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**F13a**

**Important Hearing Procedure Note:** This is a substantial issue only hearing. Public testimony will be taken only on the question of whether the appeal raises a substantial issue. Generally, and at the discretion of the Commission's Chair, testimony is limited to 3 minutes total per side. Please plan your testimony accordingly.

Appeal Filed: 12/30/2013  
49th Day: Waived  
Staff: M. Watson - SC  
Staff Report: 11/25/2014  
Hearing Date: 12/12/2014

**APPEAL STAFF REPORT: SUBSTANTIAL ISSUE  
DETERMINATION ONLY**

**Appeal Number:** A-3-SNC-14-0001

**Applicant:** King Ventures

**Appellants:** Commissioners Kinsey and Shallenberger; Sierra Club

**Local Decision:** Coastal development permit (CDP) approved by the Sand City City Council on December 17, 2013 (CDP Number 13-06).

**Project Location:** The 26.46-acre area north of Tioga Avenue and seaward of Highway 1 in the City of Sand City, consisting of an area with an active materials recovery and constriction operations (known as the Sterling site, APN 011-012-005) and undeveloped dune areas (known as the McDonald and Granite sites (APNs 011-012-002 & 005, and APN 011-501-016 respectively) immediately adjacent to the shoreline and the Monterey Bay.

**Project Description:** Construct a 340-room resort complex totaling nearly 575,000 square feet and including a 235-room standard operating hotel, a 105-room condominium hotel, a restaurant, a conference center, onsite parking, a wellness spa, on and offsite road improvements (including to Sand Dunes Drive and Tioga Avenue), public restrooms, a lifeguard station, and public access and parking.

**Staff Recommendation:** Substantial Issue Exists

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## **SUMMARY OF STAFF RECOMMENDATION**

The City of Sand City approved a coastal development permit (CDP) for construction of a 340-unit resort and related facilities, with roughly one-third of the units condominium hotel units (105 units), and the remainder standard operating hotel units (235 units). The project also includes a conference center, spa, restaurant, and on and offsite road, parking, and public access improvements. The project is located in a dune area seaward of Highway One in the City of Sand City, extending from Tioga Avenue north, that is roughly 26 acres, about 8 of which are currently used for construction materials handling and storage nearest Tioga (and owned by the Applicant), and the remainder of which constitute undeveloped dune area (about 70% of the overall site, owned by the City of Sand City). The project would be developed in a series of three to five story building clusters atop an underground garage and a deep caisson foundation, and would result in some 572,127 square feet of facilities covering some 11.5 acres of the site, and covering over 60% of the undeveloped dune portion of the site (and essentially all dune areas inland of the 15-foot elevation).

The appeals assert that the City-approved project raises Sand City Local Coastal Program (LCP) and Coastal Act conformance issues with respect to hazard avoidance, protection of public views, natural resource protection, public recreational access, and public services. These contentions raise LCP and Coastal Act consistency questions primarily about the City's approval of a large resort complex on the sand dunes above a rapidly eroding shoreline, within the public viewshed from Highway One, and on land supporting state and federally listed species, including land federally designated as critical habitat for animal species.

Staff has evaluated the appeal contentions and the record, and has concluded that the City's action raises a substantial issue regarding the City-approved project's compliance with the policies and standards of the LCP and the Coastal Act, and is recommending that the Commission take jurisdiction over the CDP application in this case.

The City-approved project raises substantial issues with respect to coastal hazards, visual and scenic resources, dune resources, public services (i.e., traffic and circulation and water supply), public recreational access, and development densities. With respect to hazards, the LCP requires that development be sited and designed to avoid hazards, and requires that it be sited to ensure stability and safety over its economic lifetime, including without a reliance on shoreline protective devices. It is clear that the site is subject to significant coastal hazards including but not limited to shoreline erosion/retreat and wave run-up/flooding. The project site consists of highly erodible dune sands, and presents some of the highest shoreline erosion rates in the state. The project appears to be sited and designed in way that portions of it would be in harm's way well before the 50-year minimum evaluation period identified in the LCP, and its foundation would act as a shoreline protective device under such erosion/retreat scenarios, inconsistent with the LCP. In addition, the Applicant's erosion/retreat and sea level rise estimates in this regard are based on more optimistic estimates than the Commission typically employs, exacerbating all of these issues.

In terms of the public viewshed, the project is located within significant public viewsheds, including critically the Highway One viewshed of the site and beyond to the Monterey Bay and the Monterey peninsula. The LCP requires that development be sited and designed to protect

significant public views, and prohibits impairment of certain specifically identified ocean views associated with this site. The City-approved project does not conform to the LCP's public viewshed protection policies because the project exceeds LCP height limits, encroaches upon and obstructs blue water views within LCP-identified view corridors, and significantly degrades public views not completely obstructed by the development.

In terms of natural resources, although a portion of the site is currently used for construction purposes (nearest Tioga), it is all located in dunes that are a part of the larger southern Monterey Bay dune system that extends roughly unbroken some 20 miles from Monterey Harbor to the Pajaro River. Portions of the project site support state and federally listed plants and animals; notably Monterey spineflower, Smith's blue butterfly, and Western snowy plover. The project would disturb essentially all dune areas above the 15-foot contour, and would permanently displace some 11.5 acres of dune, or over 60% of the undeveloped and publicly owned dune area associated with the property. These impacts would significantly degrade dune resources, including in relation to listed species habitats. In fact, the U.S. Fish and Wildlife Service (USFWS) has concluded that the City-approved project will render the project site unsuitable for use by snowy plovers in an area designated as critical habitat for the species, and that surrounding dune areas will also be adversely affected.

In terms of public services, the LCP requires that new development be approved only where water and sewer services are available and adequate, and where adequate circulation and parking are provided. For water, the project would use water from the City's desalination plant, but it is not clear whether water from this plant can be used for development on the site, including as it was sized for the purpose of providing water for City build-out inland of Highway One, and the Commission's CDP for the desalination plant would have to be amended to allow water service and allocation seaward of the Highway. For sewer, there appears to be adequate capacity at the regional wastewater treatment plant to serve the project, but the entity responsible for transporting effluent to the plant has indicated that it is not certain that they have capacity to handle project flows. For circulation, the project would bring significant new traffic to an already stressed transportation grid, particularly with respect to Highway One. An as yet unknown series of traffic improvements would be required, including to Highway One, which raises questions and issues, including because Highway One runs through dunes in this area and such projects themselves could raise their own set of LCP and Coastal Act problems.

In terms of public access, the LCP and the Coastal Act require development to include public recreational access to and along the shoreline, including improvements to maximize public recreational access opportunities and facilitate public recreational use, including parking and vista point areas. Although the project includes a suite of access amenities, including improved California Coastal Trail (CCT) connections and public parking, these elements share some of the same hazard issues associated with siting development out of harm's way as the resort development itself. In addition, the CCT improvements have been sited and designed in a way that limits their utility, including in terms of narrowing the CCT and siting it with little separation from the road.

Finally, the LCP establishes that LCP-identified development densities are maximums, and requires that development be limited to that which adequately addresses resource constraints, including with regard to coastal hazards, public views, dunes, public service capacities, and

public access and recreation. Although designed at a density that is less than the theoretical maximum for the site per the underlying zoning, the City-approved project appears to be overly dense given the significant resource constraints associated with development at the site. It is not clear that a project of this density and intensity can be found consistent with LCP and Coastal Act policies in light of these constraints, including as detailed above.

In short, the City-approved a very large resort complex on sand dunes supporting state and federally listed species (and a critical habitat area for snowy plover) above a rapidly eroding shoreline within a significant public viewshed and in an area with significant public service constraints. The City's approval raises a series of significant and substantial issues regarding LCP and Coastal Act conformance for such a project, including with respect to coastal hazards, public viewsheds, dune resources, public recreational access, public services (i.e., traffic and circulation, water supply, and sewer capacity), and development densities. For these reasons, staff recommends that the Commission find that the City's action raises a substantial issue regarding the City-approved project's compliance with the policies and standards of the LCP and the Coastal Act, and recommends that the Commission take jurisdiction over the CDP application in this case. The motion to effect this recommendation is found on page 5 below.

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## **APPENDICES**

Appendix A – Substantive File Documents

## **EXHIBITS**

Exhibit 1 – Regional Location Maps  
Exhibit 2 – Aerial Photos of Project Site  
Exhibit 3 – City's Final Local CDP Action Notice  
Exhibit 4 – Appeals of City CDP Action  
Exhibit 5 – Project Plans  
Exhibit 6 – Applicable LCP and Coastal Act Policies



## I. MOTION AND RESOLUTION

Staff recommends that the Commission determine that a **substantial issue** exists with respect to the grounds on which the appeal was filed. A finding of substantial issue would bring the CDP application for the proposed project under the jurisdiction of the Commission for de novo hearing and action. To implement this recommendation, staff recommends a **NO** vote on the following motion. Failure of this motion will result in a de novo hearing on the CDP application, and adoption of the following resolution and findings. Passage of this motion will result in a finding of No Substantial Issue and the local action will become final and effective. The motion passes only by affirmative vote of a majority of the Commissioners present.

***Motion:** I move that the Commission determine that Appeal Number A-3-SNC-14-0001 raises no substantial issue with respect to the grounds on which the appeal has been filed under Section 30603 of the Coastal Act, and I recommend a no vote.*

***Resolution to Find Substantial Issue:** The Commission hereby finds that Appeal Number A-3-SNC-14-0001 presents a substantial issue with respect to the grounds on which the appeal has been filed under Section 30603 of the Coastal Act regarding consistency with the certified Local Coastal Program and/or the public access and recreation policies of the Coastal Act.*

## II. FINDINGS AND DECLARATIONS

The Commission finds and declares as follows:

### A. PROJECT LOCATION

The proposed project is located in the sand dunes along the shoreline in the southern Monterey Bay area near the bottom of the Monterey Bay crescent where it meets the Monterey peninsula area (and the Cities of Monterey, Pacific Grove, etc.). The dunes at the site are part of the larger southern Monterey Bay dune complex extending roughly along the shoreline from Monterey Harbor to the Pajaro River, a distance of approximately 20 miles that is made up primarily of undeveloped dune, much of it in public ownership and/or managed as conservation land.

The 26.46 acre project site extends along approximately 1,600 linear feet of the Sand City shoreline in the dunes between Highway One (and the Monterey Bay Sanctuary Scenic Trail (MBSST) and CCT) and the Monterey Bay, and between Monterey Peninsula Regional Park District dune parkland (upcoast) and Tioga Avenue (downcoast). Part of the southern, downcoast site, about 7.9 acres (or just less than a third of the overall site), is currently being used as a construction and materials storage yard/staging location.<sup>1</sup> This actively used portion of the

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<sup>1</sup> The entire project site was historically used for sand mining operations and a concrete batch plant that are no longer active. Most of the site is currently undeveloped except for ongoing construction storage and staging activities on this portion of the site.

overall project site is located immediately adjacent to Tioga Avenue, is owned by the Applicant, and is known as the Sterling site (APN 011-012-005). The remainder of the overall project site, about 18.56 acres (or about 70% of the overall site) is made up of undeveloped dunes, which are known as the McDonald and Granite sites (APNs 011-012-001 & 002, and APN 011-501-016 respectively). These sites are 16.25 and 2.31 acres, respectively, and are owned by the City of Sand City.

The project site is located seaward of Highway One, between the Fremont Boulevard interchange in the north and the State Route 218 interchange to the south. Access to the site from the Fremont Boulevard off-ramp requires turns onto Playa Avenue, Del Monte Boulevard, and Tioga Avenue, which extends westward over the highway to the sand dune area and into the project site. Access to the project site from State Route 218 requires a turn onto Sand Dunes Drive, a primary beach and dune frontage road west of Highway One, and a turn onto Tioga Avenue. The Tioga Avenue overpass connects the inland portion of the City to the largely undeveloped western dune area. Public parking exists along Tioga Avenue with an informal blufftop trail leading south and unimproved access to the beach below. North of Tioga Avenue, Playa Avenue terminates on the eastern, inland side of Highway One into a public recreational trail traversing under Highway One to connect with the MBSST which heads north through the dunes all the way to Fort Ord Dunes State Park.

Much of the project site had historically been used for sand mining, and there are remnant tailings and rubble along the shore as evidence of these industrial activities. As indicated, the 7.9-acre Sterling portion of site immediately north of Tioga Avenue continues to be used for materials recovery and related operations, and is highly degraded. The 18.56-acre McDonald and Granite portion of site has also been disturbed by previous sand mining activities. However, this larger portion of the site exhibits signs of dune regeneration and stabilization, including via wind-driven dune re-establishment and re-colonization of a variety of native and non-native plant species.

See **Exhibit 1** for project location maps and **Exhibit 2** for site photos.

## **B. PROJECT BACKGROUND**

Proposed development of this site has a long history with the Commission, beginning with the Commission's denial of a CDP for a 229-unit City-approved project on the site in 1986, a decision that was upheld by the Superior Court on March 16, 1987.<sup>2</sup> The City subsequently approved a smaller 136-unit project in 1989, which was also appealed to the Commission. However, the City's approval was nullified before the Commission acted on the appeal, due to a lawsuit challenging the City approval's compliance with the California Environmental Quality Act. After complying with the Court Order, the City approved a similar project in November 1990, which again was appealed to the Commission. After the Commission approved the project with special conditions in April 1991, the Monterey County Superior Court issued a ruling finding deficiencies with the environmental documents and noticing. The City responded to this ruling with an updated environmental document in July 1993, and then re-approved the project.

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<sup>2</sup> *Sand City vs. California Coastal Commission*, Case No. M 16952.

On June 9, 1994, the Commission heard the appeal of the Sterling Center hotel resort project approved by the City in 1993.<sup>3</sup> The Commission approved the project with special conditions that required, among other things, an increase in setback distances; reductions in the height of the proposed structures and in the length of the proposed roadway extension; grading and dune stabilization and restoration plans; and a sand replenishment program.<sup>4</sup> The Commission's conditions of approval also required the applicant to eliminate a City-approved desalination plant from the project, and to provide evidence that an alternative water source was available to serve the project. The project was never fully initiated, and the Applicant ultimately requested an extension of the CDP expiration date. In September 1999, the Commission found that there were changed circumstances and voted to deny the extension for CDP A-3-SNC-94-008.<sup>5</sup>

### C. CITY OF SAND CITY APPROVAL

On December 17, 2013, the Sand City City Council conditionally approved a CDP (CDP 13-06; Site Plan 13-03; and PUD) for the Collections at Monterey Bay Resort development. Notice of the City's action on the CDP was received in the Coastal Commission's Central Coast District Office on December 23, 2013. The Coastal Commission's ten-working day appeal period for this action began on December 24, 2013 and concluded at 5 p.m. on January 8, 2014. Two valid appeals (by the Sierra Club and by Commissioners Kinsey and Shallenberger) of the City's CDP decision were received during the appeal period. See **Exhibit 3** for the City's Final Local Action Notice and **Exhibit 4** for the full appeal documents

### D. PROJECT DESCRIPTION

The City-approved project is a 340-room resort on the 26.46-acre site described above. Phase One of the project would take place on the downcoast 7.9-acre Sterling portion of the site owned by the Applicant and located closest to Tioga Avenue, and would consist of a 105-room vacation club condominium hotel. Phase Two of the project would take place on the 16.25-acre McDonald portion of the site owned by the City and located immediately upcoast and adjacent to Sterling, and would consist of a 235-room standard operating hotel, restaurant, and conference center, as well as a public parking lot and trailhead for a lateral dunes pedestrian path on the 2.31 acre Granite site owned by the City. The approved overall development design includes a series of building clusters located over an underground parking garage. In general, the buildings would be three to five stories in height. The lowest finished floor elevation would be 18 feet above sea level (the parking garage) and the highest elevation would be about 85 feet above sea level (certain hotel elements). The structures would be setback from the mean high tide line of Monterey Bay approximately 205 feet.

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<sup>3</sup> This project was essentially the same project reviewed by the Commission in 1991, and included a 136-unit hotel/resort with a 135-seat restaurant and bar; an on-site desalination and water treatment facility; 4,000 square feet of conference and retail space; a 234-space subterranean garage; an extension of Sand Dunes Drive; public access improvements; and dune restoration.

<sup>4</sup> CDP A-3-SNC-94-008.

<sup>5</sup> Changed circumstances identified were the federal listing of the Western snowy plover as a threatened species, reductions in the availability of water, and increased growth in the project vicinity with corresponding impacts on roadway capacity, among other reasons.

