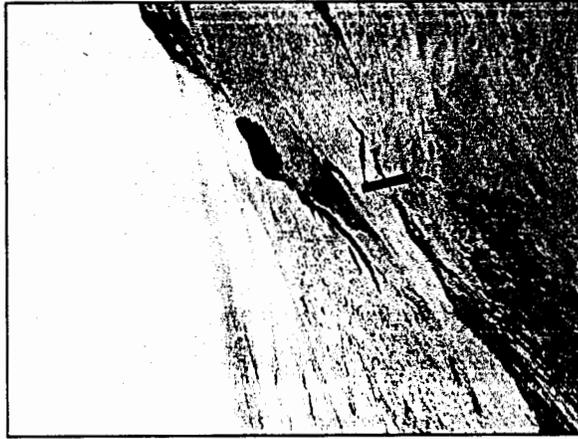
View of Pioneer Dune Vegetation with Ice Plant Mix within the northern half of the subject property



Ice plant dominated community at the northern boundary of the project site. Note the former Fort Ord in the background.



View of sand pit north of main dune area. Note OHV tracks.

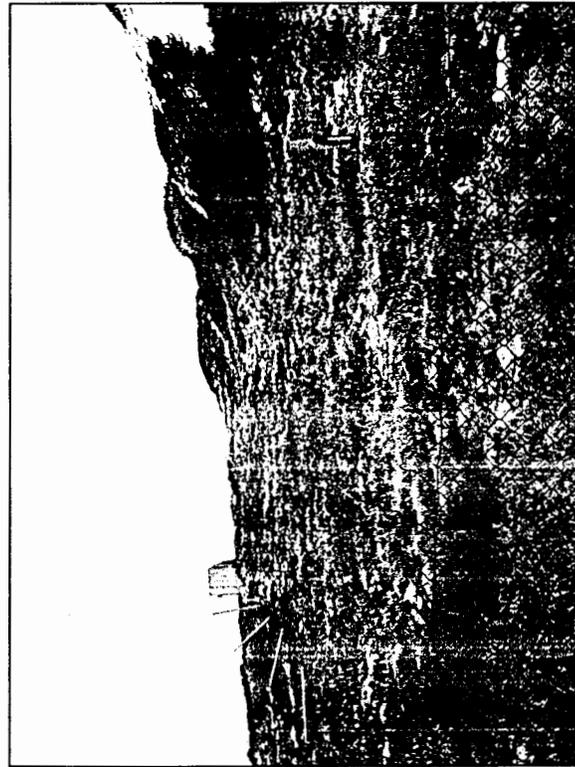


Coastal bluff and coastal strand

Source: EMC Planning Group Inc 2006



Disturbed vegetation along paved/gravel access road



Low density Monterey spineflower habitat at southeastern corner of project site



Coastal scrub with Seaciff buckwheat mix along northern edge of project site



Monterey spineflower

Source: EMC Planning Group Inc 2006

APPENDIX B

DUTIES OF THE RETAINED BIOLOGIST

APPENDIX B

DUTIES OF THE RETAINED BIOLOGIST

Selection

The property owner shall select a biologist who knowledgeable with habitats and special-status species that occur in coastal Monterey County, including the western snowy plover, Smith's blue butterfly (including host plants), and Monterey spineflower. The biologist shall be subject to the approval of the USFWS and will be retained prior to initiation of any construction activities on the site and will be responsible for monitoring and reporting activities, as described herein.¹ The biologist will be available to assist in minimizing effects on covered species and will have the authority to regulate, limit or stop construction activities in the area and manage access, in coordination and consultation with the property owner or construction manager. The biologist will use his or her best efforts to work with other biologists in the Sand City area, if available, to meet the objectives of regional and state goals; however, the biologist's focus will be on the Monterey Bay Shores site. The biologist may call upon other biologists to assist or provide data as necessary.

¹ To the extent there are conflicts between this Appendix, the Landscape Plan and the HPP regarding planting and seeding of plant species, the Landscape Plan shall take precedence, followed by the HPP.

Pre-Construction and Construction Activities

1. Prior to construction, a biologist shall collect seed from Monterey spineflower within areas proposed for disturbance during June through August prior to planting of the restoration areas to allow for propagation. If this biologist is not the biologist ultimately retained for the project, the seed collecting biologist shall transfer the seeds to the retained biologist.
2. Prior to construction, the biologist will conduct a preconstruction conference with all construction equipment operators and field supervisors. The purpose of the conference will be to educate workers of the potential presence of special status species on and adjacent to the project site, conduct a site visit to show participants where grading can and cannot occur, and inform operators of appropriate protocol should they encounter a covered species during grading or construction.
3. Prior to construction, the biologist will coordinate and oversee implementation of the following protection measures:
 - A temporary fence will be erected no more than 10 feet beyond the limit of grading in order to assure that construction activities do not encroach into habitat areas being preserved. The biologist will coordinate with the construction manager or site superintendent on placement of these fences. Signs will be placed on the fence at appropriate intervals informing construction workers and equipment operators of the presence of sensitive species.
 - "No trespass" signs will be posted at each vertical beach access and at the property line during construction.
4. During construction when grading is actively in progress, full-time monitoring will occur.
5. If found on site, the biologist will monitor activities of the western snowy plover prior to and throughout construction of the project. Work in the beach and strand zone will be restricted in accordance with direction given by the biologist, in coordination with the property owner and/or construction manager, based on observations of plover use of the site, if any, and in the immediate vicinity.

The biologist will survey and monitor the site for snowy plover during the prime snowy plover nesting season (mid-March through mid-September) immediately prior to any construction-related activities on the site. If snowy plovers are observed in any area likely to be affected by the project construction, construction in that area will be postponed until all snowy plover chicks have fledged, unless otherwise approved by the biologist, in coordination with the USFWS.

6. Use of on-site habitat by Smith's blue butterfly will be monitored by conducting reconnaissance surveys every two weeks from mid-May through mid-August.

Monitoring

1. Iceplant and/or European beachgrass will be eradicated and prevented from re-establishing in management areas through an active eradication program. If deemed necessary, the biologist shall remove iceplant or European beachgrass plants by hand or through the controlled application of herbicide.
2. The biologist will monitor the success of restoration efforts. The biologist will monitor the success of the slope stabilization and habitat restoration to determine:
 - a. If additional stabilization techniques are necessary,
 - b. If maintenance is required to remove exotic vegetation or improve the success of the plantings, or
 - c. If additional plantings are needed to meet the restoration goals. The intent of having a biologist on site is to facilitate the implementation of an adaptive management program and the timely resolution of problems.
3. Following planting, permanent monitoring transects will be established and the end points of each transect will be marked using rebar. The number and placement of transects will be determined to ensure that a minimum of 5% of the total planted area will be covered by the transect(s) and that the data collected along the transect will provide sufficient information for determining if the success criteria are met. Data will be collected using the line intercept method and will provide adequate assessments of the relative success of the restoration activities (Table 1, Success Criteria, of the HPP).
4. The biologist shall establish permanent photo points that capture an aerial view of the management area and photos will be taken annually (in the spring) for comparison. Copies of the photographs will be included in the annual progress reports to the Sand City Planning Department.
5. Vertical color infrared aerial photographs will be obtained of the project site in the fifth year of the project. The biologist shall assess these aerials in respect to changes of vegetative cover over the entire site. Copies of the photographs will be included in the annual progress reports to the Sand City Planning Department.

6. Surveys to assess use by Smith's blue butterfly of on site revegetated and enhanced habitat areas will be conducted each year (May through July). Data to be collected will include number of adults observed flying, location of butterfly use, plant species of use (if known), date, time, and weather conditions.
7. The biologist will monitor on site activities of the western snowy plover. Annual western snowy plover surveys shall be completed prior to and during the prime snowy plover nesting season (mid-March through mid-September). Access to the beach and strand zone will be restricted in accordance with direction given by the biologist based on observations of plover use of the site, if any, and in the vicinity, and based on coordination with the property owner or manager. If deemed essential, temporary off-limit areas shall be established by the use of signs, exclusion areas, and temporary post and cable fencing to attract plover use.
8. The biologist may participate as a team member in annual snowy plover monitoring work in the region.

Reporting

The biologist shall prepare notes on a monthly basis, as well as an annual report. Annual reports will be forwarded to the Sand City Planning Department and the USFWS and shall include the following:

1. A brief summary or list of project activities accomplished during the reporting year;
2. A brief description of new project impacts, if any;
3. A brief description of any conservation strategy implemented;
4. A discussion of monitoring results (compliance, effects and effectiveness monitoring) and survey information;
5. A description of circumstances that made adaptive management necessary and what new management approaches have been implemented;
6. A description of any changed or unforeseen circumstances that occurred and how they have been addressed;
7. A discussion of funding expenditures, balance, and accrual; and
8. A description of any minor or major amendments.

A comprehensive assessment of the efficacy of the habitat restoration program, especially as it relates to efforts to protect and enhance nesting habitat for the western snowy plover, will be completed five years following completion of construction. Maintenance activities for Management Areas 1, 2, 3, and 4 will be conducted throughout the monitoring period, as applicable. A maintenance program providing recommended activities for maintaining the habitat areas in perpetuity will be prepared and included in the five-year assessment report.

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APPENDIX C

LANDSCAPE PLAN



Beach

The beach is characterized by stretches of sand, with... (text is partially obscured and difficult to read)



Coastal Bluff Living Roof

The living roof of the Monterey Bay Shores project... (text is partially obscured and difficult to read)



Hotel and Residential Landscapes

The hotel and residential landscapes at Monterey Bay... (text is partially obscured and difficult to read)



Living Pool

The living pool features a variety of California... (text is partially obscured and difficult to read)



LANDSCAPE PLAN

Monterey Bay Shores

Resort, Wellness Spa and Residences



RAINA CREEK JUNE 2008



Face Dome

Face domes are elevated semi-circular... (text is partially obscured and difficult to read)



Wetland

Wetland consists of open... (text is partially obscured and difficult to read)



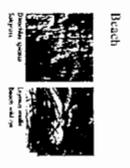
Secondary Dune

The secondary dune is composed... (text is partially obscured and difficult to read)

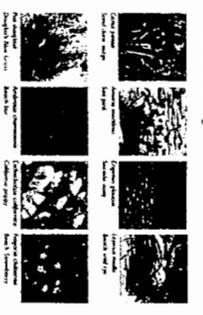


Beach Dune

Beach dunes are elevated semi-circular... (text is partially obscured and difficult to read)



Beach
 1.00' Common
 Beach sand/rye
 Scaevola
 1.00' Rare
 Lyrate shrub
 Ornithoglossum
 1.00' Rare
 Lyrate shrub
 Ornithoglossum

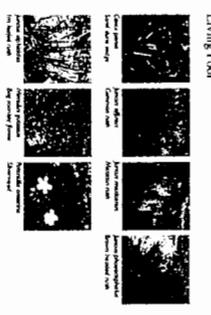


Casual Bluff Living Roof
 1.00' Common
 Beach sand/rye
 Scaevola
 1.00' Rare
 Lyrate shrub
 Ornithoglossum
 1.00' Rare
 Lyrate shrub
 Ornithoglossum

Hotel and Residential Landscapes



Hotel and Residential Landscapes
 1.00' Common
 Beach sand/rye
 Scaevola
 1.00' Rare
 Lyrate shrub
 Ornithoglossum
 1.00' Rare
 Lyrate shrub
 Ornithoglossum
 1.00' Rare
 Lyrate shrub
 Ornithoglossum



Living Pool
 1.00' Common
 Beach sand/rye
 Scaevola
 1.00' Rare
 Lyrate shrub
 Ornithoglossum
 1.00' Rare
 Lyrate shrub
 Ornithoglossum



Five Dune
 1.00' Common
 Beach sand/rye
 Scaevola
 1.00' Rare
 Lyrate shrub
 Ornithoglossum
 1.00' Rare
 Lyrate shrub
 Ornithoglossum
 1.00' Rare
 Lyrate shrub
 Ornithoglossum



Secondary Dune
 1.00' Common
 Beach sand/rye
 Scaevola
 1.00' Rare
 Lyrate shrub
 Ornithoglossum
 1.00' Rare
 Lyrate shrub
 Ornithoglossum
 1.00' Rare
 Lyrate shrub
 Ornithoglossum



Back Dune
 1.00' Common
 Beach sand/rye
 Scaevola
 1.00' Rare
 Lyrate shrub
 Ornithoglossum
 1.00' Rare
 Lyrate shrub
 Ornithoglossum



Wetland
 1.00' Common
 Beach sand/rye
 Scaevola
 1.00' Rare
 Lyrate shrub
 Ornithoglossum
 1.00' Rare
 Lyrate shrub
 Ornithoglossum



PLANT COMMUNITIES

Monterey Bay Shores



Emerson, Wilkins Spa, and Residence



United States Department of the Interior

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



IN REPLY REFER TO:
81440-2009-TA-0270

RECEIVED

MAY 11 2009

May 6, 2009

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

CALIFORNIA
COASTAL COMMISSION
CENTRAL COAST AREA

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

Dear Mr. Watson:

We are providing this letter as follow-up to our telephone conversation of February 19, 2009, in which you requested our comments on the subject project, especially regarding the "habitat protection plan" (HPP) prepared by EMC Planning Group for Security National Guarantee (Applicant).

As background, the subject project was originally proposed in 1998, but was never constructed. Subsequently, we received a draft habitat conservation plan (HCP) for the subject project from Tom Roth (attorney to the Applicant) in February of 2006 and provided comments on that draft in June of the same year. The Applicant apparently chose to abandon the HCP process and we did not receive substantial information between July of 2006 and July of 2008. On July 16, 2008, the Applicant and Mr. Roth visited our office to present a briefing on a redesigned version of the project, which is the version currently under review. On August 18, 2008, we received a copy of a draft addendum to the final environmental impact report. On October 16, 2008, and October 27, 2008, we received draft and final copies of the HPP. Per the HPP, the currently proposed project consists of construction of a 160 room hotel, 180 condominium units, conference facilities, a restaurant, a spa, public access, and parking. These facilities would be constructed on a 39-acre ocean-front parcel in Sand City, California. The current project design has reduced the number of visitor serving units, increased the setback from the high tide line, and reduced water and power use relative to the previous version of the project.

The U.S. Fish and Wildlife Service's (Service) responsibilities include administering the Endangered Species Act of 1973, as amended (Act), including sections 7, 9, and 10. Section 9 of the Act prohibits the taking of any endangered or threatened species. Section 3(18) of the Act defines take to mean to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct. Service regulations (50 CFR 17.3) define harm to include significant habitat modification or degradation which actually kills or injures wildlife by significantly impairing essential behavioral patterns, including breeding, feeding, or sheltering. Harassment is defined by the Service as an intentional or negligent action that creates the

Exhibit 29
A-3-SNC-98-114, Monterey Bay Shores Ecoresort
USFWS HPP Review Letter dated May 6, 2009
Page 1 of 5

likelihood of injury to wildlife by annoying it to such an extent as to significantly disrupt normal behavioral patterns which include, but are not limited to, breeding, feeding, or sheltering. The Act provides for civil and criminal penalties for the unlawful taking of listed species.

Exemptions to the prohibitions against take may be obtained through coordination with the Service in two ways. If the subject project is to be funded, authorized, or carried out by a Federal agency and may affect a listed species, the Federal agency must consult with the Service, pursuant to section 7(a)(2) of the Act. If a proposed project does not involve a Federal agency but may result in the take of a listed animal species, the project proponent should apply for an incidental take permit, pursuant to section 10(a)(1)(B) of the Act.

The project site includes known occupied habitat for the federally endangered Smith's blue butterfly (*Euphilotes enoptes smithi*), and the federally threatened western snowy plover (*Charadrius alexandrinus nivosus*) and Monterey spineflower (*Chorizanthe pungens* var. *pungens*). All of these species have been documented in recent surveys, including nesting western snowy plovers during the 2008 breeding season. The Smith's blue butterfly is dependent upon its host plant species, seacliff buckwheat (*Eriogonum parvifolium*) and coast buckwheat (*Eriogonum latifolium*), during all life stages and occupied seacliff buckwheat plants are known to occur in the project area.

The HPP (page 1-1) states that it "seeks to avoid or minimize take and mitigate potential impacts to ...the federally endangered Smith's blue butterfly (*Euphilotes enoptes smithi*), the federally threatened western snowy plover (*Charadrius alexandrinus nivosus*), and the federally threatened Monterey spineflower (*Chorizanthe pungens* var. *pungens*)." At issue is whether take of the listed animal species can truly be avoided. If take can only be minimized, then we recommend the applicant apply for an incidental take permit. A HCP is a required component of any application for an incidental take permit. Several passages of the HPP indicate that take can be minimized or reduced, but not necessarily completely avoided, as discussed by species below. Italics are added to the quoted passages for emphasis.

Western snowy plover:

- 1) Regarding changes between the 1998 version of the project and the currently proposed version, the HPP indicates that "elimination of these significant construction and operational activities will help *reduce* the temporary and long-term impacts to any potential plover habitat or breeding activity" (page 1-2) and "This will result in a greater buffer between resort buildings and the beach, thus *reducing* the potential impact to migratory birds including plovers" (page 3-13).
- 2) Regarding habitat, the HPP indicates that the project has "been designed to *minimize* direct removal of the *most viable* potential nesting/breeding habitat" (page 4-9).

Smith's blue butterfly:

- 1) Regarding restoration the HPP states that "efforts are intended to *minimize* the possible take of Smith's blue butterfly" (page 4-1).
- 2) The HPP is inconsistent regarding avoidance of Smith's blue butterfly host plants; on page 1-2 it indicates that "the revised project has been designed specifically to avoid any take of any seacliff buckwheat plants on the project site," while on page 4-13 it indicates that "(s)urveys will be conducted prior to construction to identify and flag each plant of seacliff or coast buckwheat within the areas proposed for development." The first statement implies that no host plants are located in proposed development areas, while the second implies the opposite and prescribes flagging (but does not elaborate on whether flagged plants can or will be avoided). Any removal of occupied host plants at any time of year is likely to cause take of Smith's blue butterflies.

The HPP prescribes a variety of avoidance, minimization, and mitigation measures; some of which may not be adequate to avoid take of listed species, as discussed by species below.

Western snowy plover:

- 1) Regarding construction monitoring, the HPP (page 4-13) states that the Applicant will "...conduct surveys along the sandy beach and strand habitat prior to construction if the construction is expected to begin or continue during prime plover nesting season. If any plover nesting is observed on site, the biologist will immediately establish exclosures around the nesting area during fledging..." Our concerns regarding this passage are that a) the term "prime plover nesting season" is defined on page B-2 as mid-March through mid-September, while the Service generally recommends March 1 through September 30 as a seasonal window to avoid the nesting season; b) it is unclear in this case how exclosures would protect nesting western snowy plovers from construction (i.e., even if direct effects such as crushing of eggs are avoided, disturbance due to construction could still cause nest abandonment, resulting in take in the form of harassment); c) prescribing the proposed measures "during fledging" does not make sense in light of western snowy plover behavior. Exclosures can provide protection for eggs and incubating adults in some cases, but chicks, especially those near fledging, are precocial and unlikely to remain within the exclosure. It should also be noted that chicks hatched outside the project area may be brooded within the project area, and may not be located during pre-construction surveys for nests. This area has historically been used for brooding by western snowy plovers nesting further south in Sand City and Seaside.
- 2) Regarding the "Dynamic Nesting Protection Zone" (zone) (page 4-14 and 4-15), assurances are not provided that this zone would be appropriately located, fenced, expanded, or timed. The HPP does not define how the zone would be protected (e.g.,

fenced and signed). The HPP states that location and expansion of the zone would include "balancing public access with plover protection," which is vague and may leave nests unprotected if their protection conflicts with the proposed access trails. The HPP states that the zone would be established "upon opening of the resort." If areas are to be set aside for western snowy plover nesting, it is best to do this before the nesting season, allowing the birds to find the area and potentially establish nests there. The date of resort opening is not known and could potentially occur in the middle of the nesting season.

- 3) Regarding adaptive management (page 4-15) the HPP states that "(b)ased on consultations with the retained biologist and the City of Sand City, the applicant will prepare an adaptive management and access plan..." We are concerned that this defers development of protection measures for western snowy plovers to an unknown future date by an as yet unnamed biologist, a City with no biological staff, and the applicant. We have the same concern regarding the predator management plan discussed on page 4-16.
- 4) Regarding funding (page 4-16), the HPP states that "... ten (10) percent of the Monterey Bay Shores Environmental Trust funds will be available for on site western snowy plover recovery efforts (for so long as the plover remains a species listed under the Endangered Species Act) and costs associated with the retained biologist." We are concerned that no accounting of the estimated costs of western snowy plover management or of the funds available from the trust is provided. This provides no assurance that funds will be available to provide for western snowy plover management. We also note that cessation of management efforts after a species is de-listed may lead to the need to re-list. In addition, the HPP (page 4-16) proposes "funding for the retained biologist for a minimum period of 5 years to monitor success of the restoration efforts relative to the snowy plover and perform other functions identified herein." We assume that the Applicant intends for the resort development to remain in place indefinitely, and are concerned about take of listed species that could occur due to use of the development after the 5 year funded monitoring period. Lacking funding for minimization measures, take would be more likely to occur, and lacking funding for monitoring, such take could go undetected.
- 5) Regarding success criteria (page 4-22 and 4-23), the HPP states that "one successful nesting western snowy plover pair within ten (10) years following completion of construction would meet the specific goal of attracting nesting plovers back to the project site" and "if snowy plover are not observed utilizing the restored habitat areas within ten (10) years after construction, success will be defined by documenting that the proposed native coastal strand vegetation goals...have been established." The project area is occupied by western snowy plovers, as indicated by nesting observed in 2008. It is misleading to indicate that the species needs to be attracted back to habitat that is currently occupied. It is also not appropriate to use vegetative conditions as a surrogate for successful nesting. If western snowy plovers stop using

the project area due to project activities, this could constitute take in the forms of harm and/or harassment.

Smith's blue butterfly:

- 1) Regarding iceplant removal, the HPP states that "(h)erbicides will be applied" and that the applicant will "remove iceplant by hand within a one- to two-foot diameter around seacliff buckwheat, coast buckwheat, and Monterey spineflower plants..." While hand removal is an appropriate minimization measure to reduce the effects of herbicides on Smith's blue butterfly host plants, the HPP provides no evidence that the proposed 1 to 2 foot buffer is sufficient, or that damage to host plants can be avoided during manual removal. Any removal of occupied host plants at any time of year is likely to cause take of Smith's blue butterflies.
- 2) Regarding seed collection for revegetation, the HPP states "(s)eed will be collected from seacliff and coast buckwheat plants within the project vicinity." While we encourage use of local seed, its collection can result in take of Smith's blue butterflies. Pupae may remain in dried flower heads and can be captured or killed during seed collection.
- 3) The HPP does not address the potential for take of dispersing adult Smith's blue butterflies. The HPP (page 3-2) acknowledges that dispersal of a few hundred yards has been observed (the project area is approximately 300 by 500 yards, see HPP figure 2), but otherwise downplays the dispersal abilities of the species without providing references for its assertions (e.g., "long distance dispersal is believed to occur only rarely"). Adults moving through the project area could be killed by vehicles, construction equipment, pedestrians, etc.

In summary, we have noted inconsistencies in the HPP and we are concerned about the effectiveness of the proposed conservation program. We believe the HPP can be improved by correcting inconsistencies within it, strengthening the avoidance measures, and providing assurances that those measures will be funded and implemented.

This concludes our comments on the subject project. We appreciate your consideration of these comments and we are available to discuss them further. If you have questions, please contact Jacob Martin of my staff at (805) 644-1766, extension 285.

Sincerely,



David M. Pereksta
Assistant Field Supervisor



**WESTERN SNOWY PLOVERS AT SAND CITY, APRIL-
JULY 2008**

Prepared by:
Kris Neuman and Gary Page
USFWS Permit TE807078-10

PRBO Conservation Science
3820 Cypress Drive #11
Petaluma, CA 94954

For:
Zander Associates
150 Ford Way, Suite 101
Novato, CA 94945

November 2008

WESTERN SNOWY PLOVERS AT SAND CITY, APRIL-JULY 2008

OBJECTIVE

The primary objective of this study was to document the presence or absence of western snowy plovers (*Charadrius alexandrinus nivosus*) on sandy beaches within Sand City, Monterey County, California, during the 2008 breeding season. A secondary objective was to document potential sources of recreational disturbance and predators that might negatively affect snowy plovers. This is the fourth year that PRBO Conservation Science has conducted surveys at Sand City under contract with Zander Associates (Page and Neuman 2005, Neuman and Page 2006, Henkel and Page 2007).

METHODS

The sandy beach and dune habitats from the Sand City-Seaside boundary north to the Fort Ord boundary (Figure 1) were surveyed for western snowy plovers (hereafter "plovers") from 14 March to 18 July 2008. Surveys were conducted by Kriss Neuman and Jennifer Erbes using binoculars of at least 8x42 magnification following the protocol described in Elliot-Smith and Haig (2005). Surveys varied from one to two hours and were usually conducted between 0700 and 1400. Additional visits to the area were made by California Department of Parks and Recreation staff to protect nests with symbolic (post and cable) fencing and assist PRBO with chick banding. Nests were monitored until hatching. Chicks were individually color-banded and monitored until fledging (~28 days old). In addition to surveying for plovers, the number and type of potential recreational disturbances and potential predators were recorded.

RESULTS and DISCUSSION

Snowy Plover Productivity

During the study period, 18 weekly surveys were completed. Four plover nests and an additional brood were found within the study area (Figure 1). Three nests were located in the north end of the area (NC01, NC02, NC03), just south of the Fort Ord boundary and one nest (DM01) was located at the south end of the study area, just north of the Monterey Beach Hotel (Figure 1). The brood of one chick, for which no nest was found (NC04), was located 100m south of NC01; we assume the nest probably occurred in the vicinity. Of the four nests found in the egg stage, three hatched and one failed (Table 1). Of the three broods that hatched, only the chicks from nest NC01 survived to fledging age.

Table 1. Snowy Plover productivity at Sand City in 2008.

Nest Number	Found as	Number of eggs	Number of hatched chicks	Number of fledglings	Cause of nest loss
NC01	Eggs	3	3	2	unknown
NC02	Eggs	3	0	0	
NC03	Eggs	3	3	0	
NC04	Brood	1-3	1-3	0	
DM01	Eggs	3	3	0	

Potential Recreational Disturbances and Potential Predators
 Potential recreational disturbances included pedestrians, surf fishers, joggers, hang-gliders, surfers and dogs (Table 2). Potential predators observed were primarily limited to American crows (*Corvus brachyrhynchos*). Other potential predators were red-tailed hawks (*Buteo jamaicensis*) seen on 29 April and 9 July, and a peregrine falcon (*Falco peregrinus*) on 5 May.

Killdeer (*Charadrius vociferans*) were observed on every survey. As in previous years killdeer apparently nested in several locations in the study area, including south of Bay Avenue and near the Fort Ord boundary.

Table 2. Numbers of people, dogs, and American Crows on 18 surveys of Sand City Beaches in 2008.

Date	Surf fishers	Pedestrians	Joggers	Surfers	Hang-gliders	Dogs off Leash	Dogs on Leash	American Crows
14 Mar		2	1				1	2
19 Mar								
25 Mar	2	1						1
2 Apr	1							
9 Apr		8				1		1
18 Apr	1	3						25
22 Apr	1	7		2		1	1	3
29 Apr	1	2						2
5 May								
12 May	1							1
29 May		13	3			3		2
3 June	3	1						2
11 June								
19 June		2		4	3			
25 June		4				2		
2 Jul		2				3		
9 Jul								
18 Jul								
Total	10	45	4	6	3	10	2	39

This is the first year since 2000 that plovers have nested at the north end of the study area and the first year since 1998 that they have nested at the south end of the study area (PRBO unpubl. data). In addition, the pair of plovers that lost nest NCC03 re-nested on an adjacent beach just north of the southern Fort Ord boundary (FO11, see Figure 1).

The 75% hatch rate for the study area was very high when compared to other areas within Monterey Bay in 2008 and to documented hatch rates for the species (Page et al. 1995). It was lower than the 100% hatch rate observed at the adjacent Fort Ord beach in 2008 (PRBO unpubl. data). The fledge rate (min 16% -max 20%) was low when compared with the adjacent Fort Ord beach (30%) in 2008 (PRBO unpubl. data) and when compared to documented fledge rates for the species (Page et al. 1995). The low fledge rate in Sand City when compared to the adjacent beach may be related to higher levels of human use at Sand City or to other unknown factors. Human use levels on Monterey Bay beaches are typically lower in the earlier part of the nesting season and the success of the NCO1 brood may be related to this.

Habitat management techniques that have enhanced plover nesting success at other sites in Monterey Bay include increased use of symbolic fencing in fore dunes, limiting access to dune areas above nesting areas, and prohibiting dogs on beaches. Because the Sand City area is adjacent to another occupied nesting area the potential exists for managing the beach as a contiguous nesting area.

LITERATURE CITED

Elliot-Smith, E. and S. Haig. 2005. Western Snowy Plover breeding window survey protocol. Unpublished report, USGS Forest and Rangeland Ecosystem Science Center, Corvallis, OR.

Neuman, K. and G.W. Page. 2006. Western Snowy Plovers at Sand City, April-July 2006. Unpublished report, PRBO Conservation Science, Petaluma, CA.

Page, G.W. and K. Neuman. 2005. Western Snowy Plovers at Sand City, May-July 2005. Unpublished report, PRBO Conservation Science, Petaluma, CA.

Page, G.W., J.S. Warriner, J.C. Warriner, and P.W.C. Patton. 1995. Snowy Plover (*Charadrius alexandrinus*). In *The Birds of North America*, No. 154 (A. Poole and F. Gill, eds.) The Birds of North America, Inc., Philadelphia, PA.

Henkel, L. and G.W. Page. 2007. Western Snowy Plovers at Sand City, April-July 2007. Unpublished Report. PRBO Conservation Science, Petaluma, CA.



Figure 1. Show my House near at Sand Chen 2008. An additional proof (RQ04) was found in the vicinity of RQ01, 02 and 03 and the nest is assumed to have been in this same area. RQ01 is the nest just north of the southern Port 3rd boundary. Heat map prepared by Amy Palacios, California Department of Parks and Recreation.

