

**CALIFORNIA COASTAL COMMISSION**

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# Th 5.3 & 5.5

## ADDENDUM

April 9, 2013

TO: Coastal Commissioners and Interested Parties

FROM: Lisa Haage, Chief of Enforcement

SUBJECT: ADDENDUM TO **ITEM NOS. 5.3 & 5.5 –CONSENT CEASE AND DESIST ORDER CCC-13-CD-03 AND RESTORATION ORDER CCC-13-RO-03 (BACARA RESORT)**  
FOR THE COMMISSION MEETING OF **April 11, 2013**

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This addendum includes documents received by Commission staff after issuance of the staff report and discussion that will: 1) clarify the final status of the Respondents' agreement to the terms of the proposed Orders; 2) provide further information regarding the ESHA findings discussed within the Staff Report; 3) clarify the intent of the proposed Consent Cease and Desist and Restoration Orders ("Orders") regarding coordination with the Native American Monitor and Most Likely Descent in implementing the proposed Orders; and 4) provide some minor corrections to the staff report. Commission staff proposes the discussion within as a supplement to its proposed findings for Commission adoption.

### **I. Documents Received:**

1. *Letter from Lanny Winberry, Attorney for Respondent, dated April 5, 2013, clarifying the "DRAFT" watermark within Attachment A, pages 25-26, of the Staff Report.*
2. *Replacement signature page from Chris Smith, Executive Manager of SB Luxury Resort, LLC, dated April 2, 2013, replacing page 25 of Attachment A of the Staff Report.*
3. *Replacement signature page from Kory Kramer, Executive Manager of BRS Investment Properties, LLC, dated April 5, 2013, replacing page 26 of Attachment A of the Staff Report.*
4. *Memorandum from Commission's staff Ecologist Dr. Jonna Engel, PhD, dated April 9, 2013, explaining her determination that the Bell Canyon Creek area is riparian ESHA.*

## II. Points of Clarification to proposed Orders

### A. Role of the monitor from the Chumash tribal group (“Native American monitor”) and the Most Likely Descendent (“MLD”) from the Chumash tribal group in implementing the proposed Orders:

Commission staff and Respondents have worked closely with the Native American community and Most Likely Descendent (“MLD”) throughout this enforcement investigation. Site SBa-71 covers two-thirds of the East Terrace and is a highly sensitive archaeological zone of great cultural and religious importance to the Chumash people. The terms and requirements of the proposed Orders reflect this and the proposed Orders, as proposed by Commission staff and Respondents, are intended to provide for and shall not preclude the Chumash peoples’ continued access to the East Terrace for cultural and religious purposes. Additionally, the Commission intends that its staff shall continue working together with the Native American community and MLD in a meaningful manner, and Respondents have committed to do so as well, throughout the planning and restoration process outlined within the proposed Orders, including its components: (1) Cultural Materials Plan; (2) Erosion Control Plan; (3) Removal Plan; (4) Revegetation Plan; (5) Public Access Signage Plan; and (6) Monitoring Plan.

## III. Errata:

### A. Changes to staff report / Recommendations and Findings for Cease and Desist Order CCC-13-CD-03 AND Restoration Order CCC-13-RO-03:

Commission staff hereby revises its March 28, 2013 staff report and, thereby, its recommended findings in support of the Cease and Desist Order & Restoration Order. Language to be added is shown in *italic and underlined*, as shown below, and deletions are shown in ~~strikeout~~:

1. Page 13, paragraph 2, sentence 3 should read as follows:

“Also, on March 7, 2013, Commission staff spoke with Sarah Mancusco of ~~BRS Investment Properties, LLC~~ SB Luxury Resort, LLC who had also confirmed that the seller had been transparent with BRS Investment Properties, LLC about the Coastal Act violation investigation throughout the sales process (Exhibit 17).”

2. Page 26, G. SUMMARY OF FINDING OF FACT, numbered as 1, should read as follows:

“~~BRS Ventures~~ Investment Properties, LLC, purchased the Bacara Resort and Spa from SB Luxury Resort LLC, on February 22, 2013 and is the current owner of the resort. SB Luxury Resort was the owner of the property at the time enforcement staff commenced the investigation for the Coastal Act violations at issue.”

LAW OFFICES OF  
**LANNY T. WINBERRY**

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April 5, 2013

Ms. Margaret Weber  
California Coastal Commission  
45 Fremont Street, Suite 2000  
San Francisco, CA 94105-2219

Re: CCC-13-CD-03 and CCC-3-RO-03  
Bacara Resort and Spa

Dear Ms. Weber:

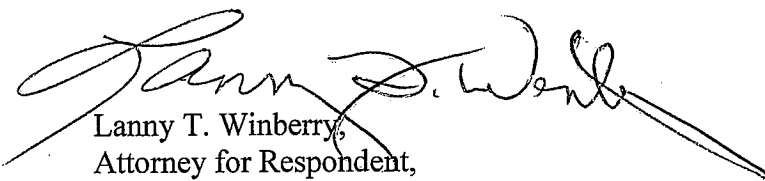
This letter is to confirm that the copies you received last week bearing the signatures of the authorized officers of the Respondents named in the above-referenced Consent Orders were, and remain, valid and binding on the Respondents, the "DRAFT" watermark on those signature pages notwithstanding. As you know, I was traveling last week and was in an airport in South Dakota on Wednesday afternoon when the final edits were completed. We wanted to get the signatures in your hands as soon as possible so that distribution could be made to the Commission. Hence, the watermark was not removed prior to signing. I apologize for that unintended glitch.

You have since received replacement signatures on pages which do not display the watermark. The Coastal Commission and its Staff may rely on either or both sets of signatures.

Although it no longer owns the Bacara Resort and Spa, Respondent SB Luxury Resort, LLC intends to remain financially able to discharge all of the obligations imposed upon it under the terms of the Consent Orders.

Please do not hesitate to contact me if further information or action is required.

Sincerely,



Lanny T. Winberry,  
Attorney for Respondent,  
SB Luxury Resort, LLC

who signs this document on behalf of SB Luxury Resort, LLC attests that he has the legal authority to bind SB Luxury Resort, LLC.

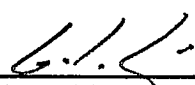
26.0 **Stipulation.** Respondents and their representatives attest that they have reviewed the terms of these Consent Orders and understand that their consent is final and stipulate to its issuance by the Commission.

IT IS SO STIPULATED AND AGREED:

On behalf of Respondents:

\_\_\_\_\_  
Kory Kramer, Executive Manager  
BRS Investment Properties, LLC  
Owner, Bacara Resort and Spa

\_\_\_\_\_  
Date

  
\_\_\_\_\_  
Chris Smith, Executive Manager  
SB Luxury Resort, LLC

4/2/13  
\_\_\_\_\_  
Date

Executed in \_\_\_\_\_ on behalf of the California Coastal Commission:

\_\_\_\_\_  
Charles Lester, Executive Director

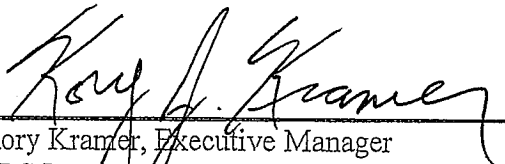
\_\_\_\_\_  
Date



who signs this document on behalf of SB Luxury Resort, LLC attests that he has the legal authority to bind SB Luxury Resort, LLC.

26.0 **Stipulation.** Respondents and their representatives attest that they have reviewed the terms of these Consent Orders and understand that their consent is final and stipulate to its issuance by the Commission.

IT IS SO STIPULATED AND AGREED:  
On behalf of Respondents:

  
\_\_\_\_\_  
Kory Kramer, Executive Manager  
BRS Investment Properties, LLC  
Owner, Bacara Resort and Spa

4/5/13  
\_\_\_\_\_  
Date

\_\_\_\_\_  
Chris Smith, Executive Manager  
SB Luxury Resort, LLC

\_\_\_\_\_  
Date

Executed in \_\_\_\_\_ on behalf of the California Coastal Commission:

\_\_\_\_\_  
Charles Lester, Executive Director

\_\_\_\_\_  
Date

**CALIFORNIA COASTAL COMMISSION**

SOUTH CENTRAL COAST AREA  
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VENTURA, CA 93001  
(805) 585-1800

**M E M O R A N D U M**

FROM: Jonna D. Engel, Ph.D., Ecologist  
TO: Lisa Haage  
SUBJECT: Bacara Hotel Unpermitted Development Adjacent to ESHA  
DATE: April 9, 2013

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On Thursday September 20, 2012, I accompanied Coastal Commission Enforcement Staff Pat Veasart and Kristen Hislop on a site visit to the Bacara Hotel. The purpose of our site visit was to examine the unpermitted development site on the hotel's East Terrace property and to observe the surrounding coastal resources. The unpermitted development occurred on a coastal terrace just above the ocean within coastal sage scrub habitat. Directly south of the unpermitted development site is a sheer coastal bluff above a sandy beach. East of the unpermitted development is characterized by a more gentle slope that drops down to Bell Canyon. This slope supported a number of non-native eucalyptus trees that were either entirely removed or significantly trimmed as part of the unpermitted development. The unpermitted development also included near elimination of the coastal sage scrub on the slope beneath the eucalyptus trees. While the coastal bluff habitat, coastal sage scrub and Eucalyptus trees do not rise to the level of environmentally sensitive habitat or ESHA, these habitats did provide significant natural resources to the area prior to the unpermitted development.

Creeks and streams and associated riparian areas are rare habitats in the coastal zone that are easily disturbed by human activities and therefore rise to the level of ESHA. Bell Canyon Creek runs through Bell Canyon with riparian habitat on either side. This riparian ecosystem is relatively pristine and is a monarch butterfly (*Danaus plexippus*) (California Species of Special Concern) autumnal site that also supports the federally endangered tidewater goby (*Eucylogobius newberryi*) and the federally endangered red-legged frog (*Rana aurora draytonii*). The presence of these rare species within Bell Canyon Creek provides additional support for an ESHA determination because this riparian ecosystem plays a special role in the ecosystem by supporting rare animals. I find that Bell Canyon Creek and the associated riparian habitat is rare and supports rare animals and is also easily disturbed by human activities and therefore is environmentally sensitive habitat or ESHA.

The unpermitted development on the hotel's East Terrace property and surroundings occurred adjacent to ESHA and had the potential to result in individual and cumulative adverse effects to the riparian habitat and creek within Bell Canyon. The unpermitted development activities included removal of major vegetation, including coastal sage scrub and Eucalyptus trees that

supported raptor roosting and had the potential to support monarch butterfly. It also involved installation of non-native landscaping and materials including sod, eucalyptus woodchips, and an above ground irrigation system. Eucalyptus trees, although non-native, provide roosting habitat for raptors, and autumnal and wintering sites for monarch butterflies, serving an important role in the site's ecosystem. Additionally, the above-ground irrigation system is susceptible to cracking and breaking as evidence by the line break that occurred in December 2012, and has the potential to lead to an artificial influx of water with the ability to harm the Bell Canyon Creek habitat below, including potentially having an adverse effect on endangered tidewater goby and red-legged frog species that live in the creek/lagoon area. The Bell Canyon Creek ecosystem is easily susceptible to disruption and provides shelter for various special-status species including raptors, monarch butterflies, tidewater goby and red-legged frog; this ecosystem is considered ESHA under the Coastal Act and warrants protection.

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# Th 5.3 & 5.5

Staff: Maggie Weber- SF  
Staff Report: 3/28/13  
Hearing Date: 4/11/13

## **STAFF REPORT: Recommendations and Findings for Consent Cease and Desist and Restoration Orders**

<b>Consent Cease and Desist Order No.:</b>	<b>CCC-13-CD-03</b>
<b>Consent Restoration Order No.:</b>	<b>CCC-13-RO-03</b>
<b>Related Violation File:</b>	<b>V-4-12-032</b>
<b>Property Owner:</b>	BRS Investment Properties, LLC <sup>1</sup>
<b>Persons Subject to these Orders:</b>	1. BRS Investment Properties, LLC 2. SB Luxury Resort LLC <sup>2</sup> 3. Bacara Resort and Spa <sup>3</sup>
<b>Property Location:</b>	8301 Hollister Avenue, City of Goleta, Santa Barbara County, APN 0079-200-012 and APN 0079-200-013
<b>Description of Property:</b>	Coastal property in Goleta, Santa Barbara County, inland of Haskell's Beach, 0.5 miles west of the intersection of US 101 and Hollister Avenue.

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<sup>1</sup> BRS Investment Properties, LLC is the current owner of Bacara Resort and Spa, effective February 22, 2013; SB Luxury Resort LLC is the prior owner of the property, concurrent with Commission staff receiving notice of the Unpermitted Development on site. Hereinafter, all references to 'Respondents' are to both consecutive owners, BRS Investment Properties, LLC, and SB Luxury Resort LLC. Respondents will be held jointly and severally liable for all of the obligations required by these Consent Orders.

<sup>2</sup> SB Luxury Resort, LLC was the owner of Bacara Resort and Spa from September 2011 until selling the property to Pacific Hospitality Group in February 2013.

<sup>3</sup> See Fn1.

**Violation Description:**

Unpermitted development and/or activities inconsistent with Coastal Development Permit No. 4-85-343, including, but not necessarily limited to: removal of major vegetation, including coastal sage scrub and *Eucalyptus* trees<sup>4</sup>, installation of non-native landscaping, geo fabric, *Eucalyptus* wood chips, and above ground irrigation system, all of which resulted in the creation of a private wedding and event venue, located directly on top of a highly sensitive archaeological zone, and on or near an Environmentally Sensitive Habitat Area (“ESHA”); failure to develop proper signs and interpretive facilities as required by Special Condition 10 of CDP No. 4-85-343; and the placement of a gate<sup>5</sup> that tends to deter use of a public access and equestrian trail.

**Substantive File Documents:**

1. Public documents in Consent Cease and Desist Order No. CCC-13-CD-03 and Restoration Order No. CCC-13-RO-03 files.
2. Coastal Development Permit No. 4-85-343.
3. Exhibits 1 through 17 and Appendix A of this staff report.

**CEQA Status:**

Exempt (CEQA Guidelines (CG) §§ 15060(c)(2) and (3)) and Categorically Exempt (CG §§ 15061(b)(2), 15307, 15308, and 15321)

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## SUMMARY OF STAFF RECOMMENDATION

### A. OVERVIEW

The property subject to these proceedings is the site of a hotel and conference center (The Bacara Resort and Spa). It is located inland of Haskell’s Beach, half a mile west (seaward) of the

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<sup>4</sup> Eucalyptus trees, while non-native, rise to the level of “major vegetation” because among other things, their size and because they provide roosting habitat for raptors and resting sites for monarch butterflies, serving an important role in the coastal bluff habitat’s ecosystem.

<sup>5</sup> Respondents have since removed the gate in response to enforcement staff’s request.

intersection of US 101 and Hollister Avenue, in the City of Goleta, Santa Barbara County (Exhibits 1 and 2).<sup>6</sup> The Commission authorized the hotel and hotel amenities in 1985 under Coastal Development Permit (“CDP”) 4-85-343, and subsequent amendments after 1985 (4-85-343-A-1 through A-5) (“the CDP”).

Historically, the property and surrounding region was occupied by the Coastal Band of the Chumash Nation for over 6,000 years. As a result, there are a number of known archaeological sites on the Property, including one that is located in the area of unpermitted sod, *Eucalyptus* wood chip, and above ground irrigation system (Exhibit 3). The plans that the Commission approved when it granted the CDP designated the East Terrace, where the majority of the unpermitted development being addressed by these Consent Orders occurred, as land known to be a highly sensitive archaeological zone; the only approved development on the East Terrace was a public access equestrian trail. The findings the Commission adopted in support of its approval of the permit to develop what is now the Bacara Resort (the original applicant was Hyatt Hotel Corps.), as provided in Exhibit 5, explain how the Commission found both that the site had a history of substantial public use for beach access and recreation, and that access to this area of Santa Barbara County is limited. Based on the concerns regarding public access, recreation, and archaeology, the Commission conditioned its CDP approval to require the owners to record an irrevocable offer to dedicate (“OTD”) an easement for public access to the beach and also included conditions to protect archaeological resources and to ensure compliance with the requirements of the Coastal Act.

The violations at issue in these proceedings include unpermitted development and other activities that are also inconsistent with CDP No. 4-85-343. Those violations include, but may not be limited to: removal of major vegetation, including coastal sage scrub and *Eucalyptus* trees, installation of non-native landscaping, geo fabric, *Eucalyptus* wood chips, and above ground irrigation system, all of which resulted in the creation of a private wedding and event venue, located directly on top of land known to be a highly sensitive archaeological zone and on or near ESHA; failure to develop proper signs and interpretive facilities as required by Special Condition 10 of CDP No. 4-85-343; and the placement of a gate that tends to deter use of a public access and equestrian trail.<sup>7</sup>

Prior to this proceeding, at the request of enforcement staff, SB Luxury Resort LLC (“the Former Owner”) agreed to remove the gate in the OTD area, and to cease operation of weddings and events on the East Terrace. In addition, during negotiations with the Former Owner, ownership of the property transferred from SB Luxury Resort LLC to BRS Investment Properties, LLC; both entities have been cooperative in working together with Commission staff to agree to these Consent Orders that will provide a mechanism to remove the unpermitted development, restore the site’s habitat, and mitigate for resulting temporal losses of habitat.

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<sup>6</sup> The City of Goleta does not yet have a certified Local Coastal Program (“LCP”), so the Commission has primary jurisdiction over the property.

<sup>7</sup> The failure to develop proper signs and interpretive facilities violates Special Condition 10 of CDP 4-85-343, concerning Signs and Interpretive Facilities; additionally, the placement of a gate that blocks the public equestrian trail and deters pedestrian use violates Special Condition 14 of the same CDP which addresses the requirement to provide Public Access Dedication and Restriction.

**B. DESCRIPTION OF THE PROPERTY**

The Bacara Resort and Spa was constructed in 2000 and is located at 8301 Hollister Avenue, in the city of Goleta, in Santa Barbara County, APN 0079-200-012 and APN 0079-200 -013. The 73-acre site runs east and west for approximately 3,000 feet immediately inland of Haskell’s beach, constituting the southern boundary with US Highway 101 and the Southern Pacific railroad track making up the northern boundary. The 400-room hotel and conference center, restaurant and bar facility, outdoor patio and pools, and a health club and spa are located on APN 0079-200-012, and a parking lot for public access and public access trails, four private tennis courts and a beach front snack bar are located on APN 0079-200-013.

**C. SUMMARY OF VIOLATION AND ATTEMPTS TO RESOLVE**

Commission staff became aware of the violations in July of 2012. Since that time, staff, Respondents, and their representatives have worked together to reach agreement on the terms of these Consent Orders amicably, in order to avoid a contested hearing and the potential for litigation. The violations that will be resolved by the Consent Orders include unpermitted development and other activities that are also inconsistent with CDP No. 4-85-343, as described above. These Consent Orders are attached hereto as Appendix A. Staff appreciates Respondents’ willingness to resolve these matters amicably and without the need for litigation.

**D. STAFF RECOMMENDATION**

Staff recommends that the Commission issue Consent Cease and Desist Order No. CCC-13-CD-03 and Consent Restoration Order No. CCC-13-CD-03 (“Consent Orders”) to address the violations described above. Through the execution of these Consent Orders, Respondents have agreed to, among other things: 1) remove non-native landscaping, wood chips, and an above ground irrigation system from the Eastern Terrace; 2) perform no further unpermitted development; 3) restore and revegetate the areas of the property impacted by the unpermitted items placed on the site, and the failure to meet CDP conditions, 4) undertake mitigation measures to account for the temporal loss of habitat, 5) take all steps necessary to ensure compliance with the Coastal Act and these Consent Orders, and 6) resolve civil liability under the Coastal Act.

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## **APPENDICES**

Appendix A Consent Cease and Desist and Restoration Orders

## **EXHIBITS**

Exhibit 1	Site Map
Exhibit 2	Aerial Photograph of Site
Exhibit 3	Map of Archaeological Sites
Exhibit 4	Site Map of Unpermitted Development
Exhibit 5	Coastal Development Permit 4-85-343 and Findings and Declarations
Exhibit 6	Coastal Access around Bacara Resort and Spa
Exhibit 7	Offer to Dedicate Public Access Easement
Exhibit 8	Photograph of East Terrace, prior to Unpermitted Development
Exhibit 9	Photograph of East Terrace with Unpermitted Development
Exhibit 10a	Photograph of Above Ground Irrigation System



- Exhibit 10b Photograph of Gate located on Public Access Equestrian Trail
- Exhibit 11 Notice of Violation letter dated August 22, 2012
- Exhibit 12 Letter from CCC dated November 1, 2012
- Exhibit 13 Bacara Resort and Spa's Website – Wedding Ceremony Sites
- Exhibit 14 Notice of Intent Letter and Statement of Defense from CCC dated December 13, 2012
- Exhibit 15 Letter from Respondents dated December 27, 2012
- Exhibit 16 LATimes.com Article, "Bacara hotel sold as high-end coastal resorts enjoy comeback" dated February 28, 2013
- Exhibit 17 Letter from Respondents dated March 11, 2013

## **I. MOTION AND RESOLUTION**

### **Motion 1: Cease and Desist Order**

*I move that the Commission issue Consent Cease and Desist Order No. CCC-13-CD-03 pursuant to the staff recommendation.*

Staff recommends a **YES** vote on the foregoing motion. Passage of this motion will result in the issuance of the Consent Cease and Desist Order for real property located at 8301 Hollister Avenue, Goleta, in Santa Barbara County. The motion passes only by an affirmative vote of a majority of Commissioners present.

### **Resolution to Issue Consent Cease and Desist Order:**

*The Commission hereby issues Consent Cease and Desist Order No. CCC-13-CD-03, as set forth below, and adopts the findings set forth below on grounds that development has occurred without the requisite coastal development permit, in violation of CDP 4-85-343, and in violation of the Coastal Act.*

### **Motion 2: Consent Restoration Order**

*I move that the Commission issue Consent Restoration Order No. CCC-13-RO-03 pursuant to the staff recommendation.*

Staff recommends a **YES** vote on the foregoing motion. Passage of this motion will result in issuance of the Consent Restoration Order for real property at 8301 Hollister Avenue, Goleta, in Santa Barbara County. The motion passes only by an affirmative vote of a majority of Commissioners present.

### **Resolution to Issue Consent Restoration Order:**

*The Commission hereby issues Consent Restoration Order No. CCC-13-RO-03, for real property located at 8301 Hollister Avenue, Goleta, in Santa Barbara*

*County, as set forth below, and adopts the findings set forth below on the grounds that 1) development has occurred without a coastal development permit, 2) the development is inconsistent with the Coastal Act, and 3) the development is causing continuing resource damage.*

## **II. JURISDICTION**

The property is located within the Coastal Zone and within the incorporated boundary of the City of Goleta. In this case, the Commission has jurisdiction in this matter because the City of Goleta does not yet have a certified Local Coastal Program, and thus this site is entirely within the Coastal Commission's jurisdiction. In addition, the Commission has jurisdiction here because the violations involve actions in conflict with a Commission-issued CDP, and the development inconsistent with the CDP would require an amendment of that permit, which must be issued by the Commission, whereas no CDP or amendment to that CDP was ever issued for that development.

## **III. COMMISSION'S AUTHORITY**

The Commission can issue a Cease and Desist Order under Section 30810 of the Coastal Act in cases where it finds that the activity that is the subject of the order has occurred either without a required CDP or in violation of a previously granted CDP. The Commission can issue a Restoration Order under Section 30811 of the Coastal Act if it finds that development 1) has occurred without a CDP, 2) is inconsistent with the Coastal Act, and 3) is causing continuing resource damage. These criteria are all met in this case, as summarized briefly here, and discussed in more detail in Section V, below.

The unpermitted activity that has occurred on the property clearly meets the definition of "development" set forth in Section 30106 of the Coastal Act. Development is defined broadly under the Coastal Act, and includes, among many other actions, the "placement of any solid material or structure; grading, removing, dredging, mining, or extraction of any materials;...change in the density or intensity of use of land;...construction, reconstruction, demolition or alteration of the size of any structure...; and the removal or harvesting of major vegetation other than for agricultural purposes..." (emphasis added). Pursuant to Section 30600 of the Coastal Act, all non-exempt development in the Coastal Zone requires a CDP. No exemption from the permit requirement applies here. In addition, the development at issue here was directly inconsistent with CDP 4-85-343. More specifically, the violations include, but are not limited to: removal of major vegetation, including coastal sage scrub and *Eucalyptus* trees. installation of non-native landscaping, geo fabric, *Eucalyptus* wood chips, and above ground irrigation system, all of which resulted in the creation of a private wedding and event venue, located directly on top of land known to be a highly sensitive archaeological zone; failure to develop proper signs and interpretive facilities as required by Special Condition 10 of CDP No. 4-85-343; and the placement of a gate that tends to deter use of a public access and equestrian trail. As described in greater detail below, the Unpermitted Development is inconsistent with the policies in Chapter 3 of the Coastal Act, including but not limited to: Sections 30210 and 30211 (Protection of Public Access and Recreational Opportunities), Section 30244 (Protection of

Archaeological Resources), Section 30240 (Protection of ESHA), Section 30253 (Protection of Geologic Stability), and Section 30231 (Protection of Water Quality), and is causing continuing resource damage, as that term is defined in the California Code of Regulations, Title 14 (“14 CCR”), Section 13190.

#### **IV. HEARING PROCEDURES**

The procedures for a hearing on a Cease and Desist Order and Restoration Order are outlined in 14 CCR Section 13185 and 14 CCR Section 13195, respectively.

For a Cease and Desist Order and Restoration Order hearing, the Chair shall announce the matter and request that all parties, or their representatives present at the hearing identify themselves for the record, indicate what matters are already part of the record, and announce the rules of the proceeding, including time limits for presentations. The Chair shall also announce the right of any speaker to propose to the Commission, before the close of the hearing, any question(s) for any Commissioner, at his or her discretion, to ask of any other party. Staff shall then present the report and recommendation to the Commission, after which the alleged violator(s), or their representative(s), may present their position(s) with particular attention to those areas where an actual controversy exists. The Chair shall then recognize any other persons who have indicated a desire to speak concerning the matter by submitting a speaker slip, after which time Staff typically responds to the testimony and to any new evidence introduced.

The Commission will receive, consider, and evaluate evidence in accordance with the same standards it uses in its other quasi-judicial proceedings, as specified in 14 CCR Sections 13195 and 13186, incorporating by reference Section 13065. The Chair will close the public hearing after the presentations are completed. The Commissioners may ask questions to any speaker at any time during the hearing or deliberations, including, if any Commissioner so chooses, any questions proposed by any speaker in the manner noted above. Finally, the Commission shall determine, by a majority vote of those present and voting, whether to issue the Cease and Desist Order and Restoration Order, either in the form recommended by the Executive Director, or as amended by the Commission. Passage of the motion above, per the Staff recommendation or as amended by the Commission, will result in issuance of the Cease and Desist Order and Restoration Order.

#### **V. FINDINGS FOR CONSENT CEASE AND DESIST ORDER NO. CCC-13-RO-03 AND CONSENT RESTORATION ORDER CCC-13-RO-03<sup>8</sup>**

##### **A. DESCRIPTION OF THE PROPERTY**

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<sup>8</sup> These findings also hereby incorporate by reference the Summary at the beginning of the March 28, 2013 staff report (“STAFF REPORT: Recommendations and Findings for Consent Cease and Desist and Restoration Orders”) in which these findings appear, which section is entitled “Summary of Staff Recommendations,” and the section entitled “Jurisdiction”.

The property subject to these proceedings is the site of a hotel and conference center (The Bacara Resort and Spa) with 400 guest rooms, 53,350 square feet of conference space, 22,400 square feet of restaurant and bar facilities (686 seat capacity), outdoor patios and pools, a 19,800 square foot health club and spa, a parking lot for public access and public access trails, four tennis courts and a public beachfront snack bar. The Bacara Resort and Spa was constructed in 2000 and is located at 8301 Hollister Avenue, in the city of Goleta, in Santa Barbara County, APN 0079-200-012 and APN 0079-200-013. The 73-acre site runs east and west for approximately 3,000 feet immediately inland of Haskell's beach, constituting the southern boundary with US Highway 101 and the Southern Pacific railroad track making up the northern boundary. The site is approximately 10 miles west of Santa Barbara and on the western side of the Santa Barbara Channel mainland.

The site's topography is dominated by eastern and western terraces, each rising approximately 110 feet from the beach to a gently sloping marine terrace. The terraces are bisected by Tecolte Canyon, and Bell Canyon is located directly down coast from the East Terrace. Both Tecolte and Bell Canyon Creeks flow south from the canyons inland of the coastal zone with the creek mouths establishing lagoons that discharge into the Pacific Ocean. The west terrace, where the hotel and conference center is located is not subject to these proceedings, with the exception of any public access/interpretive signs that were to be located in this area pursuant to the CDP. This enforcement action is addressing issues on the East Terrace, also known as archaeological site SBa-71, and issues related to the failure to install public access/interpretive signs pursuant to the CDP. There are a number of known archaeological sites on the Property, including one that is located in the area of unpermitted sod, *Eucalyptus* wood chips, and the above ground irrigation system.

The East Terrace location, or SBa-71, was the site of grading and several oil related facilities during the 1920s and 1930s; the oil facilities were removed from the site in the 1950s. After recovering from the disturbances caused by these activities but prior to the unpermitted development occurring, the East Terrace became vegetated with a grove of *Eucalyptus* trees and coastal sage scrub, consisting primarily of coyote bush, California sage, and some salt brush.

## **B. DESCRIPTION OF COASTAL ACT VIOLATIONS**

The violations being resolved by the Consent Orders include unpermitted development and other activities that are also in CDP No. 4-85-343, and those permit violations include, but may not be limited to: removal of major vegetation, including coastal sage scrub and *Eucalyptus* trees, installation of non-native landscaping, geo fabric, *Eucalyptus* wood chips, and above ground irrigation system, all of which resulted in the creation of a private wedding and event venue, located directly on top of land known to be a highly sensitive archaeological zone and on or near ESHA; failure to develop proper signs and interpretive facilities as required by Special Condition 10 of CDP No. 4-85-343; and the placement of a gate that tends to deter use of a public access and equestrian trail ("Unpermitted Development).

The East Terrace, or SBa-71, as designated by the State Office of Historic Preservation, is rich in archaeological resources from Chumash occupation, and the only approved development at this

location was a public access/equestrian trail, the same trail inhibited by the unpermitted gate, one of the violations referenced above. A diagram of the location and extent of some of the unpermitted development, created for illustrative purposes, is included as Exhibit 4.

### **C. PROPERTY AND PERMIT HISTORY**

On December 19, 1985, the Commission approved CDP No. 4-85-343 (4-85-343) for development on the property, authorizing a 400-room hotel and conference center, restaurant and bar facility, outdoor patios and pools, and a health club and spa on APN 0079-200-012, and a parking lot for public access and public access trails, four private tennis courts, and a beach front snack bar on APN 0079-200-013 (Exhibit 5).

The Commission found, among other things, that the public had crossed the Property to reach the beach historically, and therefore, the Commission required an OTD public access trails to ensure that public access remained because of the limited public access in this area of Santa Barbara County, as shown in Exhibit 6. Therefore, the Commission conditioned its approval of the permit (Special Condition 14) to require the owners to 1) record an OTD an easement for public access, 2) record a deed restriction over the property prohibiting interference by the property owner with the public's right to use of that trail, and 3) record a deed restriction over the property prohibiting interference by the property owner with the public's right to use of a private access road and bike path to gain access to the OTD trail. The OTD was recorded on May 6, 1997, and amended on January 31, 2008, to relocate the public walkway easement, after receiving the Executive Director's general approval of the new proposed location, but prior to receiving Executive Director review of the actual proposed amending documents. As a result, it was again amended on April 17, 2008, after the Executive Director requested that certain revisions be made to the prior amendments to both the OTD and Deed Restriction, and that they be merged into the same document ("the 2008 OTD") (Exhibit 7).<sup>9</sup>

In its approved findings for CDP 4-85-343, the Commission described the East Terrace as land known to be a highly sensitive archaeological zone. The property was historically occupied by Native Americans (Chumash) for over 6,000 years. As a result, there are a number of known archaeological sites on the Property, including one that is located in the area of the unpermitted sod, *Eucalyptus* wood chips, and above ground irrigation system. The only approved development on the East Terrace was a public access hiking/equestrian trail. The Commission granted approval for development, subject to several special conditions; three of the special conditions are relevant to the violations in this proceeding. Special Condition No. 3 related to archaeology and prohibited development on the East Terrace. Special Condition No. 10 required a system of signs, which clearly mark the location of public accessways and public parking areas, and an interpretive program introducing hotel guests and the general public to the physical and biological features of the project site, including the upland, wetland, coastal strand, and

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<sup>9</sup> The 2008 OTD was recorded to supersede and replace all prior documents and was irrevocable for a period of 21 years, such period running from the date of recording. The OTD has not yet been accepted, but until such time, the 2008 OTD requires the property owner to maintain and operate the OTD area and also, treat the OTD area as if the OTD had been accepted and to not interfere with the public's right to use the areas covered by the 2008 OTD.

marine habitats. Special Condition No. 14 required the property owner to record an OTD an easement for public access and recreation, and required Respondents to maintain the access improvements in a condition suitable for public use for the life of the project or until the acceptance of the OTD.<sup>10</sup> This condition further required a deed restriction to be recorded prohibiting interference with the public's use of public vertical access trails to the beach.