As part of the project, the terminus of Tioga Avenue is proposed to be restructured into a cul-de-sac with public parking, restrooms, and a lifeguard station. Beach access stairs would also be provided at the Tioga Avenue cul-de-sac. Sand Dunes Drive would be extended from Tioga Avenue north to a new terminus at the proposed public parking lot. The roadway extension would serve as a primary accessway for the resort and is designed at 24 feet in width, with a 8-foot wide multi-purpose path located along the roadway extension's edge. The project further includes ancillary improvements such as extending an eight-inch water line from Tioga Avenue east of Highway One, a private force main in the Sand Dunes Drive right of way, on-site wastewater pump station, and grading over 19.8 acres of the 26.46-acre site.

See **Exhibit 2** for site area photos and **Exhibit 5** for project plans and Applicant's photo simulations of the project.

## **E. APPEAL PROCEDURES**

Coastal Act Section 30603 provides for the appeal to the Coastal Commission of certain CDP decisions in jurisdictions with certified LCPs. The following categories of local CDP decisions are appealable: (a) approval of CDPs for development that is located (1) between the sea and the first public road paralleling the sea or within 300 feet of the inland extent of any beach or of the mean high tide line of the sea where there is no beach, whichever is the greater distance, (2) on tidelands, submerged lands, public trust lands, within 100 feet of any wetland, estuary, or stream, or within 300 feet of the top of the seaward face of any coastal bluff, and (3) in a sensitive coastal resource area; or (b) for counties, approval of CDPs for development that is not designated as the principal permitted use under the LCP. In addition, any local action (approval or denial) on a CDP for a major public works project (including a publicly financed recreational facility and/or a special district development) or an energy facility is appealable to the Commission. This project is appealable because it involves development that is located between the sea and the first public road paralleling the sea.

The grounds for appeal under Section 30603 are limited to allegations that the development does not conform to the certified LCP or to the public access policies of the Coastal Act. Section 30625(b) of the Coastal Act requires the Commission to conduct the de novo portion of the hearing on an appealed project unless a majority of the Commission finds that "no substantial issue" is raised by such allegations. Under Section 30604(b), if the Commission considers the CDP de novo and ultimately approves a CDP for a project, the Commission must find that the proposed development is in conformity with the certified LCP. If a CDP is approved for a project that is located between the nearest public road and the sea or the shoreline of any body of water located within the coastal zone, Section 30604(c) also requires an additional specific finding that the development is in conformity with the public access and recreation policies of Chapter 3 of the Coastal Act. This project is located between the nearest public road and the sea, and thus this additional finding would need to be made if the Commission were to take jurisdiction over the CDP and approve the project following a de novo hearing.

The only persons qualified to testify before the Commission on the substantial issue question are the Applicant (or its representatives), persons who made their views known before the local government (or their representatives), and the local government. Testimony from other persons regarding substantial issue must be submitted in writing. Any person may testify during the de

novo CDP determination stage of an appeal.

## **F. SUMMARY OF APPEAL CONTENTIONS**

The appeals assert that the City-approved project raises LCP conformance issues with respect to hazard avoidance, protection of public views, dune resource protection, public recreational access, and provision of public services. These contentions raise LCP consistency questions about the City's approval of a large resort complex on the sand dunes above a rapidly eroding shoreline, within the public viewshed from Highway One, and on land supporting state and federally listed species, including land federally designated as critical habitat for animal species. The appeals further contend that the approved project falls short of the design objectives for completing the Monterey Bay Sanctuary Scenic Trail, will impact public services in the vicinity of the development, and is too dense given the resource constraints of the site. See **Exhibit 4** for the full text of the appeals.

## **G. SUBSTANTIAL ISSUE DETERMINATION**

### **1. Substantial Issue Background**

The term substantial issue is not defined in the Coastal Act. The Commission's regulations simply indicate that the Commission will hear an appeal unless it "finds that the appeal raises no significant question as to conformity with the certified Local Coastal Program and the public access and public recreation policies of Chapter 3 of the Coastal Act."<sup>6</sup> In previous decisions on appeals, the Commission has been guided by the following factors in making such determinations:

- The degree of factual and legal support for the local government's decision that the development is consistent or inconsistent with the certified LCP and with the public access policies of the Coastal Act.
- The extent and scope of the development as approved or denied by the local government.
- The significance of the coastal resources affected by the decision.
- The precedential value of the local government's decision for future interpretation of its LCP.
- Whether the appeal raises only local issues, or those of regional or statewide significance.

Even where the Commission chooses not to hear an appeal, Appellants nevertheless may obtain judicial review of a local government's CDP decision by filing a petition for a writ of mandate.<sup>7</sup>

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<sup>6</sup> California Code of Regulations (CCR), Title 14, Section 13115(b).

<sup>7</sup> Pursuant to Code of Civil Procedure Section 1094.5.

## 2. Substantial Issue Analysis

The Commission finds that the City-approved project raises a substantial issue regarding the City-approved project's compliance with the policies and standards of the LCP, and with the Coastal Act's access policies, with respect to coastal hazards, public viewsheds, dune resources, public recreational access, public services (i.e., traffic and circulation, water supply, and sewer capacity), and development densities., as discussed below. See **Exhibit 6** for the applicable LCP and Coastal Act policies and standards.

### *Hazards*

The certified LCP's hazards policies and standards require all development to be sited and designed to minimize risk from geologic hazards. The LCP further requires the preparation of a geotechnical report and the identification of appropriate hazard setbacks based on the economic life of the project (which must be evaluated for a minimum of 50 years). The required geotechnical report must include recommended mitigation measures and alternatives to minimize impacts due to hazards. The LCP limits the use of shoreline protective devices to a very limited class of development (i.e., existing development, coastal-dependent uses, public beaches and recreation areas, and public works) and further requires that new development proposals be denied if shoreline hazards cannot be adequately mitigated as recommended in the geotechnical report. Finally, the LCP requires that a project be approved only if the project's density adequately reflects consideration of the degree of the on-site hazard.

As approved by the City, the resort and related development would be sited in an area that may be threatened by coastal erosion and other geologic hazards within the economic life of the project. First, the City's approval includes development seaward of the Applicant-identified 50-year erosion setback (e.g., a roadway cul-de-sac, restrooms, lifeguard station, parking, etc.). In addition, at 18-feet NGVD,<sup>8</sup> the underground parking garage is located within the Federal Emergency Management Agency's (FEMA) 100-year flood inundation zone. Similarly, portions of the first floor habitable elements (at +30 NGVD) may be subject to wave run-up and flooding under modest sea level rise scenarios. The City-approved resort development (i.e., all habitable hotel, resort, condominium hotel units, and non-habitable parking elements) relies on foundational elements, including a system of deep caisson foundation piers that will impermissibly act as a shoreline protective device, with resultant unmitigated adverse impacts to public access and natural shoreline processes. Finally, the City's approval does not explicitly address the removal of the site's existing concrete, asphalt, slurry tailings, and other debris that are located seaward of the approved development, which could create a hazard, exacerbate erosion, and adversely affect shoreline processes. As such, none of these potential hazards issues were appropriately addressed in the City's CDP approval.

The site is subject to significant coastal hazards, including but not limited to, shoreline erosion/retreat and wave run-up/flooding. The project site consists entirely of highly erodible

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<sup>8</sup> The National Geodetic Vertical Datum of 1929, formerly known as the Sea Level Datum of 1929 is a vertical control datum in the United States by the general adjustment of 1929. Mean sea level was held fixed at the sites of 26 tide gauges, 21 in the United States and 5 in Canada. The datum is defined by the observed heights of mean sea level at the 26 tide gauges and by the set of elevations of all bench marks resulting from the adjustment. The datum was not mean sea level, the geoid, or any other equipotential surface. Therefore, it was renamed in 1973, the National Geodetic Vertical Datum on 1929. (modified from <http://www.ngs.noaa.gov/faq.shtml>)

dune sands, and shows some of the highest shoreline erosion rates in the state. The Applicant contends that hazards have been sufficiently addressed, and that the approved project has been sited and designed to avoid hazards as required by the LCP. However, estimates of future shoreline hazards for the site appear to have been underestimated, particularly with respect to shoreline erosion/retreat and sea level rise. In particular, the Applicant has not identified the project's economic lifetime, and only used the LCP-minimum required hazards analysis criteria of 50 years in its geologic report. An economic lifetime and hazard evaluation beyond the LCP-minimum 50-year evaluation threshold is more realistic and a necessity for a project of this size and scope;<sup>9</sup> however, even assuming a 50-year economic lifetime for the project, it is clear that portions of the approved project will be threatened within the next 50 years by coastal erosion, even when using less conservative projections of sea level rise and associated bluff retreat. Under longer economic lifetimes, such as 75 years, and with more conservative sea level rise projections, much of the site would be severely impacted by shoreline erosion and retreat, and would be even more unsuitable for the development as proposed. Further, the project's proposed deep caisson foundation system would act as a shoreline protective device under such erosion/retreat scenarios, inconsistent with the LCP.

In short, the City-approved project has not adequately addressed coastal hazard risks at this location, particularly when taking into account reasonable estimates for its economic life and more conservative estimates for sea level rise. Therefore, it cannot be assured that the project has been adequately sited and designed to address hazards as required by the LCP. For these reasons, the City's approval raises a substantial LCP hazards conformance issue.

### ***Visual and Scenic Resources***

The LCP includes numerous policies and standards designed to protect public views from Highway One and other public viewpoints, including by establishing development height limits and applying special performance standards within certain designated view corridors (i.e., the three southbound views over development on properties between Tioga Avenue through the Granite portion of the site). Within these view corridors building heights must be limited to protect the views of the sweep of beach and dunes, Monterey Bay, and the Monterey peninsula. North of Tioga Avenue, the LCP requires that development not intrude upon, or block, an unobstructed view of more than one-third of the lineal distance across the Bay, measured as a straight line between the Highway One viewpoint and the landward edge of the Coast Guard Breakwater located across the Bay in the City of Monterey.

Thus, the LCP requires that development be sited and designed to protect significant public views, and prohibits impairment of certain specifically identified ocean views. In this case, the development would be sited between Highway One and the Monterey Bay. The project approved by the City does not conform to the LCP's visual resource protection policies because the approved project: 1) exceeds LCP height limitations; 2) encroaches upon and obstructs blue water views within identified view corridors established by the LCP; and 3) significantly degrades public views not completely obstructed by the development. As approved, the project would block existing blue water ocean views and other views across the site from Highway One and the Monterey Bay Sanctuary Scenic Trail and CCT, including views explicitly required to be

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<sup>9</sup> And has been required of the Commission in recent similar hotel resort developments in Sand City, including Monterey Bay Shores Resort in CDP A-3-SNC-98-114 approved in April 2014.

maintained by the LCP. Other public views not completely blocked would be significantly degraded. For these reasons, the City's approval raises a substantial LCP public viewshed conformance issue.

### ***Natural Resources***

The LCP requires that certain dunes and other habitats be protected and restored. A past court action concluded that the dunes west of Highway One cannot be considered ESHA under the LCP.<sup>10</sup> However, the ruling does not limit the Commission's required consideration of other LCP provisions that specifically address the protection of dune landforms and natural resources, including restoration requirements. Additionally, the LCP protects and designates specific natural resource areas that are suitable for dune stabilization and/or restoration, including explicitly a roughly 100' x 40' oblong area that straddles the Sterling and McDonald portions of the site. The LCP requires these areas to be maintained in open space, and prohibits grading except in conjunction with an approved habitat restoration plan. These areas are to be used for restoration or enhancement of native dune plant habitats, establishment of new habitat for rare or endangered species and, in conjunction with approved development, for off-site habitat mitigation.

The dunes located at the site have been degraded largely due to historic sand mining. However, sand mining in this area ceased in the late 1980s. Over time the sand dunes here have been recovering, and now are recolonized with a variety of plant species, some of them listed species under federal and state endangered species acts. The project threatens the biological and natural resource values of this dune environment contrary to LCP policies that require new visitor-serving and recreational development to protect natural resources. This is because nearly all the dunes landward of the 15-foot elevation would be altered during construction of the project (i.e., roughly 20 acres of dunes would be disturbed and of those 20 acres, approximately 11.5 acres of dunes would be permanently lost to development), including part of the explicitly protected dune feature onsite. Portions of the project site support listed native dune species, such as Monterey spineflower (*Chorizanthe pungens* var. *pungens*), which is a federally-listed threatened species, and dune buckwheat (*Eriogonum parvifolium*), which is the host plant for the federally-listed endangered Smith's blue butterfly (*Euphilotes enoptes smithi*). These plant species will be removed by the proposed project and the approved project does not address these impacts, either individually or cumulatively. Portions of the site are also designated as critical habitat for Western snowy plover (*Charadrius nivosus nivosus*), another federally-listed threatened species, with documented use of the site by plovers in the past. The U.S. Fish and Wildlife Service (USFWS) concluded that the City-approved project will render the project site unsuitable for use by snowy plovers, and that surrounding dune areas will also be adversely affected.

The approved project also includes reconstruction and revegetation of the dunes located seaward of the resort development. Foredunes up to 25 to 45 feet in height would be created near the beach and vegetated with native dune plants. However, given the moderate to strong winds at this location, these created dunes may not be stable, even if planted with native species. Additionally, within 50 years all the dune habitat seaward of the development and portions of the development itself will be lost to coastal erosion and shoreline retreat. Considering the

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<sup>10</sup> *Security National Guaranty Inc. v. California Coastal Commission* (2008) 159 Cal.App.4th 402.



ephemeral nature of this proposed restored habitat area located seaward of the development, the approved project does not include appropriate long-term habitat mitigation.

For these reasons, the City's approval raises a substantial LCP natural resources conformance issue.

### ***Public Recreational Access***

In general, the applicable LCP and Coastal Act policies require development to include public recreational access to and along the shoreline, including improvements to maximize public recreational access opportunities and facilitate public recreational use, including parking and vista point areas. Like the development itself, such public recreational access improvements must be sited and designed to be out of harm's way such that they continue to provide the intended access utility over time, while also avoiding public viewshed impacts.

While the project includes public access and recreation improvements, some of these improvements are inconsistent with LCP and Coastal Act policies that require the provision of maximum public access. For example, the existing Monterey Bay Sanctuary Scenic Trail (MBSST), which is a segment of the California Coastal Trail (CCT), is a 12-foot wide, Class I dedicated bike/pedestrian trail/multiuse path that is located north and south of the project site. The approved project would extend Sand Dunes Drive and the MBSST path in this area. However, the approved path is only designed to be eight feet in width and would have little separation from the extended portion of Sand Dunes Drive (i.e., the path would be sandwiched between Sand Dunes Drive and the project development). Thus, the City-approved path, which would provide a link in the CCT, falls short of the objectives for completing the MBSST and the CCT, and does not maximize public access as required by the LCP and the Coastal Act. For these reasons, the City's approval raises a substantial LCP public recreational access conformance issue.

### ***Public Services***

The LCP requires that new development be approved only where water and sewer services are available and adequate, and where adequate circulation and parking are provided. In terms of water supply, water for the project would be supplied via the Sand City Desalination Facility (desalination plant), which was permitted by the Commission in 2005, and built in 2010. The City contracts with a third-party water purveyor, Cal-Am, to operate, maintain, and distribute water from the desalination plant. The plant was sized to produce 300 acre-feet per year (afy) of water, and up to 206 afy of that could be allocated to new/expanded uses and development inland of Highway One in the City. Pursuant to the Commission's approval of the desalination plant, the difference between the water produced and that allotted to new uses and development was required to be used to offset Cal-Am's withdrawals from the Carmel River. In other words, the additional water produced from the plant allowed for correspondingly less withdrawals from the river. Initially, the amount of Carmel River pumping reduction was 206 afy, but as projects have been allocated water, that savings has correspondingly decreased.

The City-approved project would consume roughly 64.5 afy of water, which represents nearly 40% of the remaining available water supply from the City's desalination plant (i.e., 161.25 afy of the original 206 afy has yet to be allotted). It is unclear what the approved project's impact would be on development projects located east of the Highway in terms of water supply because

the project EIR did not evaluate this impact. At a minimum, areas inland of the Highway for which sizing of the plant was originally based (i.e., plant sizing explicitly did not include allowance for water service for development west of Highway One) may be required to obtain a separate water source prior to development. Furthermore, the Commission's desalination plant CDP requires an amendment for any changes in the physical, operational, or delivery capacity, including increases beyond the approved sizing of the plant. It is unclear whether the project is consistent with the LCP's water availability requirements, as the City's desalination plant was designed to provide water for the City's General Plan projected full build-out of all properties located *east* of Highway One, so this water may not be available to development west of Highway One.

Additionally, currently there is no water supply infrastructure located west of the Highway. Thus, the existing water supply pipelines from the water mains at Tioga Avenue and Playa Avenue would need to be extended across the Highway One right-of-way to provide water for the City-approved project. However, and although the City's approval includes extension of water supply pipelines to serve the approved project, extension of water lines west of the Highway is not subject to the City's CDP jurisdiction as it would require an amendment to the Commission's desalination CDP per the terms and conditions of that CDP. Neither the Applicant nor the City have applied for this required CDP amendment.