EX 31

CITY OF SAND CITY

RESOLUTION SC 09-06, 2009RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SAND CITY
CONCERNING AN ADDENDUM TO THE FINAL ENVIRONMENTAL IMPACT
REPORT FOR THE MONTEREY BAY SHORES ECO-RESORT

WHEREAS, Security National Guaranty, Inc., a California corporation ("Applicant") previously made application to Sand City (the "City") for a Coastal Development Permit to allow development of certain property in the City, designated as APN 011-501-014, located in the coastal zone west of Highway One in the City;

WHEREAS, Applicant's project was previously known as the Monterey Bay Shores Resort (the "Original Project");

WHEREAS, in 1998, the City certified the Final Environmental Impact Report (the "EIR") for the Original Project in accordance with the California Environmental Quality Act ("CEQA");

WHEREAS, following certification of the EIR and public hearings conducted in the manner required by law, the City acted to conditionally approve a Coastal Development Permit for the Original Project on December 1, 1998;

WHEREAS, the City's conditional approval of a Coastal Development Permit for the Original Project was appealed to the California Coastal Commission;

WHEREAS, the California Coastal Commission conducted a *de novo* review of the Original Project and acted to deny approval of a Coastal Development Permit for the Original Project;

WHEREAS, acting in accordance with the decision in *Security National Guaranty, Inc., v. California Coastal Commission* (2008) 159 Cal.App.4th 402, the Superior Court ordered a preemptory writ to issue on May 27, 2008 commanding the Coastal Commission to vacate its denial of the Applicant's application for a coastal development permit and reconsider the application for a coastal development permit;

WHEREAS, prior to such reconsideration, in order to address concerns previously expressed by the Commission and its staff, the Applicant has redesigned and reduced the size of the Original Project (hereinafter referred to as the "Revised Project");

WHEREAS, an Addendum and Errata of the Addendum to the EIR have been prepared (copies of which are attached hereto as Exhibits "A" and "B" respectively and by this reference incorporated herein), for the Revised Project which shows:

A. The changes to the Original Project will not cause new significant environmental effects or a substantial increase in the severity of significant effects identified in the EIR;

B. The circumstances under which the Revised Project is proposed to be undertaken will not result in new significant environmental effects or a substantial increase in the severity of previously identified significant environmental effects;

C. No new information of substantial importance, which was not known and could not have been known with the exercise of reasonable diligence at the time the EIR was certified as complete shows any of the following:

(i) that the Revised Project will have any significant effect which was not discussed in the EIR;

(ii) that significant effects examined in the EIR will be substantially more severe than shown in the EIR;

(iii) that mitigation measures or alternatives previously found not to be feasible would now in fact be feasible and would substantially reduce one or more significant effects of the Revised Project;

(iv) that there are no mitigation measures or alternatives which are considerably different from those analyzed in the EIR which would substantially reduce one or more significant effects of the Revised Project on the environment;

WHEREAS, although circulation of an Addendum is not required by CEQA, a draft Addendum was issued in August 1998 and thereafter distributed to certain agencies including the California Coastal Commission, U.S. Fish and Wildlife Service, the California Department of Fish and Game; and the Monterey Peninsula Water Management District;

WHEREAS, the Addendum in its present form was redistributed to the above listed agencies in November of 2008;

WHEREAS, if the Coastal Commission acts to approve a coastal development permit for the Revised Project, the Applicant must obtain additional permits (or revisions to prior approvals) from the City prior to developing the Revised Project;

WHEREAS, prior to seeking additional permissions from the City, the Applicant may need to obtain permissions from one or more responsible agencies.

NOW THEREFORE, IT IS HEREBY RESOLVED BY THE SAND CITY COUNCIL AS FOLLOWS:

- 1. No major revisions to the EIR are required for the Revised Project.
- 2. No subsequent EIR is required for the Revised Project.
- 3. Following approval of a coastal development permit for the Revised Project, the City will review the project as permitted by the Coastal Commission and consider revisions to local approvals which are then necessary prior to commencement of development of the project as approved by the Coastal Commission, including but not limited to revisions to the vesting tentative subdivision map for the project, planned unit development permit for the project and site plan for the project.
- 4. The City will make a final determination under CEQA with respect to the project as permitted by the Coastal Commission at the time the City takes action on the local approvals referred to in paragraph 3.

PASSED AND ADOPTED by the Sand City Council this 20th day of January 2009, by the following vote:

AYES:

NOES:

ABSTAINED:

ABSENT:

ATTEST:

APPROVED:

City Clerk

David K. Pendergrass, Mayor

EXHIBIT B

MONTEREY BAY SHORES RESORT EIR ADDENDUM
Errata Sheet dated January 20, 2009

The following revisions to the subject EIR addendum are hereby approved by the City of Sand City, and incorporated into the Addendum by this reference.

1. Under Introduction and Purpose, page 5, third paragraph, revise as follows: "The City of Sand City is the Lead Agency under CEQA. This Addendum has been prepared for the City to address the environmental impacts of the proposed revised project."
2. Under Air Quality Management Plan, page 36, second paragraph, revise as follows: "As noted, since the certification of the 1998 MBS FEIR, the MBUAPCD has developed new air quality management plans, most recently in June 2008. The revised, smaller proposed project includes 249 hotel and visitor-serving condominium units (rental pool)."
3. Under Biological Resources Setting, page 42, first paragraph, top of page, revise as follows: "Therefore, for the purposes of this analysis, the site is not considered ESHA under the LCP and the development constraints applied to ESHA do not apply to the site. Finally, the project site is not otherwise located within an adopted or planned habitat conservation plan or other approved or planned regional or state habitat conservation plan or natural community conservation planning (NCCP) effort."
4. Under Special-Status Plant and Animal Species, page 44, first paragraph, revise as follows: "The revised ecoresort project will modify approximately 28 acres above the mean high tide line through grading, excavation, and re-contouring, compared with approximately 31 acres for the previously approved project (a net reduction of approximately three acres). As noted in the 1998 MBS FEIR and above, much of the area is degraded and invasive ice plant has continued to expand. In addition, there is no longer a proposal to distribute additional sand excavated from the property in the coastal strand habitat for beach replenishment."
5. Under Conformance with Land Use Plans, page 75, third paragraph, add the following sentences: "There are no buildings or other structures planned within the CZ-PR (coastal zone public recreation) zoning district. However there is a limited area of bioswale (detention basin) designed to eliminate any storm water runoff from directly entering the bay waters. This land use is considered to be consistent with the CZ-PR zoning district regulations because it is a support facility intended to protect the beach, interpretative areas and public access areas from erosion."
6. Under Existing Noise Conditions, page 78, last paragraph, fourth sentence, change the word "site" to "sight".

130

MONTEREY DUNES COALITION

PO Box 8613
Monterey, California 93943
Email: thornton@nps.edu

February 28, 2009

Mike Watson, California Coastal Commission, mwatson@coastal.ca.gov

SUBJECT: Scientific/technical review of multiple environmental documents for Monterey Bay Shores Ecoresort, Sand City, California, regarding building site set-backs.

I am submitting the following technical review of the Monterey Bay Shores Ecoresort (Ghandour/SNG project, Sand City, State Clearinghouse # 97091005) Revised Draft Addendum for the 1998 Final Environmental Impact Report, and supporting environmental documents, on behalf of the Monterey Dunes Coalition.

Set-back of Monterey Bay Shores Eco-resort

The set-back lines for the Monterey Bay Shores Ecoresort building site (either 50 or 75 year) are considerably underestimated. The erosion rates that are presented in the recent Regional Sediment Management Plan for southern Monterey Bay range 2.7 feet/year for the period 1984-2004 (Thornton, et al., 2006) to 3.9- 6.4 feet/year for the period 1970-2002 (Hapke et al., 2006). This suggests that the value of 2.4 feet/year adopted by developer for this development based on estimates by Haro et al., 2003 underestimates the erosion rate and, hence, the set-back. Applying the reported range of erosion rates by Thornton, et al. (2006) and Hapke et al. (2006) says that 50 year set-back should be increased by 15 to 200 feet and the 75 year set-back should be increase by 23 to 300 feet. This suggests the proposed building site is in a hazard zone.

A new study on the impacts of sea level rise and projected set-backs for the coast of California, which encompasses Sand City and the Monterey Bay Shores Ecoresort site, will be available soon. The set-back accounts for historical and projected future erosion rates, run-up based on wave climatology and LIDAR measured morphology, and increased sea-level rise due to climate change. The report is written by Phillips-Williams Associates (PWA) and was funded by the Ocean Protection Council for the State of California and has been peer reviewed. Results for Sand City were presented at the 2008 Headwaters to Oceans (H2O) Conference in October and show that the present building site is well within the hazard zone for the 50 year economic-life set-back. Therefore, it is requested that hearing on this project be delayed until this report has been made public and is available for use to assess this project.

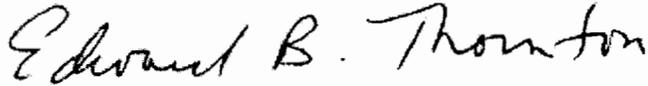
Economic Life

The proposed development uses a 50 year economic life as required by the Sand City LCP. The Sand City LCP was written in 1978 and was one of the first LCP's adopted in the State of California. The LCP's are required to be updated every 5 years, which has

CCC Exhibit 32
(page 1 **of** 33 **pages)**
A-3-SNC-98-114

not occurred. Using a 50 year economic life is outdated and unrealistic either in terms of the economics of the project and the actual planning for such a project. The project should more properly use a 100 year economic life for project planning and this should be required.

Very truly yours,



Edward B. Thornton, President, Monterey Bay Dunes Coalition
A coalition of members of the Sierra Club, Audubon Society and California Native Plants

References:

Hapke, C.J., Reid, D., Richmond, B.M., Ruggiero, P. and List, J., 2006. National Assessment of Shoreline Change Part 3: Historical Shoreline Change and Associated Coastal Land Loss Along Sandy Shorelines of the California Coast. *U.S. Geological Survey Open-File Report 2006-1219*, 72p.

Haro, Kasunich and Associates, Inc, 2003, Coastal Recession Evaluation for Coastline of Sand City, California, Report Prepared for the City of Sand City, California, pp 17.

Phillip Williams and Associates, 2008, Coastal Regional Sediment Management Plan for Southern Monterey Bay, 278 pp.

Thornton, E.B., Sallenger, A., Conforto Sesto, J., Egley, L., McGee, T. and Parsons, R., 2006. Sand mining impacts on long-term dune erosion in southern Monterey Bay. *Marine Geology*, 229, 45-58.

222 East 3rd St #1E.
NEW YORK, NY 10009

REPRESENTATIVE FORM
LETTER RECEIVED FROM 30
SEPARATE INDIVIDUALS

January 7, 2009

RECEIVED

Ms. Bonnie Neely
Chair & Commissioners
California Coastal Commission
Central Coast District Office
725 Front Street, Suite 300
Santa Cruz, CA 95060-4508

FEB 06 2009

CALIFORNIA
COASTAL COMMISSION
CENTRAL COAST AREA

**RE: YES to Monterey Bay Shores Ecoresort!
Monterey Peninsula Residents Support it.**

Dear Madam Chair and Commissioners:

It's rare to come across a coastal project on the Monterey Peninsula that I can support. But the Monterey Bay Shores Ecoresort demonstrates that by having a visionary and sustainable approach to coastal design, it can be done with *minimal* environmental impacts, and protection of coastal resources. I welcome that kind of approach and new thinking to the Monterey Peninsula. This project has many green, sustainable and ecological features and *benefits* that are simply amazing. For the Monterey Peninsula to be the *first in the country* to embrace and implement these green strategies in a visitor serving facility, would be monumental. Three benefits that capture my even greater support are:

- This site was a sand mining site for 60 years. It is degraded. I welcome the restoration, both dune and habitat, and the protection of viewshed corridor along Highway 1 and across the Bay from Monterey and Pacific Grove.
- The public on the Monterey Peninsula does not have beach access on the stretch from the Monterey Beach Hotel, Monterey, to Reservation Road in Marina, a stretch of about 8 miles. We have over 65,000 people living east of that stretch that for the first time will have public access to the beach on that stretch, paid for by the project.
- This project will generate up to 500 construction and permanent Green jobs, a much needed boost to the local economy.

This project was envisioned by respecting the coastal resources, by restoring it and by renewing it. That is the mission of the Coastal Act. **We need this project.** Please **APPROVE** the Coastal Development Permit for the Ecoresort as proposed coming up for review in your Coastal Commission hearing. I support it.

Respectfully yours,
Tomas E. Gomez

Finance
tomas.gomez@earthlink.net

cc. Dr. Charles Lester & Dan Carl, Central Coast District Office

CCC Exhibit 32
(page 3 **of** 23 **pages)**

PO Box 2031
Rohnert Park, CA 94927

REPRESENTATIVE FORM
LETTER RECEIVED FROM 49
SEPARATE INDIVIDUALS

January 7, 2009

Ms. Bonnie Neely,
Chair & Commissioners
California Coastal Commission
Central Coast District Office
725 Front Street, Suite 300
Santa Cruz, CA 95060-4508

RECEIVED

FEB 18 2009

CALIFORNIA
COASTAL COMMISSION
CENTRAL COAST AREA

REF: Support the Monterey Bay Shores Ecoresort

Dear Madam Chair and Commissioners:

I am writing to express my support for the Monterey Bay Shores Ecoresort as proposed. I reviewed with great interest their proposal and welcome the great many benefits that such a project brings to the coast and the community. It's a cutting edge environmental sensitive coastal resort that I am proud to support. The proposed project provides much needed public access to the beach, public parking and recreational opportunities as well as much needed coastal visitor serving facilities on the north side of the Monterey Peninsula. That's great! But the Ecoresort also supports habitat and dune restoration, conservation of land, renewable sources of energy and carbon footprint reduction by over 50%, water conservation and graywater reuse; it has created a new standard for coastal and green developments.

The Monterey Bay Shores Ecoresort brings refreshing new ideas and changes that are important in how we remake and reshape our built environment, country and the planet. I consider the Monterey Bay Shores Ecoresort to be an important step forward, the promise in moving us forward. I would strongly encourage you to embrace this approach to coastal development as I have, and approve the Coastal Development Permit.

Sincerely yours,
Anna Nelson

housewife
huskyanna@yahoo.com

cc. Dr. Charles Lester & Dan Carl, Central Coast District Office

CCC Exhibit 32
(page 7 of 33 pages)

REPRESENTATIVE FORM
LETTER RECEIVED FROM 39
SEPARATE INDIVIDUALS

Name:

E-mail: Cbessermin@yahoo.com

February 9, 2009

Ms. Bonnie Neely,
Chair & Commissioners
California Coastal Commission
Central Coast District Office
725 Front Street, Suite 300
Santa Cruz, CA 95060-4508

RECEIVED

FEB 25 2009

CALIFORNIA
COASTAL COMMISSION
CENTRAL COAST AREA

RE: Approve the Monterey Bay Shores Ecoresort: Making a Difference

Dear Madam Chair and Commissioners:

It is my pleasure to write a letter of support for the Monterey Bay Shores Ecoresort planned on the coast of the Monterey Peninsula. This proposal demonstrates how one can *make a difference* by utilizing visionary and sustainable design approach and applying it to a development. The ecological and sustainable features of the Ecoresort are very impressive, as are the minimal environmental impacts and protection of coastal resources. Look at the habitat and dune restoration features, the creation of new habitat for the western snowy plover. Or, the water conservation features which are cutting edge. At a time of scarce water resources, that is a very welcome change. I am particularly impressed with the design that "*fits*" into the dunes and protects viewshed from Highway 1 and across the Monterey Bay in Monterey and Pacific Grove. Most importantly, we need beach and public access for the public as well as more visitor serving accommodations. That is great!

The *Stewardship* that the development team has demonstrated exceeds the standards of the Coastal Act and is a welcome change to the traditional type of design. By incorporating the precious "five elements" of planet earth, *earth, water, air, sun and energy*, this proposal rises above all others, it sets a threshold, and makes a difference. It also provides up to 500 Green Jobs that President elect Obama is encouraging us to create. Let's join his efforts. This is our future!

The Monterey Bay Shores Ecoresort deserves an expedient **approval**, as proposed, of the Coastal Development Permit.

Thank you,



cc. Dr. Charles Lester & Dan Carl, Central Coast District Office

CCC Exhibit 32
(page 5 of 23 pages)

RECEIVED

April 11, 2009

APR 14 2009

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

CALIFORNIA
COASTAL COMMISSION
CENTRAL COAST AREA

RECEIVED

APR 13 2009

CALIFORNIA
COASTAL COMMISSION

Re: Monterey Bay Shores Ecoresort

Dear Coastal Commission

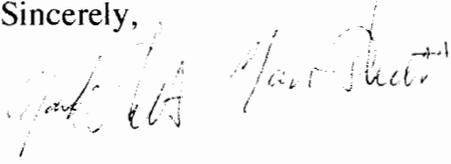
We are opposed to the construction of the Monterey Bay Shores Ecoresort for a variety of reasons:

- Lack of available water
- Impact to the marine environment
- Transportation access/egress limitations
- Elimination of public access to the coast

We urge you to vote no on this development. As you are aware the proposed 341 room hotel sounds like a great tax revenue resource to Sand City and Monterey County and the State of California. However the un-mitigated impacts, primarily water availability, will affect all of us. We recently received a significant rate increase from our water provider, the Marina Coast Water District, because of limited available water resources. They have the authority to raise the price of the water while limiting the access to this vital resource. It was also interesting to note that based on the significant rate increase, we are forced to pay a higher rate than the new/proposed/approved Marina Dunes housing project proposed for Old Fort Ord Property. In essence we are forced to subsidize new development's use of limited water resources. We take this cost increase very seriously because it is the future of available water and the subsidies that we must pay to development of and for future developments like the Monterey Bay Shores Ecoresort. The Coastal Commission knows very well that we have limited potable water within the Seaside aquifer and for that matter the entire Monterey Peninsula. The lack of available water will be even more catastrophic when, if ever, new un-mitigated development such as the Monterey Bay Shores Ecoresort is permitted. The lack of available water resources becomes even more significant when you read articles, such as the National Geographic's April 2009 Changing Rains, which is about the forecasted limited water resources due to global warming. While we can rant and rave about all of the other opposed reasons, we feel the development of the Monterey Bay Shores Ecoresort should be permanently shelved and wealthy Ed Ghandour should consider donating the land to the State for a permanent park. It, the Monterey Bay Shores Ecoresort, was a bad vision, and remains a bad vision by a very very wealthy man seeking to capitalize on his investment and his ability to manipulate public opinion. We are aware of the Marriot Resort proposed to be built on the former Fort Ord Property. This giant resort will be competing with the Monterey Bay Shores

Ecoresort for limited water resources. We urge you to vote no on this proposed development.

Sincerely,

Handwritten signature in cursive script, appearing to read "Mark & Nan Pheatt".

Mark & Nan Pheatt
5025 Peninsula Point Drive
Seaside, CA 93955

458 Gloria Circle
Marina, CA 93933

February, 16, 2009

Ms. Bonnie Neely, Chair & Commissioners
California Coastal Commission
Central Coast District Office
725 Front Street, Suite 300
Santa Cruz, CA 95060-4508

RECEIVED

FEB 19 2009

CALIFORNIA
COASTAL COMMISSION
CENTRAL COAST AREA

Subject: Oppose the Monterey Bay Shores Ecoresort

Dear Madam Chair and Commissioners:

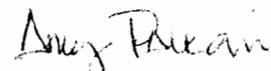
I am writing to express my concern about the Monterey Bay Shores Ecoresort project. I reviewed the developer's proposal and the information on their website, and I have many reservations about this project. The two primary problems that I am aware of are adverse impacts to the western snowy plover and coastal erosion.

The developers claim that their project will benefit sensitive species and habitats including the western snowy plover. Not only would this project introduce an intensive new human disturbance regime (around the clock), which would degrade or eliminate western snowy plover breeding habitat, it would also introduce landscaping including trees and other human factors that will attract commensal species (corvids, skunks, etc.) which are predators to the western snowy plover. Restricting the western snowy plover to fewer breeding sites, as we have been doing along the Pacific coast, makes them more susceptible to predator pressures as well as other environmental pressures. The residential portion of this development will bring with it pets, which are an additional adverse impact to western snowy plovers. Domestic cats prey upon them and dogs are a constant source of harassment to birds on the beach. Additionally, too many coastal access points negatively impact breeding western snowy plovers, as these locations become centers of high human activity. We already have more than enough coastal access for humans along the entire Monterey Bay.

The developers claim that a seawall will not be needed for their project and that they will simply move buildings if or when they are threatened by coastal erosion. I do not believe that is a feasible option. For the portion of this development that will be residences, I would expect that each of the residents who have a stake in the property would do whatever is necessary to protect their property from coastal erosion. I think this project will necessitate a seawall at some point in the future, and it will forever alter the dynamic beach and dune system in and around the project area.

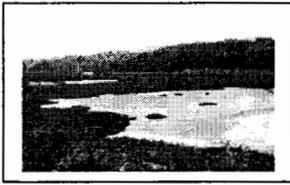
A truly 'green' and environmentally sensitive project would not be sited on the immediate coastline in sensitive species habitat. A better place for this project would be on the inland side of the highway. I strongly encourage you **not** to approve the Coastal Development Permit for the Monterey Bay Shores Ecoresort.

Sincerely,



Amy Palkovic

CCC Exhibit 32
(page 8 of 33 pages)



(415) 310-5109

Peter R. Baye, Ph.D.
Botanist, Coastal Ecologist
P.O. Box 65
Annapolis, California 95412



baye@earthlink.net

MEMORANDUM

TO: Mike Watson, California Coastal Commission, mwatson@coastal.ca.gov

SUBJECT: Scientific/technical peer review of multiple environmental documents for Monterey Bay Shores Ecoresort, Sand City, California

DATE: 24 February 2009
Via e-mail

1. Purpose: I am submitting the following technical review of the Monterey Bay Shores Ecoresort (Ghandour/SNG project, Sand City, State Clearinghouse # 97091005) Revised Draft Addendum for the 1998 Final Environmental Impact Report, and supporting environmental documents, on behalf of the Ventana Chapter of the Sierra Club (contact: Rita Dalessio, puffin@mbay.net). The scope of my review focuses on critical review of the assumptions and conclusions of environmental impact assessments related to dune and dune habitats, ecological and geomorphic processes, vegetation, and special-status species, and the technical feasibility and suitability of proposed beach/dune restoration and management plans. The opinions and technical arguments in my comments reflect my independent professional views only.

2. Qualifications: My qualifications for expert comments on environmental planning, regulation, and assessment of coastal dunes are as follows. My Ph.D. dissertation concerned coastal dune vegetation and its response to sand deposition, and I have studied coastal dunes in the Atlantic and Pacific North American coasts since 1974. My principal professional experience in California has been with conservation planning for coastal habitats and ecosystems, and recovery planning for endangered coastal species. I was a contributing author for sections of the Recovery Plan for Seven Coastal Plants and Myrtle's Silverspot Butterfly (1998) prepared by the U.S. Fish and Wildlife Service, Sacramento Fish and Wildlife Office. My contributions included technical background information on California coastal dune systems, and specific recovery recommendations for federally listed Central Coast dune plants, including Monterey spineflower (*Chorizanthe pungens* ssp. *pungens*). I was the lead author for the Service's Recovery Plan for Coastal Plants of the Northern San Francisco Peninsula (2002), which featured coastal dune species. I have conducted independent field investigations of coastal dune and wetland systems in central and northern California, including geomorphologic, hydrologic, and ecological conditions throughout the 1990s to the present. I serve on the scientific review panel (with Andrea Pickart and Pete Connors) for the planning of the Bodega Dunes Restoration Project, managed jointly California State Parks/University of California Bodega Marine Laboratory (currently the largest coastal dune restoration project in California). I am also a technical advisor/subconsultant for multiple federal dune restoration projects managed by the National Parks Service, Presidio Trust,

Peter R. Baye Ph.D.
Botanist, Coastal Ecologist
baye@earthlink.net
(415) 310-5109

and Point Reyes National Seashore in the San Francisco Bay area (Muir Beach, Presidio, Abbott's Lagoon). I was co-author of a recent habitat management plan for Laguna Creek Lagoon's barrier beach and wetland complex (California State Parks) in Santa Cruz, which supports a wintering population of western snowy plovers. I have been an active member of the Dunes/Coastal Habitat Guild of the California chapter of the Society of Ecological Restoration (SERCAL) since it formed in the early 1990s, and have led field trips and presentations for the Guild. I also served as senior scientific and regulatory staff of the U.S. Army Corps of Engineers, San Francisco District, where I managed Environmental Impact Statements/Reports, and conducted endangered species consultations (including western snowy plovers). My resume is available on request.

3. Scope of review: I have reviewed the following documents from the California Coastal Commission files, obtained through the Ventana Chapter of the Sierra Club:

City of Sand City 2008. Monterey Bay Shores Resort, Revised Draft Addendum to the Final Environmental Impact Report, October 2008.

EMC Planning Group, Inc. 2008. Habitat protection plan, Monterey Bay Shores Eco-Resort, Sand City, California. Prepared for Security National Guaranty (SNG). October 2008.

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4. Summary of findings and conclusions:

4.1 Monterey spineflower: The proposed mitigation to compensate for destruction of existing 3.4 acres of occupied habitat of federally listed Monterey spineflower is wholly infeasible because (a) the only explicit location of the landscape unit proposed to support this species is “restored fore dune bluff” (*sic*), as shown on p. 22 of the sheet titled “Monterey Bay Shores: Elements and Experiences” (Ghandour 2008), an inherently unstable erosional/depositional habitat type (due to its backshore position) that does not support persistent populations of this stable backdune gap-colonizing annual species; (b) the Habitat Protection Plan (HPP) provides for no long-term (>5 hr) sustained feasible management methods for prevalent invasive species that threaten this species; (c) the HPP fails to specify any ecologically meaningful, objective restoration criteria for soil conditions, population ranges, dominant vegetation, vegetation dynamic processes, long-term vegetation trends, or acreages essential to Monterey spineflower management.

The Addendum conclusion that mitigation will reestablish Monterey spineflower at a 1:1 ratio is unsupported by any reasonable scientific interpretation of technical details in the HPP proposal or design documents.

4.2 Western snowy plover impacts and mitigation: The Addendum and HPP fail to address threats and biologically significant indirect and cumulative impacts to the western snowy plover that are clearly identified or emphasized in the U.S. Fish and Wildlife Service’s final (2007) recovery plans for this species, which provides the primary federal ESA conservation guidance for this federally listed species. The HPP fails to address indirect impacts due to increased predator attraction and food resources (especially for corvids, gulls, red fox). The proposed 2-acre plover protection area fails to address indirect or direct impacts to nesting or foraging plovers due to increased resort-based visitor disturbance in the vicinity of the proposed resort and adjacent Fort Ord beaches. The addendum addresses only critical habitat designation (which is related to Section 7 consultation and “take” provisions of ESA, not recovery), which is not relevant to assessment of threats, impacts, and recovery. The Addendum discussion appears to confuse ESA “take” with the totality of direct, indirect, and cumulative biological impacts and mitigation required for assessment under CEQA. The Addendum ignores the recovery plan’s goal of increasing breeding success of this species in each part of its range, including all of Monterey Bay, and understates the significance of the project’s impacts on recovery. The Addendum erroneously interprets older monitoring data as evidence that “the plover has consistently migrated its nesting activity 16 miles north to Moss Landing since the mid-1990s”, and contradicts recent (2007) and current (2008) PRBO monitoring data. The Addendum uses these fallacies to support an unsound argument that project impacts to the plover are not biologically significant. The HPP fails to provide the federal scientific oversight, scientific peer-review, and enforceability mechanisms of an HCP, but the Addendum erroneously argues that the “revised [HPP] strategy is equivalent to the previous [HCP] strategy”. The creation of a dependent non-profit (tax-exempt?) environmental trust by the owners of the for-profit resort to manage and enforce the HPP is highly questionable because of potential conflicts of interest and financial self-dealing.

In view of the 2007 recovery plan, and the 2008 breeding survey results reported by Neuman and Page (PRBO), which revealed four western snowy plover nests and one additional brood in the Sand City study area (most clustered in the vicinity of the project site, the location of

future resort-based visitor disturbance), the Addendum's conclusions about less-than-significant western snowy plover impacts are not supported by reasonable scientific interpretation of evidence and authoritative federal conservation guidance.

4.3 Other special-status species impacts: Neither the Addendum nor HPP provides any current or recent, relevant survey information or biological impact assessment for the following special-status (concern) rare wildlife species identified in the USFWS recovery plan for seven coastal plants and Myrtle's Silverspot butterfly (1998), each of which may potentially occur in coastal foredune/beach/mobile dune habitats in Monterey Bay: Monterey dunes scorpion (*Pauroctonus maritimus*), Globose dune beetle (*Coelus globosus*), and sandy beach dune beetle (*Cicendela hirtocollis gravida*). The omission of these species from evaluation is unexplained. Furthermore, neither the Addendum nor HPP contain any site-specific survey information for the black legless lizard (*Anniella pulchra nigra*) after 1987 (a significant 22 year survey data gap), despite the likely presence of source populations in adjacent Fort Ord dune scrub within feasible dispersal distance of the site, and the presence of potentially suitable habitat on site. These omissions indicate the possibility of unmitigated significant impacts to special-status wildlife species.

4.4 Feasibility of HPP dune restoration: The project fails to analyze the long-term loss in coastal dune habitat caused by the combination of the development infrastructure footprint, and marine transgression (long-term shoreline retreat; "coastal squeeze"). The project footprint, notwithstanding the largely ornamental rooftop gardens with native vegetation, displaces most of the transgressive platform for regeneration of coastal dunes as the coastal bluffs retreat in response to accelerated sea level rise. The HPP fails to include dune restoration and management techniques, methods, and specifications at even a conceptual level: there are no substrate texture specifications, estimated rates of sand transport (erosion/accretion), species-specific planting densities, offsite or on-site transplant stock specifications, planting sequence or phasing, growth or survivorship criteria, long-term invasive species management, reference sites or conceptual models for vegetation objectives, quantitative or semi-quantitative vegetation or species objectives, or long-term vegetation goals. The HPP lacks any indication of due diligence in consulting standard published scientific references on coastal dune restoration, or regional California expertise. The HPP exhibits the scientific rigor of a landscape architect's planting plan. It provides no basis for expecting effective long-term restoration or rehabilitation of native coastal dune communities, or adequate mitigation in a CEQA or Coastal Act context.