The intent of these conditions and the language in the permit was to restrict development on the East Terrace and to provide for public access to the beach and public equestrian trails.

#### **D. VIOLATION HISTORY**

In July 2012, Commission staff received a complaint that the Former Owner had placed sod on top of the East Terrace. On July 24, 2012, Commission staff conducted a site inspection and confirmed that development had taken place on the East Terrace, inconsistent with the CDP. From review of aerial photographs, Commission staff also confirmed that removal of vegetation other items of development occurred in at least 2002, 2004, and 2006; additional placement of landscaping, and placement of an irrigation system (Exhibit 10a) had also occurred after August 28, 2010.<sup>11</sup> During the July 24<sup>th</sup> site visit, staff also observed a locked gate in the OTD area, which is a connection to the public trail system established by the CDP (Exhibit 10b). No CDP or CDP amendment had been issued for the above-described development.

On August 22, 2012, Commission staff sent the Former Owner a Notice of Violation letter outlining the definition of development under the Coastal Act, listing the unpermitted development that occurred on the property, and explaining how the unpermitted activity and development constituted violations of the Coastal Act (Exhibit 11). The letter requested the Former Owner to contact Commission staff by August 31, 2012 to discuss their options for restoring the site, and requested that they immediately stop all unpermitted development activity on the Property.

On August 29, 2012, the Former Owner contacted Commission staff by telephone and invited staff to return to the property for another site visit to walk the grounds together and discuss the violations. During the meeting, the Former Owner acknowledged that the placement of wood chips, sod, and irrigation on the East Terrace was to create a site for weddings. The Former Owner also informed staff that they were willing to take whatever actions were necessary to resolve the violations.

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<sup>10</sup> Although the deed restriction allowed for the relocation of the easement, upon specific conditions, and one of the public access trails was in fact relocated.

<sup>11</sup> Exhibit 8 is a photograph of the East Terrace from 1989, prior to the construction of the resort, and shows the site's native vegetation prior to Unpermitted Development. Exhibit 9 is also a photograph of the East Terrace, but from 2013, and shows the contrast in vegetation resulting from the Unpermitted Development.

On September 20, 2012, Commission staff, the Former Owner, as well as City of Goleta staff, met at the property to conduct a site inspection and discuss the violation. During this site visit, the Former Owner demonstrated that the gate on the public access and equestrian trail had been removed. Respondents again expressed a desire to take the necessary steps to resolve the violations.

On October 30, 2012, Commission staff conducted another site visit to measure the area of the East Terrace where sod and *Eucalyptus* wood chips had been placed. During this site visit, Commission staff noticed that it appeared that events were still being conducted on the East Terrace; the wiring for speakers remained on the site and it appeared that a majority of the sodded lawn was being still being watered by the unpermitted irrigation system. Therefore, on November 1, 2012, Commission staff sent a letter to the Former Owner memorializing the October 30, 2012 site visit and again requesting that the Former Owner “immediately stop all unpermitted development activity on the subject property.” (Exhibit 12)

In order to reach a consensual resolution to the Coastal Act violations, including restoration of the site, on December 13, 2012, the Executive Director notified the Former Owner of his intent to commence proceedings for issuance of Cease and Desist and Restoration Orders and recordation of a Notice of Violation (“NOI”) to address the Unpermitted Development at the site (Exhibit 14). The letter further set forth a suggested framework to legally resolve the violation via “consent orders”. In accordance with 14 CCR Sections 13181 and 13191, the letter was accompanied by a Statement of Defense (SOD) form, and established a deadline of January 2, 2013 for its completion and return.<sup>12</sup>

In a December 26, 2012 telephone conversation, the Former Owner expressed their interest in agreeing to consent orders and working towards settlement rather than submitting a Statement of Defense. A site visit was scheduled for the following week in order for Commission staff to meet with the Former Owner and together evaluate the Coastal Act violations.

On January 2, 2013, Commission staff met with the Former Owner and Mr. John Ruiz, from the Coastal Band of the Chumash Nation, at the East Terrace to discuss the Coastal Act violations and the restoration process. The parties discussed the varying interests to be addressed, including the cultural concerns associated with archaeological site SBa-71, public access, and restoration of the East Terrace with native vegetation, and the need to comply with both the CDP and the Coastal Act. Again, the Former Owner expressed their interest in resolving the Coastal Act violations through Consent Orders.

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<sup>12</sup> BRS Investment Properties, LLC, the current owner of Bacara Resort and Spa, has agreed to waive the notification requirements pursuant to Sections 13181 and 13191 of the Commission’s administrative regulations.

On February 28, 2013, as Commission staff was finalizing the proposed Consent Orders, the Los Angeles Times published an article providing notice that Bacara Resort and Spa had been purchased by Pacific Hospitality Group from Ohana Real Estate Investors (Exhibit 16).

On March 5, 2013, Commission staff contacted the Former Owner to confirm this change in ownership. Staff and the Former Owner discussed the change in ownership, and the General Manager, Kathleen Cochran, assured staff that she would continue to be the point of contact throughout our negotiations, as she was continuing her employment with the new owner BRS Investment Properties, LLC. Also, on March 7, 2013, Commission staff spoke with Sarah Mancusco of BRS Investment Properties, LLC who also confirmed that the seller had been transparent with BRS Investment Properties, LLC about the Coastal Act violation investigation throughout the sales process (Exhibit 17). The agreement reached to resolve the Coastal Act violation was principally reached with SB Luxury Resort LLC, the Former Owner, but also requires the new owners to abide by its terms.

#### **E. BASIS FOR ISSUANCE OF ORDERS**

##### **1) STATUTORY PROVISIONS**

###### **(a) Consent Cease and Desist Order**

The statutory authority for issuance of this Consent Cease and Desist Order is provided in Coastal Act Section 30810, which states, in relevant part:

*(a) If the commission, after public hearing, determines that any person or governmental agency has undertaken, or is threatening to undertake, any activity that (1) requires a permit from the commission without securing the permit or (2) is inconsistent with any permit previously issued by the commission, the commission may issue an order directing that person or governmental agency to cease and desist....*

*(b) The cease and desist order may be subject to such terms and conditions as the Commission may determine are necessary to ensure compliance with this division, including immediate removal of any development or material...*

###### **(b) Consent Restoration Order**

The statutory authority for issuance of this Consent Restoration Order is provided in Section 30811 of the Coastal Act, which states, in relevant part:

*In addition to any other authority to order restoration, the commission... may, after a public hearing, order restoration of a site if it finds that [a] the development has occurred without a coastal development permit from the commission, local government, or port governing body, [b] the development is*



*inconsistent with this division, and [c] the development is causing continuing resource damage.*

The following paragraphs set forth the basis for the issuance of the proposed Consent Cease and Desist and Restoration Orders by providing substantial evidence that the development meets all of the required grounds listed in Section 30810 and 30811 of the Coastal Act for the Commission to issue a Consent Cease and Desist and Restoration Order.

## **2) FACTUAL SUPPORT FOR STATUTORY ELEMENTS**

### **(a) Development has occurred without a Coastal Development Permit and inconsistent with CDP 4-85-343, which the Commission Previously Issued**

As previously presented in Section III of this staff report, which is incorporated herein as if set forth in full, the activities at issue in this matter constitute ‘development’ as defined in the Coastal Act and are therefore subject to permitting requirements. Staff has verified that the cited development on the property is not exempt and was conducted without the benefit of a CDP, and additionally, some of the development activities were undertaken in direct violation of the terms and conditions of Commission-issued CDP 4-85-343. Because the development occurred without the required Coastal Act authorization, this is a violation even independent of the requirements of the existing permit, and therefore the criterion for issuance of the Consent Cease and Desist Order has been met, and the first criteria for issuance of the Consent Restoration Order has also been met.

In addition, the unpermitted activities were also inconsistent with CDP 4-85-343, which authorized the development of the hotel, conference center, spa and associated amenities. The CDP was approved subject to several conditions, discussed below, governing how the site’s development was to occur.

#### Signs and Interpretive Facilities:

Special Condition 10:

***Signs and Interpretive Facilities. A system of signs, which clearly mark the location of public accessways and parking areas, and an interpretive program introducing hotel guests and the general public to the physical and biological features of the project site, including the upland, wetland, coastal strand, and marine habitats, shall be provided.***

Special Condition 10 required the implementation of a system of signs and interpretive facilities clearly marking public accessways and describing the physical and biological features on the property; although there are some public access signs on the Property, no such comprehensive system has been established. Also, some of the public access signs presently on the property do not clearly point the public to designated public access areas and are hard to read because they are faded from the sun. Failure to provide this specifically mandated program that identifies public access trails and public parking areas and describes the physical and biological features of

the property, including the upland, wetland, coastal strand, and marine habitats, constitutes a failure to comply with the terms of Special Condition 10 of the CDP.

Public Access Dedications and Restrictions:

Special Condition 14:

*Public Access Dedications and Restrictions. Prior to the transmittal of a Coastal Development Permit and the commencement of construction, the applicant shall execute and record a document, in a form and content acceptable to the Executive Director, irrevocably offering to dedicate to a public agency or private association approved by the Executive Director, an easement for public access and recreation over the accessways described in the application. The applicant or its successors in interest shall have the right to relocate the easements to other locations within the public recreation area of the property provided the public's right of access is not unreasonably diminished and subject to prior consultation with and approval by the Executive Director which approval shall not be unreasonably withheld.*

*Prior to the Transmittal of the Coastal Development Permit, the applicant shall record a deed restriction, in a form and content acceptable to the Executive Director, prohibiting interference with the use of the beach and trails described in the easement and committing the applicant to maintain the access improvements in a condition suitable for public use for the life of the project or until the acceptance of the offer of dedication; provided, however, that such deed restriction shall be expressly subject to the applicant's right to relocate such easement as provided above.*

*A deed restriction shall be recorded which prohibits interference with the public's use of the private access road and bicycle path to gain access to the public parking areas and vertical access trails to the beach.*

Special Condition 14 required public access dedications and restrictions to be recorded on the property. The condition required the applicant to record an OTD an easement for public access and recreation, and prohibited the interference with the public's use of the public access trails to the beach and the public parking lot. The violations that are being address by these Consent Orders include the placement of a gate across the public access/equestrian trail located near the East Terrace - one of the aforementioned public access easements within the CDP. Respondents obtained no CDP or CDP amendment for the placement of the gate over the trail. Moreover, Special Condition 14 specifically required the property owner to maintain the public access equestrian trail and to not interfere with the public's access to the beach. Therefore, not only was the development undertaken without a CDP, but was also inconsistent with a previously issued CDP.

Archaeology:

Special Condition 3:

*Archaeology. Prior to the transmittal of the Coastal Development Permit and the commencement of construction, the applicant shall submit for the review and approval of the Executive Director, revised plans, approved by the County of Santa Barbara, and other documents which (a) relocate the access road drainage system to avoid site SBa-71 on the east terrace.*

Special Condition 3 pertains to the archaeological resources located on the property. By requiring the applicant to relocate proposed development away from SBa-71 on the East Terrace to avoid disturbance of the archeological site, the Commission intended that development was to avoid this area known to be a highly sensitive archaeological zone, and the area's natural state was to be left intact.<sup>13</sup> This intent is further explained and supported by the Commission's findings, which describe the site as, "highly sensitive because of its relatively undisturbed nature, dense deposits, and extensive burials. This major site will be protected by the project except for a minor portion of the access road cut and drainage system...disturbing less than 2% of SBa-71." The placement of non-native landscaping and landscaping features such as sod, *Eucalyptus* wood chips, and an above-ground irrigation system, all of which resulted in the creation of a private wedding and event venue, changes the intensity of use of the East Terrace, and is inconsistent with the Commission's intent as explained in their adopted findings supporting the approval of CDP 4-85-343.

**(b) The Unpermitted Development at Issue is not Consistent with the Coastal Act**

The Unpermitted Development described herein is not consistent with Sections 30210 and 30211 (public access and recreation), Section 30244 (archaeological resources), Section 30240 (ESHA protection), Section 30253 (limiting adverse impacts of new development), and Section 30231 (protecting biological productivity and quality of coastal waters) of the Coastal Act.

**i) Providing for Public Access and Recreation**

Coastal Act Section 30210 states:

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

Coastal Act Section 30211 states:

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<sup>13</sup> The approved Phase II Restoration Plan dated December 1, 1997 describes the East Terrace as a natural area.

*Development shall not interfere with the public's right of access to the sea where acquired through use or legislative authorization, including, but not limited to, the use of dry sand and rocky coastal beaches to the first line of terrestrial vegetation.*

Coastal Act Section 30220 states:

*Coastal areas suited for water-oriented recreational activities that cannot readily be provided at inland water areas shall be protected for such uses.*

Coastal Act Section 30221 states:

*Oceanfront land suitable for recreational use shall be protected for recreational use and development unless present and foreseeable future demand for public or commercial recreational activities that could be accommodated on the property is already adequately provided for in the area.*

Public recreation and the ability for the public to access the beach are the cornerstone of the Coastal Act and are critical in this segment of the Gaviota coast. The area's sandy beaches, scenic shoreline and mountains, the mild climate and its special historic and cultural qualities draw visitors from around the State and world. The protection of public access to Haskell's Beach is particularly important because the area is notoriously hard to reach without crossing the Property. To further the discussion above, the Commission recognized, as summarized in the CDP's findings at page 15, "there is substantial evidence of public use of the site's beach [Haskell's Beach] and trails for recreation and access to adjacent public tidelands for over 20 years". The findings further recognized that Haskell's Beach is a popular area of the coastline, primarily used by surfers, picnickers, and other beachgoers. Before the development of the Bacara Resort, visitors accessed the beach through the Property regularly enough that several worn paths were established. Moreover, "access to this reach of the Santa Barbara County coast is limited" (page 16 of the Commission's adopted findings for the CDP, as provided in Exhibit 5) with the nearest public access point being at the University of California, Santa Barbara's Coal Oil Point Reserve, about 3.5 miles east, as shown on the regional map provided in Exhibit 6. Therefore, the Commission found, as further explained in their findings on page 16, that the "site, with its sandy beaches, scenic setting, surfing and fishing opportunities, is ideally suited to meet the region's existing and growing demand for public access and recreation" and conditioned its approval of the project upon the requirement that the applicant dedicate, improve, sign, maintain, and not interfere with the public's use of public accessways across the property, consistent with Section 30210 and 30211 of the Coastal Act. The Commission effectively granted the public a legally enforceable right to coastal access across the property.

The unpermitted placement of a gate in the OTD area had a direct impact on the public's ability to use the public trails that were created by conditions of the CDP.<sup>14</sup> Additionally, the gate was directly inconsistent with the applicant's OTD easements for public access at the beach, because it blocked the public's ability to use the trail, which provides the public a unique vantage point to

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<sup>14</sup> The gate has since been removed, due to Bacara's response to enforcement staff's request; however posts and concrete footings remain and, without these Consent Orders, there is the potential for this gate to be reinstalled.

enjoy uninhibited ocean views; and therefore, the unpermitted gate is inconsistent with Section 30221. Further, the placement of the gate inhibited a vital accessway for equestrians to enjoy views of Haskell's Beach while enjoying their sport; a similar vantage point of this stretch of coastline would not be available inland; thus, the placement of the gate is also inconsistent with Section 30220 as this activity of equestrian use along the beach is by its definition, not available at inland water areas.

Section 30210 also provides that coastal access points shall be conspicuously posted in order to ensure maximum opportunities for the public to access the beach. Special Condition 10 of the CDP required the implementation of a comprehensive signage plan. This signage program was never implemented. Additionally, the system of signs should have been installed long ago when the Resort first opened and remain uninstalled as of this date.

Since access to this reach of the Gaviota coast is extremely limited, the provision for public access and recreation on site is important, as reflected by the conditions of the CDP and its adopted findings. In the City of Goleta, the Bacara public access trails comprise some of the few public beach access points- the closest public beach access to the east is 3.5 miles away at the Coal Oil Point Reserve, and access to the west is 7 miles away at El Capital State Beach. Even though Haskell's Beach is open to the public, given the location relative to the resort (the parking lot and trails are within the resort compound and have the appearance of being a private resort for guests only), it is not obvious that this stretch of coastline is open to non-Resort guests. The Commission found the hotel project consistent with the Coastal Act, in part, because the applicant was providing for public access amenities. Blocking public access trails and not providing the public signage needed to ensure the public can reach the coastline is directly inconsistent with the CDP and the public access and recreation policies of the Coastal Act.

## ii) **Protection of Archaeological Resources**

Coastal Act Section 30244 states:

*Where development would adversely impact archaeological or paleontological resources as identified by the State Historic Preservation Officer, reasonable mitigation measures shall be required.*

The hotel site is in the center of the territory historically occupied by native Chumash. Tecolote Canyon, located in the center of the property, has been occupied by Native Americans for over 6,000 years. As a result, the project site is rich in archaeological resources, containing six recorded archaeological sites. The Commission's adopted findings for the CDP state that archaeological site SBa-71, located on the East Terrace, was an area of permanent habitation by the Chumash and "is designated highly sensitive because of its relatively undisturbed nature, dense deposits, and extensive burials"; development is generally not recommended in areas of high sensitivity and because of this the Commission determined that "this major site will be protected by the project, except for a minor portion of the access road cut and drainage system... disturbing less than 2% of SBa-71". In the 1920s and 1930s it was the site of grading and

several oil related facilities, however, despite these extensive disturbances, scientists and Chumash representatives have testified that archaeological deposits here retain scientific and cultural significance. The deposits have the potential to provide information regarding resource exploitation, development and use of technology, site formation, trade, and settlement patterns at Tecolote Canyon.<sup>15</sup>

Section 30244 encourages avoidance of archaeological sites where feasible, especially in areas of high sensitivity such as the East Terrace. Site SBa-71 covers two-thirds of the East Terrace and was afforded protected by the Commission issued CDP, except for a minor portion of the access road cut and drainage system. The Unpermitted Development at issue is within SBa-71, encompassing most of the site, and is inconsistent with the Coastal Act's provisions regarding and protection of archaeological sites where development would adversely impact archaeological resources.

The archaeological site on the East Terrace has potentially been impacted by the placement of landscaping and irrigation, and conducting private events such as weddings, directly above the site. This development far exceeds what the CDP authorized and furthermore, is not consistent with Section 30244. This Coastal Act violation is particularly sensitive given the potential impact on these invaluable archaeological and cultural resources; and therefore, the development conducted on the East Terrace is inconsistent with the protection of archaeological resource policies of the Coastal Act.

**iii) Protection of Environmentally Sensitive Habitat Areas (ESHA)**

Environmentally Sensitive Habitat Areas (ESHA) is defined by Coastal Act Section 30107.5 as:

*'Environmentally sensitive area' means any area in which plant or animal life or their habitats are either rare or especially valuable because of their special nature or role in an ecosystem and which could be easily disturbed or degraded by human activities and developments.*

Coastal Act Section 30240 states:

*(a) Environmentally sensitive habitat areas shall be protected against any significant disruption of habitat values, and only uses dependent on such resources shall be allowed within such areas.*

*(b) Development in areas adjacent to environmentally sensitive habitat areas and parks and recreation areas shall be sited and designed to prevent impacts which would significantly degrade such areas, and shall be compatible with the continuance of such habitat areas.*

As explained in the Commission's adopted findings for the CDP, the long history of oil development and other activities on the property left the property with only a small

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<sup>15</sup> See pages 26-27 of the CDP's adopted findings (Exhibit 5).

portion of environmentally sensitive habitat area located in the creek area and thus, its protection is a high priority. ESHA, as defined in Section 30107.5 of the Coastal Act, is “any area in which plant or animal life or their habitats are either rare or especially valuable because of their special nature or role in an ecosystem and which could be easily disturbed or degraded by human activities and developments”. Thus, the Coastal Act establishes a two part test for determining ESHA. The first part requires determining whether an area including plants or animals or their habitats is either: (a) rare; or (b) especially valuable because of their special nature or role in an ecosystem. If so, then the second part asks whether such plants, animals, or habitats could be easily disturbed or degraded by human activities. If so, then the area where such plants, animals, or habitats are located is deemed ESHA by Section 30107.5.

Although the coastal resources located on the East Terrace have been Commission staff’s main focus in resolving the violations located on the property, concerns have also been raised about the effect of the unpermitted development on the Bell Canyon Creek area, located directly below the East Terrace. Based on reports from City of Goleta staff from observations made during a routine site visit, a portion of the above-ground irrigation line, an item of unpermitted development located on the East Terrace, broke open, causing a large amount of water to flow down the bluff slope and into Bell Canyon Creek. Bell Canyon Creek contains riparian habitat, determined to be riparian ESHA by the Commission’s staff Ecologist, Dr. Jonna Engel.<sup>16</sup> In addition, the City of Goleta certified Land Use Plan designates the entire East Terrace, including Bell Canyon Creek as ESHA.<sup>17</sup> Bell Canyon Creek is also the home to several special-status species,<sup>18</sup> including monarch butterflies, red-legged frog, and tidewater goby.<sup>19</sup> Artificial influxes of water with excessive nutrient levels have the potential to destroy these native species’ habitat and are a major cause for concern in protecting Bell Canyon Creek’s ESHA. Placement of the unpermitted irrigation lines and irrigating non-native landscaping in such proximity to ESHA has the potential to degrade such ESHA by increasing unnatural water flow into and sedimentation of the riparian habitat, and therefore such activity is inconsistent with Section 30240 of the Coastal Act .

The oil development activities conducted previously on the site led to the loss of habitat on the property, which means that the reemerging habitat, as well as the habitat that remains, is both rare and essential to support the local ecosystem that was almost lost

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<sup>16</sup> Dr. Jonna Engel reached this determination after visiting the site and reviewing aerial photographs of the Bell Canyon Creek area; based on her analysis, she determined the creek and its associated riparian habitat to be ESHA.

<sup>17</sup> The City of Goleta’s Land Use Plan has adopted Coastal Act definitions and policies for areas of Goleta within the California Coastal Zone.

<sup>18</sup> According to the City of Goleta’s Land Use Plan, Special-Status Species is a universal term used in the scientific community for species that are considered sufficiently rare that they require special consideration and /or protection and should be, or have been, listed as rare, threatened, or endangered by the federal and/or state governments.

<sup>19</sup> The Monarch Butterfly is a protected species under the City of Goleta’s Land Use Plan and both the red-legged frog and tidewater goby are listed on state and federal Endangered Species Act.

during the early part of the 20<sup>th</sup> century. Figure 4-1 “Special-Status Species and Environmentally Sensitive Habitat Areas” of the City of Goleta’s certified Land Use Plan designates the East Terrace sage scrub/dunes/bluff scrub habitat as ESHA. This habitat plays a key role within the ecosystem to support local wildlife such as Monarch Butterflies (*Danaus plexippus*) and Raptors. The East Terrace, where a majority of the violations occurred, is in close proximity to the riparian habitat Dr. Engel determined to be ESHA. Many species of Monarch butterfly and Raptor roosting trees, including *Eucalyptus*, were cut down by the Previous Owner, so that the remaining trees in the ecosystem are particularly important, satisfying the first part of the test used to determine the presence of ESHA.

Bell Canyon Creek has been designated as riparian ESHA by the Commission’s ecologist, as well as in the City of Goleta, based on its role as a habitat for Special-Status Species, including Monarch Butterfly (*Danaus plexippus*), Tidewater Goby (*Eucylogobius newberryi*), and Red-legged frog (*Rana aurora draytonii*). Tidewater Goby is an endangered species listed on the federal Endangered Species Act, and the US Fish and Wildlife Service has designated all coastal California counties as within the boundary for the species’ critical habitat. The Endangered Species Act defines critical habitat as areas essential to conserving the species as risk. Along the California coast, the species occurs in lagoons, estuaries, marshes, and occasionally freshwater streams; the lagoon located at the mouth of Bell Canyon Creek is home to a vibrant Tidewater Goby community. Additionally, the Red-legged frog is endemic to California and also listed on the federal Endangered Species Act. The presence of these rare species within Bell Canyon Creek also satisfies the first part of the ESHA requirement because the area supports rare animals and also plays a special role in the ecosystem.

The second part of the test for ESHA focuses on whether such plants, animals, or habitats could be easily disturbed or degraded by human activities and if so, the area where such plants, animals, or habitats are located is deemed ESHA under the Coastal Act.

New development on the East Terrace, such as creating a wedding/event venue by placing wood chips, lawn, and irrigation on land near or on ESHA, clearly has the potential to result in individual and cumulative adverse effects to riparian habitat within the creek area because of its close proximity to ESHA. As noted above, the activities that occurred on the site included removal of major vegetation, including coastal sage scrub and *Eucalyptus* trees that supported raptor roosting and had the potential to support Monarch butterfly, and installation of non-native landscaping and materials including sod, *Eucalyptus* woodchips, and an above ground irrigation system. *Eucalyptus* trees, although non-native, provide roosting habitat for raptors, and resting sites for Monarch butterflies, serving an important role in the site’s ecosystem. Additionally, the above-ground irrigation system is susceptible to cracking and breaking as evidence by the line break that occurred in December 2012, and has the potential to lead to an artificial influx of water with the ability to harm the Bell Canyon Creek habitat below, including potentially having an adverse effect on endangered Tidewater goby and Red-legged frog species that live in the creek/lagoon area. Because the habitat is easily susceptible to disruption and provides shelter for various Special-Status Species, including raptors,



Monarch butterflies, Tidewater goby and Red-legged frog, the second part of the test is satisfied. Since the two part ESHA test is satisfied, the Bell Canyon Creek riparian habitat is considered ESHA under the Coastal Act and warrants protection.

Coastal Act Section 30240 mandates the protection of ESHA, and only uses dependent on such resource shall be allowed in such areas. Section 30240 further provides that development adjacent to ESHA be designed to prevent impacts that would significant degrade those areas. The provided guidance from the City of Goleta's LUP gives added protection by also mandating buffer areas between development and existing ESHA. The provision requires a buffer area of 100 feet but no less than 50 feet under circumstances when the habitat can be protected within the reduced space. Some of the unpermitted development that occurred on the East Terrace, although not within ESHA, falls within the buffer area because of its close proximity to Bell Canyon Creek; the ESHA buffer area must be protected, consistent with Section 30240. Thus, the unpermitted development that disrupts the riparian habitat and its potential growth, is inconsistent with the Coastal Act policies set in place to protect ESHAs. Actions to remove the unpermitted development, and to revegetate with native plant species and mitigate for the temporal loss of habitat, will be undertaken pursuant to the Consent Orders and are designed to protect and restore the ESHA and its habitat value. This restoration work will ensure that habitat connectivity will be restored and ecosystem services on and below the East Terrace will be re-established.

**iv) Minimization of Adverse Impacts/Geologic Stability**

Coastal Act Section 30253 states, in part, that new development shall:

- a) *Minimize risks to life and property in areas of high geologic, flood and fire hazard.*
- b) *Assure stability and structural integrity, and neither create nor contribute significantly to erosion, geologic instability, or destruction of the site or surrounding area or in any way require the construction of protective devices that would substantially alter natural landforms along bluffs and cliffs.*

The Coastal Act requires that any new development within areas of high geologic hazard must neither create nor contribute to erosion, or geologic instability from subsurface drainage or otherwise. The East Terrace, the site impacted by the unpermitted development, is a marine terrace, rising above coastal Tecolote Canyon, coastal Bell Canyon, and Haskell's Beach. The terrace has been shaped by uplift, the erosion action of adjacent Bell Canyon Creek, and ocean waves. As described within the Commission's adopted findings for the CDP,<sup>20</sup> the terrace is comprised of units of the Monterey formation that dips toward the ocean to a 52-degree angle, and a 30-40-foot thick overburden of older alluvium, and the top is relatively flat. The East Terrace slopes to the creek at a 40-70 percent grade and the coastal bluffs formed by the terraces range between 75 and 95 feet above the mean sea level and are nearly vertical. Coastal bluffs are the type of geologically hazardous land contemplated under Section 30253 of the Coastal Act, as discussed within the CDP's adopted findings, because by their nature, coastal bluffs are subject

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<sup>20</sup> Pages 24-25.

to erosion from uncontrolled surface or sub-surface water runoff and are susceptible to wave impact and sea-level rise.

Section 30253 of the Coastal Act requires that new development minimize risk to life and property in areas of high geologic, flood and fire hazard, and assure stability and structural integrity. In fact, the EIR for the original project indicated that a bluff retreat rate in the project's vicinity of four to eight inches per year was likely, and recommended a bluff setback of between 25 and 50 feet. In response to this analysis, the applicant, Hyatt Hotels Corp., proposed placing all structures a minimum of 75 feet from the blufftop, planting only drought tolerant vegetation in the bluff retreat setback line, 40 to 60 feet from the bluff edge, and utilizing low loss methods of irrigation, specifically to prevent excess runoff, and to direct all runoff away from the bluff – all consistent with Coastal Act section 30253.

The placement of development, including installing non-native landscaping, installing an irrigation system, and removing major vegetation, in an area that was found to be within an area of high geologic hazard, is not consistent with Coastal Act section 30253. The changes in vegetation eliminate a vital runoff barrier, and the placement of irrigation on the blufftop could accelerate erosion of the bluff where the archaeological resources are located, as well as contribute to further geologic instability or possibly destruction of the coastal bluff, itself. In fact, the irrigation system has already failed on at least one occasion, and caused an influx of artificial water to rush over the bluff edge and with probable adverse effects on the bluff's erosion rate and the Bell Canyon Creek habitat below. Additionally, the increased intensity in use of the East Terrace for activities, such as weddings, which involve both increased foot traffic and increased vehicular traffic up the eastern coastal bluff in order to host events, as well as placement of and removal of the materials used for the wedding setups, may also increase the rate of bluff erosion.

The unpermitted development has the potential to increase hazards by increasing erosion across the property, which can lead to geologic instability. Removal of the irrigation system and landscaping, and revegetating the site with native, drought tolerant vegetation pursuant to the Consent Orders will assist in protection of the site's geologic stability, and reduce the impacts of the unpermitted development on the bluff's erosion rates.

### **(c) Unpermitted Development is Causing Continuing Resource Damage**

The unpermitted development is causing 'continuing resource damage', as those terms are defined by 14 CCR Section 13190.

#### **(i) Definition of Continuing Resource Damage**

14 CCR Section 13190(a) defines the term 'resource' as it is used in Section 30811 of the Coastal Act as follows:

'Resource' means any resource that is afforded protection under the policies of Chapter 3 of the Coastal Act, including but not limited to public access, marine and other aquatic

resources, environmentally sensitive wildlife habitat, and the visual quality of coastal areas.

The term ‘damage’ in the context of Restoration Order proceedings is defined in Section 14 CCR 13190(b) as follows:

‘Damage’ means any degradation or other reduction in quality, abundance, or other quantitative or qualitative characteristic of the resource as compared to the condition the resource was in before it was disturbed by unpermitted development.

In this case, the resources affected include: public access and recreation on the Property and at the adjacent Haskell’s Beach; archaeological and cultural resources; ESHA at the site (both from the effects of native and major vegetation removal and other unpermitted development); geologic stability of the East Terrace. As discussed above, all of these resources are afforded protection under Chapter 3 of the Coastal Act.

The term ‘continuing’ is defined by 14 CCR Section 13190(c) of the Commission’s regulations as follows:

‘Continuing’, when used to describe ‘resource damage’, means such damage, which continues to occur as of the date of issuance of the Consent Restoration Order.