In short, the project raises a series of issues related to water supply, including the need for separate CDP process through the Commission to allow water to be extended west of the Highway.

In terms of sewer service, sewer services for the City-approved project would be provided by the Seaside County Sanitation District (SCSD) for transport of effluent, and by the Monterey Regional Water Pollution Control Agency (MPWPCA) for regional transport, treatment, and disposal of sewage. The existing MPWPCA wastewater treatment facility's capacity is 25 million gallons per day (gpd). Currently the wastewater treatment facility processes approximately 21 million gpd, and the approved project would contribute an additional 52,939 gpd, well below the facility's capacity. Thus, there appears to be adequate sewage treatment plant capacity for the project. However, it is not so clear that SCSD has capacity for the transport of such effluent. The project includes an extension of wastewater lines within the proposed alignment and right-of-way of Sand Dunes Drive west of Highway One. However, it is unclear if the SCSD has adequate capacity in its transport lines to serve the project.<sup>11</sup> Thus, there is considerable uncertainty as to whether there are adequate wastewater services available to serve the City-approved project.

In terms of circulation, the project site is located seaward of Highway One, between the Fremont Street interchange in the north and the State Route 218 interchange to the south. Access to the site from the Fremont Boulevard off-ramp requires turns onto Playa Avenue, Del Monte Boulevard, and Tioga Avenue, which extends westward over the highway to the sand dune area and into the project site. Access to the project site from State Route 218 requires a turn onto

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<sup>11</sup> In its January 11, 2012 letter on the project DEIR the SCSD stated, "It is unclear if the existing SCSD collection system has sufficient excess capacity to handle the increased flow."

Sand Dunes Drive, a primary beach and dune frontage road west of Highway One, and a turn onto Tioga Avenue.

The City-approved project would bring significant new traffic to an already stressed transportation grid, particularly with respect to Highway One. Highway One in this area is the primary means of coastal north-south travel, and the primary means that most visitors access this stretch of coastline. According to the project EIR, Highway One currently operates at LOS E during peak traffic times, and the project would exacerbate such congestion. The City's approval attempts to mitigate traffic impacts primarily through requiring the Applicant to contribute to the Transportation Agency of Monterey County's (TAMC) Regional Development Impact Fee program, a program that is geared towards addressing regional and cumulative impacts of development, and not site specific impacts. Payment of such a fair share fee may be part of an appropriate mitigation package for cumulative traffic impacts, but it is not appropriate for project-specific impacts, and it is not clear that it will be sufficient to offset traffic impacts attributable to this project. In addition, the primary often-cited improvement intended to emanate from this fee program and meant to address traffic issues in this area, namely the widening of Highway One, raises its own significant set of issues. The existing Highway cuts through historic dune areas, and is adjacent to existing dune resources, and widening would likely impact these resources. It is not clear at this time whether such a project could be found consistent with applicable Coastal Act and LCP policies.

For these reasons, the City's approval raises a substantial LCP public services conformance issue.

### ***Development Densities***

The LCP establishes that identified densities are maximums, and requires that development be limited to that which adequately addresses resource constraints, including with regard to public access and recreation, public service capacities, natural hazards, dunes, and public views. Although designed at a density that is less than the theoretical maximum for the site per the underlying zoning, the City-approved project appears to be overly dense given the significant resource constraints associated with development at the site (including in terms of hazards, public views, natural resources, etc.). It is not clear that a project of this density and intensity can be found consistent with applicable LCP and Coastal Act policies in light of these constraints, including as detailed above, and for these reasons, the City's approval raises a substantial LCP development conformance issue.

## **3. Substantial Issue Conclusion**

### ***Five Substantial Issue Factors***

When considering a project that has been appealed to it, the Commission must first determine whether the project raises a substantial issue of LCP conformity such that the Commission should assert jurisdiction over a de novo CDP for such development. At this stage, the Commission has the discretion to find that the project raises a substantial issue of LCP conformance. As explained above, the Commission is guided in its decision of whether the issues raised in a given case are "substantial" by the following five factors: the degree of factual and legal support for the local government's decision; the extent and scope of the development as approved or denied by the City; the significance of the coastal resources affected by the decision; the precedential value of the City's decision for future interpretations of its LCP; and,

whether the appeal raises only local issues as opposed to those of regional or statewide significance.

In this case, these five factors, considered together, support a conclusion that this project does in fact raise a substantial issue of LCP conformance. First, in terms of coastal hazards, the proposed 340-room resort development is inconsistent with LCP policies requiring all development to be setback from the shoreline and safe from hazards over the life of the development without reliance on shoreline armoring or extensive foundation systems. In addition, the Applicant has not provided evidence of adequate public services such as water, sewer, or traffic to serve the development. The proposed project footprint encompasses roughly half of the 26 acre site and will have adverse impacts on public views, natural resources, and public access inconsistent with LCP and Coastal Act requirements. Thus, there is insufficient factual or legal support for the City's decision to approve the proposed development.

Second, the proposed development is for a large resort and related facilities that will involve development over nearly 20-acres of undeveloped sand dunes, over half of which (11.5 acres, or nearly 60%) would be permanently lost. Third, the project as approved would allow a large resort development in currently undeveloped sand dunes. The project would adversely affect natural resources, public access, visual resources and does not minimize risk from coastal hazards, so it affects significant coastal resources. Fourth, given the inconsistencies of the proposed project with the certified LCP, a finding of no substantial issue would set an adverse precedent for future interpretations of the LCP. Fifth, due to the scope and scale of the development and the variety of coastal resources it would affect, it raises issues of regional or statewide significance. All five substantial issue factors therefore weigh in favor of a finding of substantial issue in this case.

### ***Substantial Issue Summary***

The City-approved project raises substantial issues with respect to coastal hazards, visual and scenic resources, dune resources, public services (i.e., traffic and circulation and water supply), public recreational access, and development densities. With respect to hazards, the LCP requires that development be sited and designed to avoid hazards, and requires that it be sited to ensure stability and safety over its economic lifetime, including without a reliance on shoreline protective devices. It is clear that the site is subject to significant coastal hazards including but not limited to shoreline erosion/retreat and wave run-up/flooding. The project site consists of highly erodible dune sands, and presents some of the highest shoreline erosion rates in the state. The project appears to be sited and designed in way that portions of it would be in harm's way well before the 50-year minimum evaluation period identified in the LCP, and its foundation would act as a shoreline protective device under such erosion/retreat scenarios, inconsistent with the LCP. In addition, the Applicant's erosion/retreat and sea level rise estimates in this regard are based on more optimistic estimates than the Commission typically employs, exacerbating all of these issues.

In terms of the public viewshed, the project is located within significant public viewsheds, including critically the Highway One viewshed of the site and beyond to the Monterey Bay and the Monterey peninsula. The LCP requires that development be sited and designed to protect significant public views, and prohibits impairment of certain specifically identified ocean views associated with this site. The City-approved project does not conform to the LCP's public

viewshed protection policies because the project exceeds LCP height limits, encroaches upon and obstructs blue water views within LCP-identified view corridors, and significantly degrades public views not completely obstructed by the development.

In terms of natural resources, although a portion of the site is currently used for construction purposes (nearest Tioga), it is all located in dunes that are a part of the larger southern Monterey Bay dune system that extends roughly unbroken some 20 miles from Monterey Harbor to the Pajaro River. Portions of the project site support state and federally listed plants and animals; notably Monterey spineflower, Smith's blue butterfly, and Western snowy plover. The project would disturb essentially all dune areas above the 15-foot contour, and would permanently displace some 11.5 acres of dune, or over 60% of the undeveloped and publicly owned dune area associated with the property. These impacts would significantly degrade dune resources, including in relation to listed species habitats. In fact, the USFWS has concluded that the City-approved project will render the project site unsuitable for use by snowy plovers in an area designated as critical habitat for the species, and that surrounding dune areas will also be adversely affected.

In terms of public services, the LCP requires that new development be approved only where water and sewer services are available and adequate, and where adequate circulation and parking are provided. For water, the project would use water from the City's desalination plant, but it is not clear whether water from this plant can be used for development on the site, including as it was sized for the purpose of providing water for City build-out inland of Highway One, and the Commission's CDP for the desalination plant would have to be amended to allow water service and allocation seaward of the Highway. For sewer, there appears to be adequate capacity at the regional wastewater treatment plant to serve the project, but the entity responsible for transporting effluent to the plant has indicated that it is not certain that they have capacity to handle project flows. For circulation, the project would bring significant new traffic to an already stressed transportation grid, particularly with respect to Highway One. An as yet unknown series of traffic improvements would be required, including to Highway One, which raises questions and issues, including because Highway One runs through dunes in this area and such projects themselves could raise their own set of LCP and Coastal Act problems.

In terms of public access, the LCP and the Coastal Act require development to include public recreational access to and along the shoreline, including improvements to maximize public recreational access opportunities and facilitate public recreational use, including parking and vista point areas. Although the project includes a suite of access amenities, including improved CCT connections and public parking, these elements share some of the same hazard issues associated with siting development out of harm's way as the resort development itself. In addition, the CCT improvements have been sited and designed in a way that limits their utility, including in terms of narrowing the CCT and siting it with little separation from the road.

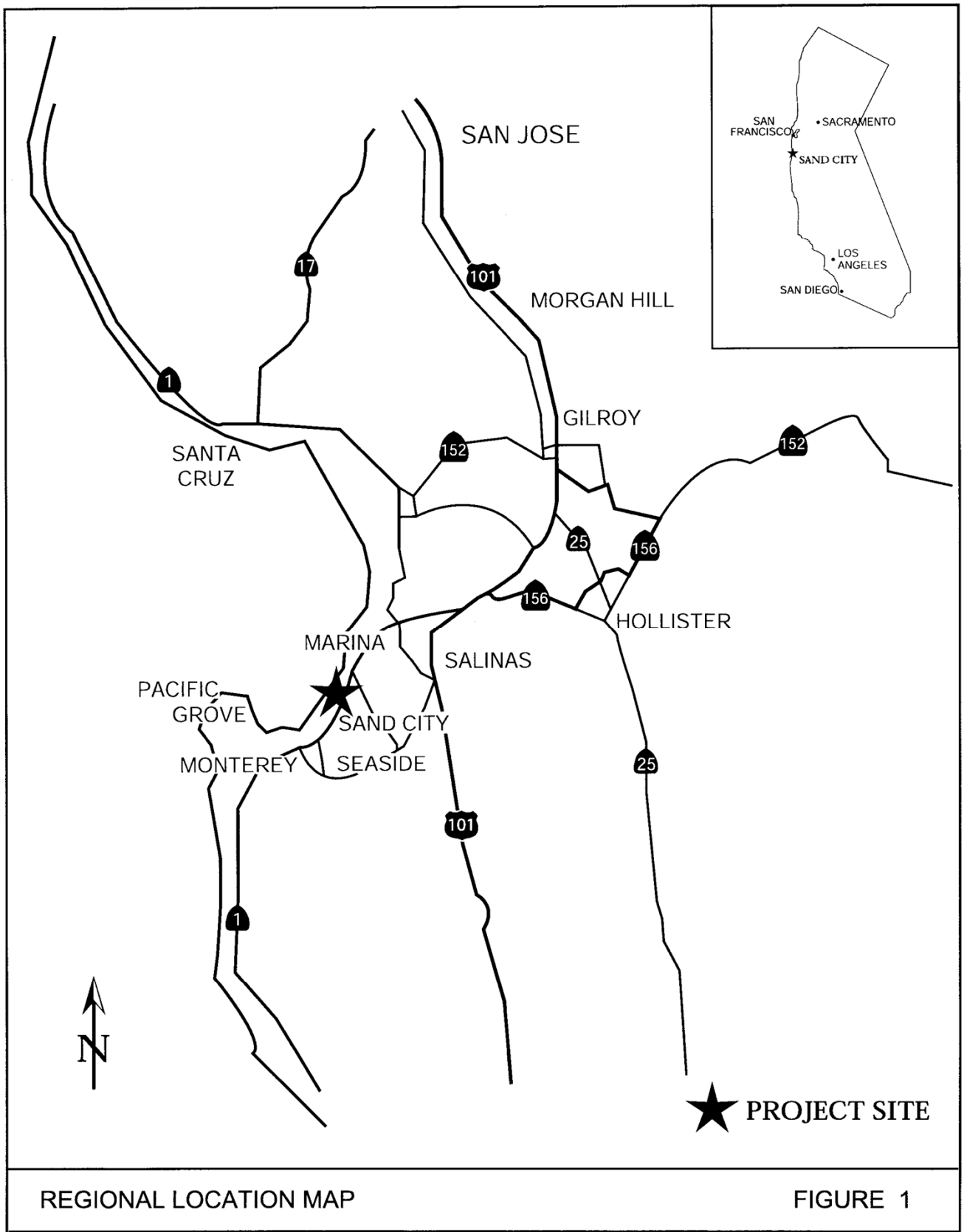
Finally, the LCP establishes that LCP-identified development densities are maximums, and requires that development be limited to that which adequately addresses resource constraints, including with regard to coastal hazards, public views, dunes, public service capacities, and public access and recreation. Although designed at a density that is less than the theoretical maximum for the site per the underlying zoning, the City-approved project appears to be overly dense given the significant resource constraints associated with development at the site. It is not

clear that a project of this density and intensity can be found consistent with LCP and Coastal Act policies in light of these constraints, including as detailed above.

In short, the City-approved a very large resort complex on sand dunes supporting state and federally listed species (and a critical habitat area for snowy plover) above a rapidly eroding shoreline within a significant public viewshed and in an area with significant public service constraints. The City's approval raises a series of significant and substantial issues regarding LCP and Coastal Act conformance for such a project, including with respect to coastal hazards, public viewsheds, dune resources, public recreational access, public services (i.e., traffic and circulation, water supply, and sewer capacity), and development densities. For these reasons, and as articulated in this report, the Commission finds that the City's action raises a substantial issue regarding the City-approved project's compliance with the policies and standards of the LCP and the Coastal Act, and takes jurisdiction over the CDP application in this case.

**APPENDIX A: SUBSTANTIVE FILE DOCUMENTS**

- City of Sand City Local Coastal Program
- The Collections at Monterey Bay Final EIR, November 2012
- Appeal A-3-SNC-14-0001 File Documents



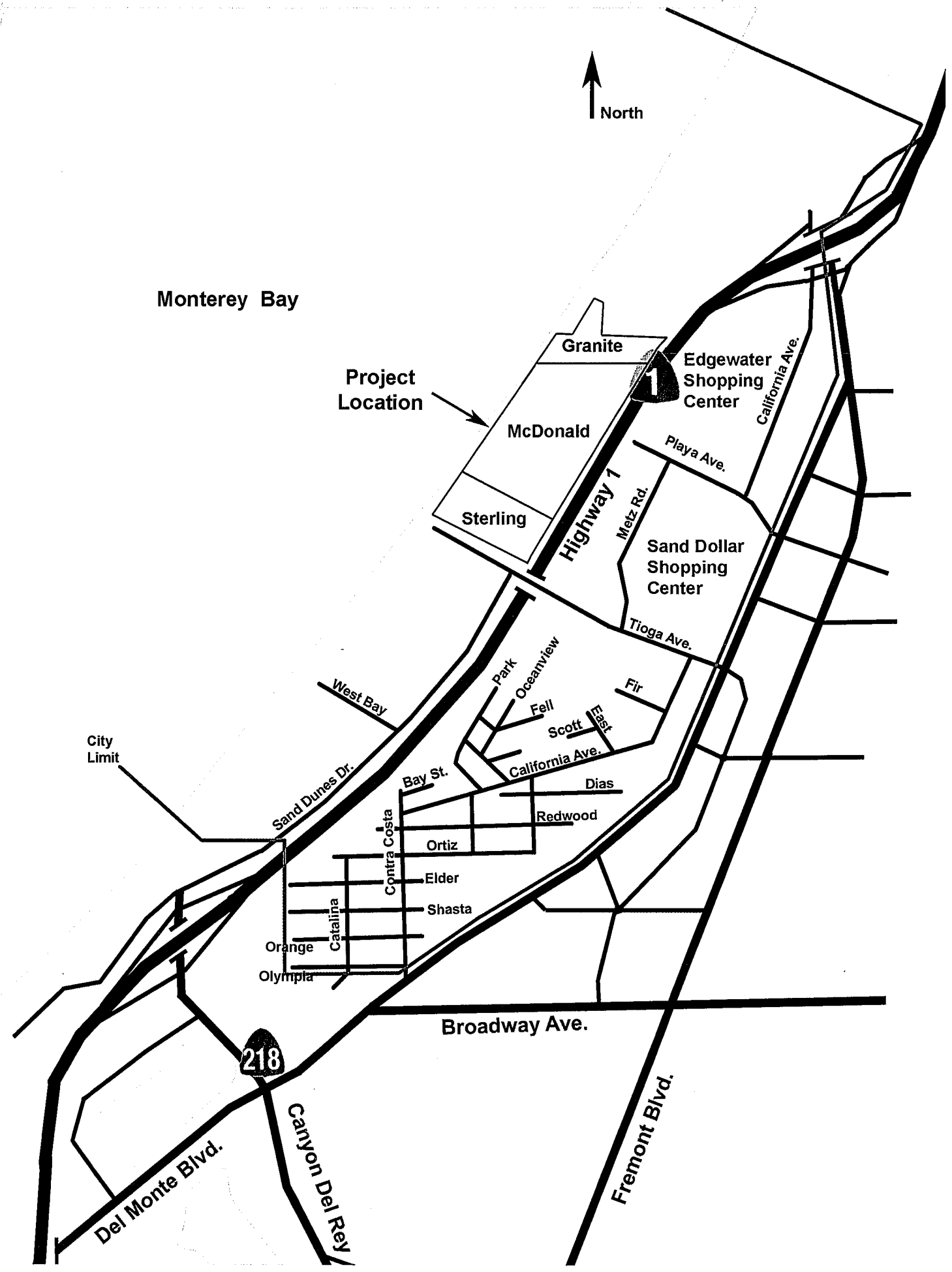




Monterey Bay

Project Location

City Limit



# Vicinity Map





Exhibit 2: Aerial Photos  
A-3-SNC-14-0001  
Page 1 of 3





Exhibit 2: Aerial Photos  
A-3-SNC-14-0001  
Page 2 of 3





Source: California Coastal Records Project, Slide 201314343

Exhibit 2: Aerial Photos  
A-3-SNC-14-0001  
Page 3 of 3



**NOTICE OF FINAL LOCAL ACTION  
CITY OF SAND CITY**

**FINAL LOCAL  
ACTION NOTICE**

REFERENCE #

APPEAL PERIOD

3-SNC-14-0005

12/23/13-1/8/2014

**RECEIVED**

DEC 23 2013

CALIFORNIA  
COASTAL COMMISSION  
CENTRAL COAST AREA

**To:** California Coastal Commission, Central Coast District  
725 Front Street, Suite 300  
Santa Cruz, CA 95060

**From:** City of Sand City  
1 Sylvan Park  
Sand City, CA 93955

This notice is sent to inform you that the City Council of the City of Sand City has taken final action to approval a Coastal Development Permit for the applicant and project as described below:

**Project Applicant:** King Ventures - The Collections At Monterey Bay

**Project Location:** The proposed project is located in Sand City, California, along the Monterey Bay, located west of State Highway 1, north of Tioga Avenue, extending past Playa Avenue on properties commonly referred to the "Sterling" site (APN 011-012-005) the "McDonald" site (APN 011-012-002 & 005) and the "Granite" site (APN 011-501-016). See attached map.

**Project Description:** Coastal Development Permit, Site Plan Permit, and PUD Permit for coastal resort project consisting of a 340-room visitor serving coastal resort on a 26.46 acre site located west of SR1 (HWY 1) and north of Tioga Avenue, that may be constructed in two phases. The project will include a restaurant, conference center, and wellness spa.

**Application Number:** Coastal Development Permit (CDP) 13-06, Site Plan Permit 13-03 & PUD Permit

**Coastal Zone Status:** Category Exempt (Sec. 15301)  
X Appealable  
   Non-Appealable

**City Council Action:** X Approval  
   Denial

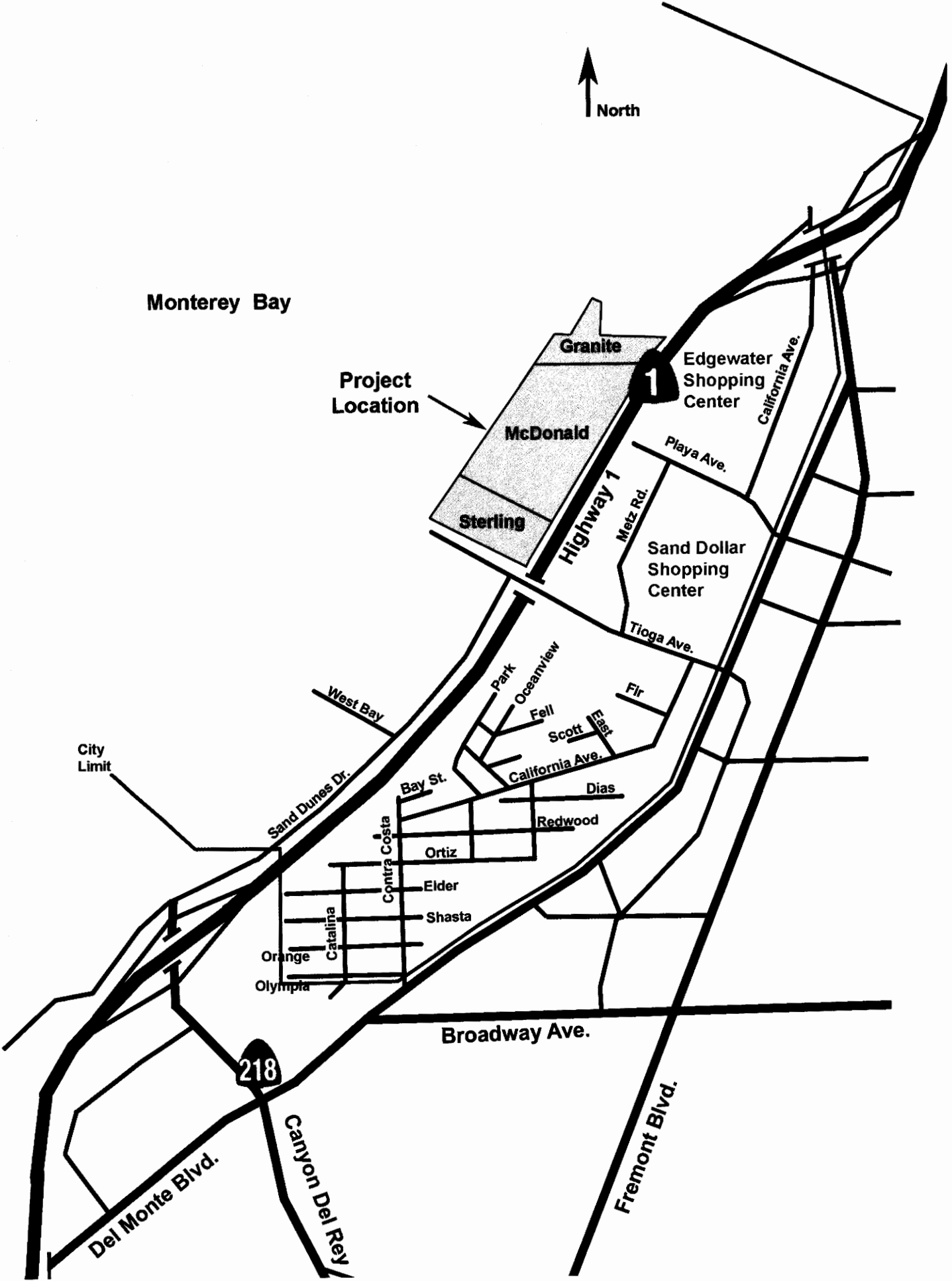
**Date of Decision:** Tuesday, December 17, 2013

The staff report and approved Coastal Development Permit with the findings and conditions of approval are attached. Approval of an "appealable" development may be appealed to the State California Coastal Commission within ten (10) working days from the City Council's date of approval.

Respectfully submitted:

  
Steve Matarazzo  
City Administrator & Community Development Dir.

12/20/13  
Date



**Vicinity Map**

REC


JAN 1

CALIF  
COASTAL C  
CENTRAL C

**CITY OF SAND CITY**  
staff memorandum

DATE: December 12, 2013 (for City Council Meeting of December 17, 2013)

TO: Mayor and City Council

FROM: City Administrator/Community Development Director 

SUBJECT: Supplemental Report on The Collection At Monterey Bay (King Ventures) and Recommended Added Conditions of Permit Approval

**BACKGROUND**

On December 9, 2013, city staff met with representatives of King Ventures and the Coastal Commission staff to discuss key issues of the Coastal Commission regarding the proposed 340-unit coastal resort project known at the Collection at Monterey Bay. It is the purpose of this report to address those issues to the satisfaction of the Coastal Commission. Therefore, staff is recommending additional conditions of approval, which are now reflected in the proposed combined development permit for the project. Each key issue is addressed below.

**1. Visual Impacts and Mitigation**

There was an extensive discussion of the environmental impact report (EIR) methodology for determining visual impacts, consistent with requirements of the Sand City Local Coastal Program (LCP). It was explained that the project has been revised to meet or exceed the various height limitations, view corridor and setback restrictions imposed by the LCP. As discussed, every building is consistent with LCP standards regarding (a) maximum building heights above existing grade, (b) overall building heights; (c) building heights restricted within designated view corridors, and (d) lower maximum building height limits within 100 feet of the Highway 1 right-of-way. Further, the project exceeds these various standards in many instances. For example, of the 21 buildings proposed for the resort, less than one-half of the buildings (S-4 through S-9 and a portion of M-1, M-2, M-8 and M-9) are proposed at or within 2 feet of the maximum heights allowed for those locations. The remaining buildings range from 12 feet to 40 feet below allowable height limits.

**2. Bluff Erosion and Managed Natural Shoreline Retreat**

As noted in the primary staff report for this project, the Coastal Commission recommends an erosion setback larger than 50 years. However, given the allowable LCP development densities, the narrow nature of the site, due to the alignment of Highway 1, the 50-year standard was chosen as the LCP standard and certified. The primary concern of Commission staff was: what happens in 50 years, if coastal erosion threatens the construction. Commission staff also noted that the Commission has

considered foundations like piers/caissons (shafts of concrete, attached to the foundation and driven down to hardpan soils) as "shoreline protective devices" that they would like to avoid. Structural engineers view such foundations differently as being necessary to protect buildings in a sandy soil condition near water. City staff believes that foundations recommended by structural and soil engineers for this project will be necessary in order to have them adequately financed and constructed. However, in recognition of the Coastal Commission's concern, however, the developer/applicant is willing to have the following condition added to the combined development permit approval. (See recommended condition 11, as amended.)

**11 (b) Waiver of Rights to Construct Shoreline Protective Devices:** Prior to issuance of a grading or building permit, the applicant shall submit a waiver of right to construct shoreline protective devices as a deed restriction to be recorded, to the satisfaction of the City Attorney. The City shall consult with the Coastal Commission staff regarding the wording of the waiver, consistent with Coastal Act policies and procedures.

**11(c) Emergency Management Plan:** Prior to issuance of a grading or building permit, the applicant shall submit a hazards management plan to implement procedures for emergency conditions associated with extreme or high sea level or wave runup and bluff erosion events. The plan will identify guest advisory actions in advance of the potential for such events, emergency response and the potential for site evacuation preceding such events. In particular, the plan will identify responsible property contacts for local emergency personnel communications, a description of annual training for resort staff and emergency information in printed forms located in all hotel rooms and posted in public spaces.

**11(d) Managed Bluff Retreat Program:** The applicant will be responsible for addressing bluff erosion over the life of the resort, as follows:

1. Initial grading plans shall provide a baseline standard for grading of the fore dune areas (areas seaward of the resort) and the detailed landscaping and habitat planting plans to stabilize the bluff and enhance habitat use.
2. The fore dune areas will be continuously managed and maintained by the applicant and any successors in interest by restoring damaged or dead plants, stabilizing sand and re-contouring the fore dune to be consistent with the baseline plan.
3. As future erosion impacts the bluff edge, the applicant has the option of providing a sand replenishment plan to restore bluff and fore dune areas lost to erosion, subject to obtaining a coastal development permit for any such work proposed beyond the management and maintenance activities provided above.
4. At the point at which the bluff has receded to within 150 feet of any hotel structure or on the twenty-fifth (25<sup>th</sup>) anniversary of the issuance of the Coastal Development Permit, whichever occurs first, the applicant will conduct a survey of the bluff top, provide updated geological analysis of future erosion rates and provide a detailed plan to address how resort structures will be modified and/or removed as natural erosion reaches the resort improvements.



### 3. Coastal Hazards and Risk Assumption

The Coastal Commission staff provided examples of acceptable standards of risk assumption that city staff recommends be included in the conditions of approval for the project. It is recommended that they be added to condition 11, as follows:

**11(e) Coastal Hazards Risk:** By acceptance of this CDP, the Permittee acknowledges and agrees, on behalf of itself and all successors and assigns:

1. Coastal Hazards. The site is subject to coastal hazards, including but not limited to, episodic and long-term shoreline retreat and coastal erosion, high seas, ocean waves, storms, tidal scour, coastal flooding, liquefaction and the interaction of same;
2. Assumption of Risk. The Permittee assumes the risks to property and damage from such coastal hazards in connection with this permitted development;.
3. Waiver of Liability. To unconditionally waive any claim of damage or liability against the City of Sand City and the California Coastal Commission, its officers, agents, and employees for injury or damage from such coastal hazards;
4. Indemnification. To indemnify and hold harmless the City of Sand City and the Coastal Commission, its officers, agents and employees with respect to the approval of the development against any and all liability, claims, demands, damages, costs (including costs and fees incurred in defense of such claims), expenses, and amounts paid in settlement arising from any injury or damage due to such coastal hazards; and
5. Property Owner Responsibility. That any adverse effects to property caused by the permitted development shall be fully the responsibility of the property owner.

**11(f) Coastal Hazards Response.** By acceptance of this CDP, the Permittee acknowledges and agrees, on behalf of itself and all successors and assigns, that:

1. CDP Intent. The intent of this CDP is to allow for the approved development to be constructed and used consistent with the terms and conditions of this permit for only as long as it remains safe for occupancy and use without additional substantive measures beyond ordinary repair and/or maintenance to protect it from coastal hazards; provided however, that the Permittee may apply for a CDP amendment to relocate threatened development elsewhere on the site within then existing building areas (and not outside of such areas);
2. Protective Devices Prohibited. In the event that the approved development is threatened with damage or destruction from coastal hazards, or is damaged or destroyed by coastal hazards, protective structures (including, but not limited to seawalls, revetments, groins, deep piers/caissons, etc.) shall be prohibited; and

3. **Removal.** If the City has ordered that the approved development or portions of the approved development are not to be occupied or used due to one or more coastal hazards, and such safety concerns cannot be abated as provided under this CDP, then the Permittee shall remove such development or portions of such development. Prior to removal, the Permittee shall submit two copies of a Removal Plan to the City for review and approval. If the City determines that an amendment to this CDP or a separate CDP is legally required, the Permittee shall immediately submit the required application. The Removal Plan shall clearly describe the manner in which such development is to be removed and the affected area restored so as to best protect coastal resources, and shall be implemented immediately upon City approval or approval of the CDP/CDP Amendment, unless such CDP/CDP Amendment identifies a different time frame for implementation.

#### 4. **Coastal Access**

During the meeting with coastal commission staff, we discussed how access is provided within the project area, including both the LCP-required extension of the coastal trail along the highway to Tioga Avenue and a minimum of 64 public parking spaces (10 % above the required resort spaces).

The Collection project includes three lateral access trails, one vertical access at Tioga Avenue to the beach, a public restroom and 102 public parking spaces, all amenities exceeding the minimum requirements of the LCP.

#### 5. **Water Supply**

Water demand for the proposed resort is estimated at 64.4 acre feet per year (AFY). A 20 AFY water credit has previously been assigned to the property by the City (purchased from the Monterey Fish Company), resulting in a net water demand from the Sand City desalination plant of approximately 44.4 AFY. The Sand City desal plant has a current water entitlement from the water district of 165 AFY, which will increase to 206 AFY when the plant meets its maximum capacity.

#### 6. **Lower-Cost Visitor Accommodation**

The Coastal Act encourages the provision of lower cost visitor accommodations, as does the Sand City LCP. There is no specific requirement in the City's LCP to supply lower cost accommodations. However, by continuing to implement the 1996 MOU with the park agencies, most of the Sand City coast will accommodate low cost to no cost visitor usage as most of the area will be owned by State Parks or the Monterey Peninsula Regional Park District (Park District).

The Coastal Commission (more frequently in Southern California) has imposed a standard of requiring about 25% of new projects to address the need for lower cost accommodations. "Lower cost" has generally been defined as providing room rental rates below the prevailing median daily room rates for a region. The coastal staff believed that, for the Monterey region, any rate at or below \$150/night would be considered lower cost. The Commission has also required, if the units cannot be provided on-site, an inlieu fee as high as \$30,000 per unit required (i.e. 25% of the project's units). Also, in the Monterey region,, for the Marina Dunes resort, which is timeshare/vacation club, the

Commission did not require an in-lieu fee recognizing that timeshare units could be considered lower cost accommodations.