4.5 Coastal recession and dune stabilization. The discussion and analysis of "coastal recession" (shoreline retreat) as an incompatible hazard for resort development appears to have omitted analysis of potential significant impacts to and by dune sand transport linked to episodic marine (storm wave) erosion of the coastal bluff scarp, and associated blowout and eolian sand transport processes. Dune blowout formation and deposition of tongue dunes and small parabolic dunes are well-documented historic and modern geomorphic processes and landforms associated with the southern Monterey Bay coastal bluff and dune sheet. The 1989 erosion study expressly indicated bluff erosion processes independent of waves and shoreline position (p. A-7), and estimated potential net onshore eolian sand transport rates ranging from approximately 3,000 to 25,000 cubic yards per year in Sand City (p. B-17). Paradoxically, all discussion of "set-back" distances since the 1989 erosion report are linked to position of the bluff or high water line, rather than the zone of active blowout erosion and eolian sand

deposition that occurs well landward of it. The environmental consequences of perpetual blowout stabilization and sand removal have not been addressed in the Addendum or geotechnical reports. There is no native vegetation type that can fully stabilize a foredune faced with strong net onshore transport of sand from dry fetch across either an erosional bluff scarp or wide beach backshore, or both. The layout of the “eco-resort” infrastructure and graywater/stormwater detention ponds appears to conflict with the likely zone of dune transgression associated with the existing bluff crest or “restored foredune” grade. Contours of the “restored” foredune appear to increase topographic steering and flow acceleration of onshore winds, intensifying potential local wind scour and sand deposition behind the bluff crest. As the beach recovers from sand mining, the risk of increased foredune mobility should be expected to increase over time.

5. Discussion

5.1 Monterey spineflower impacts and mitigation

Monterey spineflower (*Chorizanthe pungens* ssp. *pungens*) is a prostrate annual forb that inhabits vegetation gaps, inactive blowouts and deflation sand surfaces with sparse vegetation, and sparse ground layer vegetation within dune scrub assemblages of stabilized Holocene and older Pleistocene dunes (paleodunes) of Monterey Bay. *C. pungens* is not a pioneer foredune plant that completes its life-cycle within active depositional beach and foredune environments, in contrast with typical strand species (e.g., *Atriplex leucophylla*, *Cakile maritima*). It may occur only incidentally in coastal bluffs or foredunes where scarp erosion (slumping, gravitational slope processes) transport of seed from older, stable dune scrub causes local dispersal into bluff slopes or foredunes. *C. pungens* seedlings and mature plants are relatively intolerant of sand accretion, and have no specialized morphological adaptations (such as rapid shoot elongation responses) to cope with typical rates of sand accretion that occur in foredunes.

The Addendum concedes that the extent of *C. pungens* at the project site has increased since the FEIR was completed, but it argues that the original mitigation measures still apply and still reduce project impacts to a less-than-significant level. This argument is repeated in the “Biotic Assessment” letter of Zander Associates (2008) and the Ilse “Review of Potential Impacts” memorandum to SNG (2008). This conclusion must depend on the feasibility of re-establishing an equivalent or superior replacement population of *C. pungens* in suitable, sustainable long-term conditions – i.e., feasible and successful restoration of *C. pungens* population and habitat. The limited amount of planning information *C. pungens* reintroduction/restoration in the Habitat Protection Plan and project design drawings that represent the location of *C. pungens* habitat, however, indicate a very high risk of restoration and post-transplant population failure.

The most significant constraint on *C. pungens* reintroduction/restoration feasibility is the designated location of habitat, shown on p. 22 of the sheet titled “Monterey Bay Shores: Elements and Experiences” (Ghandour 2008). The HPP itself appears to contain no conceptual or other restoration design figures indicating the specific location (boundary or zone) and extent of seeded future *C. pungens* population. The HPP merely states (p. 4-26) that a “minimum 1,000 propagules” in “several areas of bare sand that totals 3.4 acres” will be harvested and sown, followed by 5 years minimum monitoring. Identification of the the location of the full 3.4 acres of *C. pungens* is apparently undocumented, but the 2008 SNG Supplemental Documents (p. 22,

“Monterey Bay Shores: Elements and Experiences” specifically accounts for “Monterey Spineflower (1.4 acres)” within a landscape unit labeled “Restored Fore Dune Bluff” (sic), immediately seaward of “Restored Low Barchan Dunes”. This appears to indicate that 41% of the required 1:1 mitigation for endangered Monterey spineflower would be located in an unstable coastal bluff scarp (strand habitat), exposed to sand accretion rates and wave erosion rates typical for coastal bluffs in southern Monterey Bay. This is not suitable or feasible habitat for a persistent restored population of *C. pungens*. *C. pungens* occurs in stable scrub dune assemblages with sparse ground layer vegetation and litter deposits, and negligible rates of sand accretion. It is likely to be excluded by significant rates of sand accretion (pulsed episodes exceeding 5-10 cm/deposition event) in foredunes and bluff slopes.

C. pungens is likely to be excluded also by significant accretion of plant litter beneath dense dune scrub canopies in artificially stabilized dune scrub assemblages. The HPP refers to revegetation techniques including retention of dead iceplant “mulch” (p. 4-10), artificial irrigation up to 3 years (p. 4-7, 4-8), and fertilizer application (p. 4-7). These techniques, problematic and largely misapplied to coastal dune restoration projects where potential mixed substrate types occur, are likely to facilitate excessive size and canopy density of planted dune scrub, and facilitate excessive invasion by non-native weeds (Pickart and Sawyer 1998). The overall effect of fertilized, irrigated, organically-enriched soil in a dune environment would be to support an ephemeral (single growing season) “flush” of robust annuals (including *C. pungens*) and planted shrubs/perennials, followed by a trend of woody/perennial canopy suppression of ground-layer native annuals. Neither the HPP nor any other supporting environmental documents cites any applied scientific literature on coastal California dune restoration, or any expert consultation, to support its methodology or design for achieving *C. pungens* and dune scrub restoration objectives. The approach described is, in my professional opinion, superficial and deeply defective in both research and formulation. Dune revegetation actions described within the project area are likely to result in vegetation types that support few or no substantial, persistent populations of *C. pungens*.

The proposed sowing density of “minimum 1000 propagules” of *C. pungens* distributed over 3.4 acres (p. 4-26 HPP) is an incredibly low 0.0067 (dry fruits/seeds) per square foot. Successful seeding of native dune annuals, particularly where weed competition or erosion/accretion rates may constrain emergence success, requires very high sowing rates. The HPP does not account for reasonable methods harvest, storage, sowing, seasonal timing, or post-sowing stabilization of *C. pungens* seed. The HPP does not provide for review or approval of restoration/reintroduction methods by either State or Federal resource agencies responsible for this endangered species, nor qualified scientific experts in coastal dune plant ecology and restoration.

The HPP coverage of *C. pungens* reintroduction/restoration measures fails to include basic and essential planning feasibility information and criteria for restoration of any dune annual, such as suitable substrate (“soil”) analysis, existing and forecast sand accretion rates in relation to topographic position, objective targets for population size (range) or trends, local vegetation succession (native plant competition) predictions, vegetation gap dynamics and patterns, long-term invasive non-native plant trends and management, boundaries of managed areas, or acreages essential to Monterey spineflower management.

The overall long-term feasibility of establishing a viable population of *C. pungens* in the so-called restored” dunes of the project site (seaward of the developed resort footprint) in the current

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project plan appears to be very low. Bluff retreat and associated bluff-top dune blowout and active dune transgression will replace stable dune scrub habitats with bluff-top dune zone that would become too geomorphically dynamic to sustain a natural population of *C. pungens* through the 21st century. The current (2008) proposed *C. pungens* mitigation measures are not adequate to offset impacts to existing endangered plants on the site, and indeed indicate a likelihood of population failure over time. This represents a significant change in the conditions evaluated by the FEIR.

5.2 Western snowy plover impacts and mitigation

The Addendum and HPP fail to address threats and biologically significant indirect and cumulative impacts to the western snowy plover that are clearly identified or emphasized in the U.S. Fish and Wildlife Service's final (2007) recovery plans for this species, which provides the primary federal ESA conservation guidance for this federally listed species. The Addendum stresses (and misinterprets) the findings of the 2005 critical habitat listing for the western snowy plover (plover), yet ignores the explicit scientific findings and guidance of the final recovery plan. "Critical habitat" designations are not rankings of recovery priority. "Critical habitat" is a legal determination that extends Section 7 ESA (interagency consultation) "may affect" triggers for formal consultation, and Section 9 "take" prohibitions for wildlife, to geographic areas that may or may not be occupied by a listed species at the time of a potential impact. In contrast, recovery plans (Section 4 ESA) establish the "master plan" for federal conservation priorities of a listed species, and also provide the primary federal scientific guidance for assessment of threats, impacts, and conservation measures. The Addendum appears make unjustified interpretations about the meaning of the plover's critical habitat designation, while arbitrarily ignoring the explicit guidance of the recovery plan (available to Addendum preparers in 2007) where it is pertinent to revised assessment of project impacts and mitigation. Moreover, the Addendum appears to disregard or trivialize recent and current (2007-2008) plover data from Sand City and Monterey Bay (also fully available to Addendum preparers) when it conflicts with its tenuous interpretations about the biological significance of project impacts. I am concerned that the Addendum's treatment of plover impact "significance" reflects substantial bias or ignorance. The same selective omission of the recovery plan appears in the HPP.

The Addendum discussion appears to confuse ESA "take" with the totality of direct, indirect, and cumulative biological impacts and mitigation required for assessment under CEQA. Significant CEQA biological impacts to plovers are not limited to the federal legal threshold of "take". The USFWS recovery plan (2007) comprehensively explains the scope of threats and modes of direct, indirect, and cumulative biological impacts to plover, but this guidance is not addressed in the Addendum or HPP. The Addendum ignores the recovery plan's goal of increasing breeding success of this species in each part of its range, including all of Monterey Bay, and understates the significance of the project's impacts on recovery. The Addendum erroneously argues, by selective citation of regional plover breeding data, that

...because the site is not designated plover critical habitat, because the on-site nesting activity has diminished since 1998, and because the plover has consistently migrated its nesting activity 16 miles north to Moss Landing since the mid-1990s, the ecoresort construction or operation is not expected to result in "take" of the plover (Addendum p. 52)

The errors in this argument and its premises are as follows:

- a. The designation of critical habitat is not an indication of recovery priority, but a legal determination of where Section 7 obligations and Section 9 prohibitions will apply even when the area is unoccupied by the listed species. The final recovery plan is the primary authority on biological importance of geographic range and site location factors to species recovery. The site falls within mapped snowy plover areas of Monterey Bay that apply to recovery recommendations.
- b. Contrary to the assertions of the Addendum, the most recent PRBO data (2008) report 4 plover nests and one additional brood in the Sand Study area, most of which are clustered around the vicinity (or actual location) of the project site (Figure 1, Neuman and Page 2008). The survey authors report high hatch rates but low fledge rates (initial breeding success, poor juvenile survivorship) in the study area, citing avian predation, human disturbance, dogs as likely causes of low nest success, rather than inherent site suitability factors. The results were reported directly to Sand City. PRBO evaluated the 2008 Sand City plover breeding survey results as “encouraging signs for plover recovery in the area”, with a caveat about crows (predators) and levels of humans disturbance (“substantially higher in Sand City than those reported for other Monterey Bay beaches”) as likely limiting factors for fledging (juvenile survival).
- c. The Monterey Bay regional plover nesting report (Page et al. 2007) does not assert or support the “migration of nesting activity” to Moss Landing since the mid-1990s. The report concludes that hatch rates are similar in Moss Landing salt ponds and Monterey Bay beaches in 2007, and of fledging chicks, 203 were on Monterey Beaches versus only 27 in the salt ponds in 2007. The report indicates a continuing decline in breeding success, not a “migration of nesting activity northward”. The report did not cover the 2008 Sand City breeding survey results, but the 4 Sand City nests (in unmanaged habitat) represent 15% of the nesting rate of the CDFG salt ponds that are actively and intensively managed for plover breeding.
- d. As indicated above, federal legal “take” is not the applicable threshold for significant impacts to plovers in a CEQA context. All plover foraging, nesting, fledging, predator refuge/cover, predation risk factors, and escape habitat functions are applicable in a CEQA context.

In contrast with the Addendum’s conclusion that the critical habitat designation suggests the site is unimportant for breeding, the recovery plan expressly states:

A key component of recovering western snowy plovers is to ensure that population increases are distributed throughout the species’ Pacific coast range. In order to achieve this, management goals (Appendix B) and needed management actions (Appendix C) have been determined for 155 sites distributed along the coasts of southern Washington, Oregon, and California.

Sand City beaches lie within mapped snowy plover areas of the recovery plan.

The projects' most significant potential impacts on breeding plovers in the "effects area" of the project are likely to be indirect, mediated by influences on predators (predator attraction, predator cues, predator activity), and visitor disturbances of breeding plovers. The recovery plan (pp. 149-150) states that coastal development that destroys or modifies habitat (listing factor A) also results in increased disturbance from recreational activities (listing factor E) and in increased predator populations (listing factor C). The recovery plan lists threats that apply to the current project (p. 152), noting those that were originally identified in listing with an asterisk (*): increased populations of native predators due to human influences; predator attractants*; disturbance by pedestrians*, dogs*; increased coastal access to beaches; litter, garbage & debris.

The "plover mitigation program" cited in the Addendum is a sketchy bullet list of 11 conservation items aimed at the plover (p. 3-7), followed by sketchy description and no technical implementation (other than deferred professional discretion or consultations of the "retained biologist") on pp. 4-14 to 4-16).

The HPP fails to address indirect impacts due to increased predator attraction and food resources (especially for corvids, gulls, red fox). The "predator management plan" (p. 4-16 HPP) is proposed for future development, and does not appear to expressly include in its scope prevention of predator attraction by food and garbage management within the resort. The scope of the plan appears to focus only on protection of "plovers nesting *on the site*" from predation "to the extent feasible" (p. 4-16), and fails to address indirect impacts of resort-based increased predator activity on adjacent areas (Fort Ord beaches). The plover recovery plan (p. 54) discusses the following indirect and landscape-level cumulative impacts on predation:

Predation, while predominantly a natural phenomenon, is exacerbated through the introduction of nonnative predators and unintentional human encouragement of larger populations of native predators. Elevated predation pressures result from landscape-level alterations in coastal dune habitats which, in turn, now support increased predator populations within the immediate vicinity of nesting habitat for western snowy plovers.

In addition the 2007 recovery plan identifies the following impacts that are directly relevant to the analysis of project impacts, but were not analyzed in the Addendum or HPP:

p. 58 [nest selection, roost site selection] Concentrations of people may deter western snowy plovers and other shorebirds from using otherwise suitable habitats.

p. 59 [foraging impacts] Recreational activities that occur in the wet sand area (e.g., sand sailing) can adversely affect western snowy plovers when they disturb plover adults or broods, which feed at the edge of the surf along the wrack line.

p. 61 [flushing] The disturbance types that caused incubating western snowy plovers to flush from their nests most frequently were joggers and walkers, followed by joggers or walkers with dogs off leash, and stationary visitors

p. 63 [dogs] Dogs on beaches can pose a serious threat to western snowy plovers during both the breeding and nonbreeding seasons. Unleashed pets, primarily dogs, sometimes chase western snowy plovers and destroy nests. Repeated disturbances by dogs can interrupt brooding, incubating, and foraging behavior of adult western snowy plovers and cause chicks to become separated from their parents.

p. 65 [energetics and disturbance] When shorebirds are flushed, they must spend more energy on vigilance and avoidance behaviors at the expense of foraging and resting activity.

p. 72 [coastal access] Expanding public access to the coast (e.g., State Coastal Trails) for recreation (e.g., walking, hiking, biking) may adversely affect western snowy plovers and their breeding or wintering habitat. Expanded coastal access brings significantly greater numbers of people to the beach and other coastal habitats, exacerbating potential conflicts between human recreational activities and western snowy plover habitat needs (see Pedestrian section).

p. 76 [litter, garbage, and debris] Placement of litter, garbage, and debris in the coastal ecosystem can result in direct harm to western snowy plovers and degradation of their habitats. Litter and garbage feed predators and encourage their habitation at higher levels than would otherwise occur along the coast, making predators a greater threat to western snowy plovers.

The proposed 2-acre plover protection area fails to address these indirect or direct impacts to nesting or foraging plovers due to increased resort-based visitor disturbance in the vicinity of the proposed resort and adjacent Fort Ord beaches. In a CEQA context, the HPP impermissibly defers preparation of an enforceable mitigation plan to protect western snowy plovers from direct, indirect, and cumulative impacts of the proposed resort, including plovers on adjacent Fort Ord beaches affected by potentially elevated predation pressures emanating from the resort.

The Addendum, following the the HPP, argues (p. 53) that the substitution of the HPP for an HCP “is unlikely to result in an increase impact to the plover” and the revised strategy is equivalent to the previous strategy. This argument is not credible for the following reasons. First, the HPP provisions for snowy plovers do not correspond to management guidance from the recovery plan. Second, the HPP lacks substantive, enforceable technical specifications, and impermissibly defers essential planning actions to future discretion of an unspecified biologist, or future planning. Third, the HPP provides no criteria or standards for unspecified plan elements to meet. Fourth, and perhaps most importantly, the HPP fails to provide the federal scientific oversight, scientific peer-review, and enforceability mechanisms of an HCP. The proposed funding mechanism (apparently unprecedented) for the HPP implementation exacerbates questions of scientific integrity and enforceability of the plover mitigation: The creation of a dependent non-profit (tax-exempt?) environmental trust by the owners of the for-profit resort to manage and enforce the HPP is highly questionable because of potential conflicts of interest and financial self-dealing. The failure of the HPP to include rigorous independent scientific review by recognized regional western snowy plover experts and resource agencies with jurisdiction and expertise (USFWS, CDFG and plover recovery team members) is a grievous deficiency in its acceptability as mitigation.

In view of the 2007 recovery plan, and the 2008 breeding survey results reported by Neuman and Page (PRBO), which revealed four western snowy plover nests and one additional brood in the Sand City study area (most clustered in the vicinity of the project site, the location of future resort-based visitor disturbance), the Addendum’s conclusions about less-than-significant western snowy plover impacts are not supported by reasonable scientific interpretation of evidence and authoritative federal conservation guidance.

5.3 Omissions or deficiencies in assessment and mitigation of other special-status species impacts

The original FEIR Addendum fails to assess three species that may occur in Monterey Bay dunes, and were identified as species of concern by the U.S. Fish and Wildlife Service (1998), even though the recovery plan and its draft were already published by 1998. Neither the Addendum, HPP, nor other supporting documents such as the Zander “biotic assessment” address the following invertebrates native to central coast dunes in the project vicinity:

Monterey dunes scorpion (*Pauroctonus maritimus*)
Globose dune beetle (*Coelus globosus*)
Sandy beach dune beetle (*Cicendela hirtocollis gravida*)

Black legless lizard (*Anniella pulchra nigra*) surveys were cited for the project site no more recently than 1987, more than 20 years ago. This special-status species of concern is likely to occur in dune scrub habitats of adjacent Fort Ord dunes, within reasonable, feasible dispersal distance of the project site. No federal or state resource agencies with jurisdiction over wildlife, in my professional experience and opinion, would accept 20+ year old survey data as adequate to conclude “non-presence” of a sensitive species if potentially suitable habitat existed on a site, and occurred next to likely source populations and dispersal vectors. In the last 20 years, many years of above-average rainfall occurred and likely contributed to increased production of leaf litter and invertebrate prey bases of this species, increasing its likelihood of occurrence in vegetated dunes on the project site.

The Addendum lacks any reasonable, objective basis for concluding that the project would not have potential significant impacts to these species in the absence of valid, current survey data and habitat assessments.

5.4 Feasibility of Habitat Protection Plan and project design of dune habitat restoration

The Addendum and project documents fail to analyze the long-term loss in coastal dune habitat caused by the (cumulative project effect) the interaction of the development infrastructure footprint, and marine transgression (long-term shoreline retreat; “coastal squeeze”). The project footprint (notwithstanding the largely ornamental rooftop gardens with native vegetation) displaces most of the transgressive platform for potential regeneration of coastal dunes as the coastal bluffs retreat in response to accelerated sea level rise. As the bluff crest position retreats, the physical space available for coastal dunes to develop will be eliminated. This is likely to occur in a matter of decades based on forecast “average” rates of bluff retreat according to the HKA erosion reports, but even the HKA 2003 report indicated that because of “extreme susceptibility of the soils to erosion, a single severe ocean storm has the potential to cause 50 feet of bluff recession anywhere on this section of coastline” (HKA 2003, p. 7). Most coastal erosion occurs in El Nino Southern Oscillation storm pulses rather than incremental recession, and the intensity and frequency of extreme storm wave processes on the U.S. west coast is increasing over decades, independently of eustatic sea level rise (Allan and Komar 2006). This indicates the need for a probabilistic assessment of storm-driven bluff retreat positions that could effectively eliminate the space available for restored or regenerated dune habitats seaward of the developed resort footprint.

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The HPP fails to include standard dune restoration and management techniques, methods, and specifications (Pickart and Sawyer 1998) at even a conceptual level. Neither the HPP nor any other supporting environmental documents cite any applied scientific literature on coastal California dune restoration, or any expert consultation, to support its methodology or design for achieving dune scrub restoration objectives. The HPP dune restoration plans fail to cite substrate texture specifications, estimated rates of sand transport (erosion/accretion), species-specific planting densities, offsite or on-site transplant stock specifications, planting sequence or phasing, growth or survivorship criteria, long-term invasive species management, quality control criteria, reference sites or conceptual models for vegetation objectives, quantitative or semi-quantitative vegetation or species objectives, or long-term vegetation goals. The HPP lacks any indication of due diligence in consulting standard published scientific references on coastal dune restoration, or regional California expertise. The HPP exhibits the scientific rigor of a landscape architect's planting plan. It provides no basis for expecting effective long-term restoration or rehabilitation of native coastal dune communities, or adequate mitigation in a CEQA or Coastal Act context.

5.5 Coastal recession and dune stabilization

The discussion and analysis of "coastal recession" (shoreline retreat) as an incompatible hazard for resort development appears to have omitted analysis of potential significant impacts to and by dune sand transport linked to episodic marine (storm wave) erosion of the coastal bluff scarp, and associated blowout and eolian sand transport processes. Dune blowout formation and deposition of tongue dunes and small parabolic dunes are well-documented historic and modern geomorphic processes and landforms associated with the original southern Monterey Bay coastal bluff (marine scarp erosion) and perched dune sheet (Cooper 1967). The influence of this coastal ecological/geomorphic process may precede or eclipse marine erosion processes studied in the shoreline recession analysis.

The dune restoration and endangered plant mitigation measures of the project appear not to address the formation of naturally mobile dune features derived deflation of wave-cut bluff scarps and dune heads, processes that are controlled by rates of sand transport upwind of bluff crest/foredune vegetation. Active dunes fed by active, rapid deflation of marine scarps cannot readily be stabilized by planting native California dune species downwind. This results in the natural characteristic condition of frequent blowouts, mobile tongue dunes, and incipient parabolic dunes in various stages of vegetation succession in southern Monterey Bay (Cooper 1967). Cooper (1967) reported comparable rates of migration of active unvegetated coastal dunes in San Mateo County (derived from smaller sand sources) during the dry season up to 5.6 cm/day, or over 6 m in 4 months. Cooper described the landward encroachment of mobile blowout-derived dunes at the bluff crest as "the most conspicuous contemporary activity in the Flandrian [Holocene] dune belt" (p. 63). It is remarkable, therefore, that the rate, pattern and magnitude of this process were not accounted for in dune restoration plans for the project, or impact assessments in the Addendum.

The "wetlands" described without explicit spatial reference in the HPP appear to be shown on Bestor Engineering sheet TM-2, "retention pond" (pp. 22 and 40, SNG supplemental documents 2008). They are located landward of a "barchanoid" (misnomer; barchan dunes are intrinsically unvegetated) dune, and downwind (SE of dominant NW winds) of troughs or gap in the foredune/bluff crest topography established by constructed "dunes" and antecedent topography.

Peter R. Baye Ph.D.
Botanist, Coastal Ecologist
baye@earthlink.net
(415) 310-5109

Gaps in foredune crests cause topographic steering of onshore and alongshore winds, as well as flow acceleration that concentrates dune sand transport pathways (Walker et al. 2006). Contours of the “restored” foredune appear to increase topographic steering and flow acceleration of onshore winds, intensifying potential local wind scour and sand deposition behind the bluff crest. The layout of the “eco-resort” infrastructure and graywater/stormwater detention ponds appears to conflict with the likely zone of dune transgression associated with the existing bluff crest or “restored foredune” grade. In other words, the constructed “restored” dune topography in back of the “set-back” bluff appears to aim dune transgression directly at constructed wetlands/detention ponds, monitoring wells, lift stations, fire access roads, and infrastructure shown in sheet TM-2. As the beach recovers from sand mining, the risk of increased foredune mobility should be expected to increase over time.

The contradiction implicit in design and the morphology, pattern, rate, and scale of natural sand transport and the landscape design on sheet TM-2 is evident on p. 7 of the supplemental document package, as shown in the photograph captioned, “Example of relatively intact dune system north of the proposed site”, which shows mobile dune tongues extending landward from the bluff crest by a distance exceeding the width of the dry high tide backshore beach zone. It is notable that the “natural Monterey Bay Dune Formation” shown on this sheet erroneously represents purely unvegetated dune forms (barchans, barchanoid ridges, transverse dunes) that do not occur in the historic Monterey Bay dune field, which is dominated by parabolic dunes (Cooper 1967). In short, long before “bluff crest recession” directly affects the proposed development, the bluff-tied blowout dune processes would indirectly influence a wide zone of constructed features. The significant environmental consequences of perpetual blowout stabilization and sand removal in the proposed developed landscape have not been addressed in the Addendum or geotechnical reports.

The omission of analysis of bluff-linked dune activity is difficult to understand because the 1989 erosion study expressly indicated bluff erosion processes independent of waves and shoreline position (p. A-7), and estimated potential net onshore eolian sand transport rates ranging from approximately 3,000 to 25,000 cubic yards per year in Sand City (p. B-17). Paradoxically, all discussion of “set-back” distances since the 1989 erosion report are linked to position of the bluff or high water line, rather than the zone of active blowout erosion and eolian sand deposition that occurs well landward of it. There is no native vegetation type that can fully stabilize a foredune faced with strong net onshore transport of sand from dry fetch across either a bluff scarp, a wide beach backshore, or both.

The failure to design the project compatibly with foreseeable natural mobile dune processes linked to bluff retreat is ironic for a self-promoted ecologically designed project, but it is a more significant issue for CEQA and the Coastal Act where it leads to significant impacts due to conflicts with endangered species mitigation, wetland management, water quality and stormwater management, and potential adverse engineered fills for coastal stabilization.

6. Conclusions.

The Addendum fails to identify feasible, enforceable mitigation for impacts to endangered Monterey spineflower, relying on the flawed mitigation planning of the project. The Addendum fails to account for recent and current site-specific data that indicates more nesting by western

snowy plovers on or near the project site, and underestimates potential indirect impacts of the project on this species. The Addendum accepts incomplete and deficient mitigation for impacts to the plover. The Addendum fails to identify potentially significant impacts to several special-status wildlife species, and relies on outdated survey data for one special-status species that was previously considered in the FEIR. The project design and Addendum assessments fail to identify the environmental consequences of dune activity and transgression linked to the inevitable natural recession of the coastal bluff.

Thank you for considering my review. Please contact me if you have any questions.

Respectfully submitted,



Peter R. Baye, Ph.D.

Literature Cited

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- EMC Planning Group, Inc. 2008. Habitat protection plan, Monterey Bay Shores Eco-Resort, Sand City, California. Prepared for Security National Guaranty (SNG). October 2008.
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Walker, I.J., P.A. Hesp, R.G.D. Davidson-Arnott, and J. Ollerhead. 2006. Topographic steering of alongshore airflow over a vegetated foredune: Greenwich Dunes, Prince Edward Island. Journal of Coastal Research 22:1278-1291.

Zander Associates. 2007. Western snowy plovers, Sand City shoreline. Letter report to Steve Matarazzo, City of Sand City, September 12, 2007.

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U.S. Fish and Wildlife Service. 2007. Recovery plan for the western snowy plover, Pacific population. USFWS California-Nevada Operations Office, Sacramento, CA

**FORM FOR DISCLOSURE
OF EX PARTE
COMMUNICATION**

RECEIVED
MAR 05 2009
CALIFORNIA
COASTAL COMMISSION

Date and time of communication:
(For messages sent to a Commissioner by mail or facsimile or received as a telephone or other message, date time of receipt should be indicated.)

Monday, March 02, 2009

Location of communication:
(For communications sent by mail or facsimile, or received as a telephone or other message, indicate the means of transmission.)

Phone Conference

Person(s) initiating communication:

Ed Ghandour, SNG and Paul Kephart, Rana Creek

Person(s) receiving communication:

Bonnie Neely

Name or description of project:

Agenda Item F7a, Monterey Bay Shores Ecoresort

Detailed substantive description of content of communication:
(If communication included written material, attach a copy of the complete text of the written material.)

Applicants gave overview of the project and identified revisions made to original project design, including reducing size of footprint, including visitor serving uses, creating public access opportunities for residents of Seaside and Del Rey Oaks, Plover recovery plan, trails, and parking.

Applicants indicated they support staff's recommendation to reschedule matter for the June Commission meeting after the water distribution permit is issued.

Date: March 2nd, 2009


Signature of Commissioner

If the communication was provided at the same time to staff as it was provided to a Commissioner, the communication is not ex parte and this form does not need to be filled out.

If communication occurred seven or more days in advance of the Commission hearing on the item that was the subject of the communication, complete this form and transmit it to the Executive Director within seven days of the communication. If it is reasonable to believe that the completed form will not arrive by U.S. mail at the Commission's main office prior to the commencement of the meeting, other means of delivery should be used, such as facsimile, overnight mail, or personal delivery by the Commissioner to the Executive Director at the meeting prior to the time that the hearing on the matter commences.