The Unpermitted Development subject to these proceedings, and its effects on coastal resources remain unaddressed.<sup>21</sup> Since Commission staff’s negotiations with Respondents commenced, they have cooperated in removing the gate blocking public access and recreation on the public equestrian trail located on the East Terrace,<sup>22</sup> and have also ceased holding events and watering the sod at that location. However, there are still public access issues to be addressed resulting from Respondents’ and past property owner’s failure to comply with Special Condition 10 of the CDP, which required a comprehensive signage plan which clearly marked the location of public accessways, parking lots, and the site’s physical and biological features. In the site’s current state, it is unclear to members of the public where the designated public trails and public parking areas are located, thereby making it difficult to reach and enjoy the recreational and scenic benefits of Haskell’s Beach, located directly adjacent to the property.

Moreover, the habitat issues on the East Terrace must be addressed; discontinuing the private events on the East Terrace does not, in itself, fully resolve the resource damage caused by the Unpermitted Development, and the proposed Consent Orders will provide for restoration of these areas. The above-ground irrigation system is still in place, as is the non-native landscaping and

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<sup>21</sup> The effects of Unpermitted Development remain unaddressed with the exception of the gate in the OTD area, the item of Unpermitted Development that was removed in response to enforcement staff’s explanation that its placement was not consistent with Sections 30210 and 30211 of the Coastal Act protecting the public access coastal resource.

<sup>22</sup> Even though Respondents have cooperated in removing the gate and public use is no longer deterred, the gate’s post still remain on the trail and because they are unpermitted, their removal is also required.

wood chip mulch; all of these items of unpermitted development continue to raise resource concerns relating to ESHA, geologic stability.

As described above, the adverse impacts to resources protected by the Coastal Act continue to occur as of the date of this proceeding, and therefore damage to resources is “continuing” for purposes of Section 30811 of the Coastal Act. The damage caused by the Unpermitted Development described above satisfies the regulatory definition of “continuing resource damage.” Therefore, the third and final criterion for issuance of a Restoration Order is satisfied.

**(d) Orders are Consistent with Chapter 3 of the Coastal Act**

These Consent Orders, attached to this staff report as Appendix A, are consistent with the resource protection policies found in Chapter 3 of the Coastal Act. These Consent Orders require Respondents to remove unpermitted development and or development inconsistent with the CDP, and restore the land occupied by Unpermitted Development and/or development inconsistent with the CDP, as listed above. Additionally, the Consent Orders require Respondents to cease and desist from conducting any further unpermitted development on the Property. Further, the Consent Orders require restoration of impacted areas and additional mitigation work to account for the temporal loss of coastal resources during the time the Unpermitted Development was in place. Failure to restore the site would have the potential to prevent public access, fall short of protecting the site’s archaeological and cultural resources, further fail to protect ESHA, increase the East Terrace’s geologic instability, and would ultimately be inconsistent with the resource protection policies of the Coastal Act. The intent of the Consent Orders is to remove Unpermitted Development and restore the site to be consistent with the Coastal Act and the CDP. Additionally, the Consent Orders would restore the East Terrace with native plants, reduce risks to bluff instability and runoff into Bell Canyon Creek, and ultimately enhance public access and recreation opportunities while also restoring the site’s ecosystem. Therefore, the proposed Consent Orders are consistent with Sections 30210, 30211, 30244, 30240, 30253, and 30231.

Therefore, the Consent Cease and Desist and Restoration Orders are consistent with the Chapter 3 policies of the Coastal Act.

**3) BASIS FOR RECORDATION OF A NOTICE OF VIOLATION**

Under the Coastal Act, a Notice of Violation (“NOVA”) may be recorded against property that has been developed in violation of the Coastal Act. The NOVA is recorded in the office of the county recorder where the property is located and appears on the title to the property. The NOVA serves a protective function by notifying prospective purchasers that a Coastal Act violation exists on the property and that anyone who purchases the property may be responsible for the full resolution of the violation. The statutory authority for the recordation of a NOVA is set forth in Coastal Act Section 30812. The Respondents here, as part of the Consent Orders, agreed to recordation of a NOVA. This NOVA will be removed as soon as the violations are fully resolved, as provided for in both 30812 and the Consent Orders, themselves.

**F. CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA)**

The Commission finds that the issuance of the Consent Orders to compel removal of the unpermitted development and restoration of the property is exempt from any applicable requirements of the California Environmental Quality Act of 1970, Cal. Pub. Res. Code §§ 21000 et seq. (CEQA), and will not have significant adverse effects on the environment, within the meaning of CEQA. These Consent Orders are exempt from the requirement of preparation of an Environmental Impact Report, based on Sections 15061(b)(2), 15307, 15308 and 15321 of the CEQA Guidelines (14 CCR).

**G. SUMMARY OF FINDINGS OF FACT**

1. BRS Ventures, LLC, purchased the Bacara Resort and Spa from SB Luxury Resort LLC, on February 22, 2013 and is the current owner of the resort. SB Luxury Resort was the owner of the property at the time enforcement staff commenced the investigation for the Coastal Act violations at issue.
2. The property, Bacara Resort and Spa, is located at 8301 Hollister Avenue, Goleta, Santa Barbara County, CA and identified by the Santa Barbara County Assessor's Office as APNs 0079-200-012 and 0079-200-013. The property is located within the Coastal Zone.
3. The Commission found, in its approval of Coastal Development Permit (CDP) No. 4-85-343, which authorized development on the property, that the property contains Environmentally Sensitive Habitat Areas, areas of archaeological and cultural concerns, and public access and recreational opportunities.
4. The Commission found the project consistent with the Coastal Act and approved the CDP because it contained permit conditions to ensure the site's development would be consistent with the Coastal Act policies protecting coastal resources.
5. SB Luxury Resort LLC undertook development on the property without the required Coastal Act permit and inconsistent with CDP No. 4-85-343.
6. SB Luxury Resort LLC and BRS Investment Properties, LLC are joint and severally liable for the removal, restoration, and payment of penalties pursuant to the Coastal Act, and for complying with the requirements of these Consent Orders.
7. The Unpermitted Development is not consistent with Chapter 3 of the Coastal Act and is causing "continuing resource damage" within the meaning of Coastal Act Section 30811 and Title 14, California Code of Regulations, Section 13190.
8. Coastal Action Section 30810 authorizes the Commission to issue a cease and desist order in these circumstances, when the Commission determines that any person or government agency has undertaken, or is threatening to undertake, any activity that (1) requires a permit from the commission without securing a permit or (2) is inconsistent with any permit

previously issued by the Commission. Coastal Act Section 30811 authorizes the Commission to issue a restoration order when it finds that development (1) has occurred without a CDP, (2) is inconsistent with the Coastal Act, and (3) is causing continuing resource damages. All of these elements have been met in this case.

9. The work to be performed under these Consent Orders, if completed in compliance with the Orders and the plans required therein, will be consistent with Chapter 3 of the Coastal Act.

**CONSENT CEASE AND DESIST ORDER CCC-13-CD-03  
AND  
CONSENT RESTORATION ORDER CCC-13-RO-03**

**1.0 CONSENT CEASE AND DESIST ORDER CCC-13-CD-03.**

Pursuant to its authority under California Public Resources Code ('PRC') Section 30810, the California Coastal Commission ('Commission') hereby orders and authorizes BRS Investment Properties, LLC; SB Luxury Resort LLC; and all their successors, assigns, employees, agents, contractors, and any persons or entities acting in concert with any of the foregoing (hereinafter collectively referred to as 'Respondents')<sup>1</sup> to:

- 1.1. Cease and desist from engaging in any further development, as that term is defined in PRC Section 30106, on any of the Property identified in Section 4.2 below, unless authorized pursuant to, or exempt by, the Coastal Act (PRC Sections 30000-30900), which includes through these Consent Orders.
- 1.2. Cease and desist from performing or maintaining on the Property any Unpermitted Development, as that phrase is defined in Section 4.3, below.
- 1.3. Remove, pursuant to an approved removal plan as discussed in Section 5.5, below, and pursuant to the terms and conditions set forth herein, all physical items placed or allowed to come to rest on the Property as a result of Unpermitted Development, as that phrase is defined in Section 4.3, below, except as described herein.
- 1.4. Fully and completely comply with the terms and conditions of the Consent Restoration Order CCC-13-RO-03 as provided in Section 2.0, below.

**2.0 CONSENT RESTORATION ORDER CCC-13-RO-03.**

Pursuant to its authority under PRC Section 30811, the Commission hereby orders and authorizes Respondents to restore the Property by complying with the Restoration Order described, and taking all other restorative actions listed, in Section 5.0, below, including: (1) protecting cultural materials; (2) undertaking restorative grading; (3) implementing native habitat revegetation; (4) providing public access, cultural resources, and native habitat signage; (5) mitigating for the temporal loss of public access and recreation, and riparian and coastal bluff habitats; and (6) implementation of a long term monitoring program.

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<sup>1</sup> BRS Investment Properties LLC is the current owner of Bacara Resort and Spa, effective February 22, 2013 and recorded in the official records of the County of Santa Barbara on February 26, 2013; SB Luxury Resort LLC is a prior owner of the Property.

### 3.0 **NATURE OF ORDERS AND OF CONSENT.**

Through the execution of Consent Restoration Order CCC-13-RO-03 and Consent Cease and Desist Order CCC-13-CD-03 (hereinafter collectively referred to as "Consent Orders"), Respondents agree to comply with the terms and conditions of these Consent Orders. These Consent Orders authorize and require the removal of unpermitted development and restoration activities, among other things, as outlined in these Consent Orders. Any development subject to Coastal Act permitting requirements that is not specifically authorized under these Consent Orders or under the prior Coastal Development Permit pertaining to the site, CDP No. 4-85-343 as amended, requires a coastal development permit ("CDP"). Nothing in these Consent Orders guarantees or conveys any right to development on the Property other than the work expressly authorized by these Consent Orders and CDP No. 4-85-343 as amended. Through the execution of these Consent Orders, Respondents agree to comply with these Consent Orders including the following terms and conditions.

Respondents further agree to condition any contracts for work related to these Consent Orders upon an agreement that any and all employees, agents, and contractors; and any persons or entities acting in concert with any of the foregoing or with any of the other Respondents, adhere to and comply with the terms and conditions set forth herein.

### **PROVISIONS COMMON TO BOTH ORDERS.**

#### 4.0 **DEFINITIONS.**

4.1 **Consent Orders.** Consent Cease and Desist Order No. CCC-13-CD-03 and Consent Restoration Order No. CCC-13-RO-03 are referred to in this document as Consent Orders.

4.2 **The Property.** The Property that is the subject of these Consent Orders is described as follows:

The property located at 8301 Hollister Avenue, Goleta, Santa Barbara County, California, which is also identified by Santa Barbara County Assessor's Parcel Numbers ("APN"): 0079-200-012, and 0079-200-013. The Unpermitted Development occurred on/near the East Terrace located on APN 0079-200-013.

4.3 **Unpermitted Development.** All "Development", as that term is defined in the Coastal Act (PRC Section 30106), that has occurred on the Property and required authorization pursuant to the Coastal Act, but for which no such authorization was obtained, and/or development



inconsistent with CDP No. 4-85-343, including, but not necessarily limited to: installation and placement of non-native landscaping, geo-fabric, *Eucalyptus* wood chips, and an above ground irrigation system; creation of a private wedding and event venue located directly on top of a known archaeological site and an area that was designated as a “natural area” and an “archaeologically sensitive zone” by CDP No. 4-85-343; grading; removal of major vegetation, including southern maritime chaparral (from the top of the East Terrace (defined below in Section 4.6), the East Terrace’s southeastern slope, and the equestrian trail that connects the beach area to the top of the East Terrace), and *Eucalyptus* trees that provide habitat for raptors and potential habitat for Monarch butterfly (on the top and slopes of the East Terrace); failure to develop and implement the “Signs and Interpretive Facilities” Program, as required by Special Condition 10 of CDP 4-85-343; and the placement of a gate that tends to deter use of a public access and equestrian trail.<sup>2</sup>

- 4.4 **Unpermitted Items.** Physical items and materials placed, or allowed to come to rest, on the Property as a result of Unpermitted Development that are subject to removal, including but not limited to: non-native landscaping including sod and *Eucalyptus* wood chips, the above ground irrigation system, and the gate that tends to deter use of a public access and equestrian trail.<sup>3</sup>
- 4.5 **Restoration Area.** The area that was impacted by the Unpermitted Development which includes the location of the non-native landscaping, the geo-fabric, the *Eucalyptus* wood chips, the above ground irrigation system, grading, and the removal major vegetation on the East Terrace (defined in the Section 4.6) and its slope.
- 4.6 **East Terrace.** The East Terrace is located on the east rim of Tecolote Canyon, in the southeastern corner of the Property, and is also the locale of archaeological site SBa-71.
- 4.7 **Resource Specialist.** A professional who has experience successfully completing restoration and revegetation (using California native plant

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<sup>2</sup> This list of specific violations is not necessarily a complete list of all development on the Property that is in violation of the Coastal Act and/or that may be of concern to the Commission. Accordingly, Commission’s silence regarding (or failure to address) other unpermitted development on the Property is not indicative of the Commission’s acceptance of, or acquiescence in, any such development.

<sup>3</sup> Respondents may propose, for the review and approval of the Executive Director, in the Public Access Signage Plan (Section 5.7, below) the installation of bollards spaced far enough apart to not effect public access or equestrian use and appropriate public access signage so as to prevent unauthorized vehicular passage on the public access and equestrian trail.

species) of coastal bluffs and chaparral habitats in the Santa Barbara County area.

- 4.8 **Archaeological Specialist.** A professional archaeologist who has experience in cultural and archaeological field work in coastal Santa Barbara County. The archaeologist must be selected in consultation with Native American monitors with ancestral ties to the area appointed consistent with the standards of the Native American Heritage Commission (“NAHC”), including a monitor from the Chumash tribal group (“Native American monitor”), and the Most Likely Descendent (“MLD”) from said tribal group. The Restoration Plan shall identify the archaeologist and include a description of their education, training, and experience.
- 4.9 **Persons Subject to the Consent Orders.** BRS Investment Properties; SB Luxury Resort LLC; and all their owners, successors, assigns, employees, agents, contractors, and any persons or entities acting in concert with any of the foregoing (collectively referred to as ‘Respondents’). All entities, collectively referred to as ‘Respondents’, will be held joint and severally liable for all of the obligations in these Consent Orders.

## 5.0 **RESTORATION PLAN**

These Consent Orders require the preparation and implementation of a Restoration Plan, as defined below, to govern the removal of all Unpermitted Items, and the restoration of impacted areas on the Property.

### 5.1 **Required Elements.**

Within 90 days of issuance of these Consent Orders, Respondents shall submit, for the review and approval of the Commission’s Executive Director, a Cultural Materials, Erosion Control, Removal, Revegetation, Public Access Signage, Mitigation, and Monitoring Plan (“Restoration Plan”). The Restoration Plan shall set forth the measures Respondents propose to use to remove Unpermitted Items subject to these Consent Orders, restore the topography as prescribed in Sections 5.6 F, G and H, restore and revegetate the Restoration Area, implement a Public Access Signage Plan, mitigate for the temporal loss of habitat impacted by the Unpermitted Development, and monitor the site to ensure that such work has been successful. The Restoration Plan shall therefore contain the following components: (1) a Cultural Materials Plan; (2) an Erosion Control Plan; (3) Removal Plan; (4) a Revegetation Plan; (5) a Public Access Signage Plan; (6) a Mitigation Plan; and (7) a Monitoring Plan. The Restoration Plan shall address all development specifically described

in Section 4.3. The Restoration Plan shall also require that all work performed be consistent with the applicable State of California Office of Historic Preservation standards for archaeological work and be performed in a manner that is most protective of any and all cultural materials, including but not limited to cultural midden and midden deposits, human remains, and archaeological features on the Property.

**5.2 General Provisions.**

- (A) The Restoration Plan shall outline all proposed removal activities, in accordance with Section 5.5, below; all proposed restoration of the mixed coastal bluff scrub, sage scrub, and coastal prairie habitat, including all proposed revegetation activities, in accordance with Section 5.6 below; the implementation of public access signage, in accordance with Section 5.7; all mitigation activities, in accordance with Section 5.8, below, and all proposed monitoring activities, in accordance with Section 5.9.
- (B) The Restoration Plan and any reports or revisions prepared pursuant to the Restoration Plan or the terms of these Consent Orders shall be prepared by a qualified Resource Specialist and a qualified Archaeological Specialist, as defined in Sections 4.7 and 4.9, respectively, and collectively referred to herein as "Specialists". Prior to the preparation of the Restoration Plan, Respondents shall submit for the Executive Director's review and approval the qualifications of the proposed Specialists, including a description of the proposed Specialists' educational background, training, and experience related to the preparation and implementation of the Restoration Plan described herein. If the Executive Director determines that the qualifications of Respondents' Specialist(s) are not adequate to conduct such restoration work, he shall notify Respondents and, within 10 days of such notification, Respondents shall submit for the Executive Director's review and approval a different Specialist(s).
- (C) The Restoration Plan shall include a schedule/timeline of activities, the procedures to be used, and identification of the parties who will be conducting the restoration activities. The schedule/timeline of activities covered by the Restoration Plan shall be in accordance with the deadlines included in Sections 5.3, 5.4, 5.5, 5.6, 5.7, 5.8 and 5.9 for the consideration of Cultural Materials Plan, Erosion Control Plan, Removal Plan, Revegetation Plan, Public Access Signage Plan, Mitigation Plan, and Monitoring Plan, respectively.

- (D) The Restoration Plan shall include a detailed description of all equipment to be used. All tools utilized shall be hand tools, unless the Specialist demonstrates to the satisfaction of the Executive Director that other mechanized equipment, such as equipment used to import and spread soil pursuant to Section 5.6(G)(1), is needed and will not impact resources protected under the Coastal Act, including, but not limited to: geological stability, integrity of landforms, freedom from erosion, and the native vegetation. The Restoration Plan shall include limitations on the hours of operations for all equipment and a contingency plan that addresses, at a minimum: 1) impacts from equipment use, including disruption of areas where revegetation and/or mitigation will occur, and responses thereto; 2) any potential water quality impacts; and in the event the Executive Director determines the use of mechanized equipment is necessary, 3) potential spills of fuel or other hazardous releases that may result from the use of mechanized equipment and responses thereto. The Restoration Plan shall designate areas for staging of any construction equipment and materials, including receptacles and temporary stockpiles of graded materials, all of which shall be covered on a daily basis.
- (E) The Restoration Plan shall specify the methods to be used during and after restoration to stabilize the soil and make it capable of supporting native vegetation. Such methods shall not include the placement of retaining walls or other permanent structures, grout, geogrid or similar materials. Any soil stabilizers identified for erosion control shall be compatible with native plant recruitment and establishment. The Restoration Plan shall also include all measures that will be installed on the Property and maintained until the impacted areas have been revegetated to minimize erosion and the transport of sediment.
- (F) The Restoration Plan shall identify the location of the disposal site(s) for the off-site disposal of all removed materials to be disposed of and all waste generated during restoration activities pursuant to these Consent Orders. If a disposal site is located in the Coastal Zone and is not an existing sanitary landfill, a CDP is required for such disposal. All hazardous waste must be disposed of at a suitable licensed disposal facility.
- (G) The Restoration Plan shall identify the Restoration Area defined in Section 4.5, above. The Restoration Plan shall also state that prior to the initiation of any restoration or removal activities, the boundaries of the Restoration Area shall be physically delineated

in the field, using temporary measures such as fencing stakes, colored flags, or colored tape. The Restoration Plan shall state further that all delineation materials shall be removed when no longer needed and verification of such removal shall be provided in the annual monitoring report that corresponds to the reporting period during which the removal occurred.

### 5.3 Cultural Materials Plan.

- (A) Prior to the disposal of any materials from the East Terrace, the Archaeological Specialist shall identify, as best as possible, soil that may contain cultural materials and screen it for evidence of such materials. Any cultural materials, including cultural midden materials, human remains, and archaeological features, shall be documented and reburied during restoration, except for any human remains discovered during soil screening that is determined by the Archaeological Specialist, in consultation with the monitors and MLDs, to have been discovered in fill soil, which shall be treated in accordance with section 5.3(B), below. Any such documentation shall be included with the report described in Section 5.3(F), below.
- (B) If the origin of any human remains discovered during the soil screening described in Section 5.3(A), above, conducted pursuant to these Consent Orders, is determined by the Archaeological Specialist, in consultation with the monitors and MLDs, to be fill soil, the human remains shall be documented and reburied with any other human remains discovered in fill soil during soil screening in a location chosen in consultation with the monitors and MLDs. If human remains are encountered during soil screening, Respondents shall comply with all applicable State and Federal laws, including but not limited to, contacting the County Coroner, NAHC and the MLDs.
- (C) All identification of soil, soil screening, and restoration activities conducted pursuant to these Consent Orders shall be monitored by the Native American monitors, as well as the MLDs at the MLDs' discretion. In addition, the Native American monitors and the MLDs shall be provided access to the site to inspect the East Terrace prior to its restoration. The Native American monitors and MLDs may enter and move freely about the East Terrace portion of the Property on which the Unpermitted Development is located. If human remains are encountered during inspection of the East Terrace, Respondents shall comply with all applicable State and Federal laws, including but not limited to, immediately stopping all

work, and contacting the County Coroner, NAHC and the MLDs. Human remains shall be left in situ and shall be excavated only to the extent necessary for the archaeologist and County Coroner to make the necessary determination as to whether the bone is human and whether it represents a modern forensic case. Unless required by the County Coroner, subsequent human remains shall not be excavated unless excavation is necessary to determine whether they are human in origin, and the extent of excavation shall be the minimum necessary to make the determination.

- (D) The Archaeological Specialist shall document any cultural materials, including cultural midden materials, human remains, and archaeological features encountered during the course of work conducted pursuant to these Consent Orders, and such documentation shall be included with the report described in Section 5.3(F), below.
- (E) Any disputes in the field regarding the discovery of any cultural midden materials, human remains or archaeological features arising among the Respondents, the Archaeological Specialist, and/or the Native American monitors or MLDs, shall be promptly reported to the Executive Director via telephone and the work shall be halted in the area(s) of dispute. Work may continue in area(s) not subject to dispute. Disputes shall be resolved by the Executive Director in consultation with the Native American monitors, the MLDs, the Archaeological Specialist, and Respondents. If disputes cannot be resolved by the Executive Director in a timely fashion, said disputes shall be reported to the Commission for resolution at the next regularly scheduled Commission meeting following the dispute.
- (F) The Archaeological Specialist shall document any cultural materials, including cultural midden materials, human remains, and archaeological features encountered during the course of work conducted pursuant to these Consent Orders, and such documentation shall be included in a report to the Executive Director within fifteen (15) days of any identification.

#### 5.4 Erosion Control Plan.

- (A) Respondents shall submit an Erosion Control Plan, prepared by a qualified Specialist, approved pursuant to Section 5.2(B), as part of the Restoration Plan, to address ground disturbance during any construction or restoration activities, and during the establishment of the vegetation planted pursuant to Section 5.6, below.

- (B) The erosion control measures shall be fully functional on the Restoration Area prior to or concurrent with the initial removal and restoration activities required by these Consent Orders, and maintained throughout the removal and restoration process to minimize erosion across the site and sedimentation of streams, tributaries, drains, and/or culverts.
- (C) The Erosion Control Plan shall: 1) include a narrative report describing all temporary run-off and erosion control measures to be used during removal/restoration activities; 2) identify and delineate on a site or grading plan the locations of all temporary erosion control measures; and 3) specify that the remedial grading work, removal work, and construction of the erosion control features shall take place only during the dry season (April 1-November 1). This period may be extended for a limited period pursuant to the provisions of Section 14.0, below.
- (D) All erosion control materials shall be comprised of bio-degradable materials and shall be removed from the Restoration Area once the permanent erosion control features are established.
- (E) The Erosion Control Plan shall indicate that Respondents shall commence implementation of the Erosion Control Plan within no more than fifteen (15) days of approval of the Restoration Plan and prior to conducting any removal or grading activities. Additionally, in those areas where erosion control measures may be immediately necessary, Respondents shall install said measures in a timely manner so as to avoid further resource impacts.

**5.5 Removal Plan.**

- (A) As part of the Restoration Plan, Respondents shall submit a Removal Plan, prepared by a qualified Specialist, approved pursuant to Section 5.2(B), to govern the removal and off-site disposal of all Unpermitted Items required to be removed pursuant to these Consent Orders.
  - (1) The Removal Plan shall include a site plan showing the location and identity of all Unpermitted Items to be removed from the Property.
- (B) The Removal Plan shall indicate that removal activities shall not disturb areas outside of the Restoration Area. Measures for the restoration of any area outside the Restoration Area disturbed by

the removal activities shall be included within the Revegetation Plan. These measures shall include the restoration of the areas from which the Unpermitted Development was removed, and any areas disturbed by those removal activities.

- (C) The Removal Plan shall indicate that Respondents shall commence removal of the Unpermitted Items by commencing implementation of the Removal Plan within no more than thirty (30) days of approval of the Restoration Plan.
- (D) All removal activities shall be consistent with Section 5.2, above and these Consent Orders.

#### 5.6 **Revegetation Plan.**

- (A) Respondents shall submit a Revegetation Plan, prepared by a qualified Specialist, as approved under Section 5.2(B), above, as part of the Restoration Plan, outlining the measures necessary to revegetate the Restoration Area, including the importation of soil to promote revegetation, consistent with the provisions of these Consent Orders.
- (B) The Revegetation Plan shall include detailed descriptions, including graphic representations, narrative reports, and photographic evidence of vegetation in the Restoration Area, prior to any Unpermitted Development undertaken in the Restoration Area, and the current state of the Restoration Area, submitted pursuant to requirements of Section 5.9(B)(1).
- (C) The Revegetation Plan shall demonstrate that the Restoration Area will be restored using plant species endemic to and appropriate for the area in which the Unpermitted Development occurred.
- (D) The Revegetation Plan shall include a detailed description of the methods that shall be utilized to restore the Restoration Area's habitat to a condition similar to a natural coastal bluff habitat in the Gaviota coast region. The Revegetation Plan shall also demonstrate that these methods will result in vegetation with a similar plant density, total cover, and species composition as that typical of undisturbed mixed coastal bluff, sage scrub, coastal prairie habitats. This section shall include a detailed description of reference site(s) including rationale for selection, location, species composition, and history of disturbance from fuel modification activities, fire, etc. The reference site(s) shall be located as close as possible to the Restoration Area, shall be similar in all relevant



respects, and shall provide the standard for measuring success of the restoration under these Consent Orders. This section shall explicitly describe the restoration goals and objectives for the revegetation. Based on these goals, the plan shall identify the species that are to be planted, and provide a rationale for and describe the size and number of container plants and the rate and method of seed application. The Revegetation Plan shall indicate that plant propagules and seeds must come from local, native stock of Santa Barbara County, and ideally from the Gaviota coast region.

- (1) The Revegetation Plan shall require that if plants, cuttings, or seed are obtained from a nursery, the nursery must certify that they are of local origin (Santa Barbara County) and are not cultivars. The Revegetation Plan shall provide specifications for preparation of nursery stock. Technical details of planting methods (e.g. spacing, mycorrhizal inoculation, etc.) shall be included in the Revegetation Plan.
- (E) The Revegetation Plan shall include a detailed description of the methods that shall be utilized to restore the Restoration Area to a condition similar to a natural coastal bluff habitat in the Gaviota region.
- (F) The Revegetation Plan shall demonstrate that vegetation can grow, and meet all success criteria and goals of these Consent Orders, with geo-fabric in place on the East Terrace to protect the site's cultural materials.
- (G) The Revegetation Plan shall specify the methods to be used during restoration to import the necessary soil to the Restoration Area. Prior to soil importation, the proposed soils must be evaluated and deemed adequate to support the type of vegetation that will be planted on them.
  - (1) In areas covered by geo-fabric on the top portion of the East Terrace, enough soil must be imported to sustain vegetation growth above the layer of geo-fabric.
- (H) As part of the Revegetation Plan, Respondents shall designate how soil fill will be contoured on the Restoration Area in order to help drain surface flow run-off water away from the bluff edge, towards the lower elevation located to the north of the Eastern Terrace.

The Revegetation Plan shall include sections showing original and finished grades, and a quantitative breakdown of fill amounts drawn to scale with contours.

- (I) The Revegetation Plan shall include a map showing the type, size, and location of all plant materials that will be planted in the Restoration Area; the location of all non-native plants to be removed from the Restoration Area; the topography of all other landscape features on the site; and the location of photographs of the Restoration Areas that will provide reliable photographic evidence for annual monitoring reports, as described in Section 5.9(B)(1), below.
- (J) The Revegetation Plans shall include a detailed explanation of the performance standards that will be utilized to determine the success of the restoration. The performance standards shall identify that 'x' native species appropriate to the habitat should be present, each with at least 'y' percent cover or with a density of at least 'z' individuals per square meter. The description of restoration success shall be described in sufficient detail to enable an independent specialist to duplicate it.
- (K) The Revegetation Plans shall include a schedule for installation of plants and removal of non-native plants, with the exception of existing *Eucalyptus* trees, from the Restoration Area and Mitigation Area. Respondents shall not employ non-native plant species, which could supplant native plant species in the Restoration Area.
  - (1) If the planting schedule requires planting to occur at a certain time of year beyond deadlines set forth herein, the Executive Director may, at the written request of Respondents, extend the deadlines as set forth in Section 14.0 of these Consent Orders in order to achieve optimal growth of the vegetation.
  - (2) The Revegetation Plan shall demonstrate that all non-native vegetation, with the exception of existing *Eucalyptus* trees, within the Restoration Area will be eradicated prior to any removal and revegetation activities within the Restoration Area. In addition, the Revegetation Plan shall specify that non-native vegetation removal shall occur year round, including on a monthly basis during the rainy season (November through April) for the duration of the restoration project.

- (3) Native plants already approved by Commission Staff biologist include: Motilija Poppy, White Sage, Black Sage, Succulent Dudleya sp., Coastal Prairie species such as native bunch grasses and wildflowers, Coastal Sage Scrub such as Deer Weed, Californica Encelia, Poison Oak, and native Creeping Coyote Bush.
  
- (L) The Revegetation Plan shall describe the proposed use of artificial inputs, such as irrigation, fertilizer or herbicides, including the full range of amounts of the inputs that may be utilized. The minimum amount necessary to support the establishment of the plantings for successful restoration shall be utilized. The Revegetation Plan shall specify that no permanent irrigation system is allowed in the Restoration Area. The Revegetation Plan may provide that temporary, above-ground irrigation to provide for the establishment of plantings is allowed for a maximum of three (3) years or until the revegetation has become established, whichever comes first. Respondents must ensure that if temporary, above-ground irrigation is utilized, all of the system's lines and connections are operated, maintained, and monitored to avoid line breaks, leaks, or any other incident that could cause the release of water, unless specifically intended for appropriate irrigation of the Restoration Area.
  - (1) If, after the three (3) year time limit, the vegetation planted pursuant to the Revegetation Plan has not become established, the Executive Director may, upon receipt of a written request from Respondents, allow for the continued use of the temporary irrigation system. The written request shall outline the need for and duration of the proposed extension.
  
- (M) The Revegetation Plan shall specify that Respondents shall commence revegetation by implementing the Revegetation Plan no more than forty-five (45) days after approval of the Restoration Plan.

#### 5.7 Public Access Signage Plan.

- (A) Within ninety (90) days of the effective date of these Consent Orders, Respondents shall submit, for the review and approval of the Commission's Executive Director, a Public Access Signage Plan that is both consistent with Special Condition 10 of CDP 4-86-343 and serves to mitigate the loss of public access resulting

from the failure to comply with this permit condition. The Public Access Signage Plan shall include a system of signs, which clearly direct the public to and mark the location of public accessways and parking areas, and an interpretive sign program providing, through photographs, diagrams, and text, educational information about the physical and biological features of the Property and surrounding Gaviota coast.