In the case of the Collection resort, if you include only the hotel units, the in lieu fee would be calculated as follows:  $235 \text{ hotel rooms} \times 25\% = 59 \text{ units}$ .  $59 \text{ units} \times \$30,000 = \$1,770,000$  in lieu fee. When accounting for an anticipated 70 percent annual occupancy rate, this would reduce the fee based on  $165 \text{ occupied rooms year-round} \times 25\% = 41 \text{ rooms}$ . At  $41 \text{ rooms} \times \$30,000 \text{ per room}$ , the in-lieu fee would be \$1,230,000.

Commission staff also noted that the Commission can be flexible as to the method of providing alternatives to the in-lieu fee. In this regard, King Ventures has accepted that a range of alternatives be allowed to meet the goals of providing lower cost accommodations. They include the following options which are included in the recommended permit language. **(See recommended conditions of approval, as revised.)**

City staff has discussed with King Ventures various ways of meeting lower-cost accommodation goals of the Commission, as outlined below.

- Option 1:** Provide hotel and/or vacation club units at daily rental rates lower than the median ADR (average daily rate) published for the Monterey-Seaside area, in an amount equivalent to 41 room nights per day. ( $235 \text{ hotel units} \times 70\% \text{ annual occupancy rate} = 165 \text{ rooms} \times 25\% = 41.25 \text{ units}$ ). This formula would yield a requirement of  $41 \times 365 = 14,965$  annual room nights at the median ADR or less.
- Option 2:** Require vacation club ownership programs that offer a lifetime buy-in fee of no more than \$15,000 per week, amortized over a 5 -20 year period. This is similar to a program tailored after the Coastal Commission's approval of the 1997 Marina Dunes Resort project in Marina that included findings recognizing the lower cost aspects of vacation ownership units.
- Option 3:** Provide an off-site hostel or similar visitor facility with a comparable number of room nights at a lower ADR.
- Option 4:** Provide on-site "temporary" seasonal tent camping or similar transitory accommodations that are tailored to groups like bike clubs, Amgen Tour, hiking groups and similar organizations.
- Option 5:** Require a surcharge on each occupied room night (hotel and vacation club) that equates to as much as \$0.50/night. (This is estimated to generate \$119/day at 70% occupancy or  $\$43,435/\text{year} \times 50 \text{ year economic life} = \$2,171,750$ )
- Option 6:** Require a combination of on-site, off-site, surcharge and/or in lieu fees that reach the goal of subsidizing visitor accommodations in an aggregate one-time contribution amount of \$1,230,000, or in an annualized amount of \$43,435/year.

City staff believes that any and all of the options above have merit in meeting the lower-cost accommodation goals of the Coastal Act and the Coastal Commission. Therefore, the following additional conditions are recommended to the combined development permit for the project.

56. **Lower Cost Visitor-Serving Facilities.** Prior to issuance of any occupancy permits, the applicant shall be required to pay an in-lieu fee of \$1,230,000 (calculated as 235 hotel units x 70% occupancy = 165 occupied units x 25% = 41 units x \$30,000 fee per unit) to the Coastal Commission for the provision of lower cost visitor serving facilities within Sand City and/or Monterey County. Lower cost visitor accommodations shall be defined as overnight stays offered at daily rental rates lower than the median daily hotel room rates (ADR) published for the Monterey-Seaside-Marina area (assumed to be \$150/night). The applicant may exercise the option of developing an alternate program for providing lower cost visitor accommodations at the site, or within the Monterey County region instead of paying this fee, provided there is an equivalent benefit, such as: (a) on-site reduced or subsidized average daily rates; (b) vacation club ownership programs; (c) offsite hostel or comparable lower-cost accommodations; and/or (d) room rental surcharge collected and dedicated to lower-cost visitor accommodations.

All programs used an alternative to the in-lieu fee shall required approval of the Executive Director of the Coastal Commission.

57. **Vacation Club Use and Operations.** The vacation club component of the project consist of 105 units (on the Sterling Site) that can be made available on a credit (or point) system generally established to allow one week purchases within the operating company's club system. The vacation club component of the project shall be subject to the following requirements.

(a) Vacation Club Owner Occupancy Limitations. Each owner, including any individual, family, group, or partnership of owners for a given credit (regardless of the number of owners) may use said credits for no more than 84 days in any calendar year, and no more than 14 total days between the Saturday of the Memorial Day weekend through the Monday of the Labor Day weekend, with no stay exceeding 29 consecutive days of use during any 60 day period. Such occupancy limitations shall be unaffected by multiple owners during the calendar year, meaning that all such owners of any given credit shall be collectively subject to the occupancy restrictions as if they were a single, continuous owner.

(b) Vacation Club Units Will Be Available to the General Public. Whenever any vacation club unit is not occupied by its owner(s), the unit shall be available for use by the general public on the same basis as a traditional hotel room.

(c) Vacation Club Management and Reservations. The vacation club operator shall manage all aspects of the club, including but not limited to reservation booking, mandatory front desk check-in and check-out, maintenance, and cleaning services (including preparing units for use by guests/owners, a service for which the operator may charge unit owners a reasonable fee). All unit keys shall be electronic and shall be newly crated by the operator upon each

change in user occupancy for any unit. The vacation club operator contract and the hotel operator contract may provide overlapping responsibilities for such similar services, at their discretion.

(d) Conversion Prohibited. The conversion of the approved vacation club units to other types of limited use visitor accommodation units (e.g., condo-hotel, fractional ownership, etc.) or to full-time occupancy condominium units or to any other units with use arrangements that differ from the approved project shall be prohibited without amendment of the CDP.


(e) Occupancy and Use Monitoring and Recording. The vacation club operator shall monitor and record occupancy and use by the general public and the vacation club owners through each year. Such monitoring and record keeping shall include specific accounting of owner use, payments of fees to the City in-lieu of transient occupancy taxes (TOT); and TOT paid for all units rented to the public. The records shall be sufficient to demonstrate compliance with the restrictions set forth herein. All such records shall be maintained for ten years and shall be made available to the Executive Director of the Coastal Commission and/or the City.

(f) Compliance Required. The vacation club owner and operator shall maintain the legal ability to ensure compliance with the terms and conditions stated herein at all times in perpetuity, and shall be responsible for ensuring that all parties subject to these restrictions comply with the restrictions.

(g) Declaration of Restrictions. Prior to issuance of a grading or building permit, the applicant shall record this combined development permit against title to the property. A statement that the provisions of the deed restriction reflect the on-going requirements of this permit, and that this declaration cannot be changed in any material way without the approval of a coastal development permit amendment, unless it is determined by the Executive Director of the Coastal Commission that an amendment is not legally required.

**CITY OF SAND CITY**  
staff memorandum

DATE: December 10, 2013 (City Council/Successor Agency Meeting of December 17, 2013)

TO: Mayor and City Council 

FROM: City Administrator/Community Development Director

SUBJECT: Consideration of: (1) Certification of Final EIR (FEIR), (2) Adoption of Mitigation Monitoring and Reporting Program (MMRP), (3) Site Plan Approval (SP 13-03)(4) Rezoning to Remove Manufacturing Districts and add Planned Unit Development (PUD) combining district; and (5) Coastal Development Permit Approval (CDP 13-06) for Proposed 340-Unit Coastal Resort Known as "The Collection at Monterey Bay".

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**BACKGROUND**

King Ventures of San Luis Obispo is proposing a 340-unit Coastal Resort at the northwest quadrant of the Sand City bounded by Tioga Avenue and Highway 1. The proposed resort development has been re-designed to meet the standards recommended in the Final environmental impact report (FEIR) as the "environmentally superior alternative." The proposed resort will have direct access from Tioga Avenue and an extension of Sand Dunes Drive, with additional access from an extension of Playa Avenue, under Highway One. (In the future, with Caltrans approval, the City could apply for an encroachment permit to allow a public mural or another type of entrance feature at the freeway overpass in this location. (See enclosure.) It provides a great opportunity to have a double gateway entrance into "Coastal Sand City" and the future resort.) The main entrance to the resort will be located at the terminus of the Playa Avenue extension.

This development proposal started as a redevelopment project initiated by the former Sand City Redevelopment Agency (RDA) in the early 2000s. King Ventures was chosen as the master developer of the McDonald site, owned by the RDA (now Successor Agency). The RDA entered into a disposition and development agreement (DDA) with the developer to provide a coastal resort on the site. As part of the DDA, King Ventures was encouraged to purchase the adjacent property, known as the Sterling Site, which has subsequently been acquired by John King. The project meets the requirements of the DDA to accommodate a coastal resort, public amenities and some conference facilities. The City is proposing to lease the former Granite Construction site to the developer for public parking to further the goals and objectives of the project and the local coastal plan to provide additional coastal access to the public.

The project site is approximately 26.46 acres and includes the parcels known as "the Sterling Site, where the Monterey Peninsula Engineering (MPE) supply yard is currently located, "the McDonald site", owned by the Successor Agency to the former Sand City Redevelopment Agency and a property owned by the City of Sand City (formerly owned by Granite Construction) where there is currently a scenic overlook to Monterey Bay. (Building clusters shown on the plan set with labels "s" and "m" are meant to designate buildings on the Sterling Site and McDonald Site, respectively.) A first phase of the project is proposed on the Sterling site, consisting of a 105-room vacation club.. A second phase, which could be constructed as part of the first phase if market conditions warrant, consists of a 235 room resort hotel and conference center.

The proposed resort development is consistent with the Sand City Local Coastal Plan (LCP) which allows up to 745 units for the combined, 3 sites. In 1996, however, the City entered into a memorandum of understanding (MOU) with the Monterey Peninsula Regional Park District (MPRPD) and the California Department of Parks and Recreation (CDPR), calling for a significant reduction in density, allowing between 300 and 450 units on the combined "building envelope". At its northerly edge, the proposed site is adjacent to property owned by the MPRPD. (See Exhibit A: Vicinity Map.)

## **CASE ANALYSIS**

### **Architecture**

The proposed architecture is characterized by its proponents as "Old California". It is an eclectic mix of mission style and other California vernacular architecture, consisting of stucco exteriors with a treatment of Carmel stone accents and heavy timbers. Page 23 of the architectural plan set further itemizes the roofing material (variegated clay tile of warm terra cotta colors) fascia, exterior wall and door treatments. Gabled and hipped roofs with significant overhangs are proposed throughout. Recessed treatment (reveals) along windows and doors is also illustrated, however, due to the size of the project, it is not specified how much of that treatment is to be applied throughout the development. It is recommended, as a condition of coastal development permit (CDP) approval, that all window and door openings have either a recess of at least 1 inch or wood trim detail. The area of the building complex exhibiting the most architectural detail will be at the lobby/porte cochere entrance (see cover sheet). It should also be a condition of project approval that the level of detail exhibited on the cover sheet be retained in the contract drawings of the project. Building heights range from two to five stories, generally terraced down the site toward the beach level. Building elevations facing Monterey Bay will have significant balcony and deck treatment. (See Exhibit B, Maximum Building Heights Per LCP.)

A large part of the architectural profile of the buildings was dictated by Local Coastal Plan requirements regarding height limits and "view-over" corridors from the highway that must be maintained. The massing of the buildings was made even more complicated given the varying finished grades proposed for the buildings and the existing change of grade of Highway 1 as cars travel from north to south, i.e., the elevation of the highway, moving in a southerly direction, decreases from approximately 90 feet above sea level at the northern terminus of the project to approximately 50 feet as it crosses Tioga Avenue. These design constraints and criteria resulted in an attractive undulating roof line for the entire complex.

### **Site Plan**

A vacation club (timeshare) is proposed on the former Sterling site, consisting of 105 rooms. This is proposed as phase I of the project. The second phase of the project will be a hotel and conference center consisting of 235 units on the former McDonald site, now owned by the successor agency to the former redevelopment agency. The Tioga Avenue terminus is proposed to be completely reconstructed to provide a cul-de-sac, public parking, restrooms and a lifeguard/safety station. Vertical access (stairs) to the beach will also be provided at the end of Tioga Avenue.

The site plan for this project is multi-dimensional, stepping down the site from east to west. For the highest elevation of the project site, Sand Dunes Drive is proposed as a major access drive (24-foot wide with 12 foot bike path along its westerly edge) for the resort as it is proposed to be extended from its existing terminus at Tioga Avenue to the former Granite Construction site, owned by the City. The City's site is proposed to be integrated into the project to provide public parking for many of the resort amenities, general coastal



access and to enjoy the Monterey Bay scenic overlook. The road extension will also provide a connection of the bike path which is currently a missing link to the regional trail that currently goes under the freeway to make an ultimate connection going south of Tioga Avenue. The bike trail will be striped along the western edge of the Sand Dunes Drive extension. Excavated material from other parts of the site will be used as fill along the highway frontage to provide the appropriate grade for the Sand Dunes Drive extension. At Tioga Avenue the road extension is built up to a grade of approximately 70 feet and then it gradually slopes down to its intersection with Playa Avenue and then gradually increases in elevation to the former Granite Rock property. (See preliminary grading plan, sheet 24 of the plan set.) The cut and fill are proposed to be balanced on the site, with excess graded material (after the build up of building pads and Sand Dunes Drive) being used to spread along the bluff following removal of all concrete slurry and rip-rap materials.

A large part of the cut for this project will occur toward the northern end of the building complex. The cut material will then be used to fill areas along the highway for the Sand Dunes Drive extension and bike path. Sheet 18c provides an example of how buildings M5 and M6 will be constructed by creating a large cut to keep them low in profile from the highway and provide the fill material for other parts of the project. (The dotted line along the building elevation represents existing grade. Also, see Exhibit F for a further explanation of the proposed cuts and fill of the preliminary grading plan.)

The scale of the project is broken up by providing six building clusters; and, the building clusters themselves have building breaks further breaking up the mass of the project. The majority of the parking for the project will be placed under the buildings, minimizing the overall footprint of the project and improving its visual quality. The site plan, by necessity, is limited to the upper and easterly half of the combined site due to the LCP-required 50 year erosion setback line. Within the 50 year erosion line, there is a proposed walking/bicycle trail where visitors are afforded a better view of the Monterey Bay. An additional walking path is provided behind the western-most buildings.

There are also several interesting site features proposed for the development such as a waterfall-like fountain proposed above the parking deck at building S1. Sheet 19 illustrates the effect of the water feature looking from the pedestrian path (ocean front elevation).

### **Environmental Analysis**

The existing dune forms within the project, absent the Sterling Site that is in an industrial state, are highly disturbed land forms. As such, the Sand City LCP identifies a small portion of the dunes as a "stabilization/restoration" area and encourages a dune management program be established concurrent with any development. The LCP does not designate any environmentally sensitive habitat areas (ESHA) within the project area. A Habitat Protection Plan (HPP) is also required as part of the City's LCP and is included in Appendix D of Volume II of the final EIR for the project. Habitat protection and management measures outlined in the HPP will be required conditions of approval of the project and are contained in the Mitigation Monitoring Program to be adopted by the City Council, prior to approval of the project. The project approval also requires that a Habitat Conservation Plan (HCP) be approved by the U.S. Fish and Wildlife Service prior to building permit issuance.

The proposed project was subject to a Draft and Final Environmental Impact Report (DEIR and FEIR, respectively). Responses to comments of the DEIR have been circulated to all commenting agencies and persons and the Final EIR is now subject to review and certification by the City Council. The project reviewed at this point is **"the environmentally superior alternative"** of the project which lowered roof profiles in key locations to insure that LCP-designated "views over" the highway were maintained. (See



Exhibit D For Mitigation Monitoring and Reporting Program (MMRP).) The MMRP summarizes the potentially significant environmental impacts of the project and the required conditions to reduce those impacts to a less than significant level. The Final EIR for the project consists of the Draft EIR (three volumes) and responses to comments. The responses to comments report is entitled: Administrative Draft, First Amendment to the Draft Environmental Impact Report, dated September 2013. A public hearing on the Final EIR was opened and closed on November 19, 2013.

### **Economic Development Impact**

A brief summary of the economic benefits of the project was previously addressed during the draft EIR public hearing in January, 2013 . In that report, the developer estimated there will be 362 part-time jobs created by the development and 225 full-time jobs after build-out. It was also estimated that total revenues to the city would conservatively be \$180,000 in property tax and more than \$1. 1 million in TOT and in-lieu fees from the vacation ownership units. An in-lieu fee (in lieu of the collection of TOT) for the vacation ownership units is also recommended. (See condition 53).

Recommended conditions of approval also include the requirement for a preference to use local labor and allowance for workers' choice to unionize regarding operation of the hotel/timeshare and restaurants on-site.