If communication occurred within seven days of the hearing, complete this form, provide the information orally on the record of the proceedings and provide the Executive Director with a copy of any written material that was part of the communication.

Coastal Commission Fax: 415 904-5400

RECEIVED**FORM FOR DISCLOSURE
OF EX PARTE
COMMUNICATION**

MAY 05 2009

CALIFORNIA
COASTAL COMMISSION,
CENTRAL COAST AREA

Date and time of communication: Friday, May 1st, 2009 - 10:00 a.m.
(For messages sent to a Commissioner by mail or facsimile or received as a telephone or other message, date time of receipt should be indicated.)

Location of communication: Commissioner Nealy's Eureka Office
(For communications sent by mail or facsimile, or received as a telephone or other message, indicate the means of transmission.)

Person(s) initiating communication: Maggy Herbelin, ORCA Representative

Person(s) receiving communication: Commissioner Bonnie Neely

Name or description of project: May Agenda Item: Th12a, Monterey Bay Shores Resort

Detailed substantive description of content of communication:

Ms. Herbelin states that ORCA has concerns about this project of 341 hotel/condo/residential units as stated below:

Erosion: no other development close by and the closest other hotels are having erosion issues. This area has the highest rate of erosion.

Water: CEQA inadequate and the permit was denied.

BSHA: is not identified and there are LCP protections for the dunes.

Sewer: protection from natural hazards - future armoring.

Traffic: there are 2 intersections at unacceptable levels of service.

Construction impacts: 420 cubic yards of sand.

Date: May 1, 2009


Signature of Commissioner

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Coastal Commission Fax: 415 904-5400

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MAY 05 2009

CALIFORNIA
COASTAL COMMISSION
CENTRAL COAST AREA

**FORM FOR DISCLOSURE OF
EX-PARTE COMMUNICATIONS**

Name or description of the project: Agenda Item Th 12a.

Application No. A-3-SNC-98-114 (SNG Development Co. Monterey Bay Shores Resort, Monterey Co.)
Application of SNG Development Co. (on remand from court decision) to construct 360,000 sq.ft. mixed-use residential and visitor serving development (Monterey Bay Shores Resort).

Time/Date of communication: Monday, May 4th, 2009, 9:30 am

Location of communication: La Jolla

Person(s) initiating communication: Dave Grubb, Liva Borak (for Surfrider Foundation, Monterey)

Person(s) receiving communication: Patrick Krueger

Type of communication: Meeting

We support the Staff Recommendation for denial.

- Inadequate Water Supply
- Safety From Coastal Hazards Not Assured
- Significant Public Views Not Protected
- Natural Resources Not Protected
- Traffic Congestion not mitigated

Date: May 4, 2009



Patrick Krueger

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MAY 06 2009

CALIFORNIA
COASTAL COMMISSION
CENTRAL COAST AREA**FORM FOR DISCLOSURE
OF EX PARTE
COMMUNICATION****Date and time of communication:**Friday, May 1st, 2009 – 10:00 a.m.(For messages sent to a Commissioner
by mail or facsimile or received as a
telephone or other message, date
time of receipt should be indicated.)**Location of communication:**

Commissioner Neely's Eureka Office

(For communications sent by mail or
facsimile, or received as a telephone
or other message, indicate the means
of transmission.)**Person(s) initiating communication:**

Maggy Herbelin, ORCA Representative

Person(s) receiving communication:

Commissioner Bonnie Neely

Name or description of project:May Agenda Item: Th12a, Monterey Bay Shores
Resort**Detailed substantive description of content of communication:**Ms. Herbelin states that ORCA has concerns about this project of 341 hotel/condo/residential
units as stated below:

Erosion: no other development close by and the closest other hotels are having erosion issues.

This area has the highest rate of erosion.

Water: CEQA inadequate and the permit was denied.

ESHA: is not identified and there are LCP protections for the dunes.

Sewer: protection from natural hazards – future armoring.

Traffic: there are 2 intersections at unacceptable levels of service.

Construction impacts: 420 cubic yards of sand.

Date: May 1, 2009
Signature of CommissionerIf the communication was provided at the same time to staff as it was provided to a Commissioner, the
communication is not ex parte and this form does not need to be filled out.If communication occurred seven or more days in advance of the Commission hearing on the item that was the
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the record of the proceedings and provide the Executive Director with a copy of any written material that was part of
the communication.

Coastal Commission Fax: 415 904-5400

**FORM FOR DISCLOSURE OF
EX-PARTE COMMUNICATIONS**

Name or description of the project: Agenda Item Th 12a.

Application No. A-3-SNC-98-114 (SNG Development Co. Monterey Bay Shores Resort, Monterey Co.)

Application of SNG Development Co. (on remand from court decision) to construct 360,000 sq.ft. mixed-use residential and visitor serving development (Monterey Bay Shores Resort).

Time/Date of communication: Monday, May 4th, 2009, 9:30 am

Location of communication: La Jolla

Person(s) initiating communication: Dave Grubb, Liva Borak (for Surfrider Foundation, Monterey)

Person(s) receiving communication: Patrick Kruer

Type of communication: Meeting

We support the Staff Recommendation for denial.

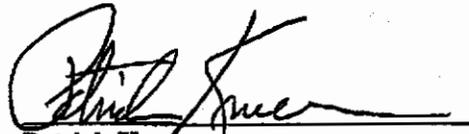
- Inadequate Water Supply
- Safety From Coastal Hazards Not Assured
- Significant Public Views Not Protected
- Natural Resources Not Protected
- Traffic Congestion not mitigated

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MAY 06 2009

CALIFORNIA
COASTAL COMMISSION
CENTRAL COAST AREA

Date: May 4, 2009



Patrick Kruer

**FORM FOR DISCLOSURE
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COMMUNICATION**

Date and time of communication:

(For messages sent to a Commissioner by mail or facsimile or received as a telephone or other message, date time of receipt should be indicated.)

May 01, 2009, 2:14 pm

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MAY 06 2009

Location of communication:

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via e-mail

CALIFORNIA
COASTAL COMMISSION
CENTRAL COAST AREA

Person(s) initiating communication:

Ed Ghandour, Ph.D.
Security National Guaranty, Inc

Person(s) receiving communication:

Commissioner Bonnie Neely

Name or description of project:

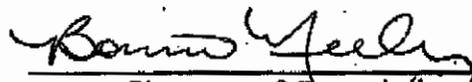
Agenda Item th.12a: Monterey Bay Shores
Ecoresort

Detailed substantive description of content of communication:

(If communication included written material, attach a copy of the complete text of the written material.)

See attached e-mail communication requesting a continuance of the hearing to a later date and supporting documentation.

Date: May 1, 2009



Signature of Commissioner

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Coastal Commission Fax: 415 904-5400

THURS
April 30, 2009 10AM

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MAY 14 2009

CALIFORNIA
COASTAL COMMISSION
CENTRAL COAST AREA

12a

RE: May 2009 Coastal Commission Meeting

Attendees: Sandra Brazil
Margaret Ambrosavage

Date of Hearing and agenda item number
Thursday May 7, 2009: Item #12a in San Francisco

12.a application No. A-3-SNC-98-114 (SNG Development Co. Monterey Bay Shores Resort, Monterey Co.) Application of SNG Development Co. (on remand from court decision) to construct 360,000 sq. ft. mixed use residential and visitor serving development (Monterey Bay Shores Resort) including 160 hotel rooms, 180 Condominium units (92 residential, 46 visitor-serving residential, and 42 visitor-serving units), restaurant, conference center, spa, 3 swimming pools, surface and underground parking (for 841 vehicles), public and private access trails, dune/habitat restoration, and related infrastructure including water, sewer, storm water systems, and various energy reduction technologies (solar, wind, geothermal, etc.) requiring some 695,000 cu.yds. of grading (and 418,000 cu. yds. of sand disposal) in sand dunes seaward of Highway One, Sand City, Monterey County.

Key Issues: Protection of Environmentally Sensitive Habitat (ESHA) and wetlands

Water Quality

Erosion/Armoring of the Coast

Viewshed Protection

Set-back issues

Landform Alteration

Development without adequate infrastructure

Attachments 1,2, Monterey County Weekly article

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MAY 14 2009

CALIFORNIA
COASTAL COMMISSION
CENTRAL COAST AREA**FORM FOR DISCLOSURE
OF EX PARTE
COMMUNICATION****Date and time of communication:**Friday, May 1st, 2009 – 10:00 a.m.(For messages sent to a Commissioner
by mail or facsimile or received as a
telephone or other message, date
time of receipt should be indicated.)**Location of communication:**

Commissioner Neely's Eureka Office

(For communications sent by mail or
facsimile, or received as a telephone
or other message, indicate the means
of transmission.)**Person(s) initiating communication:**

Maggy Herbelin, ORCA Representative

Person(s) receiving communication:

Commissioner Bonnie Neely

Name or description of project:May Agenda Item: Th12a, Monterey Bay Shores
Resort**Detailed substantive description of content of communication:**Ms. Herbelin states that ORCA has concerns about this project of 341 hotel/condo/residential
units as stated below:

Erosion: no other development close by and the closest other hotels are having erosion issues.

This area has the highest rate of erosion.

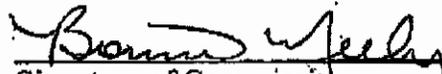
Water: CEQA inadequate and the permit was denied.

ESHA: is not identified and there are LCP protections for the dunes.

Sewer: protection from natural hazards – future armoring.

Traffic: there are 2 intersections at unacceptable levels of service.

Construction impacts: 420 cubic yards of sand.

Date: May 1, 2009
Signature of CommissionerIf the communication was provided at the same time to staff as it was provided to a Commissioner, the
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the communication.

Coastal Commission Fax: 415 904-5400

**FORM FOR DISCLOSURE
OF EX PARTE
COMMUNICATION**

RECEIVED
OCT 21 2009
CALIFORNIA
COASTAL COMMISSION

Date and time of communication:
(For messages sent to a Commissioner by mail or facsimile or received as a telephone or other message, date time of receipt should be indicated.)

October 20, 2009, 1:25 pm

Location of communication:
(For communications sent by mail or facsimile, or received as a telephone or other message, indicate the means of transmission.)

via e-mail

RECEIVED

OCT 22 2009

CALIFORNIA
COASTAL COMMISSION
CENTRAL COAST AREA

Person(s) initiating communication:

Ed Ghandour, SNG

Person(s) receiving communication:

Commissioner Bonnie Neely

Name or description of project:

Monterey Bay Shores Ecoresort Public Hearing

Detailed substantive description of content of communication:

(If communication included written material, attach a copy of the complete text of the written material.)

See attached e-mail request to schedule the Monterey Bay Shores Ecoresort Public Hearing for August 2010 or 60 days after the Decision is rendered the Appellate Court, whichever is earlier.

Date: October 20, 2009



Signature of Commissioner

If the communication was provided at the same time to staff as it was provided to a Commissioner, the communication is not ex parte and this form does not need to be filled out.

If communication occurred seven or more days in advance of the Commission hearing on the item that was the subject of the communication, complete this form and transmit it to the Executive Director within seven days of the communication. If it is reasonable to believe that the completed form will not arrive by U.S. mail at the Commission's main office prior to the commencement of the meeting, other means of delivery should be used, such as facsimile, overnight mail, or personal delivery by the Commissioner to the Executive Director at the meeting prior to the time that the hearing on the matter commences.

If communication occurred within seven days of the hearing, complete this form, provide the information orally on the record of the proceedings and provide the Executive Director with a copy of any written material that was part of the communication.

Coastal Commission Fax: 415 904-5400

Hampton, Nancy

From: Neely, Bonnie
Sent: Tuesday, October 20, 2009 1:25 PM
To: Hampton, Nancy
Subject: FW: Extension for Public Hearing on Monterey Bay Shores Ecoresort

Please do an ex parte on this. Thanks.

-----Original Message-----

From: Ed Ghandour_SNG [mailto:edg.sng@equusassetmanagement.com]
Sent: Monday, October 19, 2009 5:07 PM
To: Neely, Bonnie
Subject: RE: Extension for Public Hearing on Monterey Bay Shores Ecoresort

Dear Commissioner Neely-

As you are aware, last May the Commission granted SNG an extension to the Public Hearing on the project to December 2009.

The extension was granted because the Water District appealed the Court decision affirming SNG the right to pump its water for the Ecoresort. Also, Staff wanted the water distribution permit resolved before the project comes for a hearing before the Commission.

That Appeal is now in process, the Court having put it on an expedited schedule. Attorneys are informing me that the Appeal should be heard by March or April latest. Briefs have been filed already.

I am also told that it takes up to 90 days for the Court to issue its Decision. We are confident the Water Distribution permit will be resolved by July.

Based on that information, I would like to request that the Public Hearing for the MBS Ecoresort be postponed to August 2010 or 60 days after the Decision is rendered by the Appellate Court, whichever is earlier, and then scheduled for a N. Cal local hearing. That would give the Commission enough time to Return the Writ to the Court after the hearing.

Since the next Public Hearing of the Commission is November 4-5th, I wonder if we can agree beforehand with the Commission and Staff to that extension, thus saving time and resources to everyone.

Would you please advise me if that's fine or if you wish SNG to appear in Long Beach before the Commission's Closed Session.

Regards,
Ed Ghandour

10/20/2009

Exhibit 33
A-3-SNC-98-114, Monterey Bay Shores Ecoresort
Coastal Commissioner Ex Parte Disclosures
Page 10 of 14

Ed Ghandour

SNG

p 415.874.3121 X 3348

f 415.874.3001

c 415.233.1736

www.MontereyBayShores.com

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Confidentiality: This e-mail, and any attachments thereto, is intended only for use by the addressee(s) named herein and may contain legally privileged and/or confidential information. If you are not the intended recipient of this e-mail, you are hereby notified that any dissemination, distribution or copying of this e-mail, and any attachments thereto, is strictly prohibited. If you have received this e-mail in error, please immediately notify me by telephone at (415) 874-3121 and permanently delete the original and any copy of any e-mail and printout thereof.



October 30, 2009

Commissioner Bonnie Neely, Chair
California Coastal Commission
Board of Supervisors
825 Fifth Street, Rm 111
Eureka, CA 95501

REF: Monterey Bay Shores Ecoresort ("MBSE")
A-3-SNC-98-114
Applicant Security National Guaranty, Inc. ("SNG")
Closed Session Date: Wednesday, November 4, 2009

Dear Chair Neely,

I am just following up on my prior email request for a continuance of the December Hearing Date for the MBSE project. The request is made so that SNG can resolve the water distribution permit (water service to the project) which was appealed to the Appellate Court by the MPWMD after the Superior Court affirmed SNG's right to serve the project with water it owns (SNG has water granted by the Adjudication of the Basin). Legal counsel believes that the matter will be heard by February/March 2010 with a final Decision within 90 days afterwards. The Coastal Commission has also in the past requested that this permit be resolved before the project comes up for a public hearing.

As such, SNG is requesting a continuance to August 2010 or 60 days after the Appellate Court decision is issued, to be set in a local hearing in Northern California, in order to allow the water permit to be resolved and for staff to have time to prepare its report. The Coastal Commission previously on May 7th granted the same request. We have brought new legal counsel to represent SNG who already spoke with Mr. Pete Southworth regarding extending the Writ Return until after this new hearing date.

In sum, we respectfully request that the Commission continue the December Hearing to provide the time necessary to resolve the water permit and provide the time necessary to work with staff.

Sincerely yours,

Ed Ghandour, Ph.D.

cc. Sand City, Steve Matarazzo
Sheri Damon, Esq.

505 Montgomery Street, Suite 1147, San Francisco CA 94111 415.874.3121

**FORM FOR DISCLOSURE
OF EX PARTE
COMMUNICATION**

Date and time of communication:
(For messages sent to a Commissioner by mail or facsimile or received as a telephone or other message, date time of receipt should be indicated.)

November 2, 2009, 9:57 a.m.

Location of communication:
(For communications sent by mail or facsimile, or received as a telephone or other message, indicate the means of transmission.)

via e-mail

Person(s) initiating communication:

Ed Ghandour, Security National Guaranty, Inc. (SNG)

Person(s) receiving communication:

Commissioner Bonnie Neely

Name or description of project:

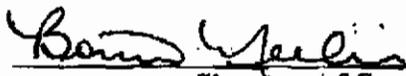
Monterey Bay Shores Ecoresort (MBSE) A-3-SNC-98-114, Request for a continuance of the December Hearing Date.

Detailed substantive description of content of communication:

(If communication included written material, attach a copy of the complete text of the written material.)

See attached e-mail communication requesting a continuance of the December Hearing Date for the MBSE Project.

Date: November 2nd, 2009



Signature of Commissioner

If the communication was provided at the same time to staff as it was provided to a Commissioner, the communication is not ex parte and this form does not need to be filled out.

If communication occurred seven or more days in advance of the Commission hearing on the item that was the subject of the communication, complete this form and transmit it to the Executive Director within seven days of the communication. If it is reasonable to believe that the completed form will not arrive by U.S. mail at the Commission's main office prior to the commencement of the meeting, other means of delivery should be used, such as facsimile, overnight mail, or personal delivery by the Commissioner to the Executive Director at the meeting prior to the time that the hearing on the matter commences.

If communication occurred within seven days of the hearing, complete this form, provide the information orally on the record of the proceedings and provide the Executive Director with a copy of any written material that was part of the communication.

Coastal Commission Fax: 415 904-5400



CL
DC

Regional Transportation Planning Agency • Congestion Management Planning
Local Transportation Commission • Monterey County Service Authority for Freeways & Expressways

July 24, 2009

RECEIVED

JUL 30 2009

Mr. Charles Lester
Senior Deputy Director
California Coastal Commission
725 Front Street, Suite 300
Santa Cruz, California 95060-4508

CALIFORNIA
COASTAL COMMISSION
CENTRAL COAST AREA

SUBJECT: Monterey Bay Shores Ecoresort Appeal Staff Report

Dear Mr. Lester:

The Transportation Agency for Monterey County is the Regional Transportation Planning Agency and Congestion Management Agency for Monterey County. Transportation Agency staff has received and reviewed comments by Coastal Commission staff related to the Regional Development Impact Fee program in the April 24, 2009 Appeal Staff Report regarding the Monterey Bay Shores Ecoresort and would like to offer several points of clarification:

1. The Regional Development Impact Fee program went into effect on August 27, 2008 with all Monterey County jurisdictions, including the City of Sand City. All jurisdictions adopted a Joint Powers Agreement to assess fees on all new development. As such, the Monterey Bay Shores Ecoresort, were it to be permitted, would be required to contribute a fair-share payment in Regional Development Impact Fees.
2. The Regional Development Impact Fee program collects fees from all new development in Monterey County as mitigation for cumulative impacts to the regional transportation system. New development, through the environmental review process, must still address project-specific impacts as a separate matter through other mitigation measures. The California Department of Transportation contributed in the development of the regional fee program and has certified that it is an adequate mechanism for mitigating cumulative transportation impacts (see enclosed letter).
3. As per the Mitigation Fee Act, impact fee programs can only collect fair-share payments related to the net increase in impacts that a given development will generate. This does not cover existing deficiencies, which must be funded through other means such as a local sales tax or State or Federal funding programs. The State Route 1 Widening project referenced in the Appeal Staff Report is listed in the Regional Development Impact Fee program with a total project cost of \$53,000,000;

only \$4.7 million of which is funded through the fee program. This is the portion of the project that is attributable to new growth and that the Monterey Bay Shores Ecoresort would be required to contribute to as mitigation for cumulative impacts.

4. Regardless of the funding status of an identified mitigation project, new development is still required to mitigate its cumulative impacts under the California Environmental Quality Act. The Regional Development Impact Fee Program is the adopted and accepted mechanism for mitigating cumulative transportation impacts in Monterey County. The actions of other agencies, jurisdictions or developments have no bearing on a given development's duty to mitigate through the regional fee program.
5. The Transportation Agency has prepared a draft Strategic Expenditure Plan to prioritize funding and identify construction schedules of all the improvement projects contained in the Regional Development Impact Fee program. The draft plan, a requirement of the Joint Powers Agreement, is scheduled for adoption by our Board at the August 26, 2009 meeting.
6. All of the improvement projects contained in the Regional Development Impact Fee program will undergo an environmental review process to ensure consistency with the California Environmental Quality Act and, as appropriate, Coastal Acts and Local Coastal Plans. All improvement projects will be required to mitigate impacts to a less than significant level.
 - With regards to State Route 1 widening, the staff report states:

"Specifically, although intersection improvements east of the Highway could likely be accomplished in this already developed area to help ease traffic without undue resource impacts, it is not clear that the Highway widening identified could be so completed. In fact, the existing Highway cuts through historic dune areas, and is adjacent to existing dune resources, and it is not clear that widening could be achieved without impacting such resources. Likewise, it does not appear that such resource impacts could be found consistent with applicable LCP and Coastal Act 103 policies protecting these resources. Thus, even if it were part of the project and/or part of a final CEQA mitigation package, it is not clear that the impact fee traffic relief identified can even be achieved."

The Project Study Report completed for the State Route 1 widening project shows several alternatives for the design of the project, including converting the median to a lane of traffic to reduce the amount right-of-way necessary. Therefore, it is not a given that the widening project would involve the take of historic dunes or sensitive habitat to a level that would be inconsistent with the Coastal Act or Local Coastal Plans after mitigation. Without a proper environmental review, it would be premature to base another project's finding on that premise.

July 24, 2009

- Our agency has also been in discussion with the City of Seaside regarding the possibility of using a portion of the \$4.7 million in regional fee funding for the State Route 1 widening project for the Monterey Branch Line. The Monterey Branch Line's proposed 16-mile light-rail or bus rapid transit service will connect to the planned Caltrain service in Castroville and also provide local transit alternatives with stations in Monterey, Seaside, Sand City, Marina/California State University Monterey Bay, and Castroville. Both projects serve the same corridor through Sand City and Seaside and would alleviate congestion to mainline State Route 1. A development that has cumulative impacts to State Route 1 could also consider contributing to the Branch Line project as part of its mitigations.

Thank you for the opportunity to review this document. If you have any questions, please contact Michael Zeller of my staff at (831) 775-0903.

Sincerely,


Debra L. Hale
Executive Director

CC: Dave Murray, California Department of Transportation, District 5
Steve Matarazzo, City of Sand City

Enclosure: February 21, 2008 letter from Richard Krumholz, Caltrans, to Debra L. Hale, Transportation Agency, re: Regional Development Impact Fee Program

DEPARTMENT OF TRANSPORTATION

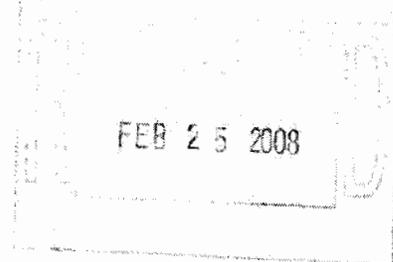
50 HIGUERA STREET
SAN LUIS OBISPO, CA 93401-5415
PHONE (805) 549-3111
FAX (805) 549-3329
TTY 711
<http://www.dot.gov/dist05>



*Flex your power.
Be energy efficient!*

February 21, 2008

Debbie Hale, Executive Director
Transportation Agency for Monterey County (TAMC)
55-B Plaza Circle
Salinas, CA 93901-2902



Dear Ms. Hale:

REGIONAL DEVELOPMENT IMPACT FEE PROGRAM

This letter is to express support for the proposed TAMC Regional Development Impact Fee program. The California Department of Transportation (Caltrans) commends your leadership in initiating and directing this collaborative countywide effort. It is widely recognized that existing transportation funding sources are insufficient to address growth-related congestion and that alternative funding sources are necessary to address transportation needs of the future. We are gratified that the jurisdictions within Monterey County understand this and are ready to move this effort forward.

In regions of the state where regional impact fee programs are in place, Caltrans considers the collection and application of fees for impacts of new development as sufficient to mitigate cumulative impacts to the State Highway System (SHS) under the California Environmental Quality Act (CEQA). In these circumstances, Caltrans' subsequent review of individual development proposals focuses on project-specific impacts and related mitigation. The benefits of implementing such a program include adding a measure of predictability in the process and streamlining CEQA review.

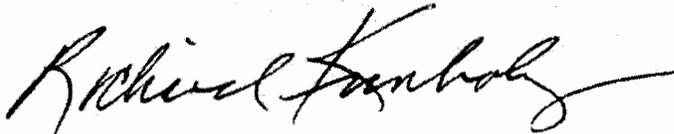
In the case of Monterey County, the implementation of the Regional Development Impact Fee program as identified in Table 6 of the January 2008 Nexus Study Update Draft (Zonal Distribution for Fee Program Projects) (enclosed) is considered sufficient to mitigate cumulative impacts of new development to the SHS. We ask to re-evaluate the program if any modifications are proposed so that we may determine whether it would continue to meet this burden under CEQA.

"Caltrans improves mobility across California"

Debbie Hale
February 21, 2008
Page 2

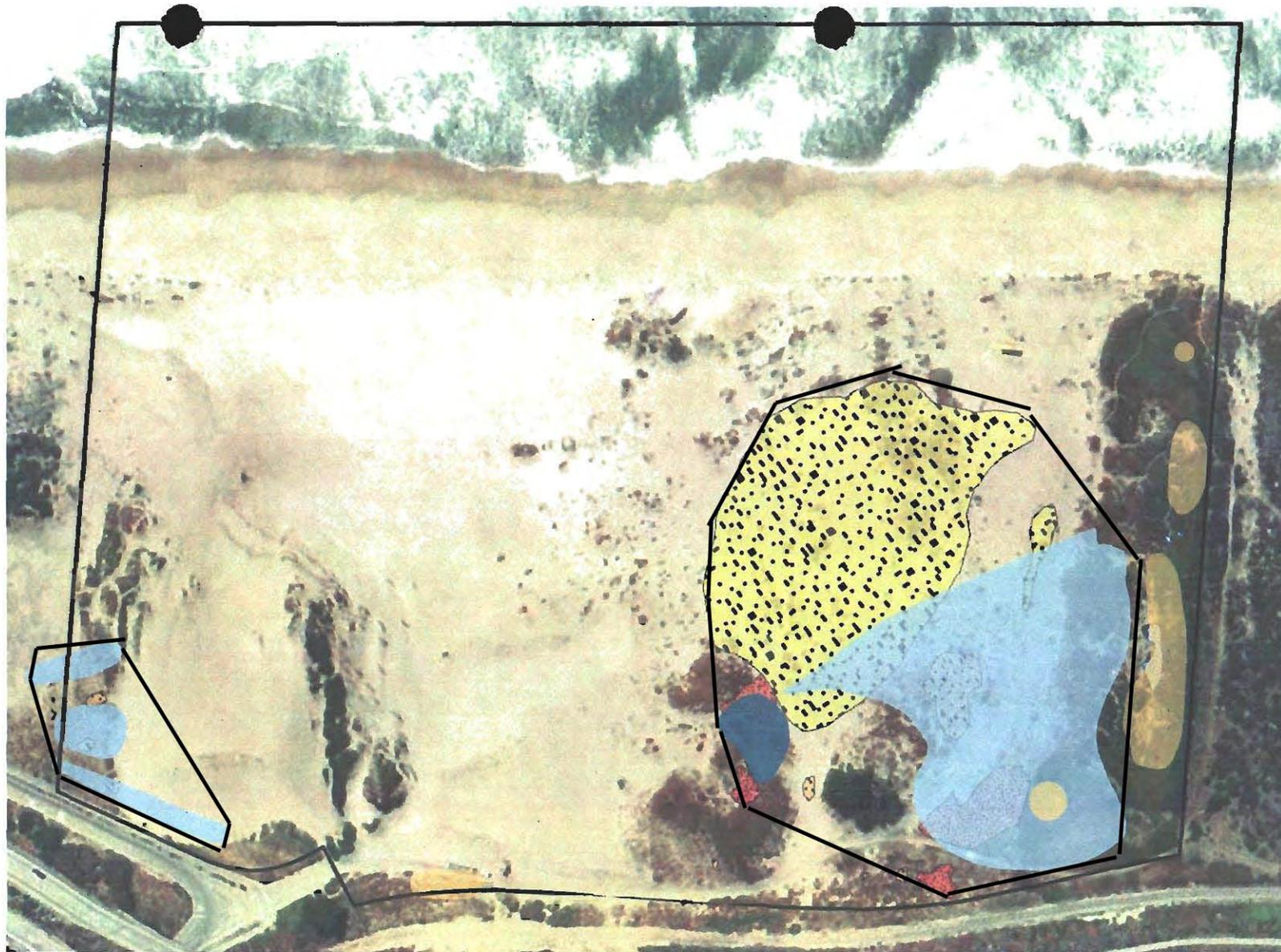
I would like to thank TAMC staff for their hard work in developing a comprehensive regional development impact fee program. I look forward to working with you along with the cities and county in implementing this program. If you have any questions or concerns, please contact David Murray at (805) 549-3168.

Sincerely,



RICHARD KRUMHOLZ
District Director

Enclosure



LEGEND

-  Seacliff Buckwheat 2000
-  Seacliff Buckwheat 2008

-  High Density Monterey Spineflower 2000
-  Low Density Monterey Spineflower 2000
-  High Density Monterey Spineflower 2008
-  Medium Density Monterey Spineflower 2008
-  Low Density Monterey Spineflower 2008



Source: EMC Planning Group Inc. 2008, Zander Associates 2000, Bestor Engineers 2008, Terraserver 2007

Figure 2

Change in Distribution of Special Status Plant Species, 2000 - 2008



Monterey Bay Shores Botanical Survey Update, Sand City, California
Exhibit 35

A-3-SNC-98-114, Monterey Bay Shores Ecoresort
Monterey Spineflower Habitat (maximum convex polygon)

Project No. M5613.1
1 May 2009

SECURITY NATIONAL GUARANTY, INC.
505 Montgomery Street, Suite 1150
San Francisco, California 94111

RECEIVED

MAY 05 2009

CALIFORNIA
COASTAL COMMISSION
CENTRAL COAST AREA

Attention: Ed Ghandour

Subject: Geotechnical/Geologic and Coastal Engineering Response
To 24 April 2009 California Coastal Commission
Staff Report Th12A-5-2009

Reference: Proposed Monterey Bay Shores Ecoresort (MBSE)
APN 011-501-14
Sand City, California

Dear Mr. Ghandour:

Haro, Kasunich and Associates, the project geotechnical/geologic and coastal engineers for the referenced project have been actively involved in the preliminary and tentative analysis of the proposed Monterey Bay Shores Ecoresort (MBSE) site since 1989. We have observed and evaluated coastal processes in southern Monterey Bay since 1978. We have worked with the City of Sand City since 1990 and completed a report entitled Coastal Recession Evaluation for Coastline of Sand City, California dated December 2003. We have worked on numerous coastal engineering projects in south Monterey Bay and the Monterey Peninsula including the Monterey Beach Hotel, the Ocean Harbor House Condominiums, the Monterey Presidio pedestrian trail, San Carlos Beach Park coastal protection structures, the Ocean View Plaza, the City of Pacific Grove recreational trail along the top of the bluff, the Asilomar State Park

Exhibit 36
A-3-SNC-98-114, Monterey Bay Shores Ecoresort
HKA Response Letter dated May 1, 2009
Page 1 of 6

parking area, numerous long term coastal projects in Pebble Beach and numerous projects along Carmel Bay. Much of our work dealt with long term evaluation of coastal recession rates including projections of erosion and recession into the future. This work has kept us abreast of current sea level rise information and application of current sea level rise information for wave runup analysis, coastal shoreline and bluff top recession as well as coastal wave forces and flooding analysis. We have interacted with the California Coastal Commission's technical staff during a number of these evaluations and have utilized the higher end Stillwater levels related to short time and long term sea level rise into the future.