- (B) At a minimum, The Public Access Signage Plan shall demonstrate that access signs shall be located so they are visible to a person facing: westbound on Hollister Avenue, east of Cathedral Oaks Road; westbound on Hollister Avenue, west of Cathedral Oaks Road, adjacent to Venoco Ellwood Onshore Facility; and westbound on Hollister Avenue marking the entrance to the public access parking lot. In addition, the Public Access Signage Plan shall include that placement of an interpretive map sign located in a conspicuous location near the trail head at the public parking lot, noting all public access paths throughout the Property; and a sign in the public parking lot giving clear direction to the public trail to Haskell's Beach and other public areas, and making it apparent that the trails are open and available to the public.
- (1) Respondents shall obtain approval from relevant land owners and/or public agencies prior to the placement of public access and interpretive signs not located on Respondents' property. In the event such approval cannot be obtained, Respondents shall submit a revised Public Access Signage Plan proposing alternate signage on the Property or at locations within public rights of way where such approval is available.
- (2) All public access and interpretive signs shall be distinct from those used by the Bacara Resort for private activities. The public signs shall clearly display the standard "Coastal Access Logo" with acknowledgement of the Commission's role in creating the public signs and public trails.
- (C) At a minimum, The Public Access Signage Plan shall demonstrate that interpretive signs shall be placed conspicuously throughout the public trail system describing: native plant habitat, coastal bluff habitat, sandy beach/rocky intertidal habitat, and the historical presence and cultural significance of Chumash on the Property and in Santa Barbara County, provided that such mention shall be general and shall not indicate the presence or location of cultural

artifacts on the site. In addition, the Public Access Signage Plan shall demonstrate that:

- (1) All trails throughout the public trail system shall have in place, every 75 feet, posts that are adorned with coastal access medallions displaying the standard Coastal Access Logo. These posts shall serve to assure members of the public they are walking on public access trails.
  - (2) The public bathrooms located on Haskell's Beach shall be marked with signs designating that they are open and available to the public. Additionally, the bathrooms shall be opened and maintained all days of the week, but shall be closed and locked during night time hours.
  - (3) The snack bar located at Haskell's Beach shall be marked with signs designating that they are open and available to the public when open to any customer. The snack bar shall remain appropriately stocked to serve customers and open at all reasonable hours, at a minimum during all days between Memorial Day and Labor Day, and Holiday weeks such as Christmas and Spring Break, and Holiday weekends.
  - (4) All existing, deteriorating signs and signs that give the impression that public areas are not available and/or that public areas are only for private use, shall be removed.
- (D) The Public Access Signage Plan shall include a map with the proposed locations of all public signs, the location of all deteriorated and/or misleading signs to be removed, and detailed descriptions and graphic representations of the proposed signs.
- (E) The Public Access Signage Plan shall be consistent with all the terms and conditions of the Restoration Plan and these Consent Orders.
- (F) Within sixty (60) days of approval by the Executive Director of The Restoration Plan, Respondents shall fully implement the Public Access Signage Plan consistent with all of its terms, and the terms set forth herein.

#### 5.8 Mitigation Plan.

- (A) Within ninety (90) days of the effective date of these Consent Orders, Respondents shall submit, for the review and approval of the Commission's Executive Director, a plan to mitigate for the temporal loss of native habitat on the Property caused by the Unpermitted Development ("Mitigation Plan"). The Mitigation Plan shall be implemented consistent with all the terms of the Restoration Plan, including the Cultural Materials Plan.
- (B) The Mitigation Plan shall contain a map overlain with the dimensions of the area impacted by each element of Unpermitted Development, and the dimensions of each proposed area of mitigation. Respondents shall additionally provide the aerial extent of each element calculated in square footage.
  - (1) The Mitigation Plan shall provide site and resource-specific mitigation for each distinct area of disturbance at a ratio of 3:1 (mitigation provided: damaged resources). If Respondents demonstrate to the satisfaction of the Executive Director that there are not sufficient areas on the Property, excluding the areas developed in accordance with CDP 4-85-343 as amended, which are in need of re-establishment of native vegetation, Respondents shall propose that the balance of the required square footage of mitigation be established in areas upon public lands or land held subject to a Conservation Easement on and lying within Coastal Santa Barbara County as proximate the Property as is practicable. .
- (C) Respondents shall begin implementation of the Mitigation Plan within forty-five (45) days of approval of the Restoration Plan by the Executive Director, and shall complete all elements of the Mitigation Plan based upon the deadlines provided in the Plan, but in any case no later than ninety (90) days from the approval of the Plan by the Executive Director.

**5.9 Monitoring Plan.**

- (A) The Restoration Plan shall indicate that Respondents shall submit a Monitoring Plan, as part of the Restoration Plan, that describes the monitoring and maintenance methodology, including sampling procedures, sampling frequency, and contingency plans to address potential problems with restoration activities or unsuccessful restoration of the area. The Monitoring Plan shall specify that the Resource Specialist shall conduct at least four site visits annually for the duration of the monitoring period set forth in Section

5.9(B), at intervals specified in the Restoration Plan, for the purposes of inspecting and maintaining, at a minimum, the following: all erosion control measures; non-native species eradication; trash and debris removal; and the health and abundance of existing vegetation and/or vegetation planted under these Consent Orders pursuant to the Revegetation and Mitigation Plans.

- (B) The Monitoring Plan shall provide that Respondents shall submit, on an annual basis and during the same one-month period of each year (no later than December 31<sup>st</sup> of the first year), for five (5) years from the completion of implementation of the Revegetation Plan, according to the procedure set forth under Section 6.1, a written report, for the review and approval of the Executive Director, prepared by the Resource Specialist, evaluating compliance with the approved Restoration Plan. The Monitoring Plan shall specify that these reports shall also include photographs taken during the periodic site inspections pursuant to 5.9(A) above, at the same time of year, from the same pre-designated locations (as identified on the map submitted pursuant to Section 5.6(I)) indicating the progress of recovery in the Restoration Area.
- (1) The Monitoring Plan shall require that the locations from which the photographs are taken not change over the course of the monitoring period unless recommended changes are approved by the Executive Director, pursuant to Section 7.0 of these Consent Orders.
- (C) If periodic inspections or the monitoring reports indicate that the restoration project or a portion thereof is not in conformance with the Restoration Plan, or these Consent Orders, or has failed to meet the goals and/or performance standards specified in the Restoration Plan, Respondents shall submit a revised or supplemental Restoration Plan ('Revised Restoration Plan') for review and approval by the Executive Director. The Monitoring Plan shall require that the Revised Restoration Plan shall be prepared by a qualified Specialist, approved by the Executive Director, and shall specify measures to correct those portions of the restoration that have failed or are not in conformance with the original, approved Restoration Plan, or these Consent Orders. The Monitoring Plan shall specify that the Executive Director will then determine whether the revised Restoration Plan must be processed as a modification of these Consent Orders, a new Restoration Order, or a new or amended CDP. The Monitoring Plan shall provide that after the Revised Restoration Plan has been approved, these

measures, and any subsequent measures necessary to carry out the original, approved Restoration Plan, shall be undertaken by Respondents as required by Executive Director until the goals of the original, approved Restoration Plan have been met. The Monitoring Plan shall state that following completion of the Revised Restoration Plan's implementation, the duration of the monitoring period, set forth in Section 5.9(B), shall be extended for at least a period of time equal to that during which the project remained out of compliance, but in no case less than two annual reporting periods.

- (D) At the end of the five (5) year monitoring period (or other duration, if the monitoring period is extended pursuant to Section 5.9(C), above), Respondents shall submit, according to the procedure set forth under Section 6.1, a final detailed report prepared by a Resource Specialist for the review and approval of the Executive Director.
  - (1) If this report indicates that the restoration has in part, or in whole, been unsuccessful, based on the requirements of the approved Restoration Plans, Respondents shall submit a Revised Restoration Plan, in accordance with the requirements of Section 5.9(C) of the Consent Orders, and the monitoring program shall be revised according to the requirements of these Consent Orders.

5.10 Respondents shall coordinate with Archaeologist Specialist and Native American Observer prior to and in conjunction with the preparation of the Restoration Plan.

## 6.0 Implementation and Completion

- (A) Upon approval of the Restoration Plan (including the Cultural Material, Erosion Control, Removal, Revegetation, Public Access Signage, Mitigation, and Monitoring Plan) by the Executive Director, Respondents shall fully implement each phase of the Restoration Plan consistent with all of its terms, and the terms set forth herein. Respondents shall complete all work described in the Restoration Plan no later than ninety (90) days after the Restoration Plan is approved. In the event of heavy rains or storms, Respondents may request, pursuant to Section 14.0, an extension of this deadline, to ensure successful restoration.
- (B) Within thirty (30) days of the completion of the work described pursuant to each phase (cultural materials, erosion control,



removal, revegetation, public access signage, mitigation, and monitoring) of restoration, Respondents shall submit, according to the procedures set forth under Section 6.1, a written report, prepared by a qualified Specialist, for the review and approval of the Executive Director, documenting all restoration work performed on the Property pursuant to the specific component of the Restoration Plan. This report shall include a summary of dates when work was performed and photographs taken from the pre-designated locations (as identified on the map submitted pursuant to Section 5.6(I)) documenting implementation of the respective components of the Restoration Plan, as well as photographs of the Property before the work commenced and after it was completed.

- 6.1 All plans, reports, photographs and other materials required by these Consent Orders shall be sent to:

California Coastal Commission  
Statewide Enforcement Unit  
Attn: Maggie Weber  
45 Fremont Street, Suite 2000  
San Francisco, CA 94105-2219

With a copy sent to:

California Coastal Commission  
Southern California Enforcement Unit  
Attn: N. Patrick Veasart  
89 S. California Street, Suite 200  
Ventura, California 93001

#### **ADDITIONAL PROVISIONS COMMON TO BOTH CONSENT ORDERS**

- 7.0 **Revision of Deliverables.** The Executive Director may require revisions to deliverables under these Consent Orders, and Respondents shall revise any such deliverables consistent with the Executive Director's specifications, and resubmit them for further review and approval by the Executive Director, by the deadline established by the modification request from the Executive Director.
- 8.0 **Commission Jurisdiction.** The Commission has jurisdiction over resolution of these alleged Coastal Act violations pursuant to PRC Section 30810 and 30811. Respondents agree not to contest the Commission's jurisdiction to issue or enforce these Consent Orders.

- 9.0 **Resolution of Matter Via Settlement.** In light of the intent of the parties to resolve these matters in settlement, Respondents have not submitted a “Statement of Defense” form as provided for in Section 13181 and 13191 of Title 14 of the California Code of Regulations (“14 CCR”) and have agreed not to contest the legal and factual bases, the terms, or the issuance of these Consent Orders, including the allegations of Coastal Act violations contained in the “Notification of Intent to Record a Notice of Violation of the Coastal Act and to Commence Cease and Desist Order and Restoration Order Proceedings” dated December 13, 2012. Specifically, Respondents have agreed not to contest the issuance or enforcement of these Consent Orders at a public hearing or any other proceeding. In the interest of expeditious settlement of this issue, BRS Investment Properties, LLC has agreed not to contest commencement of proceedings to issue these Consent Orders without first receiving a formal written notice of intent to commence cease and desist order and restoration order proceedings pursuant to 14 CCR Sections 13181 and 13191, respectively.
- 10.0 **Recordation of Notice.** Respondents do not object to recordation by the Executive Director of a notice of violation, pursuant to PRC Section 30812(b). Accordingly, a notice of violation will be recorded after issuance of these Consent Orders. No later than thirty days after the Commission determines that Respondents have fully complied with these Consent Orders, and has received from Respondents the rescission fee required by the County Recorder’s Office, the Executive Director shall record a notice of rescission of the notice of violation, pursuant to PRC Section 30812(f). The notice of rescission shall have the same effect as a withdrawal or expungement under Section 405.61 of the Code of Civil Procedure.
- 11.0 **Effective Date and Terms of the Consent Orders.** The effective date of these Consent Orders is the date these Consent Orders are approved by the Commission. These Consent Orders shall remain in effect permanently unless and until rescinded by the Commission.
- 12.0 **Findings.** These Consent Orders are issued on the basis of the findings adopted by the Commission, as set forth in the document entitled “Staff Report and Findings for Consent Cease and Desist Order No. CCC-13-CD-03 and Consent Restoration Order No. CCC-13-RO-03.” The activities authorized and required in these Consent Orders are consistent with the resource protection policies set forth in Chapter 3 of the Coastal Act. The Commission has authorized the activities required in these Consent Orders as being consistent with the resource protection policies set forth in Chapter 3 of the Coastal Act.
- 13.0 **Settlement/Compliance Obligation.**
- 13.1 In light of the intent of the parties to resolve these matters in settlement, Respondents have agreed to pay a monetary settlement in the amount of

\$575,000.00. The settlement monies shall be deposited into the Violation Remediation Account of the California Coastal Conservancy Fund (see Public Resources Code Section 30823) with a check made out to the Violation Remediation Account, or into such other public account as authorized by applicable California law at the time of the payment, and as designated by the Executive Director, with a check made out to that account. The settlement payment shall be submitted to the Commission's San Francisco Office, at the address provided in Section 6.1, to the attention of Maggie Weber of the Commission, by July 1, 2013. Settlement payments shall include a reference to the numbers of these Consent Orders.

- 13.2 Strict compliance with these Consent Orders by all parties subject thereto is required. Respondents intend to take responsibility for the violations alleged in Section 4.3, above, and also agree to obtain all necessary permissions (access, etc.) to conduct and complete the work required to resolve the violations addressed herein. Respondents, employees and agents, and any person acting in concert with any of the foregoing are jointly and severally subject to all the requirements of these Consent Orders. Respondents agree to undertake the work required herein, and agree to cause their current and future employees and agents, and any contractors performing any of the work contemplated or required herein, and any persons acting in concert with any of these entities to comply with the terms and conditions of these Consent Orders.
- 13.3 Failure to comply with any term or condition of these Consent Orders, including any deadline contained in these Consent Orders, unless the Executive Director grants an extension under Section 14.0, will constitute a violation of these Consent Orders and shall result in Respondents being liable for stipulated penalties in the amount of \$1,000 per day per violation. Respondents shall pay stipulated penalties regardless of whether Respondents have subsequently complied. If Respondents violate these Consent Orders, nothing in this agreement shall be construed as prohibiting, altering, or in any way limiting the ability of the Commission to seek any other remedies available for the violations addressed herein, including imposition of civil penalties and other remedies pursuant to Public Resources Code Sections 30820, 30821.6, and 30822 as a result of the lack of compliance with the Consent Orders and for the underlying Coastal Act violations described herein.
- 14.0 **Deadlines.** Prior to the expiration of the deadlines established by these Consent Orders, Respondents may request from the Executive Director an extension of the deadlines. Such a request shall be made in writing and received by the Executive

Director 10 days in advance of the deadline, and directed to the Executive Director, care of Maggie Weber, in the San Francisco office of the Commission. The Executive Director may grant an extension of deadlines upon a showing of good cause, if the Executive Director determines that Respondents have diligently worked to comply with their obligations under these Consent Orders, but cannot meet deadlines due to unforeseen circumstances beyond their control.

- 15.0 **Severability.** Should any provision of these Consent Orders be found invalid, void or unenforceable, such illegality or unenforceability shall not invalidate the whole, but the Consent Orders shall be construed as if the provision(s) containing the illegal or unenforceable part were not a part hereof.
- 16.0 **Site Access.** Respondents shall provide access to the Property at all reasonable times to Commission staff and any other agency having jurisdiction over the work being performed under these Consent Orders. Nothing in these Consent Orders is intended to limit in any way the right of entry or inspection that any agency may otherwise have by operation of any law. The Commission staff may enter and move freely about the portions of the site on which the violations are located, and on adjacent areas of the Property for purposes, including, but not limited to: viewing the areas where development is being performed pursuant to the requirements of these Consent Orders; inspecting records, operating logs, and contracts relating to the site; and overseeing, inspecting, and reviewing the progress of Respondents' implementation of the Restoration Plan and compliance with these Consent Orders.
- 17.0 **Government Liabilities.** Neither the State of California, the Commission, nor its employees shall be liable for injuries or damages to persons or property resulting from acts or omissions by Respondents in carrying out activities pursuant to these Consent Orders, nor shall the State of California, the Commission or its employees be held as a party to any contract entered into by Respondents or their agents in carrying out activities pursuant to these Consent Orders.
- 18.0 **Settlement via Consent Orders.** In light of the desire to settle this matter via these Consent Orders and avoid litigation, pursuant to the agreement of the parties as set forth in these Consent Orders, Respondents hereby agree not to seek a stay pursuant to PRC Section 30803(b) or to challenge the issuance and enforceability of these Consent Orders in a court of law or equity.
- 19.0 **Settlement of Claims.** The Commission and Respondents agree that these Consent Orders settle the Commission's monetary claims for relief from Respondents for the violations alleged in the NOI, occurring prior to the date of these Consent Orders, (specifically including claims for civil penalties, fines, or damages under the Coastal Act, including under PRC Sections 30805, 30820, and 30822), with the exception that, if Respondents fail to comply with any term or condition of these Consent Orders, the Commission may seek monetary or other

claims for both the underlying violations of the Coastal Act and for the violation of these Consent Orders. In addition, these Consent Orders do not limit the Commission from taking enforcement action due to Coastal Act violations on the Property beyond those that are the subject of the NOI.

- 20.0 **Successors and Assigns.** These Consent Orders shall run with the land, binding Respondents, including successors in interest, heirs, assigns, and future owners of the Property. Respondents agree that they will provide notice to all successors in interest, heirs, assigns, and potential purchasers of the Property of any remaining obligations under these Consent Orders. These Consent Orders are also a personal legal obligation and, Respondents are responsible for the work required by these Consent Orders without regard to the ownership of the Property.
- 21.0 **Modifications and Amendments.** Except as provided in Section 7.0, and for other minor, non-substantive modifications, subject to agreement between the Executive Director and Respondents, these Consent Orders may be amended or modified only in accordance with the standards and procedures set forth in Section 13188(b) and Section 13197 of Title 14 of the California Code of Regulations.
- 22.0 **Government Jurisdiction.** These Consent Orders shall be interpreted, construed, governed, and enforced under and pursuant to the laws of the State of California.
- 23.0 **Limitation of Authority.**
- 23.1 Except as expressly provided herein, nothing in these Consent Orders shall limit or restrict the exercise of the Commission's enforcement authority pursuant to Chapter 9 of the Coastal Act, including the authority to require and enforce compliance with these Consent Orders.
- 23.2 Correspondingly, Respondents have entered into these Consent Orders and waived their right to contest the factual and legal bases for issuance of these Consent Orders, and the enforcement thereof according to its terms. Respondents have agreed not to contest the Commission's jurisdiction to issue and enforce these Consent Orders.
- 24.0 **Integration.** These Consent Orders constitute the entire agreement between the parties and may not be amended, supplemented, or modified except as provided in these Consent Orders.
- 25.0 **Certification of Authority.** The person who signs this document on behalf of BRS Investment Properties, LLC attests that he has the legal authority to bind BRS Investment Properties, LLC and Bacara Resort and Spa, and represents that the aforementioned party owns all properties subject to this action. The person

who signs this document on behalf of SB Luxury Resort, LLC attests that he has the legal authority to bind SB Luxury Resort, LLC.

- 26.0 **Stipulation.** Respondents and their representatives attest that they have reviewed the terms of these Consent Orders and understand that their consent is final and stipulate to its issuance by the Commission.

IT IS SO STIPULATED AND AGREED:

On behalf of Respondents:

\_\_\_\_\_  
Kory Kramer, Executive Manager  
BRS Investment Properties, LLC  
Owner, Bacara Resort and Spa

\_\_\_\_\_  
Date

\_\_\_\_\_  
Chris Smith, Executive Manager  
SB Luxury Resort, LLC

\_\_\_\_\_  
Date

Executed in \_\_\_\_\_ on behalf of the California Coastal Commission:

\_\_\_\_\_  
Charles Lester, Executive Director

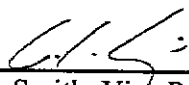
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Date

who signs this document on behalf of SB Luxury Resort, LLC attests that he has the legal authority to bind SB Luxury Resort, LLC.

- 26.0 **Stipulation.** Respondents and their representatives attest that they have reviewed the terms of these Consent Orders and understand that their consent is final and stipulate to its issuance by the Commission.

IT IS SO STIPULATED AND AGREED:  
On behalf of Respondents:

\_\_\_\_\_  
Kory Kramer, Vice President  
BRS Investment Properties, LLC  
Owner, Bacara Resort and Spa

  
\_\_\_\_\_  
Chris Smith, Vice President  
SB Luxury Resort, LLC

Executed in \_\_\_\_\_ on behalf of the California Coastal Commission:

\_\_\_\_\_  
Charles Lester, Executive Director

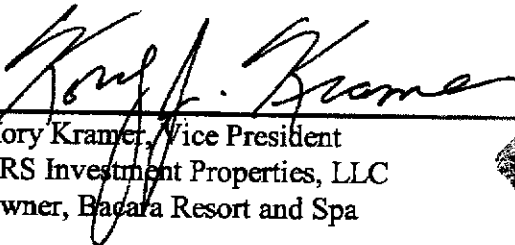
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Date

who signs this document on behalf of SB Luxury Resort, LLC attests that he has the legal authority to bind SB Luxury Resort, LLC.

26.0 **Stipulation.** Respondents and their representatives attest that they have reviewed the terms of these Consent Orders and understand that their consent is final and stipulate to its issuance by the Commission.

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On behalf of Respondents:

  
Kory Kramer, Vice President  
BRS Investment Properties, LLC  
Owner, Bacara Resort and Spa

Chris Smith, Vice President  
SB Luxury Resort, LLC

Executed in \_\_\_\_\_ on behalf of the California Coastal Commission:

Charles Lester, Executive Director

\_\_\_\_\_  
Date





Exhibit 1  
CCC-13-CD-03 & CCC-13-RO-03  
(Bacara Resort & Spa)





**Aerial Photograph of Bacara Resort and Spa, 2001**

Exhibit 2  
CCC-13-CD-03 & CCC-13-RO-03  
(Bacara Resort & Spa)  
(East Terrace)  
Page 1 of 1



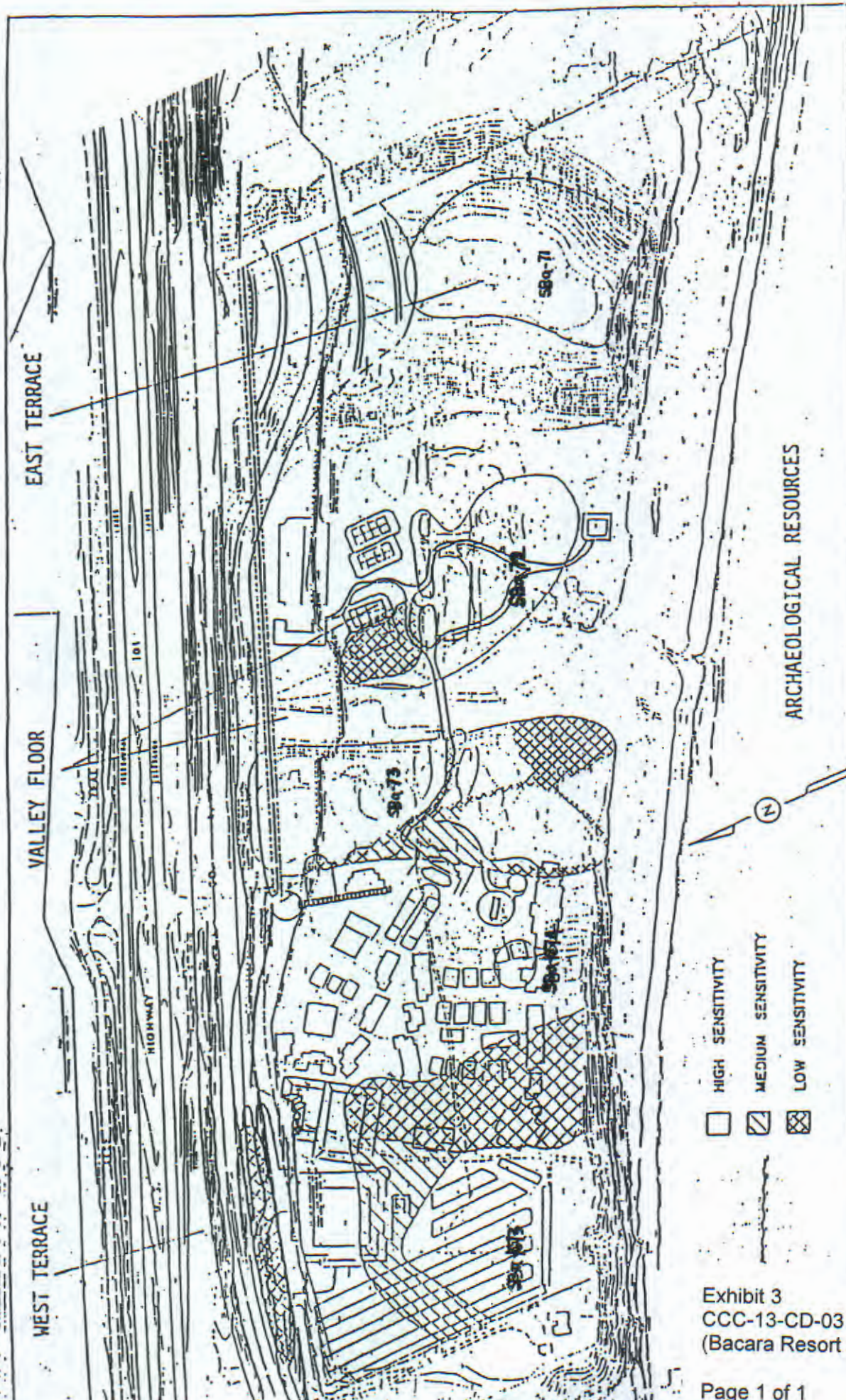


Exhibit 3  
 CCC-13-CD-03 & CCC-13-RO-03  
 (Bacara Resort & Spa)





**Locations of Unpermitted Development at Bacara Resort and Spa  
Photograph, 2001**

**“Unpermitted Development” = X**

Exhibit 4  
CCC-13-CD-03 & CCC-13-RO-03  
(Bacara Resort & Spa)



State of California, George Deukmejian, Governor

California Coastal Commission  
SOUTH CENTRAL COAST AREA  
925 De La Vina Street  
Santa Barbara, CA 93101  
(805) 963-6871

FILED:	<u>11-04-85</u>
49TH DAY:	<u>12-23-85</u>
180TH DAY:	<u>5-03-86</u>
STAFF:	<u>Capelli/Ray</u>
STAFF REPORT:	<u>3-04-86</u>
HEARING DATE:	<u>3-14-86</u>

PROJECT DESCRIPTION

APPLICATION NUMBER: 4-85-343

APPLICANT: Wallover, Inc. and Hyatt Hotels Corp.

PROJECT: Hotel and conference center with 400 guest rooms, 53,350 square feet of conference space, 22,400 square feet of restaurant and bar facilities (686 seat capacity), outdoor patios and pools, and a 19,800 square foot health club and spa.

SITE: Haskell's Beach, .5 miles west of the intersection of US 101 and Hollister Avenue, Goleta, Santa Barbara County.

PRELIMINARY CALENDAR: Adoption of Findings

COMMISSIONERS ELIGIBLE TO VOTE: Garrett, King, MacElvaine, Malcolm, McInnis, McMurray, Wornum, Warren, Wright

STAFF NOTE: On December 19, 1985 the Commission, by a vote of 11 in favor, 0 opposed, approved a coastal development permit with conditions for the project. Because the Commission's action varied substantially from the Staff recommendation, it has been necessary to revise the findings previously proposed by the staff to reflect the Commission's action.

I. COMMISSION ACTION

The Commission adopts the following resolution:

APPROVAL WITH CONDITIONS

The Commission hereby grants, subject to the conditions below, a permit for the proposed development on the grounds that the development, as conditioned, will be in conformity with the provisions of Chapter 3 of the California Coastal Act of 1976, will not prejudice the ability of the local government having jurisdiction over the area to prepare a Local Coastal Program conforming to the provisions of Chapter 3 of the Coastal Act, is located between the sea and the first public road nearest the shoreline and is in conformance with the public access and recreation policies of 3 of the Coastal Act, and will not have any significant adverse impacts on the environment within the meaning of the California Environmental Quality Act.

STANDARD CONDITIONS: (See Attachment A)



Exhibit 5  
CCC-13-CD-03 & CCC-13-RO-03  
(Bacara Resort & Spa)



## II. SPECIAL CONDITIONS

This permit is subject to the following conditions:

1. Hostel Contribution. In accordance with the Santa Barbara County conditions of approval, the applicant shall make a fair share contribution of funds for the establishment of a regional hostel. The amount of funds will be determined by the Resource Management Department of Santa Barbara County, prior to its approval of a Final Development Plan. The amount of the contribution should not be more than that imposed on other similar developments and shall take into consideration increased public access opportunities provided by the applicant or facilities, except that such contribution shall not be less than \$100,000.

2. Environmentally Sensitive Habitats. Prior to the transmittal of the Coastal Development Permit and the commencement of construction, the applicant shall submit for the review and approval of the Executive Director, revised plans, approved by the County of Santa Barbara, and other documents which provide final plans for the restoration of riparian, wetland, and coastal strand habitats. The restoration plans shall specifically include the restoration of riparian habitats along Tecolote Creek through the elimination of exotic species and the reintroduction of native species. All plantings shall be depicted at the same scale as the project site plans. A schedule for completion of the various components shall be included, along with provisions for the monitoring of the effectiveness of the restoration efforts.

3. Archaeology. Prior to the transmittal of the Coastal Development Permit and the commencement of construction, the applicant shall submit for the review and approval of the Executive Director, revised plans, approved by the County of Santa Barbara, and other documents which (a) relocate the access road drainage system to avoid site SBA-71 on the east terrace; (b) If feasible, relocate the drainage system across the eastern valley floor to avoid the high sensitive areas of site SBA-72; (c) avoid any development, other than access trails, on SBA 72 or high sensitivity portions of SBA 73; (d) relocate the main water line to the east of Vereda Ciervo, from the intersection of Vereda del Padre, to avoid site SBA 1672 and (e) avoid the use of landscaping species such as palms which develop large root balls in or adjacent to archaeological sites.

Before commencing any development in or adjacent to sites SBA-1326 and SBA-1674 the applicant shall conduct a subsurface investigation of these sites; the investigations shall be conducted within the context of and conform to the research program outlined in the finally approved Cultural Resources Management Plan, and shall assess the significance of these sites, the impacts of proposed developments, and identify appropriate mitigation.

Archaeological sites adjacent to permitted development shall be fenced to prevent damage from construction activities. Additionally, all grading, filling, and excavations for structures or utilities shall be monitored by a qualified archaeologist and Native American observer with the authority to temporarily halt any work which would significantly impact archaeological materials, and develop and implement appropriate mitigations. The Native American observer shall be acceptable to the affected Native American groups, and shall be recognized by the Native American Heritage Commission. In the



event of a dispute about the observer selected, the Executive Director may appoint an observer after consultation with the State Historic Preservation Officer and the Native American Heritage Commission.

The applicant shall submit a revised Cultural Resource Management Plan and Research Design for the review and approval of the Executive Director, in coordination with the County of Santa Barbara, which approval shall not be unreasonably withheld. The Plan and Research Design shall be revised to conform to the requirements of the Commissions' State Wide Interpretive Archaeological Guidelines and reflect the peer review comments; to avoid duplication, the plan should build upon previous archaeological investigations of the sites.

4. No Retaining Wall. The blufftop lateral access shall not be dependent upon shoreline protective devices, such as a retaining wall.

5. No Creek Dredging. Water and sewer lines shall be relocated so as to prevent dredging of Tecolote Creek.

6. Pedestrian Bridge. The pedestrian bridge shall be constructed using existing abutments for support.

7. Picnic Area. Subject to County approval, the applicant shall provide an oceanfront picnic area adjacent to the proposed snack bar on the beach. The picnic area shall not be located on any environmentally or archaeologically sensitive habitats. The plan for the grounds will be submitted for the review and approval of the Executive Director.

8. Bikeway. Final plans for the bikeway along the access road shall be consistent with the standards of the County general plan and other applicable local government plans.

9. Bluff Top Access. The bluff top lateral access shall be as proposed in the application provided, however, that said access shall be relocated away from the cliff edge from time to time as required as a result of bluff retreat due to erosion. The relocation shall be subject to prior consultation with and approval by the Executive Director of the Coastal Commission, which approval shall not be unreasonably withheld.

10. Signs and Interpretive Facilities. A system of signs, which clearly mark the location of public accessways and parking areas, and an interpretive program introducing hotel guests and the general public to the physical and biological features of the project site, including the upland, wetland, coastal strand, and marine habitats, shall be provided.

11. Beach Debris Clean-Up. The applicant shall submit for the review of the Executive Director final plans approved by the State Lands Division for the removal of beach debris.