### **Proposed Rezoning**

The Sand City Local Coastal Program requires that the properties be rezoned and have a PUD permit (Planned Unit Development) to encourage clustering of units. It is also recommended as part of the rezoning action that the Council remove the "M" manufacturing district designation from the Sterling and Granite Construction properties. (See agenda item - 8A. )

### **MEETING WITH COASTAL COMMISSION STAFF**

On Monday, December 9, 2013, city staff and the development team met with coastal commission staff in Santa Crus to discuss their primary concerns regarding the project. These concerns were: 1. Water supply limitations; 2. View Corridor Protection; 3. Dealing with Coastal Beach Erosion; and 4. Low Cost Visitor Accommodation. Each issue is briefly addressed below. (Also see supplemental report with details.)

Water Supply: Regarding water supply, the city administrator noted that the water obtained from the desalination plant did not have any limitation regarding whether that water could be used for "the West side" of Sand City. Staff was going to confirm this with the executive director of the commission. It was also noted that the project may require as much as 60 afy of water, with 20 afy being allocated from a water credit that was purchased for the properties. The city currently has a water entitlement from the Water District of 165 AFY.

View Corridor Protection : The developer's planner presented coastal staff with a series of elevations and plan sections illustrating that the environmentally superior design alternative preserved 2/3rds of the Monterey Bay View as viewed from the highway, within the 3 designated "view over" corridors in the City's Local Coastal Plan. Conditions of approval are designed to further verify finished floor and building height restrictions during construction.

### Coastal Beach Erosion

Commission staff was concerned with the project maintaining the minimum setback required in the LCP - 50 years. However, the project site is so narrow, that anything more than 50 years would severely restrict development. The project already comes in at less than 50 percent of the maximum density allowed in the LCP. They were also concerned about the type of foundation to be used by the project, claiming the Commission did not want to view such foundations as coastal protection devices. As a way to mitigate these concerns, the applicant offered to waive his right to use coastal protection devices should beach erosion threaten the hotel units in the future. They also agreed to develop a beach replenishment contingency plan at a certain triggering point, should beach erosion threaten the structure in the future. This potential solution seemed to be adequate.

### Low Cost Visitor Accommodation

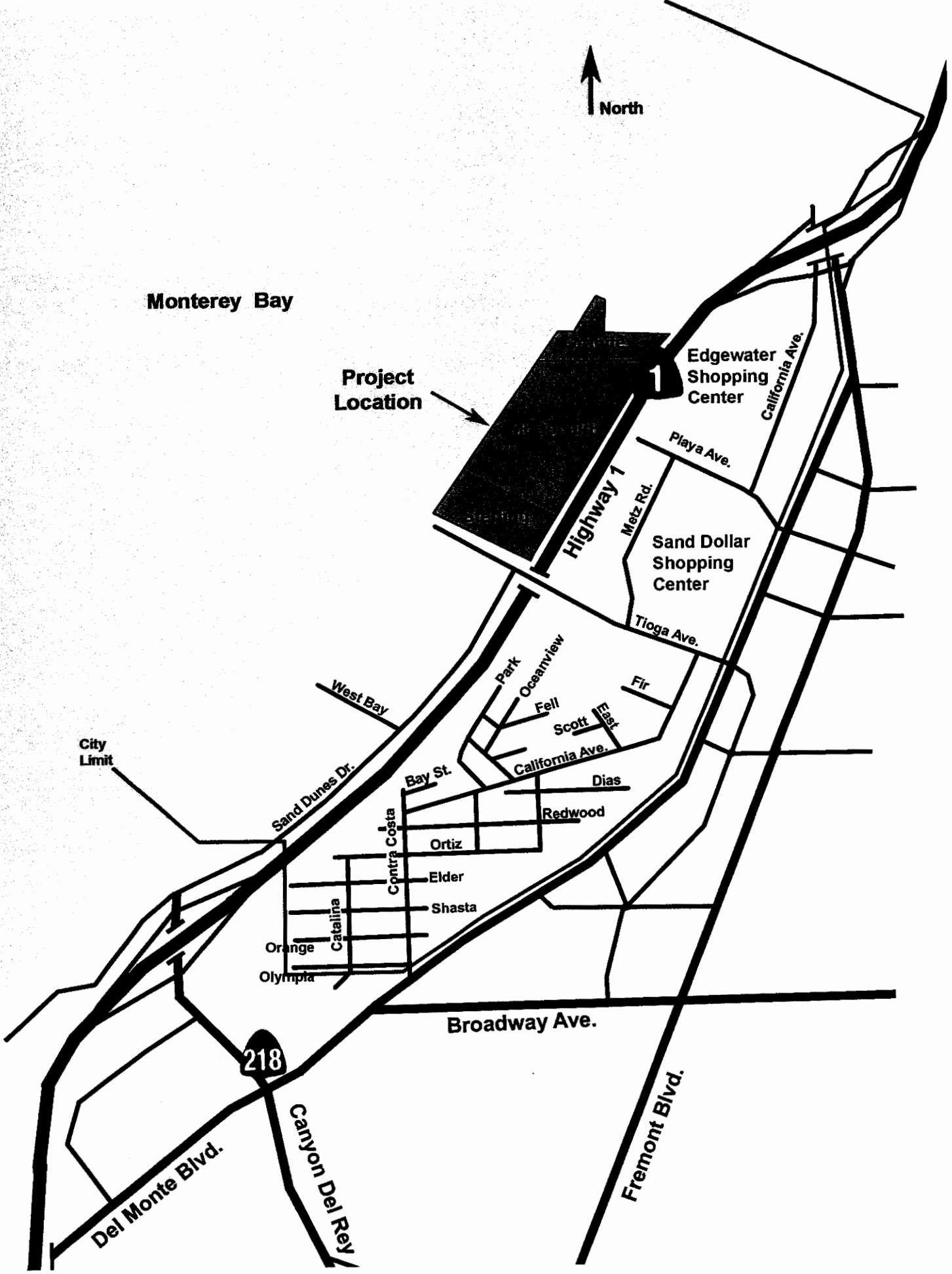
Coastal staff indicated that the Coastal Commission has been applying "in lieu fees" to provide affordable lodging for projects considered to be above affordable levels for the general public. The current benchmark used by the Commission is \$150/night. Anything above that room rental rate is considered above "low cost". The City's LCP only states that low cost accommodations are "to be encouraged", but not necessarily required. In this effort, it should be noted that as a result of the 1996 Coastal MOU, allowing the park agencies to purchase most of the Sand City coastal zone, low cost accommodations have been advanced. The applicants also noted that there was a large timeshare component to the project, which in the past (Marina Dunes) has been sufficient to satisfy the Commission's desire to provide low cost accommodation. The applicant also noted that he may be able to restrict a certain amount of his units to the rental rate of \$150/night (25% is the Coastal Commission target) or provide the units elsewhere.

### **RECOMMENDATION**

Following City Council review and public testimony during the hearing, it is **RECOMMENDED** that the Council approve the attached resolutions and ordinance. (see attachments 4 through 7).

#### Enclosures:

1. Vicinity Map
2. Architectural Plan Set (under separate cover)
3. Response to Comments as part of Final EIR (under separate cover)
4. Resolution Certifying as Adequate the Final EIR
5. Resolution Approving the Mitigation Monitoring and Reporting Program (MMRP)
6. Resolution Approving A Coastal Development Permit and Site Plan for the Collection at Monterey Bay
7. Proposed Zoning Ordinance and Map Amendment Rezoning the Properties by Adding the PUD designation and eliminating the M designation.



**Vicinity Map**

**ATTACHMENT 1**

CITY OF SAND CITY

RESOLUTION SC 13-91, 2013

**LUTION OF THE CITY OF SAND CITY CERTIFYING AS ADEQUATE THE  
COLLECTION AT MONTEREY BAY FINAL EIR (FEIR)**

**HEREAS**, on November 19, 2013, the City Council (City Council) for the City of Sand City (City) conducted a public hearing to consider certification of a final environmental impact report (FEIR) for the proposed Collection at Monterey Bay Coastal Resort in accordance with the California Environmental Quality Act, Public Resources Code Sections 21000 et seq. (CEQA), and the guidelines adopted thereunder, California Code of Regulations Sections 15000 et seq. (Guidelines); and

**WHEREAS**, the Collection at Monterey Bay proposed project is a 340-unit coastal resort, consisting of conference facilities, hotel rooms and vacation ownership units and various public and private amenities, including improvements to Tioga Avenue, an extension of Sand Dunes Drive and an extension of the public recreation trail that would be constructed on, and adjacent to, three ocean front sites located in the City of Sand City, consisting of approximately 26.46 acres; and

**WHEREAS**, the applicant for the proposed project is John King, dba King Ventures (Applicant); and, the permit application includes the consent of the property owner of two properties known as the McDonald Site (Successor Agency to the former Sand City Redevelopment Agency) and the Granite Construction site (City of Sand City); and

**WHEREAS**, the permit application also includes the necessary approvals of a Coastal Development Permit (CDP), Site Plan (SP) Mitigation Monitoring and Reporting Plan (MMRP) and Planned Unit Development Permit (PUD); and

**WHEREAS**, the FEIR has been prepared on the series of actions and activities for the plan development and construction of the proposed Collection at Monterey Bay coastal resort associated facilities; and the approval actions related thereto, which actions and approvals characterized as a single project and are related as logical parts in the chain of continuing actions for the realization and development of the coastal resort and associated facilities;

**WHEREAS**, the FEIR has been prepared for the proposed project under contract by City and David J. Powers and Associates, Inc.; and

**WHEREAS**, the FEIR consists of the Draft Environmental Impact Report (DEIR) for the Collection at Monterey Bay dated November 2012, and the First Amendment to the DEIR dated September, 2013 which includes comments and responses to comments and revisions to the text of the DEIR; and

**HEREAS**, the FEIR analyzes and evaluates the potentially significant environmental effects of the proposed project and the proposed project approvals, including related private and public improvements, possible ways to minimize those impacts and describes a reasonable range of alternatives to the proposed project; and

**HEREAS**, as required by CEQA and the Guidelines, the City provided notice of the preparation of an EIR for the proposed project on or about April 10, 2006, inviting responsible agencies, trustee agencies and interested parties to submit written comments regarding the content of the DEIR. Notice of preparation was published in the Monterey County Herald, a newspaper of general circulation on April 14, 2006; and

**HEREAS**, on or about November 16, 2012, the City provided notice of the completion of the EIR and its availability for review to the public and to the State of California, Governor's Office of Planning and Research (State Clearinghouse), as required by CEQA and the Guidelines. Notice of availability was published in the Monterey County Herald, a newspaper of general circulation on November 19, 2012. At that time, City released the DEIR to the public for review and comment for a 58-day period ending January 15, 2013; and

**HEREAS**, copies of the DEIR were made available for review at the City Planning Department, 1 Sylvan Park, Sand City, California, at the Seaside Library, 550 Harcourt, Seaside, California, and at the Monterey Library, 625 Pacific, Monterey California; and

**HEREAS**, a public hearing to receive oral and written comments on the DEIR was held by the City Council on January 15, 2013 at the City Council chambers located at 1 Sylvan Park, Sand City, California. Notice of the public hearing was published in the Monterey County Herald, a newspaper of general circulation, on or about January 4, 2013; and

**HEREAS**, copies of the FEIR were made available for review on November 8, 2013 at the Planning Department, 1 Sylvan Park, Sand City, California, at the Seaside Library, 550 Harcourt, Seaside, California, and at the Monterey Library, 625 Pacific, Monterey, California;

**HEREAS**, a public hearing was also conducted on November 19, 2013 by the City Council at a time the City Council received further comments on the Final EIR. Notice of the public hearing was published in the Monterey County Herald, a newspaper of general circulation on November 8, 2013; and

**REAS**, the City Council reviewed and considered the information contained in the FEIR with other information presented to the City.

**THEREFORE, BE IT RESOLVED** by the City Council of Sand City as follows:

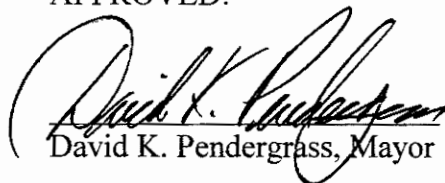
The City of Sand City certifies that the FEIR has been completed in compliance with CEQA.

2. The City of Sand City certifies that the FEIR was presented to the City Council and that the City Council reviewed and considered the information contained in the FEIR prior to approving the proposed Collection at Monterey Bay coastal resort project.
3. The City of Sand City has independently reviewed and analyzed the FEIR and certifies that the FEIR reflects the independent judgment of the City of Sand City.
4. All documents, materials, reports, data and information referred to in this Resolution are hereby incorporated into this Resolution as if set forth in full.

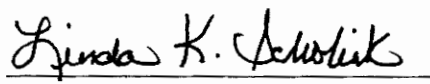
**PASSED AND ADOPTED** by the City Council of Sand City this 17<sup>th</sup>, day of December, 2013 by the following vote:

AYES: Council Members Blackwelder, Carbone, Hubler, Kruper, Pendergrass  
NOES: None  
ABSTAIN: None  
ABSENT: None

APPROVED:

  
David K. Pendergrass, Mayor

ATTEST:

  
Linda K. Scholink, City Clerk

**RECEIVED**

JAN 17 2014

**CITY OF SAND CITY**

**RESOLUTION SC 13-92, 2013**

CALIFORNIA  
COASTAL COMMISSION  
CENTRAL COAST AREA

**RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SAND CITY APPROVING A  
MITIGATION MONITORING AND REPORTING PROGRAM (MMRP) FOR  
THE COLLECTION AT MONTEREY BAY COASTAL RESORT**

**WHEREAS**, John King, dba King Ventures ("Applicant") has applied for a Coastal Development Permit, Site Plan, and Planned Unit Development (PUD) approval, to develop certain property in the City of Sand City ("City"), designated as APN 011-012-001, APN 011-012-002, 005, and APN 011-501-016, which is a vacant ocean-front site containing 26.46 acres of land located in the coastal zone of the City ("Project Site"). The Project Site is located generally north of Tioga Avenue, south of property owned by the Monterey Peninsula Regional Park District, and west of Highway 1; and

**WHEREAS**, the Applicant's development proposal is commonly known as the Collection at Monterey Bay Coastal Resort (the "Proposed Project"). The Proposed Project, as revised, is a 340-unit vacation club and hotel including auxiliary facilities of a restaurant, conference rooms and other commercial auxiliary facilities, and open space, public access trails, and restored and stabilized sand dune habitat; and

**WHEREAS**, the Project Site is also within an area governed by a Capital Improvement Program (CIP) adopted by the City. The purpose of the Capital Improvement Program is to install physical improvements and new infrastructure within the City which is needed to upgrade the City's infrastructure to normal standards of other local cities. The Capital Improvement Program relies in large part on the economic development of a project on the Project Site consistent with the General Plan; and

**WHEREAS**, in addition to the Coastal Development Permit, Site Plan, and PUD approvals, the Applicant has also requested the City to approve a Mitigation Monitoring and Reporting Plan as required by the California Environmental Quality Act, Public Resources Code sections 21000 et seq. ("CEQA"), and a Habitat Protection Plan (HPP) to address impacts associated with sensitive plant and animal species. The HPP recommends specific implementation measures, management requirements and maintenance needs, including the type of native dune plant species that will be planted in dune stabilization/restoration areas to facilitate dune habitat for special-status and endangered wildlife species. These approval requests are collectively referred to as the "Proposed Project Approvals"; and

**WHEREAS**, a Final Environmental Impact Report ("Final EIR") has been prepared for the Proposed Project; and

## **Sand City Resolution No. SC 13-92, 2013**

**WHEREAS**, on November 19, 2013 the City conducted a duly noticed public hearing to consider the Proposed Project and the Proposed Project Approvals (the "Public Hearing"); and

**WHEREAS**, at the Public Hearing, the City Council received and considered public testimony and written comments submitted in a timely manner prior to the Public Hearing as well as testimony from City staff, the recommendations of the City Design Review Committee and the applicant's representatives; and

**WHEREAS**, following the Public Hearing, the City has certified that the Final EIR has been prepared in accordance with the requirements of and pursuant to CEQA, as more particularly described in the City of Sand City Resolution No. SC 13-91, 2013, which is incorporated herein by reference; and

**WHEREAS**, the City Council of the City of Sand City has certified and found as set forth in the CEQA Certification and Findings, attached hereto as Exhibit A and incorporated herein by reference; and

**WHEREAS**, the Final EIR identified certain significant and potentially significant environmental effects from the Proposed Project. For each of those significant or potentially significant environmental effects, the Final EIR identified mitigation measures to avoid or substantially lessen the environmental effects; and

**WHEREAS**, in its consideration of the Proposed Project, the City required certain modifications and alterations to the project and imposed mitigation measures as conditions of approval to address the significant and potentially significant environmental effects of the Proposed Project. The project, as modified and conditioned, is referred to as the "Approved Project". As set forth in Resolution No. SC 13-92, 2013, adopted concurrently herewith, the City has found that changes and alterations have been required in, or incorporated into, the Approved Project which mitigate or avoid the significant effects on the environment; and

**WHEREAS**, California Public Resources Code Section 210801.6 (a) requires the City, when making the findings referred to in the preceding paragraph, to adopt a reporting or monitoring program for the changes made to the project or conditions of project approval which are adopted in order to mitigate or avoid significant effects on the environment, which is designed to insure compliance during project implementation.