Coastal Recession

We believe the projected long term future erosion rates and setback lines presented by the California Coastal Commission 4-24-09 Staff Report for MBSE are inaccurate and are based upon flawed logic. We have had site specific observations of the referenced property for the past 16 years, during which time very little to no coastal bluff recession has taken place at the property. The analysis of recession by CCC Staff indicates that approximately 100 feet of recession should have taken place during that time period, based upon their evaluation; however that did not take place. We do not dispute the southern Monterey Bay measurements of historical bluff recession by the USGS (Hapke and Reid, 2007) and by Ed Thornton (2006). However, their reports do not specifically address the MBSE site. The recession predicted by the Staff Report appears to be based on extremely conservative assumptions concerning the relationship between the impacts of historical sand excavation from onsite mining and projects those impacts into

the future without recognition that onsite sand mining has ceased. The Staff Report utilizes these regional studies by Hapke, Reid and Thornton to assess future coastal recession at the MBSE site; both of these regional studies rely on comparison of measurements of historical changes in coastal bluff edge position, despite the fact that man-made excavation has historically influenced the position of that geomorphic feature at this site. As a result, the hypothetical future bluff recession suggested by the Staff Report is in our opinion flawed and more speculative than the result of accurate scientific evaluation. We believe that at this site, where human activity has altered the bluff edge and dune-crest geomorphic environment so extremely, that the analysis of historical shoreline recession position methodology used to assess future shoreline recession and translocate those recession rates to predict future bluff edge and dune recession is much more applicable and accurate than the methodology used by Hapke, Reid and Thornton that combines historical recession of the sand dune top edge due to ongoing coastal processes with man-made and wind blown processes from mining. We note that Moffat & Nichol Engineers Final City of Sand City Shore Erosion Study dated December 1989 utilized the historical shoreline recession based methodology that was adopted by Sand City as part of their LCP in 1989. We (Haro Kasunich and Associates, Inc.) updated that methodology in 2003 and made it more conservative. Our methodology was presented in a report entitled Coastal Recession Evaluation for Coastline of Sand City, California dated December 2003. The more conservative 2003 methodology was utilized in our analysis of future coastal recession the MBSE.

The coastal recession techniques presented in the Sand City updated shoreline recession evaluation have been rigorously thought out and applied to the City as a whole and also to the referenced project site. Observations by us during the last 16 years and surveys by Bestor Engineers during the past 14 years clearly indicate that negligible long-term shoreline or dune top recession has occurred during that time period. The project plans by Bestor Engineers show the predicted future recession using the techniques presented in the Sand City updated shoreline recession evaluation. We are well aware that significant recession occurs episodically during violent large storms or lengthy storm seasons (El Niño). We have observed the referenced property through the 1983 and 1998 El Niño seasons. We have included the 1983 significant El Niño storm activity in our evaluation and erosion rates.

Accelerated Sand Mining and Coastal Recession

The CCC Staff Report suggests that future bluff recession rates will accelerate, and says that sand mining volumes in the region have increased from historical rates of 144,000 CY per year (Sand City 111,000 CY + Marina 33,000 CY) to 200,000 CY per year now from Marina according to the Coastal Regional Sediment Plan (CSRMP) for Southern Monterey Bay prepared by PWA (2008). We reviewed that report and it actually indicates that sand mining volumes in the region have decreased from historical rates of 243,000 and 257,000 CY per year (Sand City 114,000 CY + Marina 129,000 CY in the 1970's and 143,000 CY in the 1980's) to 200,000 CY per year now from Marina. As a result, we think this concern is unfounded. Perhaps it is appropriate for the CCC to

take action to regulate present or future sand mining if it is causing coastal erosion and recession.

In any case, Orzech et. al. (2008) showed that net sand transport at Sand City is to the north, resulting in a convergence with the net southerly transport at Fort Ord. As a result, little sand accumulates against the Monterey Wharf 2 breakwater. More importantly for the proposed MBSE, this convergence indicates that an alongshore littoral drift null point exists at the coastline, where littoral drift moves both upcoast and downcoast, and therefore the MBSE site in the long term is not as affected by sand depletion as the area to the north.

Accelerated Sea Level Rise and Coastal Recession

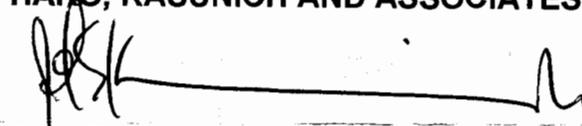
We considered the influence of accelerating sea level rise rates during our analysis of recession. Specifically, our analysis indicated that between 7 feet and 58 feet of recession would occur at the property during the next 50 years due to accelerating sea level rise, the amount depending upon actual future sea level rise rates. We utilized the Bruun Rule, which has been used since 1962, and quantitatively balances volumes of bluff erosion with nearshore sand deposition caused by sea level rise, to derive these results. While the Bruun Rule is not applicable in many coastal environments with large littoral drift and variable bedrock cliff and foreshore geomorphology, the MBSE site is one location where it is very applicable. Minor longshore littoral transport rates, uniform

CRSMP indicates that a alongshore littoral drift null point exists at the coastline in the general area of the referenced site, where littoral drift moves both upcoast and downcoast, and therefore the MBSE site in the long term is not as affected by sand depletion as the area to the north. The 16 years of observation and the 14 years of survey data support this null point location. There has been negligible bluff recession at the site during that time period, which strongly suggests that the recommended CCC Staff recession rates which predict 80 to more than 100 feet of recession should have occurred during that timeframe are in error. The recession study done for the referenced site by HKA included reasonably conservative erosion rates based on long term historical shoreline recession, and worsening future coastal processes, as well as conservative slope stability factors of safety and reasonable sand dune slope geomorphology.

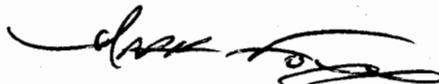
If you have any questions regarding these responses, please call our office.

Very truly yours,

HARO, KASUNICH AND ASSOCIATES, INC.



John E. Kasunich
G.E. 455



Mark Foxx
C.E.G. 1493

JEK/MF/jm

Copies: 1 to Addressee
1 to Mike Watson, California Coastal Commission



rana creek
ENVIRONMENTAL PLANNING

35351 E. Carmel Valley Rd.
Carmel Valley, CA 93924
PH 831.659.3820
FX 831.659.4851
www.ranacreek.com

Date: May 4th 2009

To: Ed Ghandour
Monterey Bay Shores Eco Resort
Security National Guaranty Inc.
505 Montgomery Street, Suite 1019
San Francisco, CA 94111

Re: Monterey Bay Ecoresort
Monterey Spineflower mitigation ratios

Dear Ed,

You ask I provide a summary regarding mitigation ratios for precedent habitat conservation plans and/or restoration mitigation plans relative to the number of acres that must be set aside and protected from development for every acre of development. The intent of the mitigation is to adequately compensate for the impacts or "take" of Monterey Spine flower. For Monterey Bay Shores, the mitigation for Monterey Spine flower should focus on a mitigation ratio inclusive of other components of the projects restoration and development plan (e.g., preconstruction surveys, monitoring, and specific management of the plant reserves in perpetuity, among others).

Several precedent projects in Monterey County have used a 1:1 mitigation ratio and these decisions have reinforced public agencies' and project proponents' ability to "fully mitigate" impacts (CESA) and/or mitigate impacts to the "maximum extent practicable" (federal ESA). Those projects include:

1. Ocean Harbor House Monterey – Draft HCP 2009 by Rana Creek -1:1 ratio
2. Holiday Inn Express- Marina – Restoration Mitigation by Plan by Rana Creek 2003 - 1:1 ratio
3. Pacific Grove Golf Course Dune Restoration and Mitigation Plan by Rana Creek 2004 – no area ratio, maintain existing numbers and plant population as mitigation
4. Marina Station Specific Plan -Draft Mitigation and Monitoring Reporting Program by Denise Duffy Associates 2007- 1:1 ratio

By combining an array of conservation features when considered together 1:1 mitigation ratio can adequately and fully mitigate for impact to spine flower on the Monterey Bay Shores site. If you need further information regarding spine flower mitigation ratios, please call anytime.

A handwritten signature in black ink that reads "Paul Kephart". The signature is written in a cursive, slightly slanted style.

Paul Kephart

Restoration Ecologist

CALIFORNIA COASTAL COMMISSION

CENTRAL COAST DISTRICT OFFICE
725 FRONT STREET, SUITE 300
SANTA CRUZ, CA 95060
PHONE: (831) 427-4863
FAX: (831) 427-4877



September 12, 2008

Ed Ghandour, President
Security National Guaranty
505 Montgomery Street, Suite 1150
San Francisco, CA 94111

Subject: **Monterey Bay Shores Resort Coastal Development Permit Application Review Package**

Dear Mr. Ghandour:

We received the materials that you submitted in support of the above-referenced application on August 13, 2008. As you are aware, the Coastal Commission originally denied this coastal development permit (CDP) application on December 12, 2000 (Application A-3-SNC-98-114). The project proponent sought judicial review and, ultimately, the First District Court of Appeals ruled that decision must be vacated. In June of this year, the Commission was served with a writ commanding that action and the Commission complied. When we met in our office in Santa Cruz on April 4, 2008, we discussed with you and your representatives the type of revised project description and supporting materials that would be necessary for the Commission to rehear the matter as directed by the Court, and you and your representatives indicated that you would provide such materials. On August 13, 2008 you came in person to the Central Coast District Office and hand delivered the materials that you had developed for this purpose. The package of materials that you submitted describes the current revised project (which is significantly modified as compared to the project originally reviewed and denied by the Commission) and provides information and materials to facilitate the Commission's review of it.

The purpose of this letter is to inform you that we have reviewed the materials that you have submitted to date and are in need of additional information to adequately analyze the proposed project for conformance with the Sand City Local Coastal Program (LCP) and the Coastal Act access and recreation policies. Towards this end, please submit the following additional materials necessary to prepare a staff recommendation and bring this matter to a Commission hearing as directed by the Court:

1. **Project Description.** The proposed revised project appears to include the following: 160-room hotel, 46 visitor-serving residential condominium units, 42 visitor-serving condominium units, 92 residential condominium units, a restaurant and bar, several swimming pools, wellness spa, conference and meeting rooms, two underground parking garages (693 parking spaces), surface public parking (70 parking spaces), public utility connections, on-site energy reduction technologies (geothermal pumps, solar voltaic panels, wind turbines, etc.), public access amenities (pathways and vista points), storm water infrastructure (including non-potable water cisterns and detention basins), use of on-site wells, 900,000 cubic yards of grading, and restoration of the dune areas that would remain

Exhibit 38

3-SNC-98-114, Monterey Bay Shores Ecoresort
CDP Application Review Package dated September 12, 2008

Page 1 of 11

outside of the proposed building and hardscaped areas. Please confirm that that the above description is accurate and/or please provide corrections as necessary. In addition please provide additional detail as follows:

- a. Mix of uses. The submitted materials describe a range of proposed uses, but they do not provide sufficient detail on each use type, including the differences between the various use types, to be able to understand what is being proposed. We presume that the "hotel units" are standard operating hotel rooms, and we presume that the residential condominium units are standard residential condominium units (please confirm both points), but the distinction between the other proposed units, including the parameters for their proposed use, is not clear. Please provide information that clearly identifies each proposed use and describes the parameters of such use (including all specifics regarding proposed operation of the hotel and the visitor-serving residential condominium/condominium hotel units, spa, restaurant, etc.). For example, will there be length-of-stay or other restrictions on condominium unit owners and if so, how long?
- b. Public Access Easement/Program. The proposed project describes an access easement and program, but the materials provided do not include any details on the proposed easement or management measures. Please provide the proposed access easement language, including any proposed and incorporated management measures and other public access program parameters, including the proposed method by which such project elements would be maintained for public access use over time.
- c. Conservation Easement. The proposed project describes a conservation easement, but the materials provided do not include any proposed easement details. Please provide the proposed conservation easement language, including any proposed and incorporated management measures and other conservation parameters, including the proposed method by which such conservation area would be managed and maintained over time (see also landscape/habitat restoration plan requirement below).
- d. Monterey Bay Shores Environmental Trust. The submitted materials reference the Monterey Bay Shores Environmental Trust as an organization to be created as part of the proposed project to fund local environmental programs from a portion of project revenues, but they do not provide any details on the Trust. Please provide a clear description of the Trust, including how it is proposed to be managed and operated, expected budget, etc.
- e. TDM. The submitted materials reference transportation demand management (TDM) as part of the proposed project (in the form of vanpools, cycling incentives, alternative fuel shuttles, etc.), but they do not provide any details on such TDM components. Please provide a clear description of all TDM programs proposed.
- f. APN 011-501-004. It is not clear to us why the submitted materials include references to residential development of APN 011-501-004 (see, for example, plan sheet TM-3). APN

011-501-004 is not a part of the remanded project, it is located outside of the City of Sand City in unincorporated Monterey County. Please confirm that this application does not propose development on APN 011-501-004, that any such development there would need to be pursued separately, and that this application is not intended to affect any future development on that site.

- g. Please provide an 8.5" x 11" black and white version of the 11" x 17" color submittal titled "Monterey Bay Shores, Ecoresort, Wellness Spas, and Residences", and please provide a pdf version of this document.

The project description must also clearly reference all project plans that would implement it (see Project Plans below).

2. **Project Plans.** The submittal includes general descriptions for a series of project elements, but it does not include more specific plans indicating how such elements would be developed. In addition, the plans submitted are reduced scale, and not full size. We need clear plan sheets that describe each element of the proposed project as it is proposed to be developed. Please submit the two full sized set of plan sheets and one reduced scale set (8.5" x 11" or 11" x 17") of plan sheets with graphic scales that include site plans, elevations, and cross-sections, and that are all keyed to same scale to allow direct comparison between them, and that are all reproducible in black and white for each of the following:

- a. Vesting Tentative Map. These are sheets TM-1, 2, and 3 received August 13, 2008. The submitted sheets lack identification of the subdivision proposed, and such sheets must also clearly indicate all proposed subdivision components (including for the condominium units, other lot breakdowns, etc.). Please supplement the sheets accordingly, including at least one site plan sheet that is devoted exclusively to lot details (including identifying existing and proposed boundaries, acreages/square feet, etc.). Please also provide a current legal lot description (e.g., from a title report) for the existing property. Please also clearly explain what is meant by the notations on sheets TM-1 and 2 for "possible supplemental well site", "optional 200,000 gal water tank", "monitoring well", and "(E) well to remain" (see also Water Supply below), and please provide descriptions for all other noted features to the extent they are not described in other plans or the project description.
- b. Main Structures. These include site plan views as well as elevations and cross-sections of proposed development in relation to the shoreline and Highway One, at a minimum. In addition, please provide a floor plan for each level of the multi-storied structure that includes the size and layout of the various proposed project elements (i.e., residential, visitor-serving condos, condo-hotel rooms, hotel rooms, spa, restaurant, etc.).
- c. Grading. The submitted materials reference a balanced cut and fill regime, but lack corresponding detail. Grading plans need to include a clear depiction of existing and proposed topography (at a minimum 5-foot contours); designation of all cut and fill areas

and estimates of expected quantities; and all parameters for any off-site disposal of fill materials should this prove necessary. Representative before and after cross-sections of proposed grading areas must be provided. Any materials to be added to final graded contours, whether structural, vegetative, or otherwise, including any materials designed to ensure slope configurations, need to be identified.

- d. Lighting. The plan needs to identify location and luminosity of lighting that will be visible outside of structures. In addition, a site plan identifying the expected nighttime luminosity field surrounding the buildings and exterior lights needs to be provided.
- e. Landscape/Habitat Restoration. The project describes landscaping and habitat restoration, and includes a planting palette, but does not include a proposed landscape/habitat restoration plan providing details on this proposed project component. Please submit a plan that not only identifies the plant list and general location of plantings, but also identifies the proposed methods for non-native plant eradication, native species replanting/revegetation, planting schedule, maintenance and monitoring requirements, performance and success criteria and contingencies for adaptation and under-performing restoration.
- f. Wind, Solar, and Geothermal Elements. In site plan, elevation, and cross-section view. In addition, for any products referenced, please provide supporting documentation (including brochures, photos, etc.) clearly detailing the attributes of said products.
- g. Water Supply and Use. It is not clear from the materials provided whether the project proposes a connection to the Cal-Am system or the use of on-site wells. Please clarify, and please provide plans indicating how water will be provided to the site (see also Off-Site Elements and Water Supply below).
- h. Water Reuse and Water Quality Elements. These include the referenced grey water, water harvesting, and biofiltration systems, and include stormwater and runoff management plans for all proposed project elements designed to collect, filter, treat, and/or convey such water. For any products referenced, please provide supporting documentation (including brochures, photos, etc.) clearly detailing the attributes of said products. For all water reuse elements, please also provide evidence of Monterey County Environmental Health Department (MCEHD) review and approval.
- i. Public Access Elements. Please identify in detail all access paths, vista points, and related development, including all public parking areas and all proposed public access signs, including text. Please also provide relevant details describing how users of the off-site recreational trail and other public access areas would connect to the proposed public access elements.
- j. Fencing. All site fencing (including proposed layout, materials, configurations, etc.) needs to be clearly identified.

- k. **Signs.** In addition to the entry sign details submitted, please submit a sign plan that clearly identifies proposed signage, including sign text (see also public access elements).
- l. **Off-Site Elements.** All development that would occur outside of the boundaries of APN 011-501-014 needs to be identified. From the vesting tentative map provided, it appears that there would be stub development on APN 011-501-004 and street/utility development extending from the site to inland of Highway One. As previously described, development should not be proposed on APN 011-501-004. All other development offsite must be clearly described and shown. For all such development proposed off-site, please provide a clear site plan identifying the ownership of affected off-site property and also provide evidence from underlying land owners that they consent to the proposed development on their land, including any necessary construction access across land where permanent development is not proposed.
- m. **Other:**
 - 1. Please identify the location of the proposed salt water pool, and describe from where the salt water would be provided.
 - 2. Please provide the submitted "Land Use Map" in black and white format.
 - 3. Please provide product specifications on the proposed "living walls".

All plans should clearly be a part of the proposed project, including via direct reference in the project description. Any elements that are not part of the proposed project should not be shown on the project plans nor referenced by the project description.

- 3. **LCP Figures.** The property is affected by a series of LCP policies and requirements in a variety of ways. To assist in understanding certain LCP requirements that are geographically based, please provide a site plan showing all of the proposed development that is overlaid with the following LCP figures to be able to understand where specific LCP requirements may apply to the site: LCP Figure 3 (land use designations); LCP Figure 4 (access); LCP Figure 7 (coastal resources); LCP Figure 9 (views); and all LCP zoning designations applicable to the site. Please provide the LCP figures site plan in the same form, scale, configuration, and sets as the project plans (see also Project Plans above).
- 4. **Water Supply.** The submittal indicates that there are two potential methods to provide water for the proposed project, via on-site well or via utilities extended from inland of Highway One. Please provide the following:
 - a. Please clarify which water supply method is proposed with this project, and explain how that method will be developed as part of the project (see also Project Plans in this respect above).

- b. Both water supply methods appear to require some form of contractual arrangement with the California American Water Company (Cal-Am), including with respect to potential operation, use, and maintenance of production wells, whether on or off site. Please provide details on the physical, contractual, and regulatory terms of whichever water supply method is proposed with this project, and please provide evidence of Cal-Am's concurrence on the terms so described.
- c. Please provide a clear physical description (including photos) and history (including permitting history) of the on-site wells, and a clear description of what is to become of them if they are not to be used to serve the proposed project.
- d. Please clearly explain what is meant by the notations for "possible supplemental well site", "optional 200,000 gal water tank", "monitoring well", and "(E) well to remain" on sheets TM-1 and TM-2.
- e. Please clarify whether the site is currently located in or out of Cal-Am's service area (because we understand from the EIR addendum that Cal-Am was trying to annex the site) and describe how water will be provided if the site is not within the Cal-Am service area.
- f. Please provide evidence that the Monterey Peninsula Water Management District (MPWMD), Monterey County Water Resources Control Agency (MCWRA), and Cal-Am agree that the water consumption rates identified on sheet TM-3 and the EIR addendum are accurate, including in relation to the proposed recycle/reuse components.
- g. Pages 41 and 42 of the submitted Seaside Basin adjudication decision includes hand-written notations. Please provide a clean copy without such hand-written notations in the margin.
- h. Please describe what will happen to any excess allocation from the Seaside Basin adjudication not proposed to be used for the proposed project, including the specific and enforceable mechanisms designed to account for any such excess allocation.
- i. Please identify all relevant agencies, including but not limited to, the Department of Health Services, the Monterey County Environmental Health Department, Cal-Am, California Public Utilities Commission, MCWRA, and MPWMD, that may require permits or authorizations for the proposed water supply, distribution, and use system. Please also identify the status of your applications to these agencies and provide us with copies of associated permits, authorizations, and relevant correspondence.
- j. Please provide written evidence that the Seaside Basin adjudication watermaster has reviewed the proposed water supply, distribution, and use parameters associated with the proposed project, and has concurred that they are consistent with the terms of the adjudication.

- k. Please provide written evidence that the State Water Resource Control Board (SWRCB) has reviewed the proposed water supply, distribution, and use parameters associated with the proposed project, and has found that they are consistent with the terms of the State Board Order 95-10.
5. **Public Views.** The draft addendum provides some photo simulations of the proposed project as seen from several locations. We are concerned, however, that these representations do not provide necessary information regarding the range of public views potentially affected by the proposed project, and that they do not represent the views as seen by the naked eye. Certain lens and camera methods result in more representative photos, and we are concerned that the methods applied in the draft EIR addendum are as accurate as is possible with such photo simulations, including specifically with respect to the view from near the breakwater in Monterey that is taken on a very dark and overcast day. Accordingly, we would like to work with you to refine and optimize the photo and photo simulations and locations to ensure adequate coverage in this respect. To achieve this, the project area must be photographed from a sufficient number of viewpoints as to provide complete photographic coverage of the existing site from relevant public viewpoints at a scale that allows comparisons to be made with the naked eye between photographs of the site and computer simulations of the proposed developed site taken from the same vantage points. Please provide before and after photos and photo simulations designed to simulate the view as seen with the naked eye using approximately a 70 – 80 mm lens including written confirmation that such methodology was used for such photos, and all other methodologies employed (e.g., height of camera, time of day, weather, etc.). The photos and photo simulations should be as seen from representative viewing locations on and surrounding the subject site which, based on our current assessment and understanding would include, at a minimum, the following locations: each location in the addendum; southbound and northbound Highway One approaching the site; southbound and northbound recreational trail approaching the site; upcoast and downcoast shoreline views (near the water) approaching the site; Fort Ord Dunes State Park adjacent to the site at representative locations (at least one point near the Bay, one midpoint along the property, and one near the recreational trail); Monterey Peninsula Park District Dunes adjacent to the site from similar locations as the State Park; the seaward side of the Monterey Bay Aquarium; at a representative point along the Pacific Grove recreational trail; as well as photos of the site taken from midpoints and corners along the property lines looking directly into the site. Please submit all photos and photo simulations in 8.5"x11" color format in hard copy and electronic (jpg) forms with the date and time of the photographs and the location of each photographic viewpoint noted on a site plan. In addition, please provide a black and white version of the color rendering of the proposed project that was provided in the already submitted materials.
6. **Hazards.** The project site is located in a region of high geologic and coastal hazards including threats from coastal erosion, liquefaction/strong ground shaking, storm wave run-up, inland sand accretion, corrosive soils, and tsunamis. The certified LCP requires that all development be sited and designed to minimize risk from such hazards by among other

means, avoiding the placement of development in high hazard areas, or by identifying and establishing appropriate long-term development setbacks based upon a geologic review of all existing and potential impacts in combination. The recommendations contained in the draft addendum to the Final EIR appear to rely primarily on the findings and conclusions of the bluff erosion study/geotechnical report updates prepared by Haro, Kasunich, and Associates (HKA) in December 2003. These HKA reports in turn reference and rely on certain earlier geotechnical evaluations, such that much of the technical material is now more than 5 years old and was developed for a much different proposed project. Please provide the following:

- a. Four copies of the referenced HKA 2003 coastal recession evaluation report.
- b. Four copies of the 1989 Moffat and Nichol Engineers erosion study.
- c. Four copies of all materials associated with the referenced adoption in May 1990 of a Sand City Dune Crest Recession Line by the City.
- d. Please clarify the distinction between the "50-year building setback line" and the two bluff recession lines noted on sheet TM-2. Also, please verify that the setback line and bluff recession line use the current (2008) bluff conditions for the baseline.
- e. Please provide an update to the 2003 HKA materials that addresses an accelerated rise in sea level and provides erosion and bluff retreat rates that take accelerated sea level rise into account, and that updates the report in response to changes in site conditions from 2003 to present.
- f. As far as we can tell, the site has not been evaluated yet for any hazards except coastal erosion, and the draft addendum refers to the need for a final geotechnical evaluation prior to final map recordation and building permit issuance as a prerequisite for site development. However, such geotechnical evaluation is critical for understanding the stability of the site overall at the discretionary permitting stage, including with respect to the fact that the project proposes substantial development atop and in sand dunes, and such materials pose significant challenges for constructability and long term stability. Please submit a geotechnical report prepared by licensed geotechnical or civil engineer with experience in sand dunes and related coastal processes that clearly addresses other site stability and buildability constraints and proposed mitigation measures (i.e., in terms of seismicity/ liquefaction, dune/soil incohesion, spreading, landslide, etc.).
- g. It is not clear to us from the submitted materials the manner in which the economic life of the project is to be implemented in relation to the LCP. In other words, the measures proposed to be taken (e.g., the proposed setback from the Monterey Bay) are designed to maintain stability over a certain economic lifetime, but no measures are identified to be taken to ensure stability after that, and corresponding measures to effectively bring the project to an economic lifetime "end" are not identified. Please identify the measures proposed to be taken to enforce the economic lifetime that the proposed project is being

based on in terms of coastal hazards, including to avoid the need for more substantive protection measures in the future – measures the Coastal Act and LCP are premised on avoiding.

- h. Dune systems can be very sensitive to wind forces and small cuts through a dune face can quickly develop into large deflation areas. Please provide some discussion about how the dune system will be protected during construction and then during operation of the proposed facility, including how access paths and viewing locations will be sited to protect the dune areas. Also, please discuss how windblown sand will be managed both during construction and facility operation.
7. **Traffic.** It appears that the project will result in significant traffic impacts for which the mitigation identified is a fee to help provide for Highway One widening in this area. However, it is not clear when or if Highway One widening in this area will occur, or how highway widening would effectively mitigate the impact. Please provide more detail on Highway One levels of service with and without the project, and with and without highway widening. If the Highway is not widened, how will anticipated traffic impacts be mitigated? Finally, please provide evidence of Caltrans review and approval of all traffic analyses and mitigation.
8. **Biological Resources.** The draft addendum to the final EIR indicates that since the release of the final EIR in 1998 there have been changes in the project design, building layout and size and siting of the proposed development as well as changes in the on-the-ground biological resources, numbers and distribution located on the development site. The draft addendum further notes that there are several special-status plants and animal species listed under state and federal Endangered Species Act as either rare, threatened, or endangered, animals designated as Species of Special Concern by the California Department of Fish and Game (CDFG), and plants listed in the California Native Plant Society's Inventory of Rare and Endangered Vascular Plants of California on the development site, and indicates that the proposed project will result in about the same biological impacts as the previous project in this respect. The draft addendum further indicates that take is not expected with the proposed project, but does not include confirmation from the United States Fish and Wildlife Service (USFWS) and CDFG in that respect, and does not include recommendations from these agencies regarding the proposed project. The draft addendum and submitted materials are silent on the impacts from the proposed project on offsite biological resources both in the City and in the unincorporated County. Please provide the following:
 - a. Please provide three copies of the reported revised vegetation mapping and directed surveys for Monterey spineflower and seacliff and coast buckwheat prepared by EMC Planning Group Inc. in 2006 and 2008.
 - b. Please provide three copies of the surveys (including methods and conclusions) of the Sand City and similar adjacent area coastline (i.e., Fort Ord and Seaside) for western

snowy plover prepared by Zander Associates for the Point Reyes Bird Observatory between the years 1999 and 2008.