12. Industrial Hazards. In consultation with ARCO and the Santa Barbara County Fire Department, the applicant shall amend its risk management plan for the site to assess risks from the ARCO Ellwood facility to public use of the access road or beach and, if necessary, implement hazard reduction measures, such as the installation of barriers, berms, or other actions, to reduce hazards.



13. Liability. The applicant shall execute and record a deed restriction, in a form and content acceptable to the Executive Director, which shall provide: (a) that the applicant understands that the site may be subject to extraordinary hazards from bluff retreat and flooding, and the applicant assumes liability from such hazards; and (b) that the applicant unconditionally waives any claim of liability on the part of the Commission and agrees to indemnify and hold harmless the Commission and its advisors relative to the Commission's approval of the project for any damage due to natural or artificial hazards.

13. Permit Compliance. A copy of these conditions with Exhibits shall be included in all bid descriptions, and shall constitute an integral part of the project description.

14. Public Access Dedications and Restrictions. Prior to the transmittal of a Coastal Development Permit and the commencement of construction, the applicant shall execute and record a document, in a form and content acceptable to the Executive Director, irrevocably offering to dedicate to a public agency or private association approved by the Executive Director, an easement for public access and recreation over the accessways described in the application. The applicant or its successors in interest shall have the right to relocate the easements to other locations within the public recreation area of the property provided the public's right of access is not unreasonably diminished and subject to prior consultation with and approval by the Executive Director which approval shall not be unreasonably withheld.

Prior to the Transmittal of the Coastal Development Permit, the applicant shall record a deed restriction, in a form and content acceptable to the Executive Director, prohibiting interference with the use of the beach and trails described in the easement and committing the applicant to maintain the access improvements in a condition suitable for public use for the life of the project or until the acceptance of the offer of dedication; provided, however, that such deed restriction shall be expressly subject to the applicant's right to relocate such easement as provided above.

A deed restriction shall be recorded which prohibits interference with the public's use of the private access road and bicycle path to gain access to the public parking areas and vertical access trails to the beach.

The document shall be recorded free of prior liens and encumbrances which the Executive Director determines may affect the interest being conveyed. The offer shall run with the land in favor of the People of California, binding all successors and assignees, and shall be irrevocable for a period of 21 years, such period running from the date of recording.

### III. FINDINGS AND DECLARATIONS.

The Commission finds and declares:

A. Project Description. The project is the construction of a destination resort hotel with attendant conference facilities on an approximately 72 acre (approximately 61 net acres) site in Goleta, Santa Barbara County (Exhibit 1). The project includes a 400-unit resort hotel and conference facilities (Exhibit 2) consisting of 38 buildings. Restaurant facilities are provided in



various buildings, outdoor patios and a beachfront snack bar. The project includes conference-related space, including meeting rooms, banquet and ballrooms, and an exhibition hall. A health club and spa also are planned. The project includes several swimming pools, other water features and several tennis courts.

The 400 hotel units are terraced down on the western slope in one-, two- and three story buildings in a variety of sizes and configurations. Buildings vary in configuration and architectural details and ornamentation. The hotel architecture is designed in the Santa Barbara Mission style with stucco walls and tile roofs. Some of the buildings are intended to be bunker units, tucked into the land with landscaping running over the top.

An approximately 580-car parking facility is located on the western terrace. Fifty additional public access parking spaces are located on the valley floor, east of the Tecolote Creek.

The project provides public access trails for hiking, horseback riding, and bicycles. Additionally, a cliff walk along the western terrace bluff is provided. Vertical access to the beach is provided from this cliff walk and from an additional trail running across the valley floor from the parking area. An equestrian trail is located on an existing road along the east terrace slope above Bell Canyon and the beach. Lateral access is available along the beach. In addition, the Project includes a right-of-way and improvements for a bikeway which ultimately will connect the existing bike trails from Goleta to El Capitan, Refugio and Gaviota State Beaches to the west. The Project will remove abandoned oil development debris from the site (Exhibit 3) and pursuant to County conditions will ensure that oil wells are properly abandoned or capped.

Building coverage on the site will be approximately 5 acres or approximately 7% of the net land area; approximately 48 acres will be landscaped or rehabilitated natural areas. Landscaping features include the entry drive and landscaped hotel garden area and the restored natural zones at the creek, the valley floor, the eastern terrace and the bluff slopes at the eastern and western terraces. Additionally, the landscaping includes the preservation and restoration of wetlands at the mouth of the Tecolote Creek and restoration of riparian habitats and woodlands at the Valley floor. The development requires about 162,000 cubic yards of cut; however about 100,600 cubic yards of fill will be placed on the site. Excess materials will be disposed of outside the coastal zone.

To provide access to the site, the applicant will extend an existing road that services the Sandpiper Golf Course and ARCO gas processing plant east of the site. The road will extend one-half mile west from its present terminus at the ARCO plant to reach the project site. The existing roadway will be widened and the intersection at Hollister Avenue will be relocated several hundred feet easterly to provide a 16 foot south bound lane and two, 12-foot wide northbound lanes.

Water for the project will be supplied by water wells located inland of the coastal zone in Tecolote Canyon. As part of the water supply system, a reservoir system and a treatment plant will be installed inland of the coastal zone. The project also includes a grey water recovery system and a portion of the greywater from the project site will be recycled and used to irrigate



landscaping. A pipeline running from the site's western terrace and across U.S. 101 through the Rancho Embarcadero subdivision and to the Embarcadero Ranch will connect the hotel with the well field, treatment plant and reservoirs. Waste water and excess grey water will be disposed to the Isla Vista Sanitary District. All utilities will be underground.

B. Project Site. The project site is bounded by U.S. 101 and the Southern Pacific Railroad tracks to the north, the ARCO Ellwood oil processing facility and the Sandpiper Golf course to the east, the Ellwood Pier (used by ARCO and EXXON for oil related activities) to the west and the Pacific Ocean to the south (Exhibit 4). Present automobile access to the site exists from an at grade intersection off of U.S. 101, crossing the railroad tracks.

Eastern and western terraces, each rising over 100 feet, and a central valley dominate the site topography. Tecolote Creek runs through the western portion of the valley floor. The creek forms a small lagoon inland of the beach. Sandy beaches extend the 3,000 foot (.57 mile) length of the parcel shoreline.

Most of the site is an open grassland. The valley floor is dominated by mixed woodland, shrubs and eucalyptus trees. A band of willow, sycamore, coast live oak and other riparian species grow along the creek bank. The creek's small lagoon supports some brackish marsh. A sparse coastal strand vegetation occurs on the beach. Coastal sage scrub is found on the bluff face and on undisturbed portions of the terrace. A line of eucalyptus trees forms the northern border of the site.

Petroleum drilling, storage and processing facilities which once occupied the parcel generally were removed in the 1950's (Exhibit 5). The oil processing facilities included a gas absorption plant, a bridge spanning the Creek, several piers, storage tanks and pipelines. Three tanks, three buildings and two stock piles were located on the eastern terrace. On the valley floor and near and to the east of the Creek at least nine large oil tanks, numerous storage and other buildings and two sumps covered the area. Thirteen oil tanks, two sumps and several sheds were located to the west of the creek. Six small and three large industrial buildings and two additional oil tanks were situated on the main part of the western terrace. A graded service road, winding throughout the site, provided internal site access. The industrial uses transformed the landscape of the site: archeological remains and natural terrain were damaged. Evidence of the oil debris remains on the site today in the form of broken pipes on the beach and in the water, abandoned pier footings, and building pads.

While no judicially established public access exists through the property, Haskell's Beach is now used primarily by surfers, picnickers, and other beachgoers who come up the beach or gain access to the site through repeatedly forcing an opening in the frontage road's chain link fence.

Adjacent land uses include a mix of open space, agriculture, residential subdivisions, and oil and gas facilities (Exhibit 6 and 7). The Ellwood Pier, a crew boat base supporting offshore development is immediately west of the site. ARCO's Ellwood facility is immediately east of the project site. Sandpiper Golf Course adjoins the ARCO plant on the east. The 176 lot Rancho Embarcadero subdivision is north of the site directly across U.S. 101. The project site is the coastal portion of the 1,143 acre Embarcadero Ranch.



C. Project Site Planning History. Haskell's Beach has had a variety of uses - from kelp processing to crude oil storage - and has been the subject of extensive planning efforts, particularly over the last ten years.

The site and adjacent areas of the Gaviota coast were developed for oil extraction and processing between 1920 and the early 1950's. Between the 1950's and 1969, the site was abandoned, reverting to its previous undeveloped condition.

The canyon north of US 101 was divided into the Rancho Embarcadero subdivision. In 1968 the site was purchased by the Wallover Corporation as part of a 1143 acre holding in Tecolote Canyon, where the lower canyon walls and floor were planted with 400 acres of avocados.

In 1975, Wallover Corporation proposed construction of 153 clustered townhouses on the site. This proposal was denied by Santa Barbara County based on inconsistencies with the County's proposed LCP.

In 1976, the Coastal Commission recommended that Haskell's Beach be purchased for public recreation, and assigned the site to Priority Group 1-A (recreation and open space). Between 1977 and 1979 the Legislature appropriated \$2.3 million for the Department of Parks and Recreation to acquire a portion of the site for day use, camping, and a staging area for the El Capitan-Santa Barbara coastal bikeway. In 1980, the proposed purchase was rescinded, based primarily on the owners' unwillingness to sell at the Department's appraised value.

In January 1980, Santa Barbara County submitted its Local Coastal Program (LCP) Land Use Plan (LUP) to the regional coastal commission. The County plan designated Haskell's Beach Resort/Visitor Serving Commercial and excluded it from the urban Goleta planning area. The LUP also recommended that a portion of the site be purchased by the County for low intensity public recreational use (i.e., hike-in, bike-in campground), and included a number of policies to protect public access, coastal resources, and visual amenities should the site be privately developed.

In December, 1980 the regional commission denied the County's LUP for the site, and approved the LUP with suggested modifications which would have redesignated the site Planned Development (primarily for residential use), and moved the urban boundary west to include the site. The modified LUP approved by the regional commission also included policies to protect public access, archaeological resources, and coastal views on the site.

The County subsequently accepted the suggested modifications approved by the regional commission for the site.

In June 1981, the state Coastal Commission, by a vote of 5 Commissioners in favor, 5 against, and one abstention, found that residential development of Haskell's Beach and its inclusion in the urban Goleta planning area was inconsistent with Coastal Act policies for the reservation of sites suitable for visitor serving facilities, the concentration of development in already developed areas, and the provision of public services to priority uses in areas where such services are limited. The Commission certified the LUP with suggested modifications which redesignated the entire site Visitor Serving



Commercial and relocated the urban boundary east, removing the site from the urban Goleta planning area. The Commission's action, however, left unchanged the siting and design policies for the site.

The County chose not accept the Commission's suggested modifications, or offer alternative language in response to the Commission's conditional certification. As a result, the site has remained a "white hole" in the certified LCP, and development on the site remains subject to the Commission's original permit jurisdiction.

In July 1983, Wallover and Hyatt filed applications with the County of Santa Barbara for a development plan and a rezoning seeking approval of an approximately 575 room destination resort and tennis facility. During the planning process, the applicants deleted the portion of the project which was proposed for land lying north of the freeway.

The County planning commission denied the project on October 24, 1984. The project, with the tennis club deleted, was heard by the Board of Supervisors on appeal and, after seven public hearings between November 1984 and June 1985, was approved. On June 3, 1985 the Board of Supervisors adopted Resolution No. 85-234, Ordinance No. 3516 approving the Project and further adopted written findings and a statement of overriding consideration for the Project. The County's approval provides for the construction of a 525 room hotel in two phases. The second phase of 125 hotel units and villas is subject to further discretionary County review and is not a part of the application before the Commission.

On July 5, 1985 the County resubmitted the uncertified portion of the LCP for Haskell's Beach to provide for the County's recent approval of the Hyatt Hotel project. In its resubmittal the County has proposed designating Haskell's Beach Visitor Serving Commercial and zoning the site C-V. It has also proposed including the site within the urban Goleta planning area. In addition to these changes, the County has also proposed deleting most of the site specific policies and development constraints and the recommendation to acquire the site for public recreation. The resubmittal was filed on August 8, 1985, and will be scheduled for Commission review following action on this coastal development permit.

D. Locating New Development

1. Visitor-Serving Use. Coastal Act Section 30222 provides:

The use of private lands suitable for visitor-serving commercial recreation facilities designed to enhance public opportunities for coastal recreation shall have priority over private residential, general industrial, or general commercial development, but not over agriculture or coastal-dependent industry.

In addition, Section 30223 provides:

Upland areas necessary to support coastal recreational uses



shall be reserved for such uses, where feasible.

Public recreation and tourism are important uses in the Santa Barbara's County's South Coast region. The area's sandy beaches, scenic shoreline and mountains, the mild climate and its special historic and cultural qualities draw visitors from around the State and the nation. Over 1.07 million persons visited the County's South Coast State parks and beaches in 1984. The Santa Barbara Conference and Visitors Bureau estimates that over 1.36 million visitors used local hotels and motels. These visitors generated over \$349 million of business for tourism, one of the County's cornerstone industries.

A variety of visitor-serving accommodations have been developed in the coastal zone to support recreation and tourism. State park units along the coast have over 620 camping units. The 40 coastal hotels within the County's south coast area (including the cities of Santa Barbara and Carpinteria) have over 2300 rooms. About 600 rooms, a quarter of the total accommodations, are the result of construction since 1980.

Demand for public recreation and tourism in the Santa Barbara South Coast area is growing. According to the Department of Parks and Recreations PARIS projections, outdoor recreation demand in the County's South Coast area is projected to increase 20% by the year 2000. The City of Santa Barbara's 1980 Economic Base Up-Date prepared by Economics Research Associates (ERA) projects that demand for hotel rooms in the South Coast area will increase by about 200 rooms per year with a total increase in demand of 2,350 new rooms between 1980 and 1990. This project with 400 rooms, together with the approximately 925 other units approved for construction or pending before local governments and the approximately 600 new rooms which have been added in the South Coast area since 1980 represent a total of about 1925 new rooms (Exhibit 7). This number falls within the projected demand of 2,350 new rooms needed in the area by 1990.

Additionally, both the Santa Barbara County LCP and this Commission have emphasized the need for and lack of oceanfront visitor-serving commercial uses in the Goleta area. The Santa Barbara County LCP states on page 195:

Visitor-serving commercial activities within the coastal zone are limited to a few restaurants in downtown Goleta and in Isla Vista; ....

The January 14, 1981, California Coastal Commission findings for the Santa Barbara County Local Coastal Plan stated:

Demand for visitor-serving uses in the Goleta and Gaviota areas particularly overnight facilities is great; existing beach parks owned by the County and State are being used to capacity. Plans for substantial expansion of the Santa Barbara airport in Goleta as well as the growing industrial development in Goleta demonstrate a future need for visitor-serving overnight and conference facilities in the area. Traffic circulation problems among the concentrated motel/restaurant services along the Santa Barbara City waterfront indicate the need to locate traffic generating visitor-serving facilities elsewhere . . . . Given the need for such a site, and the location characteristics of the Haskell's Beach site, the Commission finds that this site is



suitable for visitor-serving uses and is, in fact, the best location for good access to the beach.

On April 30, 1981, the Commission also found that:

The Commission has previously found that the Haskell's site is suitable for visitor-serving uses, commercial development and and that any other land use designation would be inconsistent with the Coastal Act. The property is oceanfronting with excellent beach access which has traditionally been used by the public. It is located in a highly scenic spot with natural vegetation screening it from the highway. The site is proximate to the Airport, the University, and industrial centers, all of which bring conference visitors to Goleta. Yet the site is remote enough to attract visitors who are seeking an isolated, resort destination.

In the South Coast area, the existing hotel inventory has very limited meeting space, banquet or conference facilities, typical of larger scale hotels. A recent study prepared by ERA indicates that the total conference space in the South Coast area is approximately 60,000 square feet and a majority of that is found at three properties: The Sheraton Santa Barbara, with 10,600 square feet, the Miramar, with 11,700 square feet, and the Santa Barbara Biltmore, with 13,000 square feet. Individual properties in other markets, such as the Marriot's Desert Resort in Palm Springs or the Hotel Del Coronado, offer as much meeting space as the total currently available in the South Coast area. This limited amount of conference space reflects a scarcity of conference or convention size hotels in the area. Over 71% of the hotels in the South Coast area have 50 rooms or less.

The South Coast area is well located to serve the needs of group meetings. The area is close to the Los Angeles Basin, and its attractive weather and beaches make it competitive with other Southern California areas for group business. Historically, however, it has offered very little in terms of larger scale hotels and high quality meeting facilities. The Hyatt Resort will meet the need for this type of destination resort and conference facilities in the South Coast area and, in particular, in Goleta. A successful resort at this location will create the visitor-serving and recreation facilities envisioned by the Coastal Act.

Based on the Commission's 1981 findings, the priority given to visitor-serving commercial uses under the Coastal Act, the eminent coastal access attributes of the site, the need for additional hotel rooms in the project area, and the need for conference facilities in the area, the project is consistent with the Coastal Act's policies calling for visitor-serving commercial facilities.

2. The Use is Appropriate to the Site. Coastal Act Section 30250 provides guidance on siting visitor-serving uses and provides in pertinent part:

(a) New . . . commercial development except as otherwise provided in this division, shall be located within, contiguous with, or in close proximity to, existing developed areas able to accommodate it, or, where such areas are not able to accommodate it, in other areas with adequate public



services and where it will not have a significant adverse effect, either individually or cumulatively, on coastal resources.

(c) Visitor-serving facilities that cannot feasibly be located in existing developed areas shall be located in exiting isolated developments or selected points of attraction for visitors.

The project density with 400 units on 61 net acres is approximately 6.5 units per acre. Calculated based on the gross site area of 72 acres, the project density is only 5.5 units per acre.

As described in the specific findings below, the impacts of the project's density on the site are minimal. In the past, the site has been subject to intense development with oil production facilities covering the site and changing the site's topography and vegetation. Its native vegetation and archaeological sites have been subject to varying degrees of disturbance. Consequently, the site is appropriate for the intensity of use proposed. Additionally, many restaurant, conference and hotel guests are unlikely to venture beyond the developed portions of the resort. In this way, the project provides maximum access to the coast at minimum risk to the land.

The site is located near an existing developed area on the boundary between urban Goleta and the rural Gaviota coast. Existing residential subdivisions, planned residential development, oil facilities, and the Sandpiper Golf Course are adjacent to the project area. This site is within several miles of commercial shopping and has available adequate public services such sewer, utilities, solid waste, roads, schools, transportation and fire and police protection. Other than an on site extension of the access road, no new public infrastructure is necessary to accommodate the Project. Thus, the Project is compatible with the existing developed pattern of the area.

No agricultural lands would be threatened by this development, as the site is unsuitable for agricultural use.

A destination resort at this location will contribute to the establishment of a stable limit to urban development in the area. Destination resorts are inherently self-contained and create minimal growth inducement. Unlike residential subdivision, which rely heavily on urban infrastructure, a destination resort generally provides all necessary services for its guests on site. The transient resort population does not create a demand for schools, office, retail or residential development.

Suburban development in Goleta already extends as far west as the project site with Rancho Embarcadero subdivision located directly across U.S. 101. This project provides an opportunity to strengthen the Goleta urban/rural boundary and provides a use consistent with the surrounding area, while protecting the rural agricultural lands further west.

The project conforms to the siting provisions of Coastal Act Section 30250. The site is adjacent to an existing developed area. Other areas of the Santa Barbara coast are not able to accommodate the visitor serving development proposed here because of their congestion and the difficulty of developing large scale resorts there. The project will not have a significant adverse effect on development patterns in the area.



3. Public Services. Adequate public services exist to serve the Project.

a. Traffic Hotel traffic will enter the local roadway at Hollister Avenue, a two lane road. Hollister Avenue intersects with U.S. 101 in an interchange at Winchester Canyon Road about 1/2 mile east of its proposed connection to the hotel access road. The project will extend the existing frontage road that currently serves the Sandpiper Golf Course and the ARCO gas processing plants so as to connect it with existing road to the Ellwood Pier west of the site. This crossing will be closed off to public access and gated to permit only emergency access. The County plans an improvement of Hollister Avenue, upgrading it to a four lane road and the County plans to install traffic signals at Pacific Oaks Road, Entrance Road, and Pebble Beach Road, thereby providing for efficient flow of traffic in the project vicinity.

The project EIR analyzed the project's effect on the level of service for six intersections in the vicinity of the project for the morning and afternoon peak hour periods. The data indicates that all analyzed intersections currently have acceptable levels of service and are expected to remain at acceptable levels in 1986. The project generated traffic, when added to the 1986 base traffic, will not significantly alter the level of service at any intersection. The project will most heavily affect the Hollister and U.S. 101 ramps in the morning and in the afternoon; however, even with the project, the intersection will remain at level of service A. (Final EIR p. 84.)

Cumulative development in the area, including projects which are proposed and not yet approved, could affect the level of service at these intersections in the project area. The project's contribution to the cumulative development, however, is insignificant; traffic impacts from the project, whether considered individually or when added to the projected cumulative impacts, will not cause the changes in the level of service to occur.

Coastal Act Section 30252 provides:

The location and amount of new development should maintain and enhance public access to the coast by (1) facilitating the provision or extension of transit service . . . (3) providing nonautomobile circulation within the development, (4) providing adequate parking facilities or providing substitute means of servicing the development with public transportation, ....

Coastal Act Section 30254, in part:

Where existing or planned public works facilities can accommodate a limited amount of new development, essential public services and basic services to public recreation, commercial recreation, and visitor serving land uses shall not be precluded by other development.

As a visitor-serving use, the development receives high priority under the Coastal Act in the allocation of roadway capacity. Santa Barbara County's conditions of permit approval would reduce the Project's effects on roadway capacity by requiring, among other conditions, the applicant to stagger employee shifts to reduce peak hour travel; to provide shuttle bus service to the Airport and areas of interest for hotel guests; to sponsor shuttle service



to the nearest bus stop; and to provide subsidized bus passes for employees. To mitigate the traffic impacts on area roads caused by cumulative development, the County required the applicant to make a payment of \$286,000.00 to the County for traffic related road improvements in the Goleta area.

Thus, the project's impacts on traffic are consistent with the Coastal Act.

b. Water Supply No water service is extended to the site. There is no opportunity in Goleta for any new development requiring a new water hookup to be served by the public Goleta Water District, although there are private water sources available for development. Accordingly, all new development must create its own water supply and distribution system.

Water service to the Embarcadero subdivision inland of U.S. 101 is provided by the Goleta Water District and private wells. Water supplies for both the subdivision and the Embarcadero Ranch agriculture are provided by wells developed in the alluvial ground water basin along Tecolote Creek, by bedrock wells in the Vaqueros, Sespe, and Coldwater formations, and for agricultural use, by the Goleta Water District. Current water demand in the area is 535 acre feet per year.

According to the applicant, the project now proposed would require 116 acre feet of water per year. (Water demand for Phase II of the project, not a part of this application, would be an additional 19.7 acre feet per year.) The project would obtain water from existing bedrock wells on the Embarcadero ranch and from new deep wells. A treatment facility would be developed on the ranch to remove excess minerals, odors, and turbidity from the water. The project also includes facilities to reclaim greywater for onsite landscaping irrigation. Greywater reclamation could reduce the project's total water demand by about 25 percent. This reduction in water demand is included in the figures above.

There is substantial disagreement about the projected yield of the available water supply. According to the EIR, the total yield of the water supplies available to the ranch in a year of average or above average rainfall is 930 acre feet per year. The EIR states that these supplies are adequate to fully serve the watershed's existing uses, and the project. However, the EIR concludes that during the third year of a three year drought, the available water supplies would provide only 319 acre feet, about 49 percent of the watershed's total water demand. The probability of such a drought in any year is 12 percent (a one in eight year drought). The EIR concludes that in an extreme drought, only 82 acre feet of water, about 13 percent of the the total demand, will be available to supply uses within the watershed. This extreme event is modeled after Santa Barbara's prolonged 1945-1951 drought.

The applicants, on the other hand, estimate that the total water supply available in the watershed in a year of average rainfall conditions will be 1510 acre feet. They believe that during the third year of a three year

drought, the available supply would decline to 540 acre feet, about 80 percent of the watershed's total water demand. They conclude that during an extreme drought 112 acre feet of water, about 20 percent of the projected demand, will be available to supply uses within the watershed. They propose to develop additional water supplies to cover this deficit by pumping from bedrock wells



during extended drought periods.

These differences in projected water supplies are due to varying assumptions about the volume of groundwater in storage in bedrock. The EIR concludes that little groundwater is likely to be stored in bedrock. According to the EIR, the bedrock wells have little groundwater storage because the rocks are fairly dense and impervious, with small primary permeability due to limited pore space. The EIR states that the bedrock hills are steep, so that rainfall tends to run off quickly rather than infiltrate into the bedrock. The EIR notes that the Vaqueros bedrock formation has limited distribution of outcrops, generally in areas of relatively low precipitation, limiting the opportunities for recharge of the formation's groundwater. The report states that the only significant source of water for bedrock recharge is groundwater in the Tecolote canyon alluvium. While the report notes that additional studies of potential water supplies from the deeper bedrock units of the Sespe formation outside the Tecolote Creek basin are underway and may identify opportunities for additional water to recharge the basin, it concludes that Tecolote Creek will be the main source of recharge for wells serving the development.

The applicants, on the other hand, believe that up to 20,000 acre feet of groundwater may be stored in bedrock beneath the ranch. They state that although the specific yield (groundwater storage per unit of volume) is low, the large volume of materials beneath the Embarcadero Ranch results in a significant volume of groundwater in storage. These groundwater storage estimates are based in large part on a 1968 U.S. Geological Survey report, Ground Water Resources, Elwood-Gaviota Area, Santa Barbara County. The USGS report indicates that bedrock groundwater is replenished by deep percolation of rainfall runoff and via the valley floor's alluvial groundwater.

Adequate information to resolve this disagreement is not available. There are no existing wells drilled within the deep bedrock formations proposed for utilization by the applicant against which to measure the projections of these formations' yield. In addition, there is no information on bedrock recharge. The applicants' estimate of their proposed wellfield's yield is based on the professional judgment of their geotechnical engineering consultants.

In response to this uncertainty, the County's conditions of project approval require a one year testing program to determine pumpage rates, water level responses, and other pertinent data from all wells proposed to be used by the project. Under the conditions, the applicant must demonstrate that the development will not result in overdraft of the Tecolote Creek groundwater supply in years of normal rainfall, and must develop a series of alternative operation plans to be approved by the County to reduce water demands during drought years.

Coastal Act Section 30250(a) requires that adequate services be available to accommodate new development. The wellfield testing program required by the County, as well as the Project water conservation mitigation measures, will ensure that there is adequate water to service the project in conformance with Coastal Act Section 30250(a).

c. Other Services. The project site is located in the Isla Vista Sanitary District which by letter on July 9, 1984 verified its capacity to accommodate



the Project. This district collects sewage and sends it to the Goleta Sanitary District treatment plant for treatment. According to the District, it presently has adequate capacity to handle waste flows from the Project. The project generated solid waste will not have an appreciable effect on existing facilities. Natural gas, electrical, and telephone facilities can all be accommodated by utility providers. Thus, the project generated demand for services can be accommodated by existing facilities. Consequently the Project will not strain existing services or create new growth inducing impacts.

E. Public Access and Recreation. The project site is ideally suited for access and recreation. While there has been no judicially established public access through the property, there is already substantial public use of the site for beach access and recreation. The site is located between U.S. 101, the first public road, and the ocean. Its 1/2 mile beach is primarily sand and some cobbles. The beach varies in width from 25 to 300 feet, depending upon the tides and the season.

Haskell's Beach is used for recreation, including horseback riding, picnicking, surfing, surf fishing, and beach access. Access to the site is gained from the US 101 frontage road and from the downcoast beach. An informal frontage road parking area accommodates 25 to 30 cars. One trail from this parking area descends the west terrace to the beach. A second trail runs from the parking area to a lookout point on the terrace and then descends along the terrace edge to join the main trail at the beach. Another path crosses from the frontage road to a vista point on the west terrace above the beach. A fourth path runs along the east terrace's east slope and across a roadcut on the seacliff to the beach.

There is substantial evidence of public use of the site's beach and trails for recreation and access to adjacent public tidelands for over 20 years. The applicant's Cultural Resource Technical Report (1980) included observations on public use of the site. The report noted:

Generally during the past two decades, the beach land has become recognized by local citizens and owners of the Embarcadero Subdivision for its scenic setting and as an access route to the popular beach. Locally, the name "Haskell's Beach" has been attached to the beachfront land. The evolution of this term is probably related to its growing use by young beachfarers, especially surfers in the 1960's. Media broadcasts labeled the site "Haskell's Beach" after the name of one local enthusiast.

Since its 1968 acquisition of the site, the Wallover Corporation has attempted to restrict access through the property through fencing along the frontage road and by posting "No Trespassing" signs. These efforts have been largely unsuccessful as the fence has been repeatedly breached. As a result, the property remains accessible from the frontage road and along the beach. The Cultural Report noted:

Travel is indicated by well-worn paths and roads across the property, broken fences, discarded refuse adjacent to travel routes, and direct observation of vehicular, equestrian and pedestrian traffic. Most of the travel is between the parking area in the north and the beach, along the western side of the valley. Some travelers ascend the western terrace presumably for the privacy and view it affords.



Travel was much less evident east of Tecolote Creek.

The site is particularly popular for surfing. Aerial photos submitted by the applicants clearly show surfers crossing the site on well worn trails. Haskell's Beach was one of 19 areas listed in a surf guide published in the September 26, 1985 Santa Barbara News and Review.

Current public use of the site, including off highway vehicle use has eroded the plant life, the riparian area, and damaging any natural or cultural resources on the site.

Access to this reach of the Santa Barbara County coast is limited. The nearest public beach access is at the University of California, Santa Barbara's Coal Oil Point Reserve, about 3.5 miles east; the nearest parking serving Coal Oil Point is a half mile to the east in Isla Vista, which also has three pedestrian accessways (Exhibit 8). The closest fully developed beach access is Goleta Beach County Park, seven miles east and El Capitan State Beach, seven miles west. Goleta Beach provides day use recreation served by a 700 car parking to. El Capitan Beach provides both day use and camping served by a 450 car parking lot. In addition to these public access points, beach access is possible thorough the private Sandpiper Golf Course, three quarters of a mile east. There is no public access easement or established parking at this site.

Access to Haskell's Beach from offsite access points is restricted at many tides by promontories and rock outcrops between Tecolote Creek and El Capital State Beach and the Coal Oil Point Reserve. As a result, distance and topography have separated Haskell's Beach from adjacent beaches.

\*The project site with its sandy beaches, scenic setting, surfing and fishing opportunities, is ideally suited to meet the region's existing and growing demands for public access and recreation. These values were recognized in the Santa Barbara County LCP, which found that Santa Barbara Shores, More Mesa and Haskell's Beach offer the most potential in terms of increasing public opportunities for beach access.

Presently, no dedicated, judicially established, or improved public access exists through the site, no commercial facilities serve beachgoers, and existing conditions, such as broken pipes and abandoned pier footings create significant public access hazards.

Room prices at the hotel are expected to be about \$150 per night, based on the applicant's estimation of \$20 million annual room sales for a 524 room hotel and villa development at 70 percent occupancy. Such prices would substantially exceed the \$80 to \$90 average room prices of hotels in the area. Many visitors will be unable to afford rooms at the hotel, reducing its value in supporting coastal access and recreation for the people of the State. To help provide affordable overnight facilities in the region, the County has required the applicants to contribute a "fair share" in lieu fee to the establishment of a regional hostel. The amount is unspecified, but is to be comparable to others made by similar developments and reflect the access opportunities provided by the project.

Coastal Act Section 30210 provides:

Exhibit 5  
CCC-13-CD-03 & CCC-13-RO-03  
(Bacara Resort & Spa)



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

Other Coastal Act policies describe in more detail provisions to carry out the Coastal Act's access mandate. Section 30211 states:

Development shall not interfere with the public's right of access to the sea where acquired through use or legislative authorization, including, but not limited to, the use of dry sand and rocky coastal beaches to the first line of terrestrial vegetation.