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

1. The City Council finds that the Mitigation Monitoring and Reporting Program for the Collection at Monterey Bay project attached hereto as Exhibit B and incorporated be referenced herein, fully complies with the requirements of Public Resources Code Section 21081.6(a) and will insure compliance with the mitigation measures identified in the Final EIR during project implementation.



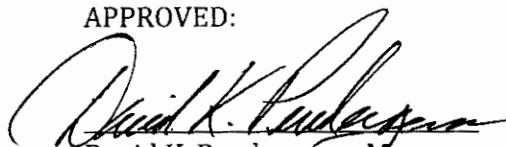
**Sand City Resolution No. SC 13-92, 2013**

2. The Mitigation Monitoring and Reporting Program for the Collection at Monterey Bay Project is hereby adopted.

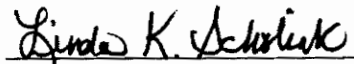
**PASSED AND ADOPTED** by the Sand City Council this 17<sup>th</sup> day of December, 2013 by the following vote:

AYES: Council Members Blackwelder, Carbone, Hubler, Kruper, Pendergrass  
NOES: None  
ABSTAIN: None  
ABSENT: None

APPROVED:

  
David K. Pendergrass, Mayor

ATTEST:



Linda K. Scholink, City Clerk

## EXHIBIT

### A

#### CEQA CERTIFICATION AND FINDINGS FOR THE COLLECTION AT MONTEREY BAY RESORT PROJECT COASTAL DEVELOPMENT PERMIT AND SITE PLAN (COMBINED DEVELOPMENT PERMIT) AND ADOPTION OF MITIGATION MONITORING AND REPORTING PROGRAM (MMRP)

##### 1. CERTIFICATION UNDER CEQA

(a) **Description of the Project:** The project consists of the development, pursuant to separate but related approval actions by the Sand City City Council, of the Collection at Monterey Bay Resort Project in the City of Sand City ("City") on property located generally located in the area bounded by Tioga Avenue and Highway 1, in its northwest quadrant.

The approved project is a 340-unit coastal resort that would be constructed on ocean-front sites located in the City of Sand City, California (the "Proposed Project"). The Proposed Project would include a vacation club and hotel including auxiliary facilities of a restaurant, conference rooms and other commercial auxiliary facilities, open space, public access trails, and restored and stabilized sand dune habitat.

As approved, the Proposed Project has been modified by the conditions of approval, attached hereto as Exhibit C, and the mitigation measures identified in the final Environmental Impact Report ("Final EIR") for the project and, as so modified, shall be referred to as the "Approved Project." The Approved Project consists of 340 units, a 105-room vacation club and a 235-room resort hotel, further described as environmentally superior alternative in the Final EIR (FEIR), and ancillary public and private improvements.

(b) **Project Approvals.** The major approval actions for the project are: 1) adoption of a Habitat Protection Plan; 2) approval of a Coastal Development Permit, Site Plan, and Planned Unit Development Zoning Permit and 3) adoption of a Mitigation Monitoring and Reporting Program.

(c) **Project Objectives:** The objectives (City and Applicant) of the project are those stated in the certified FEIR approvals by the City Council and incorporated herein by this reference

##### 2. CEQA FINDINGS:

The City of Sand City City Council finds as follows:

(a) **Final EIR:** The Final EIR for the Proposed Project consists of the Draft Environmental Impact Report ("Draft EIR") for the Collection at Monterey Bay Project

prepared for the City by David J. Powers and Associates, Inc., dated November, 2012 and the First Amendment to the Draft EIR prepared for the City by David J. Powers and Associates Inc., dated October, 2013 which includes comments and responses to comments on the Draft EIR and revisions to the text of the Draft EIR.

The Final EIR analyzes and evaluates a series of actions for approval and development of a mixed-use resort and associated facilities on the Project Site. The approval actions analyzed in the final EIR include development permits and approvals of construction of the Proposed Project, including approval of a Habitat Protection Plan, Coastal Development Permit, Site Plan and Design Permit, and Mitigation Monitoring and Reporting Program.

The City Council finds as follows:

(i) The above-listed approval actions are within the scope of the Proposed Project analyzed in the Final EIR;

(ii) The Final EIR is fully adequate to consider the Proposed and Approved Project and reflects the independent judgment of the City of Sand City;

(iii) No new significant information was added to the EIR after circulation of the Draft EIR and the Final EIR does not change the content of the Draft EIR in a way that deprives the public of meaningful opportunity to comment upon a substantial environmental effect of the Proposed Project or a feasible way to mitigate or avoid such an effect (including feasible project alternative) that the Applicant has declined to implement. In particular:

(1) The Final EIR did not identify a new significant environmental impact that would result from the Proposed Project or from a new mitigation measure proposed to be adopted;

(2) The Final EIR did not identify a substantial increase in the severity of an environmental impact that would result unless mitigation measures are adopted that reduce the impact to a less than significant level;

(3) The Applicant has agreed to accept and the City has imposed all feasible project alternatives and mitigation measures identified in the Final EIR; and

(4) The Draft EIR was sufficiently complete in nature and allowed for meaningful public review and comment.

The City finds that changes and alterations resulting from the Final EIR clarified and amplified the discussion in the Draft EIR, made insignificant modifications to the Draft EIR and provided additional mitigation to provide further and additional assurances that the impacts identified in the Draft EIR would be reduced to a less than significant impact.

(iv) No subsequent changes have been proposed to the Proposed Project analyzed by the Final EIR which will require important revisions of the Final EIR due to the involvement of new significant environmental impacts not considered in the Final EIR;

(v) No substantial changes have occurred with respect to the circumstances under which the Proposed Project is to be undertaken which will require important revisions to the Final EIR due to the involvement of new significant environmental impacts not covered in the Final EIR.

**Evidence:** The Final EIR, project file, public testimony and application materials were reviewed to assess compliance with CEQA guidelines. City of Sand City Resolution SC \_\_\_, 2013 ("Resolution of the City Council of the City of Sand City Certifying as Adequate the Collection at Monterey Bay Resort Final EIR") is incorporated herein by reference.

(b) **Custodian of Records.** The location and custodian of records for the basis of decision of the City Council approving the actions described herein is the Sand City City Hall, City Clerk's office.

(c) **Mitigation Monitoring and Reporting Program (MMRP):** The City recognizes the requirements of Public Resources Code section 21081.6 which requires the adoption of a reporting or monitoring program designed to ensure compliance with mitigation measures during project implementation. The City Council finds that the monitoring program adopted concurrent with the Approved Project is fully adequate to meet the requirements of section 21081.6 and will ensure compliance with the mitigation measures identified in the Final EIR and conditions of approval during project implementation. The MMRP is attached and approved herein by this reference. It generally outlines potentially significant environmental impact of the project and required measures to reduce those impacts to less than significant levels.



# DRAFT - MITIGATION MONITORING AND REPORTING PROGRAM

For: The Collection at Monterey Bay

File no.: 11-2013

Environmental Impacts	Mitigation Measures	Responsibility for Monitoring Compliance	Method of Compliance	Timing of Compliance
VISUAL AND AESTHETIC RESOURCES				
<b>Impact VA-1:</b> The proposed project would block portions of the designated view corridors on the site identified in the City's Local Coastal Program, which would be a significant visual impact.	<p><b>MM VA-1.1:</b> The project includes a bike path along the ocean side of the project site to allow public access to views of the Monterey Peninsula and Monterey Bay.</p> <p><b>MM VA-1.2:</b> The project also proposes extending View Corridor A in the City's LCP 100 feet further south to shift the center of the view corridor.</p> <p><b>MM VA-1.3:</b> The project proposes to improve the existing vista point on the site and improve the vista point at the western terminus of Tioga Avenue.</p> <p><b>MM VA-1.4:</b> The project will reduce building heights on the site within View Corridor B to comply with the City's LCP. The Hotel 1 building's roof will be reduced in height by at least four feet and the Hotel 1 architectural roof elements (refer to Final EIR Figure 13) will be reduced in height by at least 2.5 feet and shall not exceed 78.5 feet NGVD<sup>1</sup>. The Lobby and Conference center entry towers will be reduced by at least eight feet and the entry towers and roofline shall</p>	Community Development Director	The final design for the project shall include a secondary pathway along the seaward side of project, LCP vista points, and reduced building heights. Although not required for LCP compliance, a secondary pathway should be incorporated on the site within the 50-year coastal erosion setback line.	Prior to issuance of building permits

Environmental Impacts	Mitigation Measures	Responsibility for Monitoring Compliance	Method of Compliance	Timing of Compliance
	not exceed 74.5 feet NGVD. The Lobby and Conference center portico shall also be reduced by at least one foot.			
<b>TRANSPORTATION</b>				
<b>Impact TRANS-1:</b> Phase I and Project Buildout would result in significant LOS impacts at the Fremont Boulevard/State Route 1/Monterey Road/Ord Avenue during both peak hours.	<b>MM TRANS-1.1:</b> The proposed project will be required to pay for the proposed improvement which would need to be implemented or placed on the City's CIP list before construction of the project commences (Phase I) to mitigate the project's impact at the Fremont Boulevard/State Route 1/Monterey Road/Ord Avenue intersection to a less than significant level.	Community Development Director	Payment of fee and approval by CalTrans	Prior to issuance of building permits
<b>Impact TRANS-2:</b> The proposed project would result in significant impacts to Northbound SR 1 from SR 218 to Del Monte Boulevard during the PM peak hour.	<b>MM TRANS-2.1:</b> The project will be required to only develop 50 percent of two of the restaurant uses under Project Buildout Conditions or restrict occupancy to 50 percent of the capacity for two of the proposed restaurants in order to avoid the significant freeway segment impact to SR 1 between SR 218 and Del Monte Boulevard. The restriction on the restaurant size and/or capacity would remain in-place until the SR 1 improvements identified in the TAMC Impact Fee to improve regional circulation in the project area are constructed. Implementation of these restrictions would reduce the project's impact to this freeway segment to a less than significant level.  <b>MM TRANS-2.2:</b> Alternatively, as part of the project's Transportation Demand Management (TDM) program, the project could implement an annual trip	Community Development Director	Project building permits would limit restaurant construction to half the approved capacity and/or seating capacity would be limited through occupancy permits  -or-  Annual monitoring and TDM program reporting	Prior to occupancy permit issuance/Annual TDM reporting

Environmental Impacts	Mitigation Measures	Responsibility for Monitoring Compliance	Method of Compliance	Timing of Compliance
	<p>generation monitoring program at the project driveways to determine if the project is generating less than 112 PM peak hour inbound trips. If implemented, the monitoring to develop average trip generation rates for the site should be conducted as follows:</p> <ul style="list-style-type: none"> <li>• data collected during the month of August</li> <li>• mid-week (Tuesday, Wednesday, or Thursday)</li> <li>• between 4:00 pm and 6:00 pm</li> <li>• for six days over four weeks (6 counts).</li> </ul> <p>If the trip generation monitoring shows that the project generates less than 112 PM peak hour inbound trips, it would potentially allow the project to develop more than 50 percent of the restaurant uses. If the trip generation monitoring shows that the project generates more than 112 PM peak hour inbound trips, then the project would be required to enhance their TDM program. With an annual trip generation monitoring program as part of the project TDM program, the project would have a less than significant freeway impact on northbound SR 1 between Route 218 and Del Monte Boulevard.</p>			
<b>HYDROLOGY AND WATER QUALITY</b>				
<b>Impact HYD-1:</b> The proposed project will be subject to wave run-up and coastal flooding over the lifetime of the	<b>MM HYD-1.1:</b> Wave run-up and coastal flooding hazards can be mitigated by the structural design of the proposed buildings, elements and facilities. Breakaway walls, flow through design, appropriate foundation types, floodproofing measures, and necessary structural force field selection should be	Community Development Director and City Engineer	Incorporation of geotechnical investigation recommendations into final building design	Prior to issuance of building permits

Environmental Impacts	Mitigation Measures	Responsibility for Monitoring Compliance	Method of Compliance	Timing of Compliance
development.	considered prior to final project design, in accordance with FEMA guidelines. A final, design-level geotechnical investigation for the project shall be completed for the applicant by a qualified geotechnical consultant and shall be reviewed and approved by the City Engineer.			
<b>GEOLOGY AND SOILS</b>				
<b>Impact GEO-2:</b> Coastal erosion and recession will significantly impact elements of the project located seaward of the 50-year coastal erosion setback line.	<b>MM GEO-2.1:</b> Proposed structures situated within 20 feet landward of the 50-year erosion line shall be supported by pier and grade beam foundation systems. If a portion of any structure is to be placed on drilled or driven piers due to proximity to the 50-year erosion line, the entire structure should be supported by piers to minimize the potential for differential settlement within the building envelope (refer to Final EIR Figure 18).  <b>MM GEO-2.2:</b> Structures with perimeters situated more than 20 feet landward of the 50-year erosion line may be supported by either a pier and grade beam systems or shallow conventional spread footings bearing upon engineered fill soil mats. (A typical engineered fill soil mat consists of 24 to 36 inches of engineered fill compacted to at least 90 percent relative compaction.)  <b>MM GEO-2.3:</b> Foundations for the buildings proposed on-site shall be designed so they are embedded into the soils below a depth where lateral support is needed during the 50-year design life of the	Community Development Director and City Engineer	Incorporation of geotechnical investigation recommendations into final building design	Prior to issuance of building permits



Environmental Impacts	Mitigation Measures	Responsibility for Monitoring Compliance	Method of Compliance	Timing of Compliance
	project.  <b>MM GEO-2.4:</b> Coastal protection structures could be constructed during the design life of the project to protect non-sacrificial project elements and facilities.  <b>MM GEO-2.5:</b> The project should be partially redesigned so that the pool and spa are located landward of the 50-year setback line.			
<b>Impact GEO-3:</b> Wind erosion and sand deposition would likely result in project amenities being unusable over the life of the project.	<b>MM GEO-3.1:</b> Organic materials such as straw matts, wattles, low-profile sand and erosion fencing, twigs, branches and other organic debris shall be used prior to the establishment of planted dune vegetation to reduce wind erosion and increase sand deposition.  <b>MM GEO-3.2:</b> Sand fences shall be used to capture sand deposits caused by wind erosion. The fences should be placed to protect structures and other amenities from wind-blown sand. As the sand deposits grow, additional fences shall be used and the sand deposit shall be planted with vegetation to reduce further erosion.	Community Development Director	Incorporation of sand management techniques on landscape plans	Prior to issuance of building permits and ongoing
<b>BIOLOGICAL RESOURCES</b>				
<b>Impact BIO-1:</b> The project would result in the loss of several Monterey spineflower plants. Although the	<b>MM BIO-1.1:</b> The project shall implement the following measures proposed as part of the Habitat Protection Plan for the site: • Revegetation and enhancement of coastal dune scrub habitat.	Community Development Director	Incorporation in landscape plan with biological monitor reviewing compliance and submitting annual reports	Prior to issuance of grading and building permits, and annual reporting

Environmental Impacts	Mitigation Measures	Responsibility for Monitoring Compliance	Method of Compliance	Timing of Compliance
removal of these plants would not affect the survival of the species, the loss of the individual plants of this threatened species is a significant impact.	<ul style="list-style-type: none"> <li>Collection and propagation of seed from Monterey spineflower plants in the development area.</li> <li>Salvage of Monterey spineflower soil seedbank from the project site.</li> <li>Re-establishment of approximately 185 square feet of Monterey spineflower within the proposed foredunes on the site; a 5:1 mitigation ratio for the 37 square feet that will be lost within the building envelope.</li> <li>Pre-construction surveys for Monterey spineflower will be completed to confirm the area of impact and the required size of the mitigation area prior to the issuance of grading permits on the site.</li> </ul> <p><b>MM BIO-1.2:</b> The project shall meet the monitoring and reporting requirements, and implement the adaptive management strategy identified in the Habitat Protection Plan prepared for the site.</p>	Community Development Director	Submittal of pre-construction survey results and annual monitoring reports per the Habitat Protection Plan (HPP)	Prior to issuance of grading and building permits and annual reporting
<p><b>Impact BIO-2:</b> The project could result in the removal of habitat for western snowy plover and, therefore, would have a significant impact on the species.</p>	<p><b>MM BIO-2.1:</b> The project shall implement the following pre-construction measures proposed as part of the Habitat Protection Plan for the site:</p> <ul style="list-style-type: none"> <li>Pre-construction surveys for active breeding/ nesting on the project site to avoid disturbance of individual western snowy plovers.</li> <li>Establishment of an on-site biological monitor to monitor western snowy plover activity during construction activities and to direct construction activities appropriately through consultation with the construction superintendent.</li> <li>Lighting restrictions for project facilities within</li> </ul>			