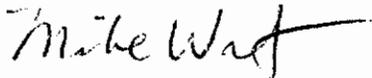
- c. Please provide three copies of biological analysis identifying the expected impacts on off-site biological resources in up and down coast dunes due to the project (including initial site manipulation and development, and increased noise, lights, and activities over the long term). Such analysis must be prepared by a biologist experienced with the varieties of plant and animal species known to inhabit the Monterey Bay Dunes Complex (e.g., Western snowy plover, Monterey spineflower, Coast buckwheat, etc.).
 - d. Please provide written evidence of USFWS, CDFG, Monterey Peninsula Park District (for downcoast property), and State Parks (for upcoast property) review of the proposed project, including the above-described biological analysis identifying the expected impacts on off-site biological resources, and any observations from these agencies, including in relation to any necessary permits, approvals, or permissions required from these agencies for the proposed project.
9. **City of Sand City.** Typically, a project revision of the magnitude proposed here in relation to the originally proposed project would go through local review again prior to submittal to the Coastal Commission. We recognize that this is not a normal review given the litigation context. Thus, please provide written evidence from the City of Sand City: (1) that the proposed project requires no discretionary approval from the City or that the City would prefer to act on the project after the Coastal Commission has acted; and (2) that clearly describes the status of the City's draft EIR addendum, including in relation to any necessary public comment periods and a proposed schedule for finalizing and certifying the addendum.
10. **Mailing Notification List.** You have not submitted a mailing notification list. Please submit a mailing notification list and stamped envelopes as described here. The list must include and be grouped and labeled as follows: (a) the applicant and any representative(s); (b) each owner of property and each occupant of property (if not owner occupied) located within 100 feet (excluding roads) of the properties on which development is proposed; (c) the appropriate contact person(s) from the City of Sand City, State Parks, Monterey Peninsula Park District, USFWS, CDFG, RWQCB, SWRCB, Cal-Am, MPWMD, MCWRA, CPUC; and (d) any other known interested persons or parties (e.g., known from the CEQA process, etc.). Please submit the revised mailing notification list on self-adhesive label sheets (Avery label 5660 or 5160 format), and please also submit plain (i.e., no return address) regular business size (9½" x 4⅛") envelopes stamped with first class "forever" postage (metered postage is not acceptable) and addressed to each addressee on the mailing notification list. In addition, please submit 50 blank stamped envelopes to account for interested parties of which we are aware as well as those not yet identified. Please also submit evidence that you agree to submit additional sets of stamped and addressed envelopes for each Commission hearing past the first hearing in the event that there are multiple Commission hearings on this matter.

11. **Public Notice.** When we get closer to scheduling this matter for a Commission hearing, we will coordinate with you on posting of notices at the site so that they will be readily visible to the public (e.g., along the Sand Dunes Drive bike path, at Tioga Avenue, at the State park, at the regional park, etc.). You will be supplied posting notices and directions at that time, and will need to submit a completed Appendix D form once the notices have been posted. In addition, given the difficulty in providing adequate notice to Highway One motorists, you will need to provide newspaper notice in the Santa Cruz Sentinel, Monterey County Herald, and Monterey County Weekly. You will be provided information on the required noticing in advance of the hearing. Please submit evidence that you consent to satisfying these noticing requirements at that time.
12. **Representation.** Enclosed please find a representation disclosure form. Please complete the form and return it to us. On the form, please identify all representatives who will be communicating on your behalf to Commission staff and Commissioners regarding your application, and please identify a primary contact with whom we should be communicating regarding this application. All representatives must be identified prior to their communicating on your behalf to Commission staff or Commissioners. If your representation changes, please submit revised disclosure forms accordingly.

We recognize that the application file is very large including the original application materials for A-3-SNC-98-114, previous EIR documents, the draft addendum to the EIR, and multiple supplemental documents. To the extent that we may have requested materials already provided in these documents or elsewhere in the administrative file for this matter, please let us know and if possible provide a reference to the correct document/materials. Please submit all of the requested materials at the same time. In addition, there may be further materials necessary for review purposes depending upon the nature of the information provided pursuant to the above-listed materials, particularly the geotechnical and project plan information.

If you have any questions, please feel free to contact me at (831) 427-4898.

Sincerely,



Mike Watson
Coastal Planner

cc: Tom Roth, Esq., Applicant's attorney
Steve Matarazzo, City Manager, City of Sand City
Peter Southworth, Esq., Deputy Attorney General

CALIFORNIA COASTAL COMMISSION

CENTRAL COAST DISTRICT OFFICE
725 FRONT STREET, SUITE 300
SANTA CRUZ, CA 95060
(831) 427-4663



January 16, 2009

Ed Ghandour, President
Security National Guaranty
505 Montgomery Street, Suite 1150
San Francisco, CA 94111

Subject: **Supplemental Materials Request for Monterey Bay Shores Ecoresort Application
(A-3-SNC-98-114)**


Dear Mr. Ghandour,

Thank you for the materials that we received from you on October 17, 2008 and at various times thereafter that respond to our application review package letter of September 12, 2008. The purpose of this letter is to: (1) reiterate our request for specific items identified in our initial application review letter that have not yet been provided; and (2) identify additional questions raised by your specific responses to our initial application review letter. Your prompt reply to these requests is needed to adequately analyze the proposed project for conformance with the Sand City Local Coastal Program (LCP) and the Coastal Act access and recreation policies. Towards this end, please submit the following information and/or materials necessary to analyze your proposed project for LCP and Coastal Act conformance, and necessary to prepare a staff recommendation and bring this matter to a Commission hearing as directed by the Court and as requested by SNG. In order to expedite this feedback, we have also preliminarily identified missing materials related to water issues. We reserve the right to supplement this request on January 30th, pursuant to the court's order. Please provide the following:

- **Elevations and Cross-Sections.** As requested in item 2b of the September 12, 2008 letter, please provide two full-sized sets and one reduced copy (8.5x11) of scaled project plans with graphic scales showing absolute elevations in relation to NGDV. Existing grade must be identified on all cross sections. These include elevations and cross sections of the proposed development in relation to the shoreline and Highway One. The three cross-sections thus far provided (x, y, and z on sheet TM-2) extend merely to the property lines and thus do not reach the shoreline or Hwy 1. Please extend the reach of these three sections to include the Monterey Bay and all of Highway One, and please provide one additional cross-section through the apex of the large dune feature at the south corner of the site. In addition, please provide a minimum of four additional cross-sections oriented generally in east-west (upcoast/downcoast) configuration across the property. These cross-sections should, at a minimum extend through the top of the bluff (30' contour line), the center-line of the sand excavation pit, the proposed building center line, and along the access road/driveway;
- **Subdivision Map.** Please provide a clear identification of all proposed subdivision of real property associated with the development, including all proposed airspace condominium subdivision. Please explain the difference between what is referred to as a "module" and "unit." Please include at least one site plan sheet that is devoted exclusively to subdivision details (including identifying existing and proposed boundaries, acreages/square feet, etc.);

Exhibit 39
3-SNC-98-114, Monterey Bay Shores Ecoresort
Supplemental Materials Request dated January 16, 2009
Page 1 of 6

- **Site Plan.** Please provide a site plan in 11"x17" format showing all development proposed in site plan view where such details are shown in as large a scale as possible relative to the 11x17 format;
- **Floor Plans.** Please provide a floor plan for each level of the multi-storied structure that includes the size and layout of the various proposed project elements (i.e., residential, visitor-serving condos, condo-hotel rooms, hotel rooms, spa, restaurant, etc.). On page 23 of the 11" x 17" MBSEER color information handout indicates that an additional (optional ?) 16 units may be constructed in the vicinity of the wellness center and spa. Please clarify what is proposed where it describes "optional units" in this location and/or otherwise in the submitted materials.
- **Project Plans.** Please submit all project plans in 11"x17" format that can be reproduced in black and white (i.e., any color coding or gray scale shading should be replaced by cross-hatching or similar) that clearly highlights all components of the proposed development (i.e., residential, commercial, visitor-serving, grading, habitat, etc.) on the project site.
- **Grading Plan.** Your response indicates that there will be 420,000 cubic yards of sand removed from the subject site and associated with the proposed development. Please identify the total amount of grading that will be necessary to construct the proposed development (cut and fill). Please also explain how any excess sand will be managed during and after construction, including identifying the location of any sand staging area and potential impacts that will be necessitated by the proposed grading, and proposed disposal methods. Finally, please provide a revised grading plan that clearly identifies the cut and fill area locations and amounts as expressed in cubic yards and illustrated by cross-hatching or similar reproducible format.
- **Wind, Solar, and Geothermal Elements.** In site plan, elevation, and cross-section view, please provide scaled, physical plans and specifications on the engineering, sizing, adequacy, and efficacy of all proposed renewable energy components;
- **Grey Water.** Please provide details regarding all components of the proposed grey water system, including any storage elements or similar development that may be located outside of buildings, and please provide evidence of MCEH review and approval for such systems.
- **Living Walls.** Please provide clear description of all living wall components, including details regarding their configuration.;
- **Water Supply.** Please clarify which of the two water systems is proposed and provide evidence that that option has been reviewed and approved by the MPWMD. Also, provide specific information on the status of the CPUC review of the annexation of the SNG property into Cal-Am service area. If the source is on-site wells, then please provide evidence of California Department of Health Services, Monterey County Environmental Health, and MPWMD approval for the water quality/health. Please also provide evidence of Monterey County Water Resources Agency review and sign-off of the proposed water consumption/savings rates of the MBSEER proposed technologies. Finally, please provide information including evidence that the State Water Resources Control Board has reviewed and authorized Cal-Am's (co-applicant) proposal, both the

aspect of supplying water to the site and the proposal to utilize excess water off-site using SNG's water rights;

- **Contractual Agreements.** Please provide specific details on the physical, contractual, and regulatory terms of SNG's agreement with Cal-Am, and evidence of Cal-Am concurrence with the terms;
- **Sewer.** Please provide written evidence from the Seaside Sanitation District that the District has adequate capacity to serve the proposed development, and will serve the proposed development;
- **LCP Figures.** Please provide an 11" x 17" black and white project site plan (see above) on which is overlaid the resource constraints identified in LCP land use plan figures 3, 4, 7, and 9. The site plan should only include the proposed development site;
- **Visual Analysis.** Please provide 8.5" x 11" color and black and white photos in hardcopy and electronic format (i.e., bmp or jpg) from the representative viewing locations identified in our September 12, 2008 letter; Additionally, please provide two 8.5" x 11" copies (both black and white and color) photos of the 9.5" x 13.5" color rendering of the Monterey Bay Shores Ecoresort development, and electronic copies of same;
- **Hazards.** The 2053 and 2083 bluff recession lines presented in the EIR were developed by Haro, Kasunich and Associates from a formula multiplying the historic long-term bluff retreat rate obtained from aerial photographs (2.4 feet per year) by the time interval between the date of the study (2003) and the date in question, with the addition of 7 feet of additional recession resulting from increased sea level rise, plus a 25 foot "safety factor." Two problems inherent in this approach should be addressed: (1) The 7 feet of additional bluff retreat resulting from increased future sea level rise results from applying the Bruun rule technique to a sea level rise of 0.6 feet for the next 50 years. This value was adapted from estimates in the IPCC Third Assessment Report. More recent data (references attached) suggest that the IPCC values from both the Third and Fourth Assessment Reports may be underestimates. In light of this, please provide a "sensitivity analysis", whereby the effects of different scenarios of potential sea level rise are evaluated. The IPCC values may be taken as minimum values; we recommend using 10 mm/yr and 15 mm/yr as reasonable middle and upper bounds, for planning purposes; and (2) Current information does not explain adequately how the development will assure stability for the life of the development, including locating foundation elements of the development outside of erosion zones and assuring adequate set backs from steep slopes (such as the coastal bluff). Please provide slope stability analysis demonstrating that the proposed development, at the end of its economic life, will be safe from slope instability at that time. One approach to establishing such a setback is outlined in the attached paper (Johnsson, 2005). Please provide information on the disposition of the project at the end of its economic life.

With respect to the evaluation of storm- and tsunami-wave design run-up, the analysis presented in the EIR (e.g., "The revised project does not contain buildings that would be located in the Tsunami Hazard Zone") appears to be inadequate. Please provide quantitative wave uprush analysis for both 100-year storm and 100-year tsunami events, taking into account the sea level rise scenarios discussed above. These analyses should be undertaken pursuant to the methods outlined in the U.S. Army Corps' *Coastal*

Engineering Manual. Finally, staff notes that many site-specific details, including mitigation for unsuitable soils and soils subject to liquefaction, have been deferred until the "design-level geotechnical report" is prepared. Please provide these materials to evaluate the project's consistency with the LCP and the Coastal Act. Please provide three copies of the HKA October 9, 2000 Geotechnical Report.

- **Biological Resources.** Please provide three copies of the 2008 WSP surveys and results. Please also provide examples, if any, of successful "living roof" systems where the living roof was restored and functioned as native dune habitat. Please provide more specific information on the proposed Environmental Trust's budget. Pursuant to specific LCP requirements (IP, Page 20), the proposed HPP must be reviewed by DFG. Please provide evidence of this review. Please also provide evidence of Monterey Peninsula Park District and California State Parks review and comments of offsite impacts, including the biological analysis identifying the expected impacts on off-site biological resources, and any observations from these agencies, including in relation to any necessary permits, approvals, or permissions required from these agencies for the proposed project.
- **Public Access.** In light of erosion projections at the sight, please clarify how public access along the shoreline will be maintained over the life of the development? Please also provide specific proposed language for the required public access easements.
- **Traffic.** Please provide evidence of Caltrans review and approval of all traffic analyses and mitigation.
- **Notice.** Please submit a mailing list in address label sheet format (Avery labels or equivalent) organized by and corresponding to owners of property and residents of property located within 100 feet of the project site (excluding roads). The project site in this sense includes all areas where development is proposed (including all construction related development, and all additional elements as described above) Please submit a site plan or map that shows all such properties used to generate the 100-foot mailing list and that clearly demonstrates how the 100-foot determination (minus roads) was made. In addition to the 100-foot addressees, please also supplement the mailing list with addressees organized by and corresponding to: (a) all applicants; (b) all representatives; (c) each property owner and occupant of property and/or units within Sand City to the extent they are not covered by the 100-foot list; (d) all other parties known to be interested in the proposed development (e.g., persons expressing interest at City hearings, during CEQA review, information demonstrations, etc.); and (e) all contacts from the following agencies (CPUC, DPR, MPWMD, CDFG, SSD, SWRCB, USFWS, NMFS, RWQCB, MBNMS, MCEH). In addition to the mailing list, please submit an addressed, stamped (no metered postage) regular business size (9½" x 4½") envelope with no return address for each addressee on the mailing list. As the project moves forward, it is likely that there will be a number of other individuals or groups interested in the proposed project. Please also submit an additional 40 plain (unaddressed) envelopes (i.e., no return address) stamped with first class postage for such other interested parties as yet to be identified.
- **Evidence of Posting.** Please post and maintain at least three notices along the beach side of the Sand Dunes Drive bike path immediately fronting the project site. Additional

Ed Ghandour
Supplemental Materials Request
January 16, 2009
Page 5

notices must be placed at the foot of Tioga Avenue in the vicinity of existing informational signs, and in a similar location at the foot of Bay Avenue. Once the site has been posted, please submit a graphic showing the locations (in site plan view) where all notices were posted, and submit a completed Appendix D (Declaration of Posting). Please provide written a commitment that you will provide notice in one or more newspapers of general circulation in the area of the project at least 10 days in advance of all upcoming public hearings on the proposal.

Once again thank you for preparing the materials and responding to our September 12, 2008 review letter requests. Your prompt reply to these supplemental materials requests are necessary to prepare a staff recommendation for a March Commission hearing as directed by the Court. Please submit all of the requested materials at the same time and do not hesitate to call me if you have any questions regarding the above requested items.

Sincerely,



Mike Watson
Coastal Planner
Central Coast District Office

Cc: Steve Matarazzo, Sand City
Henrietta Stearn, Monterey Peninsula Water Management District
Roger Van Horn, Monterey County Environmental Health Department
David Peretska, U.S. Fish & Wildlife Service
Rick Riedl, Seaside Sanitation District
Diedre Hall, Monterey Bay National Marine Sanctuary
Brad Damitz, Monterey Bay National Marine Sanctuary
Charles Lindsay, State Water Resource Control Board
Deb Hilliard, California Department of Fish & Game
Ken Gray, California Department of Parks & Recreation
Tim Jensen, Monterey Peninsula Regional Parks District
David Stephenson, California American Water
Josie Babaran, California Public Utilities Commission
Tom Roth, Applicant's Attorney

\ Attachment



Security National Guaranty

RECEIVED

MAY 05 2009

CALIFORNIA
COASTAL COMMISSION
CENTRAL COAST AREA

May 4, 2009

By Hand Delivery and by Email

Mr. Charles Lester
Mr. Mike Watson
c/oMr. Chris Pedersen
California Coastal Commission
45 Fremont Street
Suite 2000
San Francisco, California 94105

**Re: Monterey Bay Shores Ecoresort ("MBSE")
A-3-SNC-98-114
Applicant Security National Guaranty, Inc. ("SNG")
Hearing Date May 7, 2009
CONTINUANCE REQUESTED**

Dear Sirs:

We are submitting Applicant Security National Guaranty's response to the Commission Staff Report on the MBSE project. We have included along with this letter additional source materials listed in the attachment list on the last page of this letter.

Again, we believe that a continuance makes more sense for the reasons stated in our letters to the Commissioners.

I. General Issues Regarding Staff's Analysis of the MBSE Project.

A. The Commission/Staff Has Failed to Allow for a Fair Hearing

The Commission staff is not allowing for a fair hearing of the MBSE Project application because of the unreasonably short period of time between the May 7, 2009 Commission hearing and the April 24, 2009 (at 4 pm) publication of the Commission's

Staff Report recommending denial. In fact, neither Applicant Security National nor the local jurisdiction, Sand City, received the report until April 27th.

In Benson v. California Coastal Commission, the Commission argued that one month was too little time to prepare a substantive response to materials received in advance of a Commission hearing. Yet, the Commission published a 281-page (single-spaced) Staff Report (with exhibits) for the MBSE Project at 4 pm on April 24, 2009 (a Friday) and expects the Applicant to pull together all of its consultants and experts to review and be prepared to respond by May 4, 2009 for the May 7 Commission hearing. Less than 10 days is less than one-third of the time that the Commission itself argued was insufficient to prepare a substantive response in the Benson case.

Further, staff purposefully set the matter for hearing without notifying or discussing with either the Applicant or Sand City whether a May hearing date was appropriate. The Applicant set numerous written request for a continuance and most of them were ignored without a response. (See submissions for record, submitted herewith.) This appears to have been designed to make it impossible for SNG to respond in a n adequate manner.

Staff also failed to discuss any of the issues it raised in the Staff Report with SNG before issuing the report. Staff made no effort to engage in a dialogue to address those issues as encouraged by the January 30, 2009 San Francisco Superior Court order. Such conduct does not reflect a genuine desire to reach agreement on the project, but rather seems singularly designed to "kill" the project through procedural gamesmanship.

Staff also has for months implemented a policy of refusing to meet in person with the Applicant or its consultants and refusing any direct communication, insisting instead that all communication must be between Applicant's legal counsel and the State Attorney General's Office who represents the Commission.¹ Given Attorney General's Office quite limited and inadequate knowledge of the technical details of the project or the technologies involved, this approach has placed yet another obstacles to the efficient or fair processing of this permit application. Further, the Attorney General's Office has terminated all oral communications with the Applicant's legal counsel and insisted only in written communication. This constraint further makes it impossible to process the permit application.

¹ The reasons given for this new policy don't make sense. Deputy Attorney General Pete Southworth stated to Applicant's legal counsel that the reason for this policy was the "Peter Douglas' letter." He was referring to a letter from Commission Executive Director Peter Douglas denying that Coastal staff had engaged in behind the scenes pressure on, and discussions with, Monterey Peninsula Water Management District Board members in an effort to "kill" the project. SNG had reported to the alleged Water District communications from the head of LandWatch, an environmental organization, to SNG and its consultant to that effect. The LandWatch Executive Director subsequently denied making the communication and then resigned from his position of Executive Director days later. But none of this provides any logical reason for Coastal staff to refuse to speak with *the Applicant*. The Applicant explained it was simply reporting what the LandWatch head had communicated. Staff's refusal to speak has imposed an obstacle to the proper processing of the permit that makes it impossible for SNG to obtain a fair and impartial hearing and appears designed solely to punish the Applicant.

If the resources of the State of California are not sufficient to prepare a substantive response in 28 days' time, the Applicant certainly cannot be expected, in *one third* that time, to substantively address all issues raised in a 300-page Staff Report. This short time period violates Coastal Act § 30320, § 13059 of the Commission's regulations, and the procedural due process rights of the Applicant. Evans v. Department of Motor Vehicles (an elementary and fundamental requirement of due process in any proceeding which is to be accorded finality is notice reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections).

In addition, the refusal of the Commission to grant a continuance is arbitrary, contrary to law and not supported by substantial evidence. There was no reason that the hearing on SNG's application must occur on May 7. There is no prejudice to the Commission in granting a continuance. But there is great prejudice to SNG in not granting a continuance. First, as noted above, the overwhelming amount of information in the Staff Report, the failure of staff to discuss it with the Applicant beforehand, and the extremely short period of time to respond places an unfair and unnecessary burden on SNG. Second, as detailed below, nearly one third of the Staff Report is prima facie erroneous because on April 29, 2009, the Monterey Superior Court set aside the Monterey Peninsula Water Management District's denial of SNG's application for a ministerial water distribution system permit to allow the local utility, California American Water, to pump SNG's adjudicated water from inland wells – the environmentally superior approach here. Pursuant to the Court's Order, the Water District already has set SNG's application for rehearing on May 21, 2009, merely two weeks after the Commission meeting. It would be unfair, not to mention enormously wasteful, to reject SNG's request for continuance under these circumstances.

B. The Commission/Staff Fails to Follow the Sand City LCP Standards and Is Applying Arbitrary and More Onerous Standards That Exceed Requirements Applied to Similar Permits in the Monterey Bay Area

The Staff Report frequently fails to base its review of the MBSE Project on existing Sand City LCP standards and requirements, but instead applies standards that Staff appears to have created for their review of this project – standards that it does not apply to other projects in the Monterey Bay area. In other instances, Staff impermissibly attempts to amend or revise the standards and requirements set out in the LCP, outside of the amendment process authorized in the Coastal Act. As such, staff is exceeding its jurisdiction. Such actions are arbitrary, capricious and not in accordance with the law and prohibited by the previous appellate court decision in this matter.

By way of example, in the Commission's approval of the California Department of Parks and Recreation coastal development permit application for improvements related to Fort Ord Dunes State Park (App No. 3-06-069, approved 3/14/07), the Commission approved a large parking area and pedestrian paths to beach the beach located in the former footprint of the Stillwell Hall officers' club. The parking area is located adjacent to the bluff top, which has the highest erosion rate in the area due to being hit by the

waves perpendicularly. However, the Commission Staff Report now uses erosion rates at the Stilwell Hall bluff as a basis for claiming that the MBSE project cannot proceed.

In addition, in that same Parks and Recreation permit, the Commission approved trails from the parking area to the beach even though in those areas, in 2006, 21 western snowy plover nests and 29 fledges were surveyed. Introduction of humans into western snowy plover nesting sites (where it has been devoid of humans for many years, and nesting has increased) has thus been approved at a State site in Monterey, but the Staff Report objects to substantially less impact to potential plover habitat found on the edge of Project site (even though SNG has a full habitat Protection Plan and on-site biologist to manage any conflicts between people and potential plovers in the area).

Another example: In the Commission's approval of the Monterey Beach Hotel Seawall (App. No. 3-07-022, approved 11/16/07), the Commission accepted a similar shoreline erosion analysis as that performed by SNG's well-respected consultants here. That report used a 2.5 ft/year erosion rate, which is considered quite conservative. SNG's experts used 2.4 ft/year, plus additional buffer to address global warming considerations. Despite this, and despite the fact that the Monterey Beach Hotel Seawall is located in a Critical Erosion Area identified in a regional erosion study prepared for Monterey Bay (and adopted by AMBAG (11/2008) and the Applicant's site is not, the Commission has objected to the Applicant's studies as not being conservative enough.

Equally importantly, Sand City's LCP does not require the use of the 6.4 ft/yr erosion assumption that Staff insists on. Indeed, Sand City has adopted the Moffatt Nichol Study which requires assumptions that are more within the industry norm. The Commission Staff acknowledged back in 2000 that the Moffatt Nichol study "may be an appropriate way to ascertain the project's consistency with LCP standards regarding natural hazards." (May 22, 1998 letter to Sand City from Commission; see also previous Staff Report.)

C. Staff's Inflexible and Overly Rigid Interpretation of Sand City's LCP Is Contrary to Planning Law and the Coastal Act.

In numerous places in the Staff Report, Staff has taken extreme positions in interpreting the MBSE Project's compliance or noncompliance with the LCP. However, since the LCP is part of the General Plan for the City of Sand City, compliance with the LCP does not require "perfect" conformance as the Staff demands here, but rather "substantial" compliance. Thus many of Staff's conclusions are extreme, not in conformity with California planning law, the LCP or the Coastal Act, and should be rejected.

A "project is consistent with the general plan if, considering all its aspects, it will further the objectives and policies of the general plan and not obstruct their attainment." (Corona-Norco Unified Sch. Dist. v. City of Corona (1993).) In applying this standard, California courts have been very clear that perfect conformity is not required. (Endangered Habitats League, Inc. v. County of Orange (2005); Families Unafraid to Uphold Rural etc. County v. Board of Supervisors (1998).) "[A] finding of consistency requires only that the proposed project be compatible with the objectives, policies, general land uses, and programs specified in the applicable plan. The courts have

interpreted this provision as requiring that a project be in agreement or harmony with the terms of the applicable plan, not in rigid conformity with every detail thereof. (San Franciscans Upholding the Downtown Plan v. City & County of San Francisco (2002).)

Because policies in a general plan reflect a range of competing interests, the governmental agency must be allowed to weigh and balance the plan's policies when applying them, and it has broad discretion to construe its policies in light of the plan's purposes. General plans have goals and policies relating to disparate issues, and most projects involve trade-offs among them. The plan's attempts to address competing interests does not equate to "inconsistency." A given project need not be in perfect conformity with each and every general plan policy.

In fact, California courts have held that it is nearly, if not absolutely, impossible for a project to be in perfect conformity with each and every policy set forth in the applicable plan. An agency, therefore, has the discretion to approve a plan even though the plan is not consistent with all of a . . . plan's policies. It is enough that the proposed project will be compatible with the objectives, policies, general land uses and programs specified in the applicable plan. (Sequoyah Hills Homeowners Assn. v. City of Oakland (1993); and San Franciscans Upholding the Downtown Plan v. City & County of San Francisco (2002).)

Staff here appears to be insisting on "perfect conformity" even when various elements of the LCP conflict in application to the MBSE Project and balancing under the Coastal Act is obviously called for.

D. The Commission/Staff Has Interpreted the Sand City LCP Standards Differently Even From When It First Considered SNG's Application in 2000.

Staff has not interpreted the Sand City LCP in the same way when compared to its interpretation in 2000 when the Commission first denied SNG's CDP. The Commission has not explained or provided any understandable reasoning for shifts in its position. To the extent that the Staff raises issues now that could have been raised in its earlier Staff Report, but were not, the issues are waived.

E. Staff Bias

Staff has evidenced a bias against the MBSE Project and the Applicant and as such Applicant cannot get a fair hearing. In addition, in such circumstances, the Commission should not benefit from deference to agency action.

F. Over Reliance on General Studies Rather Than Applicant's Site Specific Analyses

Staff repeatedly ignores the Applicant's site specific analysis in favor of more general studies that don't take the site conditions into consideration. Examples are included throughout this submission.

II. Specific Issues Regarding Commission Staff Report

WATER AVAILABILITY

Staff's report is erroneous in that it asserts that the Monterey Peninsula Water Management District has denied a ministerial water distribution system permit and thus water is not available.

First, on April 29, 2009 the Monterey Court set aside the Water District's denial of SNG's permit. The Court found that the Water District had violated the Court's Final Judgment adjudicating the Seaside Basin and imposing a Court-supervised physical solution. The Court ordered the Water District to rehear SNG's permit application within 30 days of April 29. The Water District has set the reopening and rehearing of SNG's permit for May 21, 2009. The Court forbid the Water District from requiring any additional environmental reviews or CEQA reviews regarding the Seaside Basin water production. The Court confirmed that California American Water is entitled to mix water from different sources in its storage tanks and the Water District may not forbid that. The Court confirmed that so long as Cal Am agrees to front load Seaside Basin water in deliveries to SNG, such water wheeling is allowed under the Court's Judgment and may not be prohibited by the Water District.

Second, Coastal Staff is misinterpreting the Sand City LCP which merely requires "water availability." The LCP does not require the water distribution permit to be issued before the Commission may consider or approve the CDP. Coastal staff has rejected Sand City's interpretation of its LCP without any, much less sufficient, justification. Conditional approval is the typical way to address this circumstance and is reasonable here in light of the Monterey Court's adjudication of the Seaside Basin and imposition of a physical solution. In light of the Monterey Court's April 29, 2009 clarification of the Final Judgment, it is clear that the Court's oversight includes all environmental considerations related to the Seaside Basin. Thus, the Staff's refusal to allow a conditional approval is clearly unreasonable and not supported by substantial evidence. Indeed, the insistence on a ministerial water distribution system permit before Coastal consideration, ignores the Monterey Court's jurisdiction over Seaside Basin environmental issues. Coastal Staff is not recognizing the reduced role that the Water District now plays in managing the Seaside Basin. Provisions of the Sand City LCP that conflict with the Seaside Basin adjudication and physical solution (and watermaster powers) are preempted by the Monterey Court and cannot be applied.

Staff's water analysis further flawed. Coastal staff applies the wrong standards for interpretation of consistency with the LCP provisions which is to ensure a reliable water supply. In several places, staff relies upon decidedly outdated information and reports, such as the Feeney Report of 2005, despite the fact that the Monterey Superior Court has made factual findings and resolved any conflicting scientific evidence related to the Seaside Basin. Staff also inaccurately describes the background setting, mischaracterizes the public utility by referring to California American as a "private purveyor" when in fact, California American Water is heavily regulated by the California Public Utilities Commission. Staff likewise erroneously interprets the Court's determinations related to

the interplay between alternative allocation producers and standard allocation producers. As the Monterey Court recently ordered and restated, the Amended Decision and adjudication is not just about water rights, but is also an environmental determination about the management of water supplies and health of the Seaside Basin. The Court orders have also conclusively established water rights, usage, pumping locations and priorities among users of the Seaside Basin water. Staff's analysis appears to second guess the Court's orders in a manner which the MPWMD did when it analyzed the water distribution permit system. That method of analysis was determined to be incorrect and the MPWMD denial of the permit was set aside by the Court. In terms of consistency, the Court determined that the MPWMD is no longer the pre-eminent arbiter of rights within the Seaside basin nor can MPWMD condition SNG's use of its water rights allocated under the Amended Decision. CCC staff must interpret and apply the LCP and IP policies and provisions to harmonize with the Court's decision.