Coastal Act Section 30212 provides, in part:

(a) Public access from the nearest public roadway to the shoreline and along the coast shall be provided in new development projects, except where (1) it is inconsistent with public safety ... or the protection of fragile coastal resources, (2) adequate public access exists nearby, or (3) agriculture would be adversely affected. Dedicated accessways shall not be required to be open for public access until a public agency or private association agrees to accept the responsibility for maintenance and liability of the accessway.

Coastal Act Section 30252 provides, in part:

The location and amount of new development should maintain and enhance public access to the coast by . . . (3) providing nonautomobile circulation within the development, (4) providing adequate parking facilities or providing substitute means of serving development with public transportation.

Section 30213 states, in part:

Lower coast visitor and recreational facilities shall be protected, encouraged and where feasible, provided. Developments providing public recreational opportunities are preferred.

Finally, Section 30214 provides, in part:

(a) The public access policies of this article shall be implemented in a manner which takes into account the need to regulate the time, place, and manner of public use depending on the facts in each case, including, but not limited to, the following:

- (1) Topographic and geologic site characteristics.
- (2) The capacity of the site to sustain use and at what level of use.
- (3) The appropriateness of limiting public access to the right to pass and repass depending on such factors as the fragility of natural resources in the area and the proximity to adjacent



residential areas.

(4) The need to provide for the management of access areas so as to protect the privacy of adjacent property owners and to protect the aesthetic values of the area by providing for the collection of litter.

(b) It is the intent of the Legislature that the public access policies of this article shall be carried out in areas on able manner that considers the equities and that balances the rights of the property owner with the public's constitutional right of access. Nothing in this section or any amendment thereto shall be construed as a limitation on the rights guaranteed to the public under Section 4 of Article X of the California Constitution....

The project will provide access to the beach through dedicated easements and facilities to enhance the enjoyment of the coast. Debris from abandoned pipeline will be removed from the beach and the water, eliminating this hazard. The project will provide bicycle, pedestrian and equestrian and nature trails, build public showers, restaurants and dining facilities and parking spaces. Additionally, the project includes a cliffwalk along the western terrace bluff. As part of the project, the entire beach frontage from the mean high tide line to the toe of the bluff will be dedicated as a public easement for beach use. The project sponsor will maintain this area in perpetuity. The proposed pedestrian and bicycle paths will provide legal means of access to the beach which are equivalent to those presently used by the public while managing public use to protect the site and its limited sensitive habitat areas.

The conditions of this permit requiring the dedication, improvement, signing, and maintenance of the accessways proposed by the applicant, and prohibiting interference with the public's use of these accessways, will ensure that the access program proposed in the application is carried out. The provisions of the conditions permitting the applicant, after consultation and approval by the Executive Director, to relocate the accessways from time to time, is intended to facilitate relocation of the blufftop accessway in response to bluff erosion or relocation of the vertical accessways to the beach for management purposes, and are not intended to permit any diminishment of the public's right of lateral access along the beach front. For these reasons, the project as conditioned conforms to Coastal Act Sections 30210, 30211, and 30214.

A new access road will be provided for the project and result in a removal of the currently dangerous access road across Highway 101. The project will provide a shuttle bus service and a ride-sharing program for guests and employees. The project will provide a jitney service for internal site circulation, thus restricting the automobiles on the site. These mitigation measures included within the project and the County's conditions of approval will ensure the development's conformance to Coastal Act Section 30252.

Although low or moderate cost overnight accommodations on the site are not feasible because of the project's high development cost, additional day use facilities on the site can provide the public recreation facilities preferred by Coastal Act Section 30213. For this reason, the conditions of permit approval call for the provision of additional public picnic facilities on the site. The conditions also require the developer to participate in funding of



a regional hostel facility by contributing at least \$100,000 as an in lieu fee for hostel development in conformance with the conditions of the County's approval of the development. By contributing to the creation of this low cost recreation opportunity the development, as conditioned, will provide feasible affordable public recreation facilities in conformance with Coastal Act Section 30213.

Therefore, the Project is in compliance with the Coastal Act Sections 30210, 30212, 30213, 30214 and 30252.

F. Environmentally Sensitive Habitats. The project site, because of the long history of oil development and other activities, contains only a small amount of sensitive habitat -- a thin strip of riparian vegetation in the creek area, a small wetland and estuary pond where the creek ends at the beach, and a narrow coastal strand.

Disturbed uplands containing some native plant species intermixed with dominant non-native species are found on the top portions of both terraces, as well as on the slopes bordering the Tecolote Creek. Coastal sage scrub is found scattered on the steeper terrace slopes in the north portion of the valley floor. This area consists primarily of coyote bush, California sage and some salt brush. A mixed woodland of native and introduced trees and shrubs occupy a portion of the south end of the valley floor, east of Tecolote Creek. These areas support a variety of birds, lizards and small mammals such as mice. A row of mature introduced eucalyptus trees run along the site's north boundary.

Tecolote Creek supports some riparian woodland. The Tecolote Creek runs approximately 250 yards from the railroad line to the Pacific Ocean, where it terminates in a small tidal lagoon. The creek bank supports a band of riparian vegetation (primarily willows with some black berries, sycamore, cottonwood, and poison oak). The riparian vegetation is intermixed with introduced Monterey Cypress and eucalyptus. Bell Creek has a similar flora, but with the exception of the upper 100 feet which would be crossed by the road, is outside the site.

The small lagoon at the mouth of Tecolote Creek varies in size, but generally contains no more than a quarter acre of surface area. The wetland supports a small assemblage of wetland plants, including some cattail, sage, pickleweed and saltgrass.

Water fowl, and water-associated birds, such as herons and kingfishers, use the Tecolote Creek area. When water conditions are suitable, the lagoon and lower creek still support small marine/brackish water fish such as topsmelt and pacific Staghorn sculpin. These fish help sustain the herons and kingfishers.

The site's one-half mile of beach includes some coastal strand and intertidal habitat. The beach width varies between 25 and 300 feet and consists primarily of fine sand and some cobbles at the west end. The wider, more stable beach between the terraces has a narrow fringe of dune species, such as sand verbena, sea rocket, beach primrose, and the introduced New Zealand spinach. This coastal strand area is used by a variety of shore birds. The intertidal portion of the beach area has a sand and cobble substrate, which supports a sparse flora, primarily marine algae and provides



habitat for invertebrates, including mollusks, mussels, crustaceans, and starfish.

All of the habitats have been disturbed by human activity, most recently by oil development in the 1920's through the 1950's. Oil facilities were placed on the valley floor, the terraces, across and around the creek, and along the beach. Only portions of the site's habitat have recovered from the oil production to its natural state.

None of the plants or wildlife on the site are rare or endangered. Two of the communities most important for wildlife, riparian and coastal wetland, are naturally restricted and have experienced sharp decline in acreage, both regionally and statewide over the past 50 years.

Coastal Act Section 30240 provides:

- (a) Environmentally sensitive habitat areas shall be protected against any significant disruption of habitat values and only uses dependent on such resources shall be allowed within such areas.
- (b) Development in areas adjacent to environmentally sensitive habitat areas shall be sited and designed to prevent impacts which would significantly degrade such areas and shall be compatible with the continuance of such habitat areas.

Coastal Act Section 30231 provides, in part:

The biological productivity and the quality of coastal water, streams [and] wetlands... appropriate to maintain optimum populations of marine organisms... shall be maintained and where feasible, restored through, among other means, minimizing adverse affect of waste water discharges,... controlling runoff, preventing depletion of ground water supplies, and substantial interference with surface water flow, encouraging waste water reclamation, maintaining natural vegetation buffer areas that protect riparian habitats, and minimizing alteration of natural streams.

The Coastal Act provides specific provisions controlling development affecting streams and wetlands. Coastal Act Section 30233 provides, in part:

- (a) The ... filling or dredging of ... wetlands [and] estuaries ... shall be permitted in accordance with other applicable provisions of this division where there is no feasible less environmentally damaging alternative and where feasible mitigation measures have been provided to minimize adverse environmental effects....

Section 30236 of the Act provides:

Channelization, dams, other substantial alterations of rivers and streams shall incorporate the best mitigation measures feasible, and be limited to (1) necessary water supply projects, (2) flood control projects where no other method for protecting existing structures in the floodplain is feasible and where such protection is necessary for public safety or to protect existing development, or (3) developments where the primary function is the improvement of fish and wildlife habitat.

No direct adverse impacts to sensitive habitats will result from the



project. The project includes a habitat restoration and protection program which will preserve the existing wetland and riparian habitats and restore other habitats, recreating a more natural condition on this site. The riparian corridor will be widened to 50 feet. An extensive dune system will be created to buffer the wetland from beach use. The oak woodland habitat on the site will be expanded to cover larger portions of the valley floor. Thus the project will meet the Coastal Act requirements for preservation and restoration of the site's habitats.

To minimize any potential impacts on sensitive habitats the Project, including conditions imposed by the County, incorporates numerous mitigation measures, including, among others, the following:

1) In conjunction with the County and the Department of Fish and Game, the applicants will develop a comprehensive biological resources mitigation program.

2) Thirty eight acres of native vegetation will be preserved and restored.

3) A buffer zone between the developed areas and the riparian and wetland habitat will be provided, up to 200 feet wide in some areas, to reduce potential impacts from hotel occupants and the public. This buffer zone will be landscaped with suitable native species, both to provide habitat and to screen the habitats. The conditions of permit approval requiring that the Commission's Executive Director review and approve the buffer zone's landscaping plan will ensure that the habitat restoration program is carried out in conformance with Coastal Act Sections 30231 and 30240.

4) No dredging of the Creek will occur. Conditions of this permit provide that dredging will not be permitted, ensuring the project's conformance with Coastal Act section 30233.

5) Pathways will be routed through appropriate sections of the restoration area to provide controlled public access.

6) As an integral part of the nature trails for the Project, the applicant proposes to construct a pedestrian bridge over the lower portion of Tecolote Creek. The approximately 10-foot wide bridge will be placed on the existing abutments from the bridge which spanned the Creek during the oil development. Bridge construction would not require any filling in the creek channel. This limitation is incorporated in the permit's conditions, ensuring that the project does not result in fill of wetlands or estuaries in conflict with Coastal Act Section 30233 or substantial alteration of the stream in conflict with Coastal Act Section 30236.

7) To minimize demands on the surface and groundwater resources in Tecolote Creek, the applicant has proposed reclaiming grey waste water for landscape irrigation. Approximately 29 acre feet per year (27 percent of the project's water demand) would be met by recycling grey water.

8) The landscaping plan includes planting of trees, shrubs and other ground covers which would control erosion, plantings of native species are proposed for the Tecolote Creek's valley floor.

9) A system to collect, treat and transport runoff containing oil,



grease, fertilizers and pesticides is also proposed. The system would collect runoff on the west terrace, directed by a surface and subsurface routes through an oil trap to a concrete and rubble drop structure adjacent to the lagoon at the mouth of Tecolote Creek. From this point, the runoff will pass a sheet flow or through a natural channel about 120 feet to the lagoon. Runoff from valley floor development will be directed to Tecolote Creek through drainages and open swale. Runoff from the east terrace road cut will be directed through drop structures to Tecolote Creek and the Bell Canyon Creek.

10) The project includes construction barriers to prevent the disturbance of sensitive areas by construction workers.

11) The proposed depth of fill will not adversely affect tree root systems. Trees with greater than a six inch diameter trunk will be preserved by the construction of walls around the base of the trees, if necessary.

12) Although fill is proposed in the valley floor area, vegetation there is a mixed woodland vegetation, which is neither a sensitive nor endangered habitat.

13) The proposed project does not have the potential of significantly reducing stream flow in Tecolote Creek nor of endangering wildlife. Tecolote Creek is an intermittent stream which has variable water flow throughout the entire year. The stream level varies greatly from year to year. The project will not interfere with winter discharges of the creek or with the intrusion of brackish waters within the creek's estuary. The creek's present populations of marine and brackish water fish are not expected to be affected by the project. Changes in the stream's summer flows, if any, attributable to the proposed project will not be significant because of the seasonal variation in stream flow which already occurs and the absence of an anadromous or freshwater fishery in the creek.

The increased human use of the site because of the Project is not likely to further damage onsite or offsite vegetation. The site has undergone an intense and diversified historical use, ranging from ranching and agriculture to petroleum drilling, storage and processing. More recently, portions of the site have been used by two and four-wheel vehicles and others to wander across the site. This uncontrolled public access can result in habitat damage, particularly in the valley and creek areas. The project will provide pedestrian and bicycle paths to control and direct public access to the beach, thereby reducing the number of people who currently trample the site's resources. The interpretive signing program will increase public understanding of the site's habitats, encouraging their conservation. Development of the project will assure that trash and debris will be removed and that the dry sandy beach will be maintained for the benefit and enjoyment of the public.

Therefore the project as conditioned complies with Coastal Act Sections 30231, 30233, 30236, and 30240.

G. Visual Resources. The project site is visible most prominently from the adjacent beach and ocean. Portions of the beach are also visible from the nearby golf course. Views of the site from U.S. 101 and the Southern Pacific Railroad line are largely obscured by a row of eucalyptus trees.



The site, over the years, has undergone an intense and diversified history of use ranging from ranching and agriculture to petroleum drilling, storage and processing. During the oil development of the property, numerous structures were located on the site and their remnants still can be observed today. In essence, the visual quality of the site has been in a state of flux for the past century.

Coastal Act Section 30251 provides:

The scenic and visual qualities of coastal areas shall be considered and protected as a resource of public importance. Permitted development shall be sited and designed to protect views to and along the ocean and scenic coastal areas, to minimize the alteration of natural land forms, to be visually compatible with the character of the surrounding areas, and, where feasible to restore and enhance visual quality in visually degraded areas. New development in highly scenic areas such as those designated in the California Coastline Preservation and Recreation Plan prepared by the Department of Parks and Recreation and by local government shall be subordinate to the character of its setting.

Coastal Act Section 30253 provides, in part:

New development shall:...(2) assure stability and structural integrity, and neither create nor contribute significantly to erosion, geologic instability, or destruction of the site or surrounding area or in any way require construction of protective devices that would substantially alter natural land forms along bluffs and cliffs.

Although the project will alter the existing visual qualities of the site, the design and siting of the project will mitigate these impacts. The hotel architecture is not massive, with mixed sizes and heights and some units tucked into the terrace. None of the major buildings exceeds three stories. In breaking the buildings into small units, the Project will not dominate the site but will blend with the site's natural topography. All Project buildings will conform with the 35 foot height limit of the County's coastal zoning ordinance.

The hotel architecture is designed in the Santa Barbara style with stucco walls and tile roofs (Exhibit 10 and 11). The architecture reflects the character of the Santa Barbara style and will not conflict with the general character of architecture in the area. The one, two and three story buildings are terraced down the slope in a variety of sizes and configurations to give the feeling of a Spanish village created over time. The buildings are small scale and each is unique in its ornamentation. For example, the buildings vary in room configuration and architectural detailing such as window shape and location, railings, paving, doors, exterior lighting, pastel color tone. Some units include balconies, other terraces or verandas. The conference center reflects the notion of a village city hall and is consequently the most ornamental and detailed of the buildings.

Entry courts and access areas to units are designed as landscaped courtyard gardens while the view side of the units have a naturalized meadow landscape treatment. The pedestrian view from the public walkways is a combination of unique architecture, varied roof lines, terraces, green spaces



and courtyards.

Visually, the project will be screened by the existing line of tall eucalyptus trees on the site's northern boarder and will not be visible from the highway and hills beyond or from below the bluff. On site, the buildings can be seen from the beach and the site area between the western and eastern bluffs.

Site coverage of the buildings is only 7% of the land area; approximately 48 acres are landscaped or rehabilitated natural areas. The natural and plant areas of the project are divided in two zones: (1) the entry drive and landscaped hotel garden; and (2) the restored natural zones at the creek, the valley floor and the eastern terrace and the bluff slopes of the eastern and western terraces. The landscape for the hotel area and entry drive will contain plant species commonly used in the Santa Barbara region. This treatment offers a variety of plant materials and includes both native and introduced species. Throughout the valley floor plant species have been selected to restore native vegetation to the site. The creek area has been carefully planned to restore riparian wetland values and the habitats.

The project has been designed to follow the site's topography. The relatively level hotel site on the western terrace will be minimally graded to accommodate the proposed structures. The overall form of the topography of the project site will be substantially changed in only a few areas.

The access road would run from the end of the existing Sandpiper/ARCO access road, across Bell Canyon Creek, through the north half of the eastern terrace, along the valley floor, and over Tecolote Creek. The cut through the east terrace would remove approximately 99,000 cubic yards of material. The slopes of this cut will be replanted and the landscaping will soften the impact of this cut. The cut would be necessary for any development at this site, in that the road cut must meet County standards and the current access to the site is dangerous and must be removed.

All utility lines will be located underground to minimize any visually intrusive features of the Project. Additionally, all parking areas will be landscaped and screened. As conditioned, the Project cliff walk does not include a retaining wall. Such a wall could unnecessarily alter the seacliff's landform and views of the site from the beach.

Thus the project as conditioned is consistent with Sections 30251 and 30254 of the Coastal Act protecting coastal visual resources.

G. Geologic Hazard. The project site is located at the mouth of narrow coastal canyon, bordered on the east and west by marine terraces and on the south by a sandy beach. The terraces have been shaped by uplift, the erosion action of Tecolote Creek, and ocean waves. The Tecolote Creek's valley floor is elevated five to fifteen feet above the creek bed and is composed of recent alluvial material, and some imported fill. The creek runs along the valley's west side.

The marine terraces are composed of units of the Monterey formation which dip toward the ocean to a 52 degree angle, and a 30-40-foot thick overburden of older alluvium. The tops of both terraces are relatively flat. Portions of the west terrace slope to the creek at a 10-20 percent grade with a greater



gradient at the extreme south end. The east terrace slopes to the creek at a 40-70 percent grade. The coastal bluffs formed by the terraces range between 75 and 95 feet above mean sea level and are nearly vertical. The sandy beach has a gentle slope; its width varies from 25 to 300 feet depending on the season and the tide.

There are no faults on the site. The active More Ranch fault is located offshore at a 1,000 feet to the southeast. The Santa Ynez and Big Pine faults are located, respectively, 7.5 and 17 miles northeast of the area. The area is classified as high seismic problem zone by the County, because of the location and number of faults. The County has rated the slope stability problem as high. Ground shaking associated with the adjacent More Ranch fault has the potential to cause landsliding, particularly along the steep bluff face of the two marine terraces. Other potential effects of ground shaking are liquefaction on the valley floor, particularly east of Tecolote Creek and an inundation by tsunami of portions of the valley floor. The site's liquefaction potential is considered only moderate because of uncertainty regarding the amount of groundwater underlying the valley floor.

The project EIR indicated a bluff retreat rate in the project vicinity of four to eight inches per year, and recommended a bluff setback of between 25 and 50 feet. In response to this analysis, the applicant proposed placing all structures a minimum of 75 feet from the blufftop. The applicant's most recent site specific geological analysis indicates an average bluff retreat of 6 inches per year, and recommends a bluff setback of 37.5 feet from the stable slope point to ensure the project's stability for 75 years (Exhibit 12).

Coastal Act section 30253 provides, in part:

New development shall:

1. Minimize risk to life and property in areas of high geologic flood and fire hazard.
2. Assure stability and structural integrity and neither create nor contribute significantly to erosion, geologic instability, or destruction of the site or surrounding area or in any way require construction of protective devices that would substantially alter natural land forms along bluffs and cliffs.

With proper site preparation, the soils of the site can adequately support the project. The project requires modification of the topography to accommodate the structures. Portions of the west terrace, where most of the project would be located, will be excavated and filled, with cuts and fills ranging between five and ten vertical feet. Most of the cuts and fills will occur on the sloping portion of the terrace with slopes of ten to twenty percent. The west terrace parking area will also be filled with two to four feet of fill, primarily to protect the most sensitive portion of an archeological site.

A portion of the valley floor east of Tecolote Creek would be covered with between two and ten feet of fill to create a level building site for the proposed public parking area, tennis courts and service buildings. The access road, which will be parallel to the south side of the existing rail line, will require a 60-foot deep cut through the north end of the east terrace. The road has been realigned to reduce to the extent possible the modification of



the topography. Cut and fill slopes would range 2:1 maximum steepness with the steepest slopes created by the access road through the east terrace. A total of 162,000 cubic yards of material would be cut and approximately 100,600 cubic yards of fill will be placed on the site. Cuts and fills will be molded and contoured to soften the appearance of modified land forms.

All principal structures will be placed outside the 75-year bluff retreat setback line, 40 to 60 feet from the bluff edge.

Only drought tolerant vegetation will be planted in the buffer zone.

The project uses low loss methods of irrigation in order to prevent excess runoff and directs all runoff away from the bluff.

Nothing will be developed in the floodway.

No retaining wall would be required for the cliff walk. The conditions of permit approval will prevent construction of such a device. Instead, the cliffwalk will be relocated if required by bluff retreat.

The project has been conditioned by the County in a number of ways to insure that the development will substantially reduce the risk to life and property due to any geologic hazards. The project sponsor must retain a licensed geologist or landscape architect to design and supervise an erosion control program during grading. The project sponsor must revegetate any graded slopes. The project sponsor must use low loss methods of irrigation to prevent excessive runoff. Storm drains must be installed to collect storm water runoff and runoff will not be discharged to unprotected slopes. The project sponsor must develop a system of erosion control to prevent siltation of the creek. The project sponsor must retain a licensed professional to design and supervise an erosion control program during grading. All buildings must be constructed to conform with standards of the Uniform Building Code to insure that the earthquake hazard is reduced to an acceptable level of risk. Thus, the project is consistent with Coastal Act section 30253.

I. Archaeology. The project site is in the center of the territory occupied by the native Chumash. Tecolote Canyon has been occupied by Native Americans for over 6000 years, covering all major phases of Chumash cultural history. As a result, the project site is rich in archaeological resources. The site contains six recorded archaeological sites (SBa 71, SBa 73, SBa 1326, SBa 1673 and SBa 1674) (Exhibit 13). Additionally two archaeological sites were identified during the pipeline right of way survey (SBa 1671, SBa 1672). The archaeological sites vary from temporarily or seasonally occupied areas to permanent habitations with cemeteries.

Most of the sites have been examined by archaeologists, beginning in 1908 and 1929. Three sites, however, were discovered recently. Most of the sites have been disturbed by agriculture and oil processing. The most heavily disturbed sites are SBa 72 on the east valley floor and SBa 73 on the west terrace. The eastern terrace site, SBa 71, was the site of grading and several oil related facilities during the 1920s and 1930s. The sites on the western terrace, SBa 1673 and 1674, and most of the northern half of SBa 73 have been subject to agricultural impacts. Extensive disturbance has resulted from unauthorized collecting activities at SBa 71, 72 and SBa73. SBa 1326 has been subject to extensive grading and only a small remnant of the site still



exists.

Despite disturbance, scientists and Chumash representatives have testified that the archaeological deposits retain scientific and cultural significance. The deposits have the potential to provide information regarding resource exploitation, development and use of technology, site formation, trade, and settlement patterns at Tecolote Canyon. An analysis of site characteristics at Tecolote Canyon with other Santa Barbara Channel sites could increase understanding of broader Chumash cultural patterns. Tecolote Canyon is also valued by Chumash descendants who have used the sites for religious ceremonies; this value is heightened by the large number of Native American burials the sites contain.

Coastal Act Section Section 30244 provides that:

Where development would adversely impact archaeological resources as identified by the State Historic Preservation officer, reasonable mitigation measures shall be required.

The Commission is guided by both its archaeological guidelines and those provided by the California Environmental Quality Act, in considering reasonable mitigation for the Project. Both guidelines encourage avoidance of archaeological sites where feasible, but include permitting capping or covering archaeological sites with a layer of soil for mitigating impacts on archaeological resources before building on the site. (Public Resources Code Section 21083.2)

Archaeologists have ranked the sensitivity of the sites as high, medium, and low to assess project impacts. Development is generally not recommended in areas of high sensitivity, while medium and low sensitivity areas can be developed with appropriate mitigation. As described below, the development generally avoids or protects high sensitivity portions of the sites. Appropriate mitigation measures have been incorporated into the development plan or are imposed as a condition of this permit, and an archaeology mitigation plan has been developed in order to reduce impacts from development on medium and low sensitivity portions of the site.

Site SBA-71 covers the southern 2/3 of the east terrace. The entire site is highly sensitive because of its relatively undisturbed nature, dense deposits, and extensive burials. This major site will be protected by the project except for a minor portion of the access road cut and drainage system, which would extend 25 feet into the north tip of the site, disturbing less than 2% of SBA-71. The conditions of permit approval require relocation of the access road drainage system to avoid this site. Alternative road alignments which could avoid this site have been reviewed by the County and are not feasible.

Site SBA-72 on the eastern valley floor is the most disturbed of those in the area. Several portions of this site, however, remain undisturbed or contain burials. Archaeologists and Chumash representatives have testified to the special value of this site. As proposed, the tennis courts, maintenance building, and sewer main east of Tecolote Creek affect low sensitivity portions of SBA 72. No structures would be located on the high sensitivity south portion of the site. Pedestrian trails and a portion of the drainage from the east terrace road cut could be routed across this area. Trail



surfacing materials would protect the site, and the conditions of the permit's approval require relocation of the drainage system to avoid high sensitivity portion of SBa 72 if feasible and relocation of all other development to avoid the site. As permitted, the development will protect this site to the maximum extent feasible.

Site SBa-73 on the valley floor and shallow slopes west of Tecolote Creek contains high, medium and low sensitivity areas. Special features such as cemeteries, a dance floor, and a sweat lodge have been identified by archaeological investigations. Archaeologists and Chumash representatives have testified to the special importance of this site. The service entrance road to the loading dock, a portion of the internal road system, the east end of hotel unit #2, the sewer line, and the principal drainage line would be located in high sensitivity areas. To prevent this adverse effect, the conditions of the permit require that no development, other than access trails, be located on high sensitivity portions of SBa 73. Trail surfacing materials would protect those portions of the site crossed by the pathways. Where portions of the service loading dock, speciality restaurant, pool, lagoons, and decking areas, and internal walkways would be on medium sensitivity areas other mitigation measures, as described below, are included in the project.

Site SBa-1326 along the west terrace's north edge is provisionally classified as low sensitivity. The western portion of the entrance road would encroach slightly into this site and grading would cut into the site an additional 25 feet. The permit's conditions require investigation and appropriate mitigation of any significant adverse effects to this site.

Site SBa-1672 lies north of US 101 at the intersection of Vereda Leyenda and Calle Real (Exhibit 14). The site has not been completely surveyed but is provisionally classified as high sensitivity. The water main down Tecolote Canyon would pass through the eastern portion of the site west of the Vereda Leyenda right-of-way, disturbing 15% of site SBa-1672. To avoid this affect, the permit's conditions require relocation of the water line to avoid SBa 1672.

Site SBa-1673 covers most of the west terrace top. The site was discovered during project planning, and has had only limited investigation. The main restaurant and adjacent structures have been located off high sensitivity areas of the site. Most of the site classified as highly sensitive would be covered with a protective fill as part of the development of the main parking lot. Only medium or low sensitivity areas would be affected by the arrival court, convention center, main restaurant, hotel units #3, #4, #6, #7, a portion of #9, and #19, the sewer main, a drainage line, and internal walkways located on SBa 1673. Mitigation measures are proposed to compensate for this development.

SBa-1674 is on the west terrace's east slope between sites SBa-1673 and SBa-71. This high sensitivity site was only recently discovered and has not been completely surveyed. Portions of one set of bungalows (Buildings #15 & #16) and the sewer line collection station would be on the site. The slopes in the area would require extensive grading and fill to create building pads. The permit's conditions require testing and appropriate mitigation of any adverse effects to this site.

Other measures required by the County to mitigate archaeological impacts



include (1) fencing or flagging archaeological sites during construction, (2) monitoring grading and fill, (3) controlling access to remaining exposed sites, (4) conducting salvage and other investigations on portions of site SB 72, SB 73, and SB 1674, (5) preparing a public interpretative program, (6) cemeteries will be fenced during construction and left in their natural state, (7) the applicant must fund the preparation of a cultural resources management plan, (8) the sponsor must implement an archaeological data recovery and mitigation program at sensitive sites, (9) in all archaeologically sensitive areas noted as high or medium where capping or filling is proposed the program shall be followed to insure appropriate mitigation of potential impacts, (10) provision shall be made for the disposition of non-burial remains in a permanent repository, and (11) Native American consultants will monitor all earth moving activities.

Additionally, the conditions of the permit require further mitigation measures including: relocating the access road's drainage system to avoid SB 71 to the maximum extent feasible; if feasible, relocate the drainage system to avoid high sensitivity areas of SBa 72; avoid development, other than access trails, on SBa 72 and high sensitivity areas of SBa 73; relocate the water line to avoid SB 1672; avoid landscaping species with large root balls near archaeological sites; and further site specific investigations.

As conditioned, structures will be located to avoid almost all of the high sensitivity areas. More than 80 per cent of the high and medium sensitivity portions of the sites will be protected by the development, ensuring their long term availability for scientific and cultural purposes.

Therefore, the Project will be consistent with the Coastal Act policies for mitigating impacts to archaeological and cultural resources.

6. Oil and Gas Development. The site is adjacent to ARCO's Ellwood processing plant. While the structures appear safe from hazards posed by ARCO's plant, the site's access road and the beach, like some other adjacent development, are within areas exposed to toxic gas leaks, blast waves, and flying metal fragments in an explosion at the plant. To mitigate these hazards, permit conditions require additional hazard analysis and, if necessary, implementation of a hazard reduction plan.

ARCO's Ellwood processing plant is separated from the project site by the east terrace. The plant includes four 43,000 gallon liquefied petroleum gas (LPG) pressure vessels. According to the EIR and information supplied by the applicant, the east terrace would protect the hotel from flying metal fragments in the event of an LPG explosion at the plant.

The access road and the beach are both within the 1500 foot safety zone around the LPG vessels identified in the EIR. The project will substantially increase public use of both the road and the beach. In the event of an LPG explosion at the ARCO plant, travelers on the road or beach users could be exposed to hazards such as the concussion of an explosion and flying metal fragments.

ARCO is proposing major modifications of its Ellwood plant as part of its development of the Coal Oil Point, South Ellwood, and Embarcadero offshore fields. Under of its proposal, ARCO would eliminate gas processing at the



Ellwood plant and and expand the plant's oil processing capacity from 20 million barrels per day (MBD) to 80 MBD. If ARCO's project were to be constructed as proposed, it could have significant effects in the project area.

Coastal Act Section 30260 provides, in part:

Coastal-dependent industrial facilities shall be encouraged to locate or expand within existing sites and shall be permitted reasonable long-term growth where consistent with this division.

Coastal Act Section 30262 states, in part:

Oil and gas development shall be permitted in accordance with 30260 if the following conditions are met:

(b) New or expanded facilities related to such development are consolidated to the maximum extent feasible and legally permissible....

Coastal Act section 30250(b) states:

Where feasible, new hazardous industrial development shall be located away from existing developed areas.

Finally, Coastal Act Section 30253 provides, in part:

New development shall:

(1) Minimize risks to life in areas of high ... fire hazard.

The project could expose users of the access road or beach to hazards from LPG explosion at the ARCO plant. To mitigate this hazard, the permit's conditions require the applicant, in cooperation with ARCO and the Santa Barbara County Fire Department, to prepare a risk management plan for these hazards and, if necessary, to implement hazard reduction measures, such as installation of barriers, berms, or other appropriate actions, to minimize these hazards. These measures may include coordination of the project's construction with the elimination of LPG processing at Ellwood. As conditioned, the project conforms with Coastal Act Sections 30250(b) and 30253.

The project will not conflict with oil and gas development consistent with Santa Barbara County's LCP or the Coastal Act's industrial siting policies. The LCP calls for consolidation of oil and gas facilities at Gaviota and Las Flores Canyon. The Commission, in its actions on the LCP has found that the consolidation of treatment facilities at Gaviota and Las Flores Canyon will permit reasonable expansion of oil and gas consistent with the Coastal Act's policies. The consistency with the LCP of the Ellwood oil processing proposed by ARCO is currently being reviewed by the County.

For these reasons, the project as conditioned conforms to Coastal Act Sections 30260, 30262, 30250(b), and 30253.

7. Local Coastal Program. The project site does not have a certified LCP under which development can be reviewed. The County of Santa Barbara has resubmitted its LCP for the site with a land use designation and policies which would allow the project as proposed. Because the project as conditioned



is consistent with the applicable policies of the Coastal Act, as well as the resubmitted LCP and past Commission action's on the land use designation for this site, approval of the project in its present form will not prejudice the ability of the County to prepare an LCP for the site in conformity with Chapter 3 of the Coastal Act.