Environmental Impacts	Mitigation Measures	Responsibility for Monitoring Compliance	Method of Compliance	Timing of Compliance
	<p>and adjacent to western snowy plover habitat.</p> <p><b>MM BIO-2.2:</b> The project shall implement the following post-construction measures proposed as part of the Habitat Protection Plan for the site:</p> <ul style="list-style-type: none"> <li>• Designation of a biological steward specifically to conduct ongoing monitoring of western snowy plover activity during the breeding season (March through September) to identify presence/absence and locations of western snowy plover nests. Public access to beach areas will be regulated based on this monitoring.</li> <li>• Restrict beach access during breeding/nesting season, as determined necessary by the biological steward. Access would be restricted through the installation of fencing and signs as well as patrol by the biological steward.</li> <li>• Prohibit off-leash dogs and campfires on beaches to minimize disturbance of western snowy plover nests and populations. Fines and other penalties may be imposed on violators. This prohibition will remain in effect even if monitoring indicates that no plovers are using the coastal strand area.</li> <li>• Prohibit use of motorized equipment to rake beaches or to remove trash or other debris from the beach. All maintenance activities in the coastal strand area should be completed by manual means. No beach raking shall occur on the project site and trash collection, during the breeding season for western snowy plover, will be completed using foot patrols.</li> <li>• Develop education program to inform the public about the sensitivity of western snowy plover.</li> <li>• Provide interpretive signs to describe the life</li> </ul>			

Environmental Impacts	Mitigation Measures	Responsibility for Monitoring Compliance	Method of Compliance	Timing of Compliance
	<p>history and sensitivity of western snowy plovers to the public.</p> <ul style="list-style-type: none"> <li>All solid waste receptacles will be sealed and maintained to reduce the potential for predators on the site.</li> </ul> <p><b>MM BIO-2.3:</b> The project shall meet the monitoring and reporting requirements, and implement the adaptive management strategy identified in the Habitat Protection Plan prepared for the site.</p>			
<p><b>Impact BIO-3:</b> The removal of seacliff and coast buckwheat plants as a result of the project would result in significant impacts to Smith's blue butterflies and their dispersal.</p>	<p><b>MM BIO-3.1:</b> The buckwheat host plant for Smith's blue butterfly shall be included in the plant palette for the dune areas to be reconstructed as part of the project. The planted dunes will re-establish habitat and create a movement corridor for this species on the west side of SR 1. To minimize direct impacts to the butterfly, removal of the buckwheat host plants shall occur between October and May, which is outside the species' typical flight season of June to September.</p> <p><b>MM BIO-3.2:</b> Due to the removal of buckwheat plants from the site, a Section 10(a)(1)(B) permit from the U.S. Fish and Wildlife Service may be required for the project. The permit will require replacement of approximately 0.21 acres of buckwheat plants that will be lost due to construction grading. Approval from the U.S. Fish and Wildlife Service shall be obtained prior to project construction.</p>	Community Development Director	Incorporation in landscape plan and receipt of Incidental Take Permit	Prior to issuance of building permits
<p><b>Impact BIO-4:</b> The</p>	<p><b>AM BIO-4.1:</b> Directed surveys shall be conducted</p>	Community	Submittal of pre-construction	Prior to issuance

Environmental Impacts	Mitigation Measures	Responsibility for Monitoring Compliance	Method of Compliance	Timing of Compliance
<p>proposed project will not result in impacts to burrowing owl habitat or active burrowing owl nests on the site.</p>	<p>within 30 days of initiation of construction to determine presence/absence of burrowing owl nests. If construction activities are initiated during the period of August through November, these surveys may not be necessary. If pre-construction surveys identify an active burrowing owl nest, an appropriate buffer shall be established around the nest in accordance with CDFG requirements/protocols, and construction activities shall not be allowed within that buffer area until the young have fledged or are otherwise able to move out of harm's way. The nest shall be monitored by a qualified biologist and when it is determined to no longer be active, construction activities can resume within the buffer area.</p> <p><b>AM BIO-4.2:</b> If preconstruction surveys determine that burrowing owls occupy the site, and avoiding development of occupied areas is not feasible, then the owls may be evicted outside of the breeding season, with the authorization of the California Department of Fish and Game (CDFG). The CDFG typically only allows eviction of owls outside of the breeding season (only during the non-breeding season [August-November]) by a qualified ornithologist, and generally requires habitat compensation on off-site mitigation lands.</p> <p><b>AM BIO-4.3:</b> A final report of burrowing owls, including any protection measures, shall be submitted to the Director of Community Development prior to the start of grading.</p>	<p>Development Director</p>	<p>survey results per the Habitat Protection Plan (HPP)</p>	<p>of grading permits</p>

Environmental Impacts	Mitigation Measures	Responsibility for Monitoring Compliance	Method of Compliance	Timing of Compliance
	<b>AM BIO-4.4:</b> As part of the preconstruction surveys for burrowing owls, the biologist will place exclusionary devices in unoccupied ground squirrel burrows to prevent burrowing owls from occupying the site prior to the initiation of grading on the site.			
<b>Impact BIO-5:</b> The project will remove potential habitat for the black legless lizard and could result in the loss of individual black legless lizards.	<b>MM BIO-5.1:</b> Per CDFG recommendations, impacts to black legless lizards shall be minimized through a search and relocation effort for the species within the disturbance envelope prior to construction. The search and relocation effort shall be completed as a three-pass salvage effort immediately preceding the start of construction by a qualified biologist who holds a Scientific Collecting Permit issued by CDFG. The effort shall be completed in accordance with a black legless lizard Search and Relocation Plan specific to the project that is submitted to and approved by CDFG. Pursuant to CDFG guidelines, the plan will, at a minimum: 1) specify a relocation area for the lizards that will be preserved and has habitat characteristics suitable to support the species; 2) describe the protocol for conducting the three-pass search of the project area; 3) describe the protocol for recording essential data on each captured lizard, including information such as body length, color, sand temperature, capture location coordinates and release site coordinates; and 4) identify proper handling and search procedures.	Community Development Director	Completion of Search and Relocation Plan and submittal of pre-construction survey results per the Habitat Protection Plan (HPP)	Prior to issuance of grading permits
<b>Impact BIO-6:</b> The proposed project would not result in	<b>AM BIO-6.1:</b> Directed surveys for ground nesters, including coast horned lark and killdeer, shall be conducted within 30 days of initiation of construction	Community Development Director	Submittal of pre-construction survey results per the Habitat Protection Plan (HPP)	Prior to issuance of grading permits

Environmental Impacts	Mitigation Measures	Responsibility for Monitoring Compliance	Method of Compliance	Timing of Compliance
impacts to nesting migratory birds on the site.	to determine presence/absence of active nests. The typical nesting period for coast horned lark is January 15 to August 1. The typical nesting period for killdeer is March through September. If construction activities are initiated outside of these typical breeding seasons, then preconstruction surveys for active nests would not be necessary. If active nests are found and the biologist determines that construction activities would remove the nest or have the potential to cause abandonment, then those activities shall be avoided until the young have fledged as determined through monitoring of the nest. Once the young have fledged, construction activities can resume in the vicinity.			
<b>AIR QUALITY</b>				
<b>Impact AQ-3:</b> Construction activities, such as, clearing, excavation, and grading operations, construction vehicle traffic, and wind blowing over exposed earth would generate fugitive particulate matter emissions that would temporarily affect local air quality.	<b>MM AQ-3.1:</b> Construction contractors shall implement a dust abatement program. The following construction practices shall be included in the dust abatement program and reflected as notes on the project plans prior to issuance of grading or building permits: <ul style="list-style-type: none"> <li>• Water shall be used to control dust generation during loading materials onto trucks.</li> <li>• All trucks hauling demolition debris from the site shall be covered.</li> <li>• All exposed soil surfaces shall be watered at least three times daily. Frequency should be based on the type of operation, soil, and wind exposure.</li> <li>• All trucks hauling dirt, sand or loose materials, shall be covered or maintain at least two (2) feet of freeboard.</li> </ul>	Community Development Director	Verify inclusion of all Air Quality Control mitigation measures in contract specifications, plan sets and documents; and implementation during construction	During preparation of contract specifications, plan sets; and prior to and during construction

Environmental Impacts	Mitigation Measures	Responsibility for Monitoring Compliance	Method of Compliance	Timing of Compliance
	<ul style="list-style-type: none"> <li>Inactive storage piles shall be covered.</li> <li>Streets shall be swept if visible soil material is carried out from the construction site.</li> <li>A publicly visible sign shall be posted which specifies the telephone number and person to contact regarding dust complaints. This person shall respond to complaints and take corrective action within 48 hours. The phone number of the Monterey Bay Unified Air Pollution Control District shall be visible to ensure compliance with Rule 402 (Nuisance).</li> </ul> <p><b>MM AQ-3.2:</b> In order to ensure construction emissions are reduced below MBUAPCD's significance criterion, construction contracts and conditions of approval on building permits and grading permits shall specify that grading operations be restricted such that the area actively disturbed at any one time is less than five acres which would reduce dust emissions below 82 pounds per day.</p>			
<b>NOISE</b>				
<b>Impact NOI-2:</b> Interior noise levels would exceed the City's adopted General Plan and California Building Code standards for hotel units using standard construction methods.	<b>MM NOI-2.1:</b> Design-level acoustical analyses are required by the state building code to confirm that interior noise levels would be reduced to 45 dBA DNL or lower. The specific determination of what treatments would be necessary will be conducted on a unit-by-unit basis at the design stage. Results of this analysis, including the description of noise control treatments, will be submitted to the City along with the building plan and approved prior to issuance of a building permit.	Community Development Director	Incorporation of design-level acoustical requirements in building plans	Prior to issuance of building permits



Environmental Impacts	Mitigation Measures	Responsibility for Monitoring Compliance	Method of Compliance	Timing of Compliance
	<p><b>MM NOI-2.2:</b> Building sound insulation requirements will need to include the provision of forced-air mechanical ventilation for units proposed in noise environments exceeding 60 dBA DNL, so that windows could be kept closed at the occupant's discretion to control noise.</p> <p><b>MM NOI-2.3:</b> Special building techniques (e.g., sound-rated windows and building façade treatments) may be required to maintain interior noise levels. Depending upon the final building plans, units nearest SR 1 may require sound rated windows and doors (STC 30-33) to assure that the 45 dBA DNL indoor standard is met.</p>			
<b>UTILITIES AND SERVICE SYSTEMS</b>				
<b>Impact UTIL-2:</b> The proposed project would not result in the need for additional wastewater treatment facilities; however, the proposed public restrooms on Tioga Avenue would conflict with water supply facilities.	<b>MM UTIL-2.1:</b> As a condition of project approval, the proposed restrooms on Tioga Avenue shall be located on the north side of Tioga Avenue near the proposed lifeguard station. The location of these restroom facilities will reduce the impact to existing water supply facilities to a less than significant level.	Community Development Director	Incorporation in project plans	Prior to issuance of building permits
<b>GREENHOUSE GAS EMISSIONS</b>				
<b>Impact GHG-1:</b> The project would result in a net increase in	<b>MM GHG-1.1:</b> The City will require, as conditions of project approval, the implementation of the majority of the following measures to reduce energy use and	Community Development Director	Incorporation of measures to reduce energy use and submittal of GHG Reduction	Prior to issuance of a building permit

Environmental Impacts	Mitigation Measures	Responsibility for Monitoring Compliance	Method of Compliance	Timing of Compliance
<p>carbon dioxide emissions annually. The project proposes a TDM program to reduce the number of vehicle trips and associated greenhouse gas emissions resulting from the project. Based on the estimated emissions from construction and operation of the proposed development, the project would result in substantial new greenhouse gas emissions and contribute to cumulative global climate change impacts.</p>	<p>greenhouse gas emissions:</p> <ul style="list-style-type: none"> <li>• Incorporation of passive solar design principles</li> <li>• LEED certification</li> <li>• Installation of efficient lighting and lighting control systems</li> <li>• Installation of energy efficient heating and cooling systems, appliances and equipment, and control systems</li> <li>• Use of solar heating, automatic covers, and efficient pumps and motors for pools and spas</li> <li>• Installation of solar, wind, and geothermal power systems and solar hot water heaters</li> <li>• Install water-efficient irrigation systems and devices, such as soil moisture-based irrigation controls</li> <li>• Implementation of a waste management plan requiring recycling of construction and land clearing materials</li> </ul> <p>The applicant shall prepare and implement a Greenhouse Gas Emissions Reduction Plan (GHG Plan) to offset the project-related incremental increase of greenhouse gas emissions exceeding 1,100 metric tons of carbon dioxide equivalents per year. Refinement of the project's estimated GHG emissions would be completed as part of the GHG Reduction Plan in order to reflect the most current and accurate data available regarding the project's estimated emissions (including emission rates) using CalEEMod. The GHG Plan shall be updated for each phase of the project to ensure the project by phase or in total does</p>		Plan	

Environmental Impacts	Mitigation Measures	Responsibility for Monitoring Compliance	Method of Compliance	Timing of Compliance
	<p>not exceed 1,100 metric tons of carbon dioxide equivalents per year. Offsets may include, but are not limited to, the following (in order of preference):</p> <ol style="list-style-type: none"> <li>1. Incorporation of on-site measures to offset project emissions, for example through development of a renewable energy generation facility or additional energy efficiency measures.</li> <li>2. Implementation of projects that would result in real, permanent, verifiable, enforceable, and additional reduction in greenhouse gas emissions.</li> <li>3. Purchase of carbon credits. Carbon offset credits must be verified and registered with the Climate Registry, the Climate Action Reserve, or other source that is approved by the California Air Resources Board as being consistent with the policies and guidelines of the California Global Warming Solution Act of 2006 (AB 32). Based on current California offset credit costs (October 2012), approximately \$57,650 annually would be required for full-funding of this mitigation measure. Either a dedicated developer-funded annuity will be required or a percentage of revenue proposed by the development will need to be dedicated to pay for this mitigation measure on an annual basis.</li> </ol> <p>The applicant will submit the GHG Plan for review and approval by the Community Development Director prior to the issuance of a building permit for any phase of the project generating in excess of 1,100 MTCO<sub>2</sub>e. Implementation of these measures will be</p>			

Environmental Impacts	Mitigation Measures	Responsibility for Monitoring Compliance	Method of Compliance	Timing of Compliance
	<p>verified by the City through annual reporting required as a condition of permit approval.</p> <p><b>AM GHG-1.1:</b> A TDM program is proposed to reduce the number of vehicle trips and resulting GHG emissions from the project.</p>			
<b>Impact GHG-3:</b> The proposed project would experience flooding due to expected sea level rise by the year 2100.	<b>MM GHG-3.1:</b> The applicant will develop an adaptive management plan to remove and/or relocate portions of the project that may be impacted by sea level rise. The project will be monitored until the year 2100 (over a 90 year period) to determine if sea level rise would impact the project in the final 40 years of that term.	Community Development Director	Submittal of an adaptive management plan	Prior to the issuance of building permits
<b>CUMULATIVE IMPACTS</b>				
<b>Impact CUMUL-1:</b> The proposed project would result in a cumulatively considerable contribution to scenic resource impacts from resort development along the Sand City Coast.	<b>MM CUMUL-1.1:</b> The project will reduce building heights on the site within View Corridor B to comply with the City's LCP. The Hotel 1 building's roof will be reduced in height by at least four feet and the Hotel 1 architectural roof elements (refer to Figure 13) will be reduced in height by at least 2.5 feet and shall not exceed 78.5 feet NGVD. The Lobby and Conference center entry towers will be reduced by at least eight feet and the entry towers and roofline shall not exceed 74.5 feet NGVD. The Lobby and Conference center portico shall also be reduced by at least one foot.	Community Development Director	The final design for the project shall reflect reduced building heights	Prior to issuance of building permits
<b>Impact CUMUL-2:</b> The proposed project	<u>Fremont Boulevard</u>	Community Development Director	Payment of fee and approval by CalTrans	Prior to issuance of building

Environmental Impacts	Mitigation Measures	Responsibility for Monitoring Compliance	Method of Compliance	Timing of Compliance
will contribute to cumulative impacts at four intersections.	<p>As noted in the Final EIR Section 3.4.3.1, Caltrans approved the Highway 1 (SR 1) Project Study Report (PSR) in 2002, which identified improvements for the intersection at the Fremont Boulevard/State Route 1/ Monterey Road/Ord Avenue intersection. Currently, this project is not fully funded, though the project is included in the Regional Development