HAZARDS

A. Project Economic Life

The Staff Report states that the Applicant has failed to provide a specific economic lifetime for the MBSE Project, and the lack of a lifetime leaves the Staff "unable to precisely determine the degree of setback required by the LCP." (p. 30). Staff interprets LUP Policy 4.3.5 (b) to require projects to provide a specific economic lifetime for analysis, and then proceeds to define the economic lifetime of the project without any input from the Applicant (p. 45). This is a misinterpretation of the LUP on the part of Staff in a manner that has specifically be forbidden by the First Appellate District Court. Security National Guaranty v. California Coastal Commission, (2008) 159 Cal.App.4th 402, 422. LUP Policy 4.3.5 (b) only requires that setbacks address "at least a 50-year economic life for [analyzed] project[s]." Therefore, so long as the Applicant has provided an analysis showing that its project contains sufficient setbacks to meet at least a 50-year project life, the Applicant complies with the LUP, and the Applicant's submitted reports have done so for this application.² Any attempts by Staff to assign a specific project life to the MBSE Project beyond what the Applicant has identified consistent with LUP Policy 4.3.5 (b) are inconsistent with the language of the certified LCP, and barred. Security National Guaranty, *supra*, at 422.

B. Sea Level Rise

No section of the Sand City LUP requires CDP applicants to analyze sea level rise. Although sea level rise may be a factor in hydrologic and geomorphic analysis required certain sections of the LUP and IP, neither portion of the LCP requires an applicant to provide an analysis of sea level rise, and any attempt to do so would be a

² Reports prepared by HKA on behalf of the Applicant and submitted to the Commission indicate that project setbacks are sufficient to protect the MBSE Project for at least 50 years and as much as 75 years, thus exceeding the LCP requirements. After that point, the project Applicant has indicated that if the project becomes threatened by erosion the threatened portions would be removed. This discussion fully satisfies the LUP requirements.

reinterpretation or attempted amendment of the requirements of the LCP, which is barred by the law of the case and the Court of Appeal decision. Security National Guaranty, *supra*, at 422.

At the Commission's request, the Applicant provided a range of sea level rise estimates for a 50-year time horizon,³ which can be used in the calculus necessary to determine safety setbacks that comply with the requirements of LUP Policy 4.3.5 (b).

Staff insists on using assumptions that are not supported by good science. SNG submits as part of this packet information from the Intergovernmental Panel on Climate Change (IPCC)—the IPCC Fourth Assessment Report's Working Group. It projects sea level rise 7-23" in next 100 years. IPCC received Nobel Prize for their work. By comparison, the Staff suggests 59 inches. The average IPCC projections to 2100 are 17", with a maximum of 23 inches. IPCC is considered very conservative, i.e., it assumes worse case. Thus, Coastal Staff insists on using assumptions that exceed IPCC's maximum numbers by 256% and exceed IPCC's average number by 350%. That is unrealistic, not supported by science and not required by the LCP.

C. Tsunami

In compliance with LUP Policy 4.3.7, the Applicant provided the Commission with a study of tsunami run-up elevation prepared by HKA 92/3/2009) citing Dr. Warren Thompson. The Staff Report states that "it does not appear that the 1984 [report] remains current and up to date (sic), nor can be used as a baseline from which to measure consistency with the LCP tsunami requirements." (p. 34). Staff's basis for this assertion is simply speculation, not substantial evidence. To wit, Staff indicates that unspecified "increased awareness of a large tsunamigenic source of the California Coast" and "improved understanding of landslide generated tsunamis" render the 1984 Thompson Report out-of-date, and attempt blatant fear-mongering by alleging a comparison of this site with the 2004 Indian Ocean tsunami disaster. Nothing in the superficial Staff Report discussion analyzes the inputs or information discussed in the HKA letter, nor does the Staff Report point to any specific portions of the Thompson Report. The Staff Report simply speculates that because the Thompson Report was prepared in 1984, it must be out-of-date. Unless Staff can point to something more concrete, this speculative discussion does not rise to the level of substantial evidence necessary to demonstrate that the report prepared and provided by the Applicant is insufficient. Bixby v. Pierno (1971) (courts examine whether the agency's findings are supported by substantial evidence in light of the whole record).

The sole quantitative data the Staff Report does cite are **draft** maps being prepared by the California Emergency Management Agency. According to the Staff Report, these maps "should be released for review by the County sometime in 2009," but conveniently "Commission staff has had the opportunity to review draft maps for other parts of the State." Now, based on publicly unavailable draft maps not specifically relevant to this site, the Staff Report predicts that tsunami inundation zones for Sand City will be significantly higher than those based on the HKA/Thompson Report conclusions.

³ Letter to E. Ghandour from HKA Engineers, 03 February 2009.

The problems with this speculative conclusion are as obvious as they are manifold. The Staff Report bases its refutation of the HKA/Thompson Report on **draft maps not yet available to the public** or the applicant,⁴ but purportedly available to Commission staff. None of these maps have been finalized as to any part of the California coastline, and specifically have not even been created for the portion of the coast where the MBSE Project is to be located. Instead, the Staff Report extrapolates from draft maps of other parts of the coast to conclude that the HKA conclusions underestimate tsunami inundation zone for the MBSE Project site. It is arbitrary and capricious and contrary to law for the Commission to find that the Applicant's project is inconsistent with the policies of the LUP based on speculative information, when more specific evidence in the administrative record exists, which demonstrates that the Project provides an adequate margin of safety to comply with LUP polices. As indicated above, Staff has applied different standards to the MBSE. As another example, in August 2008, the Commission approved Application No. 3-08-013 for the Ocean View Plaza in Monterey (on Cannery Row, 2 miles across the Bay from MBSE, and located on Bay waters). That project actually sits in the 100 coastal flood zone, with wave run-up to 31 feet NGVD, and in the tsunami zone.

Lastly, the Staff Report states "removal of fore dune crests as is proposed with the project would worsen the potential [tsunami inundation] risk." (p. 34). The fore dune crests on the project site are proposed to be recontoured to comply with FEMA 100 year food zone and to establish nesting habitat for the federally threatened western snowy plover, as discussed in the project's Habitat Protection Plan, October 2008, by EMC Planning Group (Section 4), and the environmental review documentation for the Project. In addition, higher bluff tops (with sand foundation) and sand dunes actually increase erosion risk in the models assessing wave run up.

The LCP requires restoration of dune or sensitive species habitat where possible, and this requirement must be balanced with the Commission's speculative (and wrong) assertion that recontouring these dune areas would exacerbate a hypothetical tsunami threat. Given that the existing evidence in the HKA (2008 and 2009) letters indicates that tsunami inundation is not a threat, and that the Commission has failed to produce any substantiated evidence to the contrary, the requirement to restore dune habitat in the fore dune area must be favored over the speculative threat of a potential tsunami inundation risk. Public Resources Code § 30007.5.

D. Wave Run-Up/Flooding

The Staff Report asserts that the MBSE Project application is inconsistent with LUP Policy 4.3.4 and IP Policy 2.2, both of which require applicants to site proposed development in a manner that minimizes flooding, among other things. The Staff Report states that analyses of potential flooding by wave run-up prepared and submitted by the Applicant are inadequate because they: (1) "look only at the expected run-up elevation on the existing dune slope (i.e. the pre-project condition) (p. 37); (2) although the MBSE

⁴ These maps are not part of the record for this application since they are not available to the public and are in draft form that may well change before being formally adopted.

Project would exceed 100-year-storm wave run-up projected by the Federal Emergency Management Agency for this area for the required 50-year span of the project, this is not sufficient in the eyes of the Commission to meet LCP requirements.

As to the first of the Staff Report's objections, their argument is flawed. SNG has submitted studies by HKA (1997-2009) and others that established a 50 years setback for a finished grade of 32 NGVD. The project's lowest living habitable floor elevations of the buildings are at 32 ft and totally conform to the wave run-up elevations, which range from 11ft to 31ft. Wave run-up is a function of topography, slope and other factors, and HKA and other geotechnical scientists and civil engineers, including Bestor Engineers, have demonstrated that wave run-up elevations inland of the bluff edge diminishes as the wave energy spreads laterally and the wave momentum dissipates inland. For the MBSE, that means at least 70 years before possible breaching under the conservative global warming and sea level rise assumptions incorporated by HKA.

As to the second objection, the Staff Report admits that they quibble with HKA's usage of 12 inches of sea level rise over the 50-year time horizon required by the LUP, citing a report hand-picked by Staff which indicates that sea level rise is expected to fall between 20 and 55 inches by 2100.⁵ As the Staff Report acknowledges (p. 32), the Rahmstorf Report concludes that sea level rise is not expected to occur in a linear fashion, but will be backloaded, i.e., sea levels will increase at a more rapid rate towards the end of the century, after the expected lifetime of this project. In fact, the 12-inch rise in sea level assumed by HKA in its wave run up studies is the average of the amounts expected by the Rahmstorf Report at or about the 50-year time horizon required by the LCP. HKA's use of the average predicted sea level rise from the Staff's chosen report is a reasonable approach to including sea level rise as a factor in wave run-up modeling, particularly since the Staff Report admits that "direction on sea level rise to coastal permit project applicants is in flux," and that there is "great uncertainty future concerning sea level" (p. 32-33).

More importantly, it is completely consistent with the requirements of the LCP, which simply require that flood risk be analyzed and minimized. Here and elsewhere, Staff attempt to reinterpret the provisions of the LCP to require that applicants eliminate

⁵ The Staff Report states that the report, *A Semi-Empirical Approach to Projecting Future Sea-Level Rise*, prepared by Dr. S. Rahmstorf, has "become the central reference point for much of recent sea level rise planning." Staff does not substantiate this statement (they point only to its use in a yet-to-be-finalized paper of the California Climate Action Team), and ignore the danger of using the conclusions of a single study as a basis for planning over 1,000 miles of diverse and varied coastal areas. Despite its asserted "central reference point," the Rahmstorf study was not cited a single time in the IPCC's 2007 Fourth Assessment Report, nor in probably the most voluminous recent governmental action regarding global climate change and sea level rise, the United States Fish and Wildlife Service's Endangered Species Act listing of the polar bear.

the flood hazard from wave run-up posed by the most drastic or catastrophic predictions of sea level rise, even those analyses on the fringe of science. The LCP does not require this. It simply states "all developments shall be sited and designed to minimize risk from . . . flood . . . hazard . . ." based on at least a 50-year economic life for the project. LUP policies 4.3.4 and 4.3.5 (b). Staff's extreme interpretation of these sections is not consistent with the plain language of these sections or of the LCP in general, and is tantamount to impermissible amendment or revision of the LCP. Security National Guaranty, supra, at 422.

E. Slope Stability

The Staff Report states that the 2:1 setback from bluff toe designed into the MBSE Project is sound and offers a sufficiently conservative setback from the toe bluff, but the Report quibbles with the Applicant's analysis deriving the bluff toe because of what the Staff views as incorrect assumptions regarding shoreline erosion/retreat. As discussed further below, the Staff's critique is arbitrary and capricious as it is based on generalized, regional information and speculative assumptions regarding beach erosion, when existing reports and data indicate that erosion rates in this area are consistent and will likely remain consistent with the assumptions used by the Applicant in its beach erosion hazard analyses.

F. Shoreline Erosion/Retreat

The Applicant has prepared and submitted at the Staff's request several shoreline erosion and retreat studies for the MBSE Project site demonstrating that the MBSE Project as proposed retains adequate setback from bluff toe/mean high tide line to satisfy the safety requirements of the LUP policies 4.3.4, 4.3.5 and 4.3.12. These studies conclude that shoreline erosion would not threaten the project for at least 70 years (and even in this instance using more conservative erosion rates that have been observed on this site for more than ten years). Despite this conservative and site-specific approach, the Staff Report states that the Applicant's estimates of shoreline erosion are insufficient for two general reasons: (1) the studies' estimate of shoreline erosion are too low; (2) the studies "likely greatly underestimate the necessary safe bluff setback" if they underestimate future sea level rise.

With regard to sea level rise, our earlier discussion of the extreme position of the Staff Report applies here. The Applicant has chosen a reasonable estimate of sea level rise based on a review of the range of estimates, and has met the standard of the LCP. Staff appears to insist on the most radical and catastrophic estimates of sea level rise even though the LCP does not call for it. Staff approach is not supported by any formal Commission regulation or published policy, and is arbitrary and capricious.

In suggesting that the MBSE Project does not meet the requirements of the LUP, Staff impermissibly ignores site-specific data provided by the Applicant in favor of generalized information for the Sand City area. (Agency findings must be supported by substantial evidence in light of the whole record). As discussed by the Applicant's reports (attached, see, e.g. Haro, Kasunich and Associates to E., Ghandour dated 28 Sept 2008), erosion rates at the site since the cessation of sand mining in 1984 have dropped from rates of ~6'/year in the historic sand mining era to no net erosion in the post-mining era. In fact, a study cited by the Staff Report and in which the Commission participated in preparing, indicates that the MBSE Project area is within a null zone, that is an area of shoreline accretion. See Coastal Regional Sediment Management Plan for South Monterey Bay (2007), by Phillip Williams and Associates (available online and incorporated herein by this reference). Because of this, the Coastal Regional Sediment Management Plan (CRSMP) quite rightly does not include the MBSE Project site a Critical Areas of Erosion. Despite this current, site-specific evidence of minimal erosion threat and actual shoreline accretion in the MBSE Project area, the Applicant used a conservative 2.4 foot annual erosion rate together with other conservative buffers and assumptions (additional) in locating the MBSE Project footprint well outside the 50-year setback requirement set out in the LUP. This is certainly consistent with the requirements of the LUP as written.

The Staff Report ignores this site specific information, and instead sums up its critique of the Applicant's shoreline erosion conclusions by stating, "probably the best site-specific data available are those reported in Thornton et al.⁶ (2006) and Hapke and Reid (2007)." (p. 44). Neither of these reports provide site-specific data for the MBSE Project site, but instead use data to the north and south of the site. Staff may not ignore more appropriate and specific information in the administrative record in favor of general information. The more accurate data from the HKA Reports and the CRSMP should be used in this instance, and if they are used, Staff's objection (that the MBSE Project does not meet safety setback requirements in the LUP) fails.

The Staff Report goes on to calculate recommended safety setbacks for several retreat rates set out in the Thornton Report, the historic mining era retreat rate, an average of the mining era retreat rate and the post-mining retreat rate as measured by that report. Obviously, historic retreat rates are not applicable, as sand mining at the MBSE Project site significantly increased erosion rates in comparison to post-mining conditions. As for the average retreat rate identified in the Staff Report, the methodology is unsound and the average rate should be ignored. This is because the average rate uses the historic, mining era rate that was substantially increased by mining activities on site, and averages that rate with the current, post-mining rate without weighting or otherwise compensating for the current absence of mining. Lastly, although the post-mining retreat rate of 2.6

⁶ In fact, the author of the Thornton Report is a vocal critic of development in the Monterey Bay area and there is no indication in the record that this report has been peer-reviewed to eliminate possible bias in the preparation of the report.

feet/year is closer to the conservative estimate used by the Applicant's reports, this rate is not the most accurate for the MBSE Project site because it is taken from a data point north of the Project site, closer to the last remaining sand mine in the area (the Marina dredge pond mine, p. 40, 44). Thus, all three general, estimated rates of erosion used in the Staff Report are not more accurate than data collected for the MBSE Project site itself by the Applicant's consultants, and cannot be used to the exclusion of the Applicant's more accurate data.

Lastly, the Staff Report is incorrect in positing that low, post-mining erosion rates identified in the Thornton Report should be adjusted upward due to mining upcoast, at the Marina dredge pond site. (p. 44). The Staff Report states that potential effects of the Marina dredge mine "would not have been captured by the [Thornton Report] for the [post-mining period] of 1984 to 2004; this time period could represent an aberrant lull in the effects of sand mining on the San City shoreline." P. 44. However, the CRSMP, which the Staff Report cites as the basis for this assertion, contradicts this position. The first and most obvious bar to this argument is that the CRSMP determined the MBSE Project site sits within a null zone, and currently experiences accretion, not erosion. Secondly, according to the CRSMP, the volume of sand mining in the Plan area has decreased from 350,000 to 200,000 cubic yards/year. The Marina mine has been operating continuously since the closure of mining at the MBSE Project site (CRSMP p. E-7) and nevertheless, erosion rates have dropped dramatically at the site. If the Marina mine were affecting the MBSE Project site, it would have been observed in the existing data. In fact, the CRSMP states, "Erosion rates at **Marina** increased after 1985, and are believed to be related to an increase in sand extraction at the Marina sand mine in the mid 1980s, 1990s, and 21st century. Erosion rates at **Sand City decreased** after 1985, and are believed to be related to closure of drag-line mining at three sites at Sand City between 1970 and 1990." Id. The evidence in the record at this time demonstrates that low, post-mining erosion rates in the Sand City area are stable and not subject to increase by mining upcoast at the Marina site, contrary to assertions in the Staff Report.

G. Additional Concerns with Staff Analysis

The project MBSE is sited landward of the 75 years setback line as determined by Haro Kasunich and Associates (HKA) and Bestor Engineers, and is based on using very conservative, above average sea-level rise, erosion rates, wave run-up and tsunami run-up zones. The economic life for the project exceeds the 50 years referred to in LCP Policy 4.3.5(b). HKA uses the methodology reported initially in their Coastal Recession Evaluation for Coastline of Sand City, California (December 2003), adjusted further for higher sea level rise and the "Bruun calculations" for bluff edge positions, then adding a "safety factor" of 32 feet. It is noteworthy that the only Sand City adopted erosion setback methodology is the Moffatt & Nichol Study, Sand City Resolution No. SC-21 (1990), which is the LCP standard for Sand City. Nonetheless, HKA used significantly more conservative approach and updated the calculations with aggressive global warming

sea level rise assumptions. We are available to discuss with staff any concerns that they may have about SNG's analysis.

The Staff Report notes that the "greatest" sea level rise projections should be used now for the MBSE. Those projections represent statistical "outliers," meaning, they are typically ignored by the scientific community and the conclusions derived there from are erroneous and mis-represent the consensus thinking of the scientific community (that does not accept "dooms-day" scenarios). The scientific community accepts the IPCC (2007) projections by year 2099 of sea level rise under numerous scenarios from liberal to conservative as being the best projections, namely, 20 cm to 43cm (7.1 inches to 20.1 inches) . They received the Nobel Prize in 2007 for their Climate Change work. The coastal staff rejects their projections and instead go to 140 cm (55 inches) by 2100 based on purely speculative reasoning, some 325% increase, and requesting that we analyze for the MBSE setbacks based on extreme unrealistic 15mm/year, or 150 cm (59 inches) sea level rise. Staff's analysis is flawed. The scientific community accepts the fact that sea level rise over the next 100 years will rise in an exponential manner, namely, the rise will be back loaded such that in the first 50 years, roughly a third of the rise will occur, while the latter 50 years will see two-thirds of the rise. That means, even if you used the coastal staff outlandish assumptions, then the first 50 years sea level analysis should be based on no more than 50 cm sea level rise, or 19.68 inches. Coastal staff has chosen to use different standards for the MBSE and go beyond that by seeking assumptions for MBSE that are greater by over 250% than those accepted by them just in the previous year, which lead to flawed recession rates and setbacks. It is important to note that on 11/16/07, the Commission approved in a consent calendar Application No. 3-07-022 for the Monterey Beach Hotel Seawall (about 1.5 miles to south of MBSE), in which HKA used in their analysis 2.5 ft/year as recession rate. That analysis was not challenged by staff, yet for the MBSE staff seeks recession rates of 6.4 ft/yr.. Likewise, to the north of the MBSE (about 1 mile), the Commission approved the State Parks paved parking area which sits practically on the Bluff top, without apparent concern for erosion, wave run-up or tsunamis (Application No. 3-06-069, Hearing Date 3/14/07). In August 2008, the Commission approved Application No. 3-08-013 for the Ocean View Plaza in Monterey (on Cannery Row, 2 miles across the Bay from MBSE), wherein it sits in the 100-year coastal flooding zone with wave run-up to 31 ft NGVD that will strike and breach the structures. The HKA calculations to determine setbacks and wave run-up for the MBSE were far more conservative than those 3 projects above; yet, staff is recommending 325% increase in sea level and 256% increase in recession rates for the MBSE? Those cannot apply to the MBSE because (i) those are not the LCP standards for this site, and (ii) they are extreme and unfounded scientifically. Even the well regarded PWA report (11/3/2008) Coastal Regional Sediment Management Plan for Southern Monterey Bay, adopted by AMBAG, on which coastal staff worked (as did Ed Thornton who now suggests for the MBSE a 256% increase just a few months later), suggests that the MBSE setbacks could have an economic life of 170 years or more (MBSE engineers have provided a range of 70-300), and that the MBSE site is located in a "null zone" where

sediment transport is neutralized, resulting in accretion. In fact, over the past 16 years, Bestor Engineers has documented that the MBSE shoreline has accretion and no change to bluff top was detected. Coastal staff point to the Pacific Institute report, but fails to point to the fact that the MBSE site is one of only few in the Monterey Bay that is not impacted by sea level rise scenarios of Coastal Base Flood plus the 55 inches (1.4m) sea level rise. In fact, once the sand-mining pit is graded, the building setbacks for the MBSE will all be located landward of the erosion high hazard zone in 2100! MBSE is a green Ecoresort, and as such, we believe that if at some distant point in the future the buildings will be breached, that they will either be relocated or removed (no seawalls).

Further concerns regarding the Staff Report are contained in the May 1, 2009 HKA letter submitted herewith.

TAKINGS WITHOUT JUST COMPENSATION

A. SNG Asks the Commission to Exercise Whatever Power It Has Under PRC § 30010

Public Resources Code § 30010 states that the Coastal Act does not authorize the Commission "to exercise their power to grant or deny a permit in a manner which will take or damage private property for public use, without the payment of just compensation therefor." Previously in the history of the above-referenced project, the Commission's counsel has asserted the position in pleadings filed with the courts that § 30010 allows the Coastal Commission to ignore or override coastal policies, which otherwise would prevent approval of a project, as necessary to avoid a taking of an applicant's property.

SNG has contended that the Coastal Commission is not constitutionally empowered to decide whether its own actions constitute a taking. Without waiving that position and reserving all rights with respect thereto, SNG asks the Commission to exercise what power it has under § 30010 to approve SNG's project.

"The state and federal Constitutions prohibit government from taking private property for public use without just compensation." (Kavanau v. Santa Monica Rent Control Bd. (1997); Cal. Const., art. I, § 19; U.S. Const., 5th Amend; Chicago Burlington Q.R. Co. v. Chicago (1897) [applying the federal takings clause to the states].) It is settled that a land-use regulation constitutes a taking that requires compensation if its application denies an owner economically viable use of his land. (Palazzolo v. Rhode Island (2001); NJD, Ltd. v. City of San Dimas (2003); Lucas v. South Carolina Coastal Council (1992) [denial of permit caused a taking]; Nollan v. California Coastal Commission (1987) [permit condition lacking nexus to legitimate state interest caused a taking]; Dolan v. City of Tigard (1994) [permit condition lacking rough proportionality to expected impacts of project caused a taking].)

In Palazzolo v. Rhode Island, the United States Supreme Court recently summarized the guidelines to be followed by "courts confronted with deciding whether a particular government action goes too far and effects a regulatory taking. First, we have observed, with certain qualifications ... that a regulation which 'denies all economically

beneficial or productive use of land' will require compensation under the *Takings Clause*. [Citations.] Where a regulation places limitations on land that fall short of eliminating all economically beneficial use, a taking nonetheless may have occurred, depending on a complex of factors including the regulation's economic effect on the landowner, the extent to which the regulation interferes with reasonable investment-backed expectations, and the character of the government action. [Citation.] These inquiries are informed by the purpose of the *Takings Clause*, which is to prevent the government from 'forcing some people alone to bear public burdens which, in all fairness and justice, should be borne by the public as a whole.' [Citation.]"

In enacting the Coastal Act, the Legislature anticipated that the application of development restrictions to deny a coastal development permit could deprive a property owner of the beneficial use of his or her land and thereby cause an unconstitutional taking. (4 Manaster & Selmi, Cal. Environmental Law and Land Use Practice (2004) Coastal Zone Regulation, § 66.57, pp. 93-96 (4 Manaster & Selmi).) Consequently, the Legislature enacted § 30010 which provides, in relevant part, "The Legislature hereby finds and declares that this division is not intended, and shall not be construed as authorizing the commission, port governing body, or local government acting pursuant to this division to exercise their power to grant or deny a permit in a manner which will take or damage private property for public use, without the payment of just compensation therefor."

The Commission has asserted in other court cases that § 30010 generally authorizes projects where doing so is necessary to avoid an unconstitutional taking. Thus, where a restriction would require the denial of a permit, and the denial would, in turn, deprive an owner the economic benefit or productive use of his or her land, the Commission theoretically has two options: deny the permit and pay just compensation; or grant the permit with conditions that mitigate the impacts that limitations were design to prevent. However, because, as one commentator has observed, "the Commission is not authorized to purchase property, it has instead determined to limit application of the resource protection policies to the extent necessary to allow a property owner a constitutionally reasonable economic use of his or her property." (4 Manaster & Selmi, *supra*, § 66.57, p. 96, fn. omitted.)

Whether the owner has been denied substantially all economically viable use of the property is a factual inquiry that requires the analysis of such factors as the economic impact of the regulation, interference with the landowner's reasonable, investment-backed expectations and the character of the government action. (Buckley v. California Coastal Com'n (1998); Keystone Bituminous Coal Assn. v. DeBenedictis (1987); Kaiser Aetna v. United States (1979).)

SNG purchased its property with the expectation of developing it along the lines of this proposed project (See Ghandour Declaration submitted herewith.) SNG's expectation was reasonable. Its investment was substantial. The proposed development is commensurate with SNG's reasonable investment-backed expectations for the site. (4 Manaster & Selmi, *supra*, § 66.57, p. 96.) Denial of a permit would deprive SNG of economic benefit or productive use of its property and constitute a taking.

Denial of SNG's requested permit would result in a finding that the owner has been deprived of all beneficial use of the property, a result that the Coastal Commission must avoid under the Coastal Act. Two conditions of note are the Commission's coastal hazards analysis and its claim that the entire site is dune habitat. To avoid a taking, the Commission must relax the restrictions identified in the Staff Report that make the project infeasible or impossible to build and instead approve the Project with conditions that mitigate impacts to the extent possible. If the Commission declines to do so, SNG asks for written findings to support its decision. (§ 30604(a)-(c).; Regs., § 13096(a).)

SNG has also asked the Commission's legal counsel for an explanation of the processing of this request since it is not addressed in Commission regulations.

VISUAL RESOURCES

The Staff Report misinterprets several provisions of the LCP regarding coastal visual resources, essentially attempting to amend, unlawfully, these provisions to create an absolute prohibition against alteration of coastal dunes. Staff Report states "existing dunes must be protected . . . [and] the intent of the LCP is to protect existing dunes." P. 56. However, the LCP sections the Staff Report cites for these assertions say nothing of the sort. Of the six sections identified in the Staff Report as "requiring that existing dunes must be protected," not one contains such a statement. Although the LCP policies on Coastal Visual Resources certainly encourage the restoration of dunes and usage of natural and manmade dunes to protect and complement existing visual resources in the Plan area, the Staff Report's extreme and unsupported interpretation of these LCP provisions are not supported by the text of the LCP and are flatly impermissible.

Similarly, the Staff Report impermissibly ignores the clear language of the LUP that states the MBSE Project site and other areas of the Sand City shoreline are not in a natural condition but instead are manmade features consisting mainly of denuded shifting sands in a condition remnant from mining activities in the area. Friends of Lagoon Valley v. City of Vacaville (2007) (the primary method for construing a statute is giving words their ordinary commonsense meaning). Specifically, LUP Policy 4.2.2, which the Staff Report cites, repeatedly and explicitly states that unprotected shoreline areas of the City, including the northern part of the City where the MBSE Project is located, "are not in a natural condition." LUP Policy 4.2.4 states "the dunes west of Highway One are in a severely disturbed state [and d]ue to human uses over time, the original dune landform in this area is generally absent." Both of these sections clearly and plainly state that no natural dune landforms exist, neither generally in unprotected areas of the Sand City shoreline, nor in particular at the MBSE Project site.

Nonetheless, the Staff Report states "the Commission does not agree," and attempts a tortured argument that subverts the LCP's clear language by: discounting the language of the LCP because of its age; using verbal tricks to suggest that references to "dune restoration" elsewhere in the LCP, instead of "dune creation," indicates the LCP does not mean what it says; using unsubstantiated allegory that "much has been learned

regarding dunes since the LCP polices were certified,” as if extrinsic evidence gained at a later time were at all relevant to the interpretation of the LCP’s language. Lastly, the Staff Report simply, baldly asserts, “it [the LCP] should not be read to say that the City’s dunes are not natural landforms, because of course they are.” On this basis, together with an unelaborated reference to the “rest of the plain language of the LCP,” the Staff Report asserts that the LCP “clearly recognize dunes as natural landforms features to be protected.”

The plain language of a statute or regulation is given extreme deference (Friends of Lagoon Valley), and in this case, the language clearly states “original landform absent,” and “not in a natural condition.” Contrary to the Staff Report’s tortured interpretation of the language, i.e., that “not natural” actually means “natural” and “severely disturbed” actually means “protected natural resource,” the language of LUP Policy 4.2.4 clearly indicates that the City anticipated the argument the Staff is now making, and explicitly inserted language in the LUP indicating the lack of natural landforms in the altered shoreline west of Highway One, so as not to run afoul of Coastal Act § 30253(b). The Commission’s attempt to alter the plain language of this certified LCP is arbitrary, and tantamount to amending the provisions of the LCP, which the Commission is not permitted to do in these proceedings. The existing LCP contradicts all of the Staff Report’s descriptions of the site, characterization of the site as natural, important, significant, part of a littoral cell or regional dune complex, and is therefore impermissible and cannot be allowed. All of this violates the direction given by the Court of Appeal in this case.