In its resubmitted LCP for Haskell's Beach, the County has proposed designating the site Visitor/Serving Commercial (with a C-V zone designation). It also proposes placing the site within the urban Goleta planning area. The County's submittal contains no site specific polices. The consistency of this resubmittal will be the subject of a separate Commission hearing.

The County's certified LCP contains a large number of general policies which relate to the coastal issues raised by the development. The certified LCP also incorporates by reference (Policy 1-1) the Coastal Act's Chapter 3 policies, and includes the language of these policies within the text. The most pertinent are summarized and discussed below.

The County's general development policies (Policy 2-1 through 2-15) require the provision of adequate public services (including water and sewer) to new developments and encourage the concentration of new development in already developed urban areas, or adjacent areas, through controls over land divisions, annexations, utility extensions, and the prioritization of land uses. Planned development policies (Policies 2-17 through 2-21) and site design overlay designations (Policy 2-22) establish additional development review procedures and standards for areas designated as planned development (PD). As discussed above, the project is located adjacent to an existing developed area, has adequate public services, and so conforms to these policies.

The LCP includes hazards polices (Policies 3-1 through 31-2) which address shoreline erosion, bluff protection, earthquakes, flooding, and slope stability. Policy 3-4 requires that all new development be set back a sufficient distance from the bluff edge to protect the structure from bluff erosion for a minimum of 75 years. Other policies control bluff top drainage, landscaping, and development on bluff faces. The development is generally consistent with these policies.

Visual resources (and view corridors) are given protection in policies 4-1 through 4-11. Policy 4-3 provides that in areas designated as rural, the height, scale, and design of structures be "compatible with the character of the natural environment" and "subordinate in appearance to natural landforms". In reviewing the project the County considered the site to be urban and consequently did not apply this policy. As discussed above, the Commission has concluded that the project's design is appropriate for the site.

The general access policies in the County LCP (Policy 7-1 through 7-7) mirror those in the Coastal Act. The County's policies require that access to and along the coast be maximized, and specifically that vertical access be provided if necessary in all new development consistent with the protection of coastal resources, public safety, and individual privacy. As described above, the project will provide adequate access to the coast.

The LCP contains policies (Policies 7-28 through 7-30) which guide the



location and scale of visitor serving commercial development in the urban and rural portion's of the County's Coastal Zone:

Policy 7-28: Visitor Serving commercial recreational development that involves construction of major facilities, i.e., motels, hotels, restaurants, should be located within urban areas, and should not change the character or impact residential areas.

Policy 7-29: Visitor serving commercial recreational development in rural areas should be limited to low intensity uses, i.e., campgrounds, that are designed to protect and enhance visual resources, and minimize impacts on topography, habitats, and water resources.

Policy 7-30: Visitor-serving facilities shall be permitted in rural areas only if it is determined that approval of such development will not result in a need for major ancillary facilities on nearby lands, i.e., residences, stores, gas stations.

The County has resubmitted its Land Use Plan with a proposal to change the urban boundary to incorporate the site into the urban Goleta planning area. The County's present policies would not permit a development of the scale and intensity proposed for the site in a rural area. However, Coastal Act Section 30250 does permit visitor serving facilities that cannot feasibly be located in existing developed areas in isolated areas consistent with other applicable Coastal Act policies. As described above, the Commission has found that the use is appropriate to the site.

The County has extensive agricultural land within the Coastal Zone and the LCP contains numerous policies (Policies 8-1 through 8-10) designed to protect the agricultural lands from urbanization. One of the principal mechanisms for protecting agricultural lands is the establishment of stable urban/rural boundaries. Policy 8-2 limits the conversion of agricultural lands which are located in rural areas, but not contiguous with an urban area, and Policy 8-3 limits the conversion of farm lands contiguous with an urban rural boundary. The project site is part of a larger holding which contains 400 acres of avocado orchards. As described above, Haskell's Beach itself has limited agricultural potential. In addition, because a destination resort is not anticipated to induce additional development surrounding the site, the project will not generate pressure on adjacent agricultural lands through the extension of utilities and the increased demands for urban services. The proposed project, therefore, has little potential to affect the long term viability of adjacent agricultural lands.

The County LCP contains policies for the protection of environmentally sensitive habitats, including dunes (Policies 9-2 and 9-3), wetlands (Policies 9-6 through 9-16), intertidal areas (9-30 through 9-32), and coastal streams (Policies 9-37 and 9-38). Policy 9-36 requires that "where sites are graded or developed, areas with significant amounts of vegetation shall be preserved. Policy 9-37 requires a 100 foot buffer between all development and major streams in rural areas, and a 50 foot buffer in urban areas. Other policies limit the kinds of development allowed in stream corridors and the mitigation which must accompany permitted development. Development is proposed to be sited a sufficient distance from Tecolote Creek to meet the County's rural stream buffer standards.



Archaeological resources are afforded protection under Policies 10-1 through 10-4. These policies identify avoidance of impacts as the preferred methods of dealing with archaeological resources, and require mitigation consistent with the guidelines of the State Office of Historic Preservation and the Native American Heritage Commission when complete avoidance is not possible. The County's policies also require consultation with Native Americans. The project conforms to these policies.

Because the project conforms to the Coastal Act and is consistent with the resubmitted LCP and the general LCP policies applicable to the development, approval of the permit will not prejudice the County's preparation of an LCP that conforms to the Coastal Act.

DR/ms/mt  
1320A



Exhibit 6  
 CCC-13-CD-03 & CCC-13-RO-03  
 (Bacara Resort & Spa)

Coastal Access around Bacara Resort and Spa

1 miles 2 km





2008-0034569

Recorded	REC FEE	284.00
Official Records	CONFIRMED COPY	1.00
County of Santa Barbara		
Joseph E. Holland		

10:56AM 10-Jun-2008	NA	Page 1 of 93
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1 REQUESTED BY AND  
 2 WHEN RECORDED RETURN TO:  
 3 CALIFORNIA COASTAL COMMISSION  
 4 725 Front Street, Suite 300  
 Santa Cruz, CA 95060  
 5 Attn: Legal Division

93  
cc1

7 Project: Bacara Resort & Spa  
 CDP: 4-85-343 & 4-85-343-A2  
 8 APN: 079-200-012 and 013  
 Location: 8301 Hollister Avenue, Goleta

10 **SECOND AMENDED IRREVOCABLE OFFER TO DEDICATE**  
 11 **PUBLIC ACCESS EASEMENT AND DECLARATION OF RESTRICTIONS**  
 12 **THIS IRREVOCABLE OFFER TO DEDICATE PUBLIC ACCESS EASEMENT**

13 **AND DECLARATION OF RESTRICTIONS** (hereinafter referred to as the "Second Amended  
 14 Offer to Dedicate") is made this 17 day of April, 2008, by HT-SANTA BARBARA,  
 15 INC., a Delaware corporation (hereinafter referred to as the "Grantor").

16 I. WHEREAS, Grantor is the legal owner of a fee interest of certain real property  
 17 located in the County of Santa Barbara, State of California, legally described as set forth in  
 18 attached Exhibit A hereby incorporated by reference (hereinafter referred to as the "Property");  
 19 and

20 II. WHEREAS, the California Coastal Commission (hereinafter referred to as the  
 21 "Commission") is acting on behalf of the People of the State of California; and

22 III. WHEREAS, all of the Property is located within the coastal zone as defined in  
 23 Section 30103 of the California Public Resources Code (hereinafter referred to as the  
 24 "California Coastal Act of 1976," the "Act"); and

25 IV. WHEREAS, pursuant to the Act, the Grantor applied to the Commission for a  
 26 coastal development permit on the Property; and

27 ///

Second Amended Offer to Dedicate and Declaration of Restrictions

41278529.1

Exhibit 7  
 CCC-13-CD-03 & CCC-13-RO-03  
 (Bacara Resort & Spa)

This document supersedes and replaces the Irrevocable Offer to Dedicate Public Access Easement and Deed Restriction, both recorded on May 6, 1997 as Instrument Nos. 97-025124 and 97-025123, respectively; and the Amended Irrevocable Offer to Dedicate Public Access Easement and the Amended Deed Restriction, both recorded on January 31, 2008 as Instrument Nos. 2008-0005714 and 2008-5715, respectively, all in the Official Records of the Recorder's Office of the County of Santa Barbara.



1           V.     WHEREAS, on December 19, 1985 and December 14, 1988, respectively, the  
2 Commission granted Coastal Development Permit No. 4-05-343, and Coastal Development  
3 Permit Amendment No 4-85-343-A-2 (hereinafter collectively the "Amended Permit"), in  
4 accordance with the provisions of the Staff Recommendation and Findings for the Amended  
5 Permit, attached hereto as Exhibit "B" and herein incorporated by reference; and

6           VI.    WHEREAS, the Amended Permit is subject to the terms and conditions  
7 including but not limited to the following condition:

8           14. Public Access Dedications and Restrictions. Prior to the transmittal of a Coastal  
9 Development Permit and the commencement of construction, the applicant shall execute  
10 and record a document, in a form and content acceptable to the Executive Director,  
11 irrevocably offering to dedicate to a public agency or private association approved by  
12 the Executive Director, an easement for public access and recreation over the  
13 accessways described in the application. The applicant or its successors in interest shall  
14 have the right to relocate the easements to other locations within the public recreation  
15 area of the property provided the public's right of access is not unreasonably diminished  
16 and subject to prior consultation with and approval by the Executive Director which  
17 approval shall not be unreasonably withheld.

18           Prior to the Transmittal of the Coastal Development permit, the applicant shall record a  
19 deed restriction, in a form and content acceptable to the Executive Director, prohibiting  
20 interference with the use of the beach and trails described in the easement and  
21 committing the applicant to maintain the access improvements in a condition suitable for  
22 public use for the life of the project or until the acceptance of the offer of dedication;  
23 provided, however that such deed restriction shall be expressly subject to the applicant's  
24 right to relocate such easement as provided above.

25           A deed restriction shall be recorded which prohibits interference with the public's use of  
26 the private access road and bicycle path to gain access to the public parking areas and  
27 vertical access trails to the beach.

28           The document shall be recorded free of prior liens and encumbrances which the  
Executive Director determines may affect the interest being conveyed. The offer shall  
run with the land in favor of the People of the State of California, binding all successors  
and assignees, and shall be irrevocable for a period of 21 years, such period running  
from the date of recording.

          VII.   WHEREAS, the Property is a parcel located between the first public road and  
the shoreline; and

          VIII. WHEREAS, under the policies of Sections 30210 and 30212 of the Act, public  
access to the shoreline and along the coast is to be maximized, and in all new development  
projects located between the first public road and the shoreline shall be provided; and

          IX.    WHEREAS, the Commission found that but for the imposition of the above



1 condition, the proposed development could not be found consistent with the public access  
2 policies of Section 30210 and 30212 of the Act and that therefore in the absence of Special  
3 Condition No. 14, as quoted above, the Amended Permit could not have been granted; and

4 X. WHEREAS, on May 6, 1997, Grantor recorded both a Deed Restriction  
5 (hereinafter referred to as the "Deed Restriction"), and an Irrevocable Offer to Dedicate Public  
6 Access Easement and Declaration of Restrictions (hereinafter referred to as the "Offer to  
7 Dedicate", as Instrument Nos. 97-025123 and 97-025124, respectively, in the Recorder's  
8 Office of the County of Santa Barbara; and

9 XI. WHEREAS, Grantor thereafter requested the Executive Director of the  
10 Commission to approve the relocation of "Easement Parcel Five, Public Walkway Easement";

11 XII. WHEREAS, on November 22, 2006, the Executive Director of the Commission  
12 approved the relocated "Easement Parcel Five, Public Walkway Easement" after a  
13 determination that relocation of said easement would not diminish public access or impact  
14 archaeological resources.

15 XIII. WHEREAS, on January 31, 2008, Grantor recorded an Amended Irrevocable  
16 Offer to Dedicate Public Access Easement and Declaration of Restrictions (hereinafter referred  
17 to as the "First Amended Offer to Dedicate"), and an Amended Deed Restriction (hereinafter  
18 referred to as the "First Amended Deed Restriction") as Instrument Nos. 2008-0005714 and  
19 2008-0005715, respectively, in the Recorder's Office of the County of Santa Barbara to reflect  
20 the approved relocation "Easement Parcel Five, Public Walkway Easement";

21 XIV. WHEREAS, on March 17, 2008, the Executive Director of the Commission  
22 requested that certain revisions be made to the recorded First Amended Offer to Dedicate and  
23 the First Amended Deed Restriction and that this Second Amended Irrevocable Offer to  
24 Dedicate Public Access Easement and Declaration of Restrictions (hereinafter referred to as the  
25 "Second Amended Offer to Dedicate") be recorded to supersede and replace the Offer to  
26 Dedicate, the Deed Restriction, the First Amended Offer to Dedicate, and the First Amended  
27 Deed Restriction; and

28 ///



1 XV. It is intended that this Second Amended Offer to Dedicate is irrevocable and  
2 shall constitute enforceable restrictions; and

3 XVI. WHEREAS, Grantor has elected to comply with the conditions imposed by the  
4 Amended Permit so as to enable Grantor to undertake the development authorized by the  
5 Amended Permit.

6 NOW THEREFORE, in consideration of the granting of the Amended Permit to Grantor  
7 by the Commission and the approval by the Executive Director of the Commission of the  
8 relocation of "Easement Parcel Five, Public Walkway Easement," Grantor hereby offers to  
9 dedicate to the People of California an easement in perpetuity over the Property for the  
10 purposes of public access and recreation subject to the terms and conditions listed below.

11  
12 1. DESCRIPTION.

13 a. The easements offered hereby affect that portion of the Property consisting of the  
14 accessways originally described in the applications for the Amended Permit, as amended by the  
15 Executive Director of the Commission, as specifically described and depicted in Exhibit C,  
16 attached hereto and incorporated herein by reference (hereinafter referred to as the "Easement  
17 Areas").

18 b. Grantor or its successors in interest shall have the right to relocate the easements to  
19 other locations within the public recreation area of the Property, provided the public's right of  
20 access is not unreasonably diminished and subject to the prior consultation with and approval  
21 by the Executive Director which approval shall not be unreasonably withheld.

22 2. DECLARATION OF RESTRICTIONS.

23 The Grantor, for itself and for its heirs, assigns, and successors in interest, covenants  
24 and agrees that:

- 25 a. Grantor shall not interfere with the public's use of that portion of the Easement  
26 Areas consisting of Parcels 1 (Beach Easement), 2 (Equestrian Trail To Beach),  
27 3 (Public Walkway To Beach), 5 (Public Walkway Easement), and 6 (Equestrian  
28 Trail Northerly of Road).
- b. Subject to the right of the Grantor to relocate the Easement Areas as provided in  
Section 1.b, Grantor shall maintain the public access improvements for the



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Easement Areas in a condition suitable for public use for the life of the project or until acceptance of this Second Amended Offer to Dedicate.

- c. Grantor shall not interfere with the public's use of the private access road and the bicycle path, as shown on aforementioned Exhibit C, to gain access to that portion of the Easement Areas consisting of Parcels 2 (Equestrian Trail To Beach), 4 (Public Parking Lot Easement), and 5 (Public Walkway Easement).
- d. This Second Amended Offer to Dedicate shall not be used or construed to allow anyone, prior to acceptance of the Second Amended Offer to Dedicate, to interfere with any rights of public access acquired through use which may exist on the Property.

3. BENEFIT AND BURDEN.

a. This Second Amended Offer to Dedicate shall remain in full force and effect during the period that said permit, or any modification or amendment thereof, remains effective, and during the period that the development authorized by the Permit or any modification of said development, remains in existence in or upon any part of, and thereby confers benefit upon, the Property, and to that extent, this Second Amended Offer to Dedicate is hereby deemed and agreed by Grantor to be a covenant running with the land, and shall bind Grantor and all its assigns or successors in interest.

b. Grantor shall retain all normal rights and incidents of ownership of the underlying fee interest in the Property not inconsistent with the easement.

4. DURATION, ACCEPTANCE AND TRANSFERABILITY. This Second

Amended Offer to Dedicate shall be binding upon the owner and the heirs, assigns, or successors in interest to the Property for a period of 21 years running from the date of recordation hereof. The People of the State of California shall accept this Second Amended Offer to Dedicate through the local government in whose jurisdiction the Property lies, or through a public agency or a private association acceptable to the Executive Director of the Commission or its successor in interest (hereinafter referred to as the "Grantee"). Such acceptance shall be effectuated by recordation by the Grantee of an acceptance in the form attached hereto as EXHIBIT D. Upon such recordation of acceptance, this Second Amended Offer to Dedicate and terms, conditions, and restrictions shall have the effect of a grant of access easement in gross and perpetuity that shall run with the land and be binding on the heirs,



1 assigns, and successors of the Grantor. After acceptance, this easement may be transferred to  
2 and held by any entity which qualified as a Grantee under the criteria hereinabove stated.

3 5. ADDITIONAL TERMS, CONDITIONS, AND LIMITATIONS. Prior to the  
4 opening of the accessway, the Grantee, in consultation with the Grantor, may record additional  
5 reasonable terms, conditions, and limitations on the use of the Property in order to assure that  
6 this Second Amended Offer to Dedicate is effectuated.

7 6. REMEDIES. Any act, conveyance, contract, or authorization by the Grantor  
8 whether written or oral which uses or would cause to be used or would permit use of the  
9 Easement Areas contrary to the terms of this Second Amended Offer to Dedicate will be  
10 deemed a violation and a breach hereof. The Grantor, any Grantee of this easement and any  
11 offeree of this Second Amended Offer to Dedicate may pursue any and all available legal  
12 and/or equitable remedies to enforce the terms and conditions of the Second Amended Offer to  
13 Dedicate and easement and their respective interest in the Property. In the event of a breach,  
14 any forbearance on the part of any such party to enforce the terms and provisions hereof shall  
15 not be deemed a waiver of enforcement rights regarding any subsequent breach.

16 7. CONSTRUCTION AND VALIDITY. If any provision of these restrictions is  
17 held to be invalid or for any reason becomes unenforceable, no other provision shall be thereby  
18 affected or impaired.

19 8. SUCCESSORS AND ASSIGNS. The terms, covenants, conditions, exceptions,  
20 obligations, and reservations contained in this Second Amended Offer to Dedicate shall be  
21 binding upon and insure to the benefit of the successors and assigns of both the Grantor and the  
22 Grantee, whether voluntary or involuntary.

23 9. TERMS. Upon recordation of an acceptance of this Second Amended Offer to  
24 Dedicate by the Grantee, the Second Amended Offer to Dedicate and terms, conditions, and  
25 restrictions shall have the effect of a grant of access easement in gross and perpetuity that shall  
26 run with the land and be binding on the parties, heirs, assigns, and successors.

27 Acceptance of this Second Amended Offer to Dedicate is subject to a covenant which  
28 runs with the land, providing that any offeree to accept this Second Amended Offer to Dedicate




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may not abandon it but must instead offer the easements to other public agencies or private associations acceptable to the Executive Director of the Commission for the duration of the terms of this Second Amended Offer to Dedicate.

Grantor agrees to record this Second Amended Offer to Dedicate in the Recorder's office for the County of Santa Barbara as soon as possible after the date of execution.

DATED: MAY 15, 2008

HT-SANTA BARBARA, INC., a Delaware Corporation

By: 

B. J. HOPPE

Its: President

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STATE OF CALIFORNIA  
COUNTY OF SANTA BARBARA

On May 15, 2008 before me, Yolanda Garcia, a Notary Public personally appeared BJ Hoppe, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature Yolanda Garcia (Seal)





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This is to certify that the Second Amended Offer to Dedicate set forth above is hereby acknowledged by the undersigned officer on behalf of the California Coastal Commission pursuant to authority conferred by the California Coastal Commission when it granted Coastal Development Permit Nos. 4-85-343 & 4-85-343A-2 on December 19, 1985 and December 14, 1988, respectively, and the California Coastal Commission consents to recordation thereof by its duly authorized officer.

Dated: May 28, 2008

CALIFORNIA COASTAL COMMISSION

By: John Bowers  
JOHN BOWERS, Staff Counsel

STATE OF CALIFORNIA  
COUNTY OF SAN FRANCISCO

On May 28, 2008 before me Jeff G. Staben, a Notary Public personally appeared John Bowers, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature Jeff G. Staben (Seal)







Exhibit 8  
CCC-13-CD-03 & CCC-13-RO-03  
(Bacara Resort & Spa)

East Terrace, January 1989 before Bacara Resort and Spa  
Photo Courtesy of Kenneth Adelman, [www.californiacoastline.org](http://www.californiacoastline.org)





Exhibit 9  
CCC-13-CD-03 & CCC-13-RO-03  
(Bacara Resort & Spa)

East Terrace, Bacara Resort and Spa

Courtesy Google, 2013



Above Ground Irrigation System



Site Visit - September 20, 2012



Site Visit - July 24, 2012



City of Goleta - Site Visit  
December 14, 2012

Exhibit 10A  
CCC-13-CD-03 & CCC-13-RO-03  
(Bacara Resort & Spa)





Exhibit 10B – Site Visit – 7/24/12  
CCC-13-CD-03 & CCC-13-RO-03  
(Bacara Resort & Spa)

Gate blocking Public Access Equestrian Trail, Site Visit July 24, 2012



**CALIFORNIA COASTAL COMMISSION**

SOUTH CENTRAL COAST AREA  
 89 SOUTH CALIFORNIA ST., SUITE 200  
 VENTURA, CA 93001  
 (805) 585-1800



**NOTICE OF VIOLATION OF THE CALIFORNIA COASTAL ACT  
 REGULAR AND CERTIFIED MAIL**

August 22, 2012

SB Luxury Resort LLC  
 1991 Broadway St. #140  
 Redwood City, CA 94063-2068

Exhibit 11  
 CCC-13-CD-03 & CCC-13-RO-03  
 (Bacara Resort & Spa)

Violation File Number: V-4-12-032

Page 1 of 4

Property location: The Bacara Resort at 8301 Hollister Avenue, Goleta; Santa Barbara County Assessor's Parcel Number 0079-200-013

Unpermitted Development<sup>1</sup>:

- 1) Unpermitted development, including, but not limited to: the placement of a gate blocking a public access equestrian trail; grading; the removal of native chaparral and non-native eucalyptus trees; landscaping; and placement of an irrigation system—all in an area designated as a "natural area" and an "archaeologically sensitive zone" by CDP No. 4-85-343.
- 2) Development inconsistent with Special Condition 14 of CDP No. 4-85-343, including, but not limited to blocking a required public access equestrian trail.

Dear SB Luxury Resort LLC:

The California Coastal Act<sup>2</sup> was enacted by the State Legislature in 1976 to provide long-term protection of California's 1,100-mile coastline through implementation of a comprehensive planning and regulatory program designed to manage conservation and development of coastal resources. The California Coastal Commission ("Commission") is the state agency created by, and charged with administering, the Coastal Act of 1976. In making its permit and land use planning decisions, the Commission carries out Coastal Act policies, which, amongst other goals, seek to protect and restore sensitive habitats, such as native chaparral; protect natural landforms; protect scenic landscapes and views of the sea; protect against loss of life and property from coastal hazards; and provide maximum public access to the sea.

**Violation**

<sup>1</sup> Please note that the description herein of the violation at issue is not necessarily a complete list of all development on the subject property that is in violation of the Coastal Act and/or that may be of concern to the Commission. Accordingly, you should not treat the Commission's silence regarding (or failure to address) other development on the subject property as indicative of Commission acceptance of, or acquiescence in, any such development.

<sup>2</sup> The Coastal Act is codified in sections 30,000 to 30,900 of the California Public Resources Code. All further section references are to that code, and thus, to the Coastal Act, unless otherwise indicated.



Our staff has confirmed that unpermitted development has occurred at the Bacara Resort on an area referred to as the "east terrace" and archaeological site SBa-71, described by Santa Barbara County as APN 0079-200-013 ("subject property"), which is located within the Coastal Zone. The unpermitted development at issue here includes, but is not limited to, the placement of a gate that blocks a public access equestrian trail, grading, the removal of native chaparral and non-native eucalyptus trees, landscaping (e.g. planters, mulch, and sod), and the placement of an irrigation system. The above described development activities have occurred in an area designated as a "natural area" and an "archeologically sensitive area" by Coastal Development Permit (CDP) No. 4-85 343 and in violation of Special Condition 14 of that permit.

Pursuant to Section 30600 (a) of the Coastal Act, any person wishing to perform or undertake development in the Coastal Zone must obtain a coastal development permit ("CDP"), in addition to any other permit required by law. "Development" is defined by Section 30106 of the Coastal Act as:

***"Development" means, on land, in or under water, the placement or erection of any solid material or structure; discharge or disposal of any dredged material or any gaseous, liquid, solid, or thermal waste; grading, removing, dredging, mining, or extraction of any materials; change in the density or intensity of the use of land, including, but not limited to, subdivision pursuant to the Subdivision Map Act (commencing with Section 66410 of the Government Code), and any other division of land, including lot splits, except where the land division is brought about in connection with the purchase of such land by a public agency for public recreational use; change in the intensity of use of water, or of access thereto; construction, reconstruction, demolition, or alteration of the size of any structure, including any facility of any private, public, or municipal utility; and the removal or harvest of major vegetation other than for agricultural purposes, kelp harvesting, and timber operations....***

The above-mentioned placement of a gate blocking a public access trail, grading, removal of vegetation, landscaping, and placement of an irrigation system all constitute development under the Coastal Act and, therefore, require a CDP. Additionally, this development is also in violation of the terms and conditions of CDP No. 4-85-343, as the gate blocks an equestrian trail that was offered as an easement for public access and recreation pursuant to Special Condition 14 of that permit.

Any non-exempt development activity (which is the case here) conducted in the Coastal Zone without a valid CDP, or which is in violation of a previously issued CDP, constitutes a violation of the Coastal Act.

### **Background**

SB Luxury Resort LLC is the current owner of the Bacara Resort (APNs 0079-200-012 and 0079-200-013), located at 8301 Hollister Avenue in Goleta. In 1986, the Commission approved CDP No. 4-85-343 for the construction of a 400-room hotel and conference center on APN 0079-200-012. A parking lot for public access and public access trails, four tennis courts and a



beachfront snack bar were approved on APN 0079-200-013. The approved plans designated the east terrace as both a "natural area" and an "archaeologically sensitive zone," and the only approved development on the east terrace was a public access hiking/equestrian trail. Special Condition 14 of CDP No. 4-85-343 required the applicant to irrevocably offer to dedicate an easement for public access and recreation over the accessways described in the application. This offer to dedicate was recorded on May 6, 1997.

On July 24, 2012, Commission staff visited the subject property and observed that development had taken place on the east terrace (archaeological site SBa-71). From a review of aerial photographs, Commission staff has confirmed that the aforementioned grading, removal of vegetation, landscaping, and placement of an irrigation system occurred after August 28, 2010. During this site visit, staff also observed a locked gate that was blocking access to the public access equestrian trail. Staff has found that no CDP has been issued for the above described development.

### **Resolution**

In some cases, violations involving unpermitted development may be resolved through removal of the unpermitted development and restoration of any damaged resources. Removal of the development and restoration of the site generally will require formal approval under the Coastal Act. Please contact me by **August 31, 2012** to discuss options for restoration of the site, which may include resolution of this matter through the coastal development permitting process. If we can come to an agreement as to what a coastal development permit application would need to include in this case (typically plans prepared by qualified professionals including, but not limited to, a biological assessment, an erosion control plan, a restoration and monitoring plan, etc), and if, after speaking with you, Commission staff can support resolution of this matter through the coastal development permitting process, you may be asked to submit a complete coastal development permit application to remove the subject unpermitted development and restore the site to its pre-violation condition. If, however, we cannot come to an agreement in a timely manner, we will consider other options for resolution including processing administrative orders pursuant to Sections 30809, 30810, and/or 30811 as described below.

Therefore, in order to resolve this matter in a timely manner and reduce the possibility of a monetary penalty or fine, we are requesting that you **immediately stop all unpermitted development activity on the subject property** and contact me by no later than **August 31, 2012** to discuss resolution of this violation.

While we are hopeful that we can resolve this matter amicably, please be advised that the Coastal Act has a number of potential remedies to address violations of the Coastal Act, including the following:

Section 30809 states that if the Executive Director of the Commission determines that any person has undertaken, or is threatening to undertake, any activity that may require a permit from the Coastal Commission without first securing a permit, the Executive Director may issue an order directing that person to cease and desist. Section 30810 states that the Coastal Commission may also issue a cease and desist order. A cease and desist order may be subject to terms and



conditions that are necessary to avoid irreparable injury to the area or to ensure compliance with the Coastal Act. Section 30811 also provides the Coastal Commission the authority to issue a restoration order to address violations at a site. A violation of a cease and desist order or restoration order can result in civil fines of up to \$6,000 for each day in which the violation persists.

Additionally, Sections 30803 and 30805 authorize the Commission to initiate litigation to seek injunctive relief and an award of civil fines in response to any violation of the Coastal Act. Section 30820(a)(1) provides that any person who undertakes development in violation of the Coastal Act may be subject to a penalty amount that shall not exceed \$30,000 and shall not be less than \$500 per violation. Section 30820(b) states that, in addition to any other penalties, any person who "knowingly and intentionally" performs or undertakes any development in violation of the Coastal Act can be subject to a civil penalty of not less than \$1,000 nor more than \$15,000 per violation for each day in which the violation persists.

Finally, Section 30812 authorizes the Executive Director to record a Notice of Violation against any property determined to have been developed in violation of the Coastal Act. If the Executive Director chooses to pursue that course, you will first be given notice of the Executive Director's intent to record such a notice, and you will have the opportunity to object and to provide evidence to the Commission at a public hearing as to why such a notice of violation should not be recorded. If a notice of violation is ultimately recorded against your property, it will serve as notice of the violation to all successors in interest in that property<sup>3</sup>.

Thank you for your attention to this matter. If you have any questions regarding this letter or the pending enforcement case, please feel free to contact me at (805) 585-1800.

Sincerely,

Kristen Hislop  
South Central Coast District Enforcement Officer

cc: Lisa Haage, Chief of Enforcement, CCC  
N. Patrick Veasart, Enforcement Supervisor, CCC  
Steve Hudson, District Manager, CCC  
Barbara Carey, Supervisor, Planning and Regulation, CCC  
Alex Helperin, Senior Staff Counsel, CCC  
Pat Saley, Acting Director, City of Goleta Planning and Environmental Services

<sup>3</sup> Even without such notice, by law, while liability for Coastal Act violations attaches to the person or persons originally responsible for said violations (and continues to do so even if they no longer own the property), liability additionally attaches to whomsoever owns the property upon which a Coastal Act violation persists (see *Leslie Salt Co. v. San Francisco Bay Conservation and Development Com.* [1984], 153 Cal. App.3d 605, 622). Therefore, any new owner(s) of the subject property will assume liability for, and the duty to correct, any remaining violations. Under California Real Estate law, if you plan to sell the subject property, it is incumbent upon you to inform any potential new owner(s) of same.



## CALIFORNIA COASTAL COMMISSION

SOUTH CENTRAL COAST AREA  
89 SOUTH CALIFORNIA ST., SUITE 200  
VENTURA, CA 93001  
(805) 585-1800



November 1, 2012

Kathleen Cochran, General Manager  
8301 Hollister Avenue  
Santa Barbara, CA 93117

Violation File Number: V-4-12-032

Property location: The Bacara Resort at 8301 Hollister Avenue, Goleta; Santa Barbara County Assessor's Parcel Number 0079-200-013, ("subject property")

Unpermitted Development<sup>1</sup>:

- 1) Unpermitted development, including, but not limited to: the placement of a gate blocking a public access equestrian trail; grading; the removal of native chaparral and non-native eucalyptus trees; landscaping; and placement of an irrigation system—all in an area designated as a "natural area" and an "archaeologically sensitive zone" by CDP No. 4-85-343.
- 2) Development inconsistent with Special Condition 14 of CDP No. 4-85-343, including, but not limited to blocking a required public access equestrian trail.