Despite the impermissible nature of its interpretation of the LCP, the Staff Report applies the interpretation in several instances to assert that the MBSE Project is inconsistent with the LCP. The Staff Report states that grading of the dune restoration area on the Project site identified in Figure 9 of the LUP “is only allowed for purposes of dune habitat restoration . . . [and] must be kept in open space.” No section of the LUP contains such a statement, and particularly, the LUP Policies cited by the Staff Report, Policies 5.3.1 and 5.3.2 do not contain such requirements.

Similarly, the Staff Report states that grading of the fore dunes on the Project site is inconsistent with LUP policies that require protection of natural and visual resources, despite the fact that the LCP has already unequivocally stated that these areas are not natural. In addition, the views which the Staff Report emphasizes are important in this area – views of the Bay and Monterey peninsula (p. 55) – are not altered by the proposed fore dune restoration. Thus, although the Staff Report asserts that views will be impermissibly impacted by the restoration of the fore dune area, there is no factual basis for this assertion. Furthermore, the Project complies with the Policy of restoring dune habitat in the fore dune area, and this must be favored over nonexistent threats to views in the area. Public Resources Code § 30007.5.

Lastly, as shown by the video DVD submitted with this letter, there is a minimal blue water view from Highway 1 even today – literally a few seconds as a car travels 55 mph down the Highway. The most significant views occur after the traveler passes the property. While part of the “few second view” will be impacted, the impact is created by

the need to restore the dunes as required elsewhere in the LCP. Such balancing is expected and authorized under the Coastal Act. Public Resources Code § 30007.5.

Contrary to the assertion of Staff, very little of the project would be "plainly visible" from public views. It would be shielded in the LCP view corridor. Staff includes many additional view corridors that are not view corridors in the LCP. Thus, again, Staff ignores the Court of Appeal direction and adds things that it would like to see in the LCP rather than simply applying the LCP.

Contrary to Staff's assertion, the Applicant **did provide detailed product information** on the solar arrays and wind turbines.

Staff seems to be under the impression that no person should be able to see any building from any view. Of course, the LCP contains no such standard.

In addition, the exhibits submitted by staff are of dubious evidentiary value. Exhibit 23 are made from digital maps that are not site specific, show "viewing" only at a certain elevation slice, meaning, there is no 3D view corridor quality, and thus are not accurate for the site. Neither the digital origin nor the scale is provided. It appears these are submitted in order to give a deceptive idea of what the view actually looks like. Further, it is unclear where these are taken, but apparently from a point stopped on Highway One which is illegal. It also appears that a used super telephoto lens was used to accentuate the view, which doesn't really exist to the human eye. It does not state who Sanborn is, whether the photos predate the baseline, or whether he has a stake in opposing the project.

NATURAL RESOURCES

Staff makes every effort to avoid the limitations placed on it by the Court of Appeal in this case. Staff first attempts to claim that LUP Policy 4.3.20 mandates that certain areas, including the major sand dune formation, remain in place and that the policy prohibits grading "except in conjunction with habitat restoration." (p. 67.) However, Policy 4.3.20 states that grading and use of these areas is allowed "in conjunction with approved development." Obviously, in order to restore what is presently a man made sand dune created from sand mining, some grading and dune stabilization activity is necessary. Further, the restoration and stabilization of the dune must be undertaken in conjunction with the preparation of the adjacent area for the project buildings. The policy clearly discusses "restoration"; it does not suggest that the area is pristine or ESHA, so that it can never be touched even in restoration. The policy must be read in conjunction with Policy 4.2.4. Staff further acknowledges that Figures 7 and 9 identify the area for "dune stabilization/restoration." Stabilization/restoration requires grading on a dune that size.

With respect to ESHA adjacent to the project site, the Staff has presented no evidence in the record that lands next to the project site have been legally deemed "ESHA."

Staff has provided no evidence that impacts to the dune system generally in the area has increased the risk of extinction for any species, or “cumulative decline.” The fact that species are listed does not provide evidence that fewer dunes are the cause of the listing. More to the point, many of the species listed in the Staff Report are not located on the project site and there is no evidence that the proposed project would impact them at all if they exist on adjacent sites, which also has not been established in the record.

Information provided by Staff is seriously out of date. For instance, biologists have long ago determined that the “black legless lizard” is not a separate species. It has never been listed. And it have never been found on the project site or even nearby.

Staff’s discussion of large dune areas to be ESHA, even when devoid of plants is not supported by evidence in the record, nor is the statement that the Commission has “often found” such areas to be ESHA.

Staff next claims that although it is bound by the Court of Appeal’s “no ESHA” determination, it can still regulate areas on site as “dune landform and natural habitat area.” This is a transparent attempt to side step the Court ruling. The area mapped by Figure 7 is for “dune restoration” – it does not say that natural dune areas currently exist there. In fact, Policy 4.2.4, which Staff routinely ignores, makes clear these areas are not natural after 60 years of sand mining. Calling them natural doesn’t make them so. Staff then says the LCP is not up to date. But the Court of Appeal addressed that issue as well and said that’s not a proper inquiry. Nor is the fact that the Commission believes that it has learned more since 1985. The Commission is limited by the Coastal Act to simply suggesting changes to the LCP. It cannot unilaterally implement changes. It must work in a collaborative manner with Sand City. It cannot just ignore the City or its interests. There are not natural dune resources on site. There are simply areas that the LCP targets for restoration and the project made sure that it incorporated adequate restoration that meets or exceeds the LCP requirements.

Contrary to Staff’s assertion, there has not been significant “self restoration” of dune habitat on site. In fact biological studies during the past 16 years, show exactly the opposite – they show that invasive, non-native ice plant continues to expand and threaten the very dune habitat that the Staff professes to want to protect.

With respect to the western snowy plover, Staff relies on a HPP prepared more than 12 years ago that clearly has outdated information. It largely ignores the more recent biological studies. It also misleads the reader by claiming that plover nesting was increasing on Monterey County beaches. The truth, clearly described in the biological reports, is that the plover all but disappeared on the project site because the plover started nesting 16 miles to the north on the man made salt flats at Moss Landing.

Nests located on the Fort Ord property to the north have nothing to do with this project. There is no evidence in the record that the project would have even the slightest impact on nests so far away.

Staff's analysis ignores the way in which Monterey spineflower expands and contracts and ignores the biological studies' conclusion that the spineflower is being impacted by ice plant on site.

The development does not impermissibly encroach the dune stabilization area, especially considering that the living roofs will functionally operate as dune habitat. Again, the area is targeted for dune stabilization and restoration, not for preservation of an existing natural area.

Staff next seeks to avoid the limitations imposed by the Court of Appeal by seeking to analyze natural resource impacts not under the Coastal Act, but rather under CEQA. In doing so, the Staff ignores the findings of the lead agency, Sand City. It is questionable whether the Commission legally can ignore the Court of Appeal limitation, throw aside the Coastal Act provisions, ignore the legal agency's findings under CEQA, and make its own findings under CEQA that contradict all of the above. This exceeds the Commission's jurisdiction. Staff has misconstrued its authority under § 13096, even if that provision is legally valid, which is doubtful.

Nothing in the Coastal Act requires or authorizes the type of CEQA analysis by the Commission Staff here.

Staff also has failed to take into consideration SNG's proposed conditions of approval in determining whether the project complies with CEQA.

In addition, Staff has made assumptions about "feasibility" without any evidence in the record as to what is feasible from an economic or engineering perspective; indeed, they have made no requests whatsoever from the Applicant regarding this issue.

Staff assumes the entire site contains "natural resources" when in fact the biological studies show that is not the case. Staff cannot fall back on its argument that the site falls with the regional dune range so it must be a natural resource that must be protected. Not so. The site is badly damaged from sand mining. It is not natural or pristine. Again, Staff is trying to bring in ESHA standards that the Court of Appeal prohibited.

Staff's disagreement that temporary impacts are insignificant is not supported by substantial evidence. In fact, there are areas that are especially sensitive are being protected fully and are not disturbed even temporarily, i.e. the buckwheat and total avoidance. Impacts to spineflower is easily mitigated because the plant grows so readily in bare sand.

The Fish and Wildlife Service does not require protecting the Monterey spineflower in situ if it can fully mitigated. The plant grows readily in bare sand and it is easy to re-establish areas and indeed to enhance them after grading. Staff has presented no evidence whatsoever to the contrary. Staff has provided no evidence that it requires mitigation of 3:1 or 4:1 for spineflower mitigation. SNG's biological consultant notes that in Monterey County, spineflower is usually 1:1, especially when the project is not located within spineflower critical habitat. (See submission herewith.) The project site was specifically removed from critical habitat for the spineflower in the recent past few years, a fact that Staff completely ignores. Mitigation success for spineflower has a very high rate of success. (Ref. FWS studies.)

Staff essentially ignores all of the analysis on the plover in the Addendum and HPP. It makes contrary assumptions to the conclusions in those reports without supporting its assumptions with any evidence. It relies on out dated information. FWS believes that management of plover/human interaction is far superior to assuming or trying complete separation which is not realistic. There are numerous examples on the California coast of well-managed program that allow plovers to survive and increase despite a close human presence. FWS opines it all depends on the management program. The program developed by SNG and its biologists is not merely conceptual; there are well-developed plans that have been provided to the Staff.

The project does not displace any documented plover nesting locations that existed in the past 11 years.

With respect to the butterfly, Staff fails to note that the existing 40 or fewer buckwheat plants will not be disturbed and will be avoided entirely during grading. Despite this, SNG has agreed to add 400 additional plants – a 10 fold increase. Yet, staff still finds this inadequate. So with respect to spineflower Staff insists on a 3:1 mitigation ration, but with respect to buckwheat, a 10:1 mitigation ration is insufficient even where there is full avoidance. Again, Staff is ignoring the LCP and imposing whatever standards it feels like on a given day.

Staff claims there are not contingency plans in the HPP but apparently misunderstood the entire "adaptive" management approach of the mitigation designed specifically to expand or change mitigation if the plan is not working. FWS specifically encouraged this.

There is no evidence of impacts on the adjacent Fort Ord and Staff has provided no evidence to contradict the findings in the environmental documents or to suggest that impacts are likely or even possible. SNG already has refuted this.

Staff also cites a personal communication with a FWS employee that plovers have traveled to the project site from distant locations but the Staff Report does not state when the FWS employee made these observations or how he could track them over such distances. Presumably, he was referring to events in the 1990s, not anytime in the past 11 years. There is no evidence to the contrary in the record. In fact, the FWS made no such observations in its official response to the project.

TRAFFIC AND CIRCULATION

The Staff Report states that the MBSE Project would not comply with LUP Policy 6.4.10 and IP Section 3.2. These policies require new development to provide for adequate parking and circulation and not create traffic congestion. The City's Addendum to the Final EIR for the MBSE Project (October 2008) estimates that the project as proposed would result in significant traffic impacts without mitigation. The City's Final EIR for the project identifies specific measures that can be taken to mitigate traffic impacts at congested intersections within the City's authority. The State highway transit authority, CalTrans, has also prepared a report identifying necessary improvements to Highway One that would mitigate traffic impacts in the vicinity of the Project. These and other traffic improvement projects are to be funded and carried out by CalTrans and the Transportation Agency for Monterey County, the regional transportation authority with jurisdiction over Sand City and the Project. The TAMC is implementing a Regional Development Impact Fee that allows for the collection of fees from development projects within the County that will be used to fund transit improvement projects such as those identified in the Project EIR and Addendum, and the Project Applicant has agreed to pay the Project's fair share of Development Impact Fees. The Addendum concludes that agreement to pay these fees, which when consolidated with other fees will pay for intersection and highway improvement work in the vicinity of Project, is sufficient to mitigate traffic impacts of the Project.

The Staff Report states that because there is a predicted gap in funding between the fees to be collected from the TAMC Regional Development Impact Fee and the cost of 17 regionally-specific projects to be paid for by the fee, the payment of these fees by the Project Applicant is not sufficient to mitigate impacts. Staff also argues that "it has been [its] experience that the time it takes to bring such major Highway One improvements to fruition can be considerable, thus it could be many years" before these improvements are fully implemented. The Commission's arguments are contradicted by case law in this appellate district, which unequivocally holds that the payment of traffic impact fees is a reasonable mitigation measure for project-related traffic impacts, even in the face of potential funding shortfalls or delay in implementation of such measures. Friends of Lagoon Valley. Nothing required the City in that case to set out a time-specific schedule for the completion of specific roadway improvements. *Id.* The same reasoning applies in this matter as well; the Applicant's identification of the Development

Impact Fee and agreement to pay the Project's determined fair share is sufficient to meet the requirements of the LUP requirements. SNG also has agreed to a TDM plan. SNG has addressed its fair share of impacts; it is not required to single-handedly resolve the entire region's traffic concerns. Neither the LCP, the Coastal Act nor the case law requires that.

CEQA

Staff's CEQA analysis does not comply with the regulatory programs certified by the Secretary of Natural Resources in the following manner. First, 14 CCR § 15252 requires that the certified document contain alternatives or mitigations to reduce significantly potential impacts that the project might have on the environment. The Applicant has proposed conditions of approval that would mitigate environmental impacts yet none of these, nor any proposed by Staff, have been identified or discussed. Second, 14 CCR § 15253 requires that the Coastal Commission allow Sand City, as the lead agency under CEQA, a period of time to review and consult regarding its environmental document. That has not been done here with this Staff Report. Likewise, Public Resources Code § 21104 requires consultation.

Third, this Commission specifically certified Sand City's LCP Amendment in 1997 which specifically identified this property for mixed use development of up to 650 units. In order to make such certification of the LCP, the Commission was required to find no substantial adverse impacts to the mixed use development of this property. Under the now proffered staff analysis there would be no circumstance where this property could be developed at such a mixed use density or even a fraction of that density because of the Staff's new interpretation of the coastal erosion policies.

Fourth, the lead agency, Sand City, certified the environmental document and adopted its Addendum document. As a responsible agency reviewing LCP consistency, the Coastal Commission is bound by the environmental determinations in Sand City's environmental documents. The Coastal Commission participated in the preparation of the 1998 FEIR document and cannot now assume lead agency status. A responsible agency is limited in CEQA to either challenging the underlying document, taking lead agency status or making findings which comply with the changed circumstances provisions of 14 CCR 15162 allowing additional environmental review. (14 CCR § 15096). A responsible agency is required to presume that the environmental document is fully defensible and binding. PRC § 21167.2 provides a conclusive presumption that the environmental document complies with CEQA. A responsible agency cannot determine that it is inadequate. In any event, the Commission did not make any such objection in a timely manner.

Fifth, the Coastal Commission made comments on the more dense version of the project in 1998. In every respect what is now proposed as an environmentally superior alternative is less intensive and more environmentally sensitive. The Commission is bound by its previous comments and determinations on the project.

PUBLIC ACCESS AND RECREATION

The Staff Report states that the MBSE has addressed many of the Public Access and Recreation elements of the LCP and the Coastal Act, but that "certain details have not been specified, and maximum public access is not assured." While the Staff has noted that these items can likely be addressed through "conditional approval," they can only be done so if the "project is otherwise approvable." Other aspects of the project have been addressed above, and as noted, staff is erroneous and flawed on many of their statements and assertions. The MBSE has complied with all LCP policies and the Coastal Act, and contrary to staff's assertions, has provided conformity with the Coastal policies. The MBSE site has no public access, vertical or lateral (pursuant to the Mexican Land Grant). MBSE has provided vertical access and lateral access, public recreation and enhanced vista points, ample public parking, bike trails, trails to the beach, and connectivity to the regional bike path. While they quibble about the width of the vertical access, that matter they acknowledge can be fixed easily. They bring up low cost housing, § 30213, but fail to point to the fact that the MBSE has set aside in lieu housing fee to comply with that section payable to Sand City. Staff selectively picks on various points, such as potential historical use of the site by the public and "ridicules" the fact that the property is fenced. In fact, the property is fenced and posted "no-trespassing" which provides constructive notice to the public, along with recorded documents with the Monterey County Recorder that have provided additional public notice. Staff notes that public access easements raise three issues (i) 25ft beach , (ii) beach access subject to erosion , and (iii) width of vertical accessway.

As to the first issue, dedication below the 20 ft contour provides a sandy beach greater than 25ft. As for the second point, again staff fails to note that it has approved public access in areas to the north and south of the site that have higher erosion rates, and the fact that the Applicant will relocate the beach access if and when erosion breaches the 20 ft contour and causes the beach access to move landward. As for the third item, addressing that concern is easily done by the conditions of approval . Public Parking for the project exceeds the standards required by the LCP, yet, staff is requesting additional details that Applicant is willing to provide the Commission, but has been unable to do so because the Commission would not communicate with the Applicant. Staff has failed to include in its analysis the Applicant's Report "Access, Signage and Lighting Plan" for the MBSE , EMC Planning Group (October 2008), submitted to the Commission in October 2008, which details a very comprehensive public access and recreation plan for the public. In sum, the Applicant has complied with the LCP Policies and the Coastal Act and to the extent that there are minor modifications to the plan, they can be easily worked with the Applicant through conditions of Approval.

Sincerely,



Ed Ghandour, President
Security National Guaranty, Inc.

List of Attachments

HKA reports dated September 12, 1997, October 6, 1997 and October 6, 2000

HKA, "Coastal Recession Evaluation for Coastline of Sand City, California, Dec. 2003

HKA Letter, September 30, 2008

HKA Letter, May 1, 2009

HKA resume

Letter from Paul Kephart, May 4, 2009

Two declarations of E. Ghandour

Moffatt & Nichol, "City of Sand City Shore Erosion Study," Dec. 1989

CCC Staff Report, 3-06-069, Fort Ord

CCC Staff Report, 3-07-022, Monterey Beach Hotel Seawall

CCC Staff Report, 3-08-013, Ocean View Plaza

CCC exhibits from Cannery Row Marketplace project, CDP Application 3-08-013

IPPC Summary, "Findings of the IPCC Fourth Assessment Report"

PWA "Coastal Regional Sediment Management Plan for Southern Monterey Bay," prepared for AMBAG, Nov. 3, 2008

Pacific Institute Maps showing flood risk and sea level rise

Google Earth maps

Email communications from Applicant to CCC

Communications regarding Fitz issue

Hearing Transcript, *Cal Am v. Seaside*, Monterey Superior Court, April 29, 2009, Case no. M66343

Joint Powers Agreement for Monterey County Regional Development Impact Fee Agency (Effective Date), 6/26, 2008

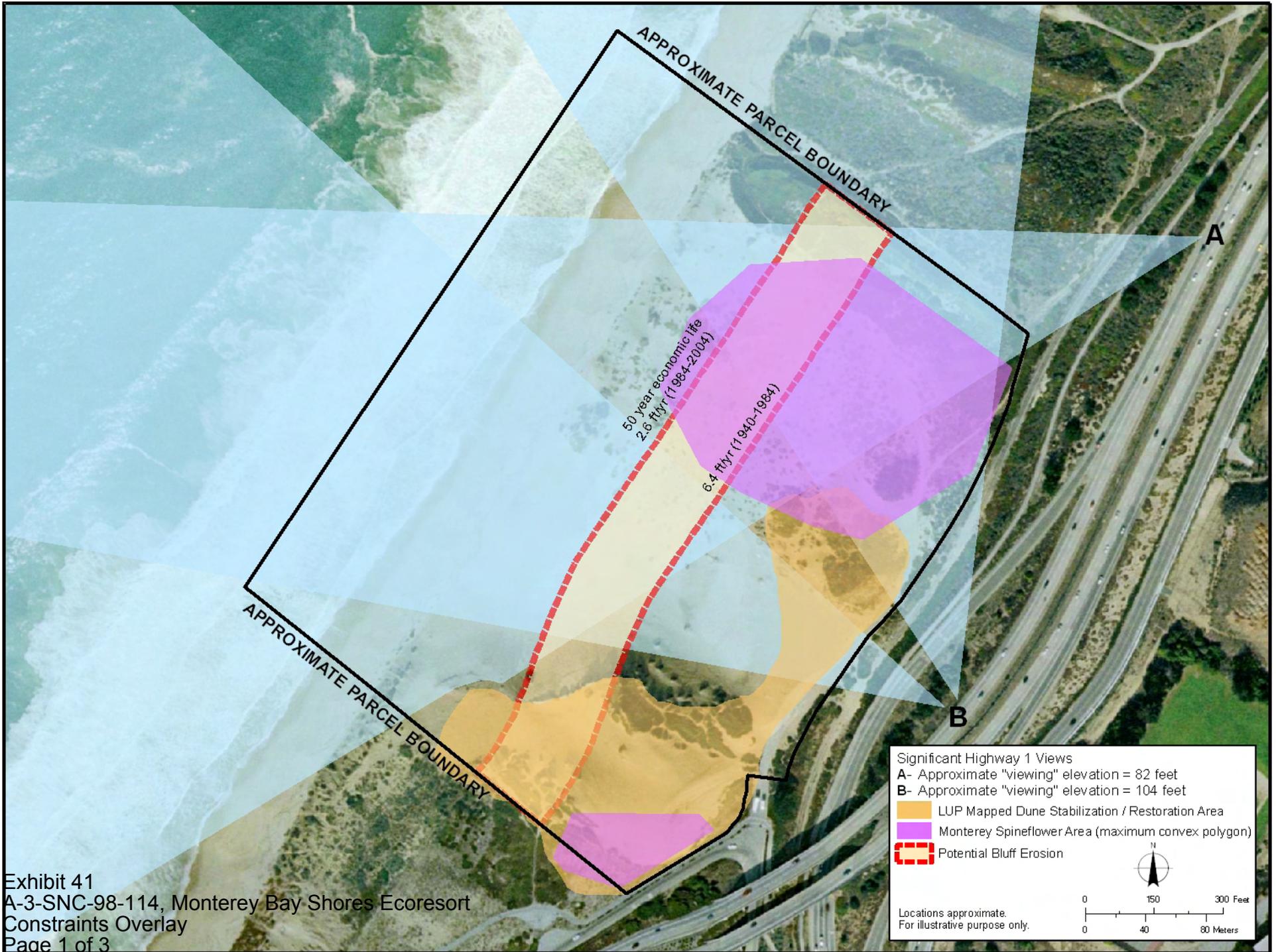


Exhibit 41
 A-3-SNC-98-114, Monterey Bay Shores Ecoresort
 Constraints Overlay
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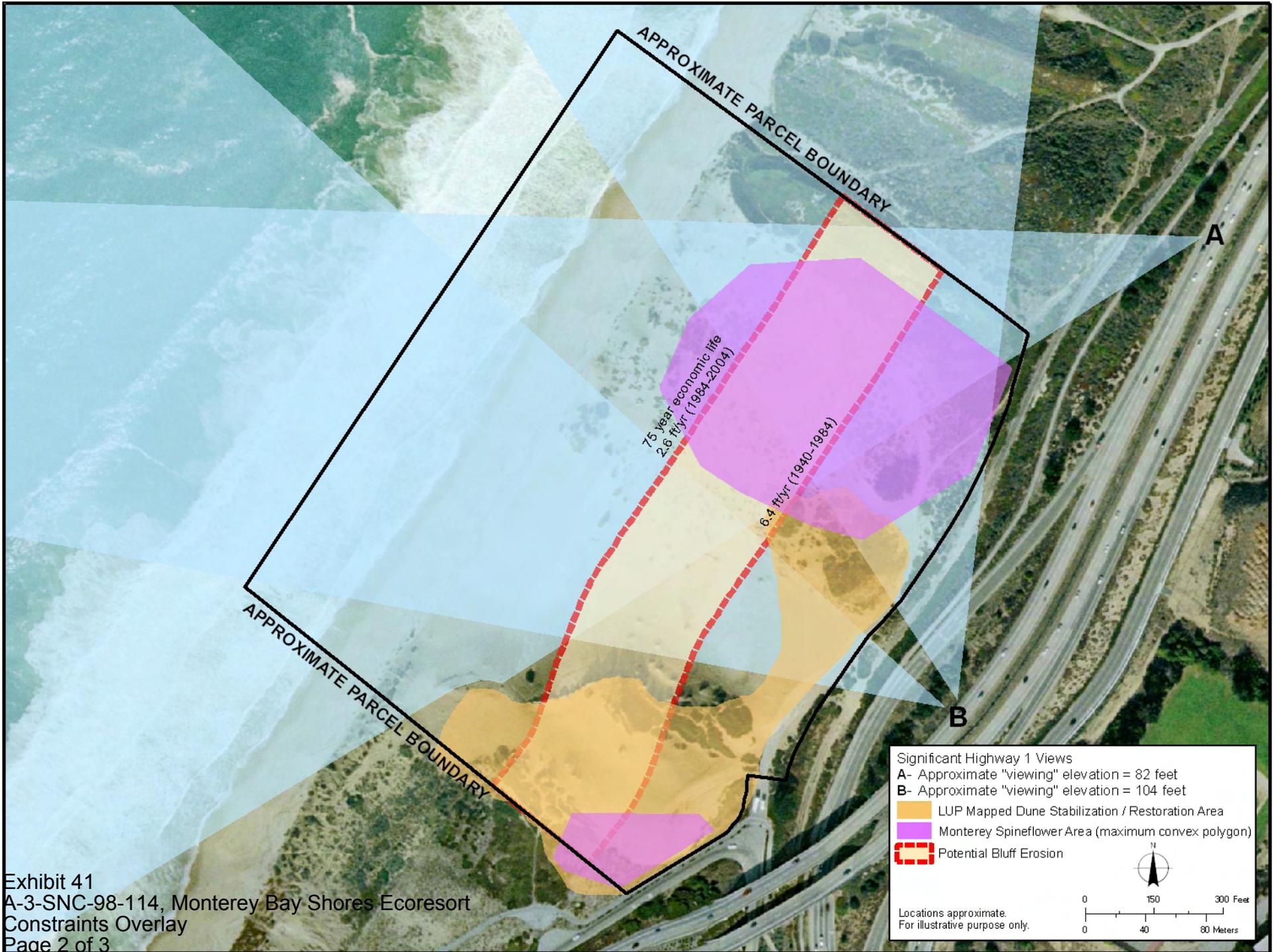


Exhibit 41
 A-3-SNC-98-114, Monterey Bay Shores Ecoresort
 Constraints Overlay
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Significant Highway 1 Views
 A- Approximate "viewing" elevation = 82 feet
 B- Approximate "viewing" elevation = 104 feet

- LUP Mapped Dune Stabilization / Restoration Area
- Monterey Spineflower Area (maximum convex polygon)
- Potential Bluff Erosion

Locations approximate.
 For illustrative purpose only.



0 150 300 Feet
 0 40 80 Meters

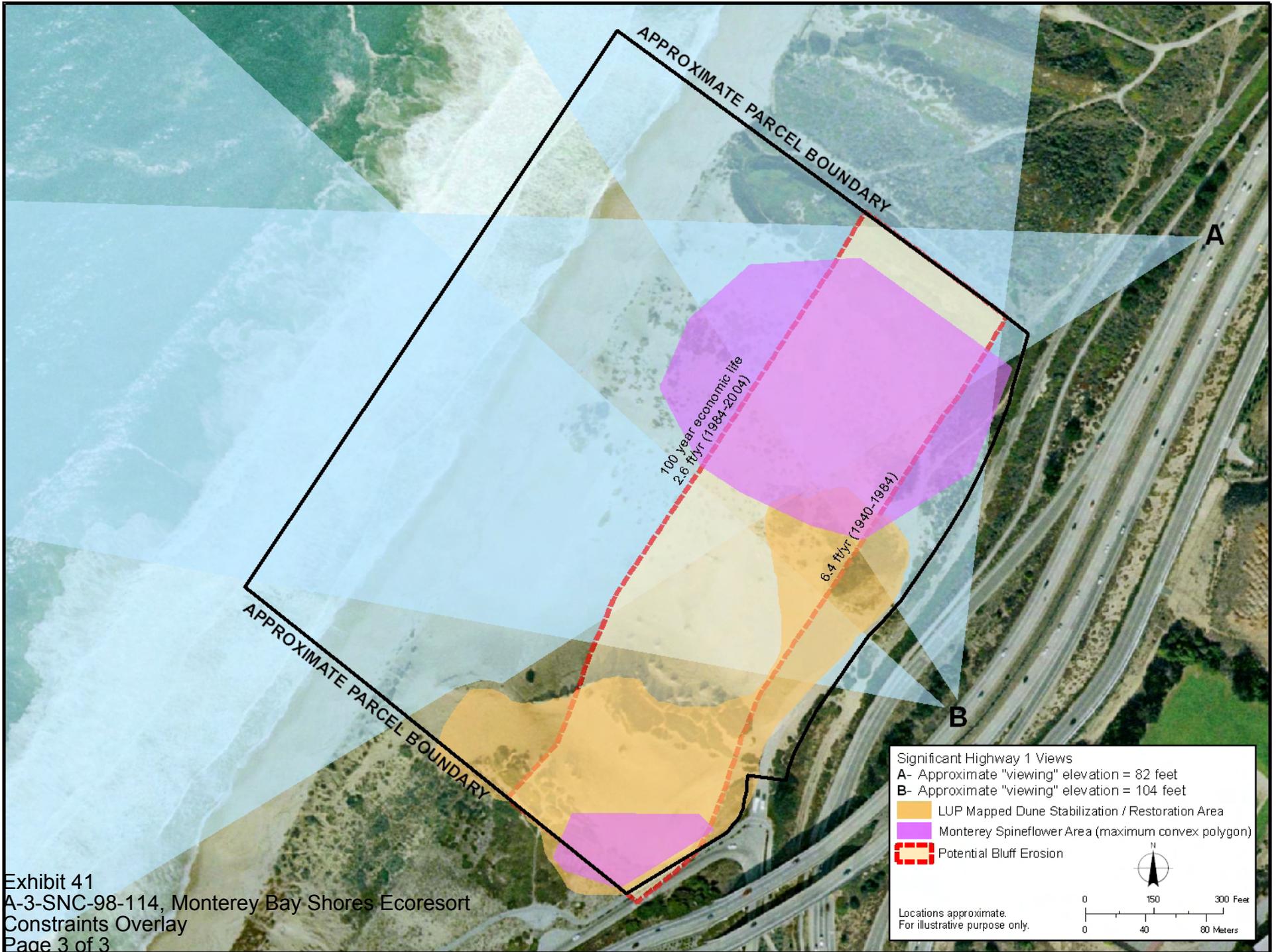


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