Dear Ms. Cochran:

On October 30, 2012, I was at the subject property in order to measure the disturbed area, including the area where geo fabric, sod, and *Eucalyptus* wood chips have been placed. During this visit, I noticed that approximately  $\frac{3}{4}$  of the sod area is still being irrigated and approximately  $\frac{1}{4}$  (the area closest to the bluff face) is not. It appears that the two sprinkler heads nearest the bluff face have been removed and, thus, the sod that they would irrigate appears to be dry. The remainder of the sod area still has an intact irrigation system which appears to be in use. Additionally, it appears that events are still being conducted on the East Terrace. I observed that the wiring for a sound system remains and additional equipment has been placed on the site, including a large power generator.

As you were previously informed in a letter dated August 22, 2012, during a telephone conversation with me on August 29, 2012, and during a site visit with me and other Coastal Commission and City of Goleta staff on September 20, 2012, the development that is subject of this violation file is considered unpermitted and constitutes a violation of the California Coastal

<sup>1</sup> Please note that the description herein of the violation at issue is not necessarily a complete list of all development on the subject property that is in violation of the Coastal Act and/or that may be of concern to the Commission. Accordingly, you should not treat the Commission's silence regarding (or failure to address) other development on the subject property as indicative of Commission acceptance of, or acquiescence in, any such development.



Act. In the above mentioned letter, and during our conversations, Commission staff advised you to immediately stop all unpermitted development activity on the subject property. The persistence of irrigation of the sod area and the placement of new equipment on the subject property, with the apparent purpose of holding events on the East Terrace, constitute "knowing and intentional" violations of the Coastal Act. **We again advise you to immediately stop all unpermitted activity on the subject property.**

We remind you that the Coastal Act has a number of potential remedies to address violations of the Coastal Act, including the following:

Section 30809 states that if the Executive Director of the Commission determines that any person has undertaken, or is threatening to undertake, any activity that may require a permit from the Coastal Commission without first securing a permit, the Executive Director may issue an order directing that person to cease and desist. Section 30810 states that the Coastal Commission may also issue a cease and desist order. A cease and desist order may be subject to terms and conditions that are necessary to avoid irreparable injury to the area or to ensure compliance with the Coastal Act. Section 30811 also provides the Coastal Commission the authority to issue a restoration order to address violations at a site. A violation of a cease and desist order or restoration order can result in civil fines of up to \$6,000 for each day in which the violation persists.

Additionally, Sections 30803 and 30805 authorize the Commission to initiate litigation to seek injunctive relief and an award of civil fines in response to any violation of the Coastal Act. Section 30820(a)(1) provides that any person who undertakes development in violation of the Coastal Act may be subject to a penalty amount that shall not exceed \$30,000 and shall not be less than \$500 per violation. Section 30820(b) states that, in addition to any other penalties, any person who "knowingly and intentionally" performs or undertakes any development in violation of the Coastal Act can be subject to a civil penalty of not less than \$1,000 nor more than \$15,000 per violation for each day in which the violation persists.

Finally, Section 30812 authorizes the Executive Director to record a Notice of Violation against any property determined to have been developed in violation of the Coastal Act. If the Executive Director chooses to pursue that course, you will first be given notice of the Executive Director's intent to record such a notice, and you will have the opportunity to object and to provide evidence to the Commission at a public hearing as to why such a notice of violation should not be recorded. If a notice of violation is ultimately recorded against your property, it will serve as notice of the violation to all successors in interest in that property<sup>2</sup>.

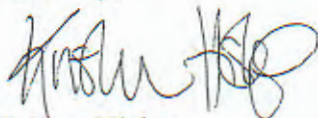
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<sup>2</sup> Even without such notice, by law, while liability for Coastal Act violations attaches to the person or persons originally responsible for said violations (and continues to do so even if they no longer own the property), liability additionally attaches to whomsoever owns the property upon which a Coastal Act violation persists (see *Leslie Salt Co. v. San Francisco Bay Conservation and Development Com.* [1984], 153 Cal. App.3d 605, 622). Therefore, any new owner(s) of the subject property will assume liability for, and the duty to correct, any remaining violations. Under California Real Estate law, if you plan to sell the subject property, it is incumbent upon you to inform any potential new owner(s) of same.



Thank you for your attention to this matter. If you have any questions regarding this letter or the pending enforcement case, please feel free to contact me at (805) 585-1800.

Sincerely,



Kristen Hislop  
South Central Coast District Enforcement Officer

cc: Lisa Haage, Chief of Enforcement, CCC  
N. Patrick Veesart, Enforcement Supervisor, CCC  
Steve Hudson, District Manager, CCC  
Barbara Carey, Supervisor, Planning and Regulation, CCC  
Alex Helperin, Senior Staff Counsel, CCC  
Pat Saley, Acting Director, City of Goleta Planning and Environmental Services  
Shine Ling, Associate Planner, City of Goleta  
Greg Nordyke, Code Enforcement Officer, City of Goleta





Reservations CHECK IN CHECK OUT  PROMO/CORPORATE CODE GROUP CODE CHECK AVAILABILITY

single/room  
multiple/room

RECENT POSTS

Bacara's General Manager Honored as One of Industry's Most Influential Women

Enjoy Frightful Family Fun at Boocara!

Get Buff on the Bluff at Bacara

EMAIL CLUB

Stay up to date with all the latest Bacara news and offers!

11/11/12 10:00 AM

### Ceremony Sites - Wedding Ceremony Sites

#### Ocean Lawn

The Ocean Lawn at Bacara Resort in Santa Barbara boasts stunning panoramic ocean views and is surrounded by the resort's lush landscaping.

- 



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Includes white or fruitwood chiavari chairs, a sound system with two wireless lavalier microphones, one dedicated bellman for two hours, and complimentary iced tea and lemonade for your guests. For more information, please contact us using our Wedding Planning Form.

#### The Bluff

Nestled on the eastern terrace on the highest point of Bacara's 78 coastal acres, The Bluff provides a private setting with breathtaking ocean and mountain views.

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Exhibit 13  
CCC-13-CD-03 & CCC-13-RO-03  
(Bacara Resort & Spa)

**CALIFORNIA COASTAL COMMISSION**

45 FREMONT STREET, SUITE 2000  
SAN FRANCISCO, CA 94105-2219  
VOICE (415) 904-5200  
FAX (415) 904-5400  
TDD (415) 597-5885

**Via Certified and Regular Mail**

December 13, 2012

SB Holdco LLC  
Attn: Kathleen Cochran, General Manager  
8301 Hollister Avenue  
Goleta, CA 93117  
Certified Mail No 7006 2760 0005 5883 4418

**Subject:** Notification of Intent to Record a Notice of Violation of the Coastal Act and to Commence Cease and Desist Order and Restoration Order Proceedings

**Location:** 8301 Hollister Avenue, Goleta; Santa Barbara County  
Assessor's Parcel Numbers 0079-200-012 and 0079-200-013

**Violation File Number:** V-4-12-032

**Violation Description:** Unpermitted development and/or development inconsistent with Coastal Development Permit No. 4-85-343, including but not limited to: installation of non-native landscaping such as geo fabric and sod, *Eucalyptus* wood chips, and above ground irrigation system, all of which created a private wedding and event venue, located directly on top of a known archaeological site that was designated as a "natural area" and an "archaeologically sensitive zone" by CDP No. 4-85-343; the removal of major vegetation, including southern maritime chaparral and *Eucalyptus* trees, to widen an existing trail and thinning a designated "natural area"; grading; and the placement of a gate that blocks a public equestrian trail and deters pedestrian use.

Dear Ms. Cochran:

I am directing this notice to your attention as the General Manager of the property described above. California Coastal Commission ("Commission") staff appreciates your efforts thus far to

Exhibit 14  
CCC-13-CD-03 & CCC-13-RO-03  
(Bacara Resort & Spa)



work cooperatively towards resolution of the alleged Coastal Act<sup>1</sup> violations on the above-referenced property owned by SB Holdco LLC, as reflected in our November 7, 2012 telephone conversation and identified in our letters to you dated August 22, 2012, and November 1, 2012. As we have stated in previous correspondence and communications, we would like to continue to work with you to resolve these violations amicably. We remain willing and ready to discuss options to resolve the Coastal Act violations on the subject property, including your entering into consent cease and desist and restoration orders.

As Commission staff discussed with you during our November 7, 2012 conversation, prior to taking an order to the Commission or recording a Notice of Violation, our regulations<sup>2</sup> require that we first initiate the formal notification procedures required by Section 13181 and 13191 thereof, and by California Public Resources Code ("PRC") Section 30812, respectively. Accordingly, the purpose of this letter is to notify you of my intent, as the Executive Director of the Commission ("Executive Director"), to commence proceedings for issuance of Cease and Desist and Restoration Orders and to record a Notice of Violation to address unpermitted development and/or development inconsistent with Coastal Development Permit ("CDP") No. 4-85-343 on the subject property. Again, this letter is not intended to supplant the productive discussions we have been having, but is a legally mandated step in the ongoing process that is intended to facilitate the resolution of the issues. The steps noticed herein are designed to resolve the aforementioned Coastal Act violations through formal enforcement actions, and we can utilize these mechanisms whether we come to agreement on a consent process or not.

Commission staff has confirmed that unpermitted development and/or development inconsistent with CDP No. 4-85-343 (the "Permit"), has occurred at the Bacara Resort, located at 8301 Hollister Avenue, Goleta, Santa Barbara County (Assessor's Parcel Numbers 0079-200-012 and 0079-200-013), (referred to herein as "Subject Property") on an area referred to as both the "East Terrace" and archeological site SBa-71. The party subject to these proceedings is SB Holdco LLC, as owner of the Subject Property and operator of the Bacara Resort.

This unpermitted development and/or development inconsistent with CDP No. 4-85-343 that has occurred on the Subject Property (collectively, the "Violations") includes, but may not be limited to: installation of non-native landscaping such as geo fabric, and sod, *Eucalyptus* wood chips, and above ground irrigation system which all create a private wedding and event venue, located directly on top of a known archaeological site, designated as a "natural area" and an "archaeologically sensitive zone" by CDP No. 4-85-343; the removal of "major vegetation" including southern maritime chaparral and *Eucalyptus* trees that provided habitat for raptors and potentially for monarch butterflies; grading; and the placement of a gate that blocks a public equestrian trail and deters pedestrian access. The Commission conditioned its approval of the Permit to protect archaeological resources, natural resources, and to otherwise ensure compliance with the requirements of the Coastal Act.

<sup>1</sup> The Coastal Act is codified in California Public Resources Code section 30000 to 30900. All further section references are to the Public Resources Code, and thus to the Coastal Act, except where it is specified that the reference is to the Commission's regulations.

<sup>2</sup> The Commission's regulations are codified in Title 14 of the California Code of Regulations, Division 5 (sections 13001 *et seq.*).



Pursuant to Section 30600(a) of the Coastal Act, with limited exceptions not applicable here, any person wishing to perform or undertake development in the Coastal Zone must obtain a coastal development permit, in addition to any other permit required by law. "Development" is defined by Section 30106 of the Coastal Act as set forth below:

*"Development" means, on land, in or under water, the placement or erection of any solid material or structure; discharge or disposal of any dredged material or any gaseous, liquid, solid, or thermal waste; grading, removing, dredging, mining, or extraction of any materials; change in the density or intensity of the use of land, including, but not limited to, subdivision pursuant to the Subdivision Map Act (commencing with Section 66410 of the Government Code), and any other division of land, including lot splits, except where the land division is brought about in connection with the purchase of such land by a public agency for public recreational use; change in the intensity of water, or of access thereto; construction, reconstruction, demolition, or alteration of the size of any structure, including any facility of any private, public, or municipal utility; and the removal or harvest of major vegetation other than for agricultural purposes, kelp harvesting, and timber operations....*

The activities listed above as comprising the Violations constitute "development," as that term is defined in the Coastal Act, and therefore required a CDP(s). No CDP or CDP amendment was issued for any of the above-listed development. As noted above, development activity conducted in the Coastal Zone without a valid CDP or CDP amendment constitutes a violation of the Coastal Act. In addition, some of the development at issue is also inconsistent with requirements of the Permit. Development that is inconsistent with a previously issued CDP is also a violation of the Coastal Act.

The purpose of these enforcement proceedings is to address development on the Subject Property that was not authorized pursuant to the Coastal Act, some of which was also inconsistent with the terms and conditions of the Permit. The proceedings will propose to address these matters through the issuance of Cease and Desist and Restoration Orders ("Orders") that will collectively direct the owner of the Subject Property to: 1) cease and desist from maintaining existing development not authorized by the Coastal Act, 2) cease and desist from undertaking any new development without Coastal Act authorization, 3) remove unpermitted development, 4) restore the impacted areas by conducting restorative grading and revegetation of the site with native vegetation, among other things, 5) provide mitigation for temporal losses of habitat, and 6) resolve civil liabilities under Chapter 9 of the Coastal Act.

### **CDP and Violation History**

In 1985, the Commission approved CDP No. 4-85-343 (the Permit) for the construction of a 400-room hotel and conference center on APNs 0079-200-012 and 0079-200-013; these parcels of land comprise the Subject Property, which is presently owned by SB Holdco LLC. The Permit also authorized a public parking lot, public access trails, four tennis courts, and a beachfront



snack bar on APN 0079-200-013; the parcel that contains the subject violations. The Commission's findings and declarations in support of its approval of the Permit, designated an area known as the East Terrace as both a "natural area" and an "archaeologically sensitive zone". The only development approved on the East Terrace was a public access equestrian trail located on an existing road along the terrace's slope above Bell Canyon and Haskell's Beach. Special Condition 14 of the Permit required the applicant to irrevocably offer to dedicate easement areas for public access and recreation pursuant to their permit application, including a beach easement for Haskell's Beach, two equestrian trails, one of which was the one on the East Terrace, mentioned above, and two public walkways to the beach. Special Condition 14 states:

*"Prior to the transmittal of a Coastal Development Permit and the commencement of construction, the applicant shall execute and record a document, in a form and content acceptable to the Executive Director, irrevocably offering to dedicate to a public agency or private association approved by the Executive Director, an easement for public access and recreation over the accessways described in the application. The applicant or its successors in interest shall have the right to relocate the easements to other locations within the public recreation area of the property provided the public's right of access is not unreasonably diminished and subject to prior consultation with and approval by the Executive Director which approval shall not be unreasonably withheld.*

*Prior to the Transmittal of the Coastal Development Permit, the applicant shall record a deed restriction, in the form and content acceptable to the Executive Director, prohibiting interference with the use of the beach and trails described in the easement and committing the applicant to maintain the access improvement in a condition suitable for public use for the life of the project or until acceptance of the order of dedication; provided, however, that such deed restriction shall be expressly subject to the applicant's right to relocate such easement as provided above.*

*A deed restriction shall be recorded which prohibits interference with the public's use of the private access road and bicycle path to gain access to the public parking areas and vertical access trails to the beach.*

*The document shall be recorded free of prior liens and encumbrances which the Executive Director determines may affect the interest being conveyed. The offer shall run with the land in favor of the People of California, binding all successors and assignees, and shall be irrevocable for a period of 21 years, such period running from the date of recording."*

The required offer to dedicate and deed restriction were recorded on May 6, 1997.<sup>3</sup>

<sup>3</sup> The offer to dedicate and the deed restriction recorded pursuant to this condition have been amended and re-recorded (with each amended version superseding and replacing the prior version(s)) twice since their original recording in 1997. They were first amended and re-recorded on January 31, 2008, to reflect the approved relocation of the public walkway easement. However, those amended documents were not approved by the Commission prior to their recordation. As a result, they were amended a second time and re-recorded on June 10, 2008, upon the Executive Director's request, to make further revisions. The second amendment combined the provisions of the offer to dedicate and the deed restriction into a single document that superseded and replaced all four previously recorded documents.



On July 24, 2012, Commission staff visited the Subject Property and confirmed a report, made by a concerned citizen, that development had taken place on the East Terrace (archaeological site SBa-71). From a review of aerial photographs, Commission staff has confirmed that the aforementioned grading, removal of major vegetation, landscaping, and placement of an irrigation system occurred some time after August 28, 2010. During the site visit, staff also observed a locked gate blocking access to a public access equestrian trail that was required to remain open pursuant to Special Condition 14 and the Second Amended Offer to Dedicate Public Access Easement and Declaration of Restrictions. Research of our records confirms that no CDP was issued for any of the above-described development.

On August 22, 2012, Commission staff sent the owners of the Subject Property a Notice of Violation ("NOV") letter that addressed the Coastal Act violations and requested that all unpermitted development activity stop immediately. We appreciate your immediate response and desire to cooperate with Commission staff to resolve the Violations, including your removal of the aforementioned gate that was blocking the public access equestrian trail, confirmed during Commission staff's September 20, 2012 site visit.

On October 30, 2012, Commission staff visited the Subject Property again to measure the disturbed area and determined that 950 square feet of native chaparral was removed to widen the existing trail. While conducting this exercise, Commission staff noticed that a portion of the sod area was still being irrigated. Commission staff also observed that wiring for a sound system and additional equipment had been installed on the East Terrace, apparently for conducting events at the site were still being conducted on the site. This site visit was memorialized with a follow up letter sent to you on November 1, 2012 that cited both the portion of irrigated sod and the appearance that events were still being conducted on the Eastern Terrace. The letter again reminded you that the development that is subject to this violation file is considered unpermitted, constitutes a violation of the Coastal Act, and further, advised you to immediately stop all unpermitted activity on the Subject Property.

On November 7, 2012, Commission staff spoke with you and confirmed that: events were still being conducted on the East Terrace; the unpermitted development remained in place; and the unpermitted development was being maintained by SB Holdco LLC. During the telephone conversation, you indicated that you believed "events" were not "development" under the Coastal Act. Commission staff explained that the definition of development is broadly defined under the Coastal Act, and includes the change in intensity of use of land, as well as the items of physical development placed in an area designated as a "natural area" and an "archaeologically sensitive zone" by the CDP. During the November 7 telephone call, you stated that SB Holdco LLC would no longer hold events at the site after November 7. We appreciate your commitment to no longer use the East Terrace for events and to restore the site by agreeing to work with us through the consent orders process.

As we discussed, the development that occurred at the Subject Property is located in an area designated by the Permit as a "natural area" and an "archeologically sensitive area" and in an area designated specifically for public hiking and equestrian use. Again, we appreciate your



cooperation and we are hopeful that we can resolve the violations amicably through the consent order process.

### **Cease and Desist Order**

The Commission's authority to issue Cease and Desist Orders is set forth in Section 30810(a) of the Coastal Act, which states, in part, the following:

*If the commission, after public hearing, determines that any person or governmental agency has undertaken, or is threatening to undertake, any activity that (1) requires a permit from the commission without securing the permit or (2) is inconsistent with any permit previously issued by the commission, the commission may issue an order directing that person or governmental agency to cease and desist.*

Section 30810(b) states that the Cease and Desist Order may be subject to such terms and conditions as the Commission may determine are necessary to ensure compliance with the Coastal Act- including removal of any unpermitted development or material.

The unpermitted development and/or development inconsistent with the Permit described herein clearly constitutes "development" within the meaning of the definition in the Coastal Act (PRC Section 30106), is not otherwise exempt from permitting requirements under the Coastal Act, and therefore is subject to the permit requirement of PRC Section 30600(a). Neither a CDP nor a CDP amendment was issued to authorize the subject unpermitted development. In addition, the activities undertaken at the Subject Property were also inconsistent with a permit previously issued by the Commission, and, as such, are Coastal Act violations.

As the activities at issue required a CDP and none was obtained, in addition to the activities violating the Permit, the criteria of Section 30810(a) have been satisfied. For these reasons, I am issuing this "Notice of Intent" to commence cease and desist order proceedings. The procedures for the issuance of cease and desist orders are described in Sections 13180 through 13188 of the Commission's regulations, which are codified in Title 14 of the California Code of Regulations.

The proposed Cease and Desist Order will direct SB Holdco LLC and others subject to the control and/or in a legal relationship with the Bacara Resort to 1) cease and desist from maintaining any development on the Subject Property not authorized pursuant to the Coastal Act; 2) cease and desist from engaging in any further development on the subject property unless authorized pursuant to the Coastal Act; 3) remove the unpermitted development and development inconsistent with the Permit, and 4) take all steps, as identified, necessary to comply with the Coastal Act.



### Restoration Order

The Commission's authority to issue Restoration Orders is set forth in Section 30811 of the Coastal Act, which states, in part, the following:

*In addition to any other authority to order restoration, the commission...may, after a public hearing, order restoration of a site if it finds that the development has occurred without a coastal development permit from the commission..., the development is inconsistent with this division, and the development is causing continuing resource damage.*

Pursuant to Section 13191 of the Commission's regulations, I have determined that the specified activities meet the criteria of Section 30811, based on the following:

- 1) Unpermitted development and/or development inconsistent with a previously issued CDP has occurred, including, but not limited to, installation of non-native landscaping including geo fabric, and sod, *Eucalyptus* wood chips, and above ground irrigation system which all create a private wedding and event venue, located directly on top of a known archaeological site, designated as a "natural area" and "an archaeologically sensitive zone" by the CDP; the removal of major vegetation, including southern maritime chaparral and *Eucalyptus* trees to widen an existing trail and thinning a designated "natural area"; grading; the placement of a gate that blocks a public equestrian trail and deters pedestrian access, in violation of Special Condition 14 of the CDP.
- 2) This development is inconsistent with the resource protection policies of the Coastal Act, including, but not limited to the following:
  - a. Section 30210 (protecting public access and recreational opportunities)
  - b. Section 30240 (protecting archaeological resources)
  - c. Section 30231 (protecting water quality)
  - d. Section 30253 (protecting geologic stability)
- 3) The unpermitted development and/or development inconsistent with a previously issued CDP remains in place and is thereby causing continuing resource damage, as defined by Section 13190 of the Commission's regulations. The impacts from the unpermitted development remain unmitigated; therefore, the damage to resources protected by the Coastal Act is continuing.

For the reasons stated above, I have decided to commence proceedings for the Commission's issuance of a Restoration Order requiring you to restore the Subject Property. The procedures for the issuance of Restoration Orders are described in Sections 13190 through 13197 of the Commission's regulations, which are codified in Title 14 of the California Code of Regulations.



### Response Procedure

In accordance with Section 13181(a) and 13191(a) of the Commission's Regulations, you have the opportunity to respond to the Commission staff's allegations as set forth in this notice of intent to commence Cease and Desist and Restoration Order proceedings by completing the enclosed Statement of Defense (SOD) form. The SOD form must be returned to the Commission's San Francisco office, directed to the attention of Maggie Weber, no later than, January 3, 2013. However, should this matter be resolved via a settlement agreement, a statement of defense form would not be necessary. In any case, and in the interim, staff would be happy to accept any information you wish to share regarding this matter.

Commission staff currently intends to schedule the hearings for the Cease and Desist and Restoration Order during the Commission's February 2013 hearing in Huntington Beach.

### Notice of Violation of the Coastal Act

As you have been informed in prior letters, dated August 22, 2012, and November 1, 2012, the Coastal Act contains a provision for notifying potential, future purchasers of real property of the existence of a Coastal Act violation on the property. The Executive Director of the Commission may record a Notice of Violation against the title to the property pursuant to Section 30812, after providing notice and the opportunity for a hearing. Section 30812 provides, in part:

*(a) Whenever the executive director of the commission has determined, based on substantial evidence, that real property has been developed in violation of this division, the executive director may cause a notification of intention to record a notice of violation to be mailed...to the owner of the real property at issue...*

*(b) ... The notification shall state that if, within 20 days of mailing of the notification, the owner of the real property at issue fails to inform the executive director of the owner's objection to recording the notice of violation, the executive director shall record the notice of violation in the office of each county recorder where all or part of the property is located.*

*(d) If, after the commission has completed its hearing and the owner has been given the opportunity to present evidence, the commission finds that, based on substantial evidence, a violation has occurred, the executive director shall record the notice of violation...*

Should you choose to object to the recording of a Notice of Violation and wish to present evidence to the Coastal Commission at a public hearing on the issue of whether a violation has occurred, you must specifically object, in writing, within 20 calendar days of the postmarked mailing of this notification. The objection should be sent to Maggie Weber at the Commission's headquarters office (the address is provided above in the letterhead), no later than **January 3, 2013**. Please include the evidence you wish to present to the Coastal Commission in your



written response and identify any issues you would like us to consider. If recorded as provided for under Section 30812(b), the Notice of Violation will become part of the chain of title of the Subject Property and will be subject to review by potential buyers. This notice is intended to put other parties on notice of the status of the property and to avoid unnecessary confusion. The Notice of Violation will be rescinded once the violations are resolved. Should this matter be resolved via a settlement agreement, a NOVA would be part of any such settlement and therefore a formal objection would not be necessary.

### **Civil Liability/ Exemplary Damages**

You should be aware that the Coastal Act includes a number of penalty provisions for unpermitted development. Section 30820(a)(1) provides for civil liability to be imposed on any person who performs or undertakes development without a CDP and/or that is inconsistent with any CDP previously issued by the Commission in an amount that shall not exceed \$30,000 and shall not be less than \$500 for each instance of development that is in violation of the Coastal Act. Section 30820(b) provides that additional civil liability may be imposed on any person who performs or undertakes development without a CDP and/or that is inconsistent with any CDP previously issued by the Commission when the person intentionally and knowingly performs or undertakes such development, in an amount not less than \$1,000 and not more than \$15,000 per day for each day in which each violation persists. Section 30821.6 provides that a violation of a cease and desist order or a restoration order can result in civil fines of up to \$6,000 for each day in which the violation persists. Section 30822 provides for additional exemplary damages in appropriate cases.

### **Resolution**

As we have stated in previous correspondence and communications, we would like to work with you to resolve these issues amicably and to continue the discussions we have had in the past regarding this matter. One option that you may want to consider is agreeing to consent orders. Consent cease and desist and restoration orders would provide you with an opportunity to have more input into the process and timing of restoration of the Subject Property and mitigation of the damages caused by the unpermitted activity and could potentially allow you to negotiate a penalty amount with the Commission staff in order to resolve the complete violation without any further formal legal action. Consent cease and desist and restoration orders would provide for a permanent resolution of this matter and restoration of the Subject Property. If you are interested in discussing the possibility of agreeing to consent orders, please contact or send correspondence to the attention of Maggie Weber in the Commission's San Francisco office by no later than December 28, 2012, to discuss options to resolve this case. Again, should we settle this matter, you do not need to expend the time and resources to fill out and return the SOD form mentioned above.



Should you have any questions regarding any of the above items, please contact Maggie Weber at (415) 904-5264.

Sincerely,

CHARLES LESTER  
Executive Director  
California Coastal Commission

Enclosure: Statement of Defense Form

cc: Lisa Haage, Chief of Enforcement, CCC  
N. Patrick Veasart, Enforcement Supervisor, CCC  
Aaron McLendon, Enforcement Supervisor, CCC  
Alex Helperin, Senior Staff Counsel, CCC  
Maggie Weber, Statewide Enforcement Analyst, CCC

BACARA  
RESORT & SPA

December 27, 2012

Ms. Maggie Weber  
Statewide Enforcement Analyst  
California Coastal Commission  
45 Fremont Street  
Suite 2000  
San Francisco, CA 94105-2219

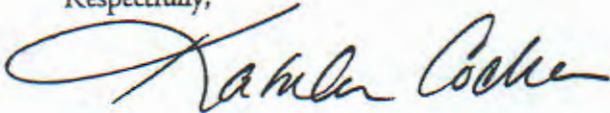
RE: Response to Violation File #V-4-12-032

Dear Ms. Weber:

Thank you for taking the time to speak with me on Wednesday, December 26, 2012 regarding the notice from the California Coastal Commission dated December 13, 2012. Pursuant to our conversation, we look forward to welcoming Aaron McLendon on January 2, 2013 at 2 p.m. to discuss this matter further. We also invited John Ruiz from the Coastal Band of the Chumash Nation. Mr. Ruiz is our cultural advisor who worked closely with us on the Eastern Terrace property.

Please know that you have our full cooperation and support to quickly and amicably find a resolution to this matter. Thank you for the opportunity to meet with Mr. McLendon. If I may assist with anything in the meantime, please let me know.

Respectfully,



Kathleen Cochran  
General Manager

cc: Lisa Haage, Chief of Enforcement, CCC  
N. Patrick Veasart, Enforcement Supervisor, CCC  
Aaron McLendon, Enforcement Supervisor, CCC  
Alex Helperin, Senior Staff Counsel, CCC

Exhibit 15  
CCC-13-CD-03 & CCC-13-RO-03  
(Bacara Resort & Spa)

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latimes.com/business/money/la-fi-mo-bacara-hotel-sold-20130227,0,1708584.story

latimes.com

## Bacara hotel sold as high-end coastal resorts enjoy comeback

By Roger Vincent

5:45 AM PST, February 28, 2013

Plush Southern California seaside resorts suffered during the recent recession, but they are making a comeback as business and leisure travel picks up.

Now, Bacara Resort & Spa near Santa Barbara has been acquired by an Irvine hotel company that plans to upgrade the luxurious inn as well-heeled guests return to coastal resorts.

Pacific Hospitality Group bought Bacara from SB Luxury Resort, an affiliate of Ohana Real Estate Investors and Rockpoint Group, which have owned the property since 2011. The sale price was not disclosed, but real estate experts said the seller was asking for more than \$150 million.

The 354-room hotel will continue to be known as Bacara, a name made up for the property that opened in 2000. It will be operated by Pacific Hospitality, which also acquired Estancia La Jolla Hotel & Spa in San Diego, Balboa Bay Resort in Newport Beach and the Meritage Resort & Spa in Napa during the last 15 months.

"We see this as a really dynamic hotel environment, which we have been lucky enough to take advantage of because we are an owner-operator," said Kory Kramer, chief investment officer.

Pacific Hospitality will spend more than \$5 million on improvements, he said, starting with refurbishments to guest rooms. The company's strategy also calls for booking more conferences and meetings on weekdays.

"Our goal is to double that business," Kramer said.

The hotel industry lost a lot of customers during the economic downturn in 2008 and 2009, said consultant Alan Reay of Atlas Hospitality Group. "Resorts suffered the largest drop in revenue of all hotel segments."

Now the trend is reversing as companies book more out-of-town retreats and leisure travelers open their wallets again for top-drawer destinations, Reay said.

**ALSO:**

Exhibit 16  
CCC-13-CD-03 & CCC-13-RO-03  
(Bacara Resort & Spa)

Page 1 of 1

advertisement



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# SB Luxury Resort LLC

March 11, 2013

Pacific Hospitality Group  
Attn: Kory Kramer  
2532 Dupont Drive  
Irvine, CA 92612

The Busch Firm  
Attn: George Mulcaire, Esq.  
2532 Dupont Drive  
Irvine, CA 92612

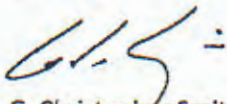
Re: Acknowledgement of Coastal Commission Matters

Dear Mr. Kramer:

In connection with that certain agreement of sale and purchase (the "Agreement") dated as of January 28, 2013, made by and between SB Luxury Resort LLC, a Delaware limited liability company ("SBLR") and Pacific Hospitality Group, LLC, a California limited liability company ("PHG"), and related assignment and assumption of purchase agreement, dated as of February 13, 2013, made by and between PHG and BRS Investment Properties, LLC ("BRS"), SBLR advised BRS of an ongoing California Coastal Commission investigation relating to (i) the matters specifically enumerated in that certain letter from the California Coastal Commission dated August 22, 2012, and (ii) all matters regarding those certain zoning violations that are referenced in that certain letter dated September 18, 2012 from Shine Ling, Associate Planner of the City of Goleta, to Mitch Elrik of PZR Corporation (collectively, the "Costal Commission Matters").

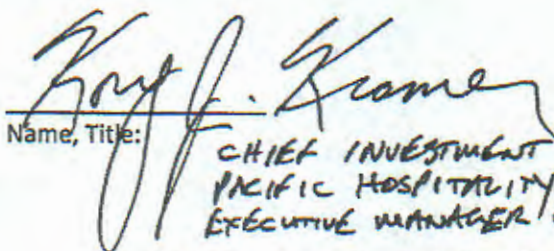
Per the Agreement SBLR has the right to direct any communication, settlement or negotiation of the matter, subject to BRS's joint participation rights in any communication, settlement or negotiation and reasonable approval rights over any settlement.

Sincerely,



G. Christopher Smith  
Authorized Signatory

Acknowledged:



Name, Title:

CHIEF INVESTMENT OFFICER  
PACIFIC HOSPITALITY GROUP, LLC  
EXECUTIVE MANAGER OF BRS INVESTMENT PROPERTIES, LLC

Exhibit 17  
CCC-13-CD-03 & CCC-13-RO-03  
(Bacara Resort & Spa)

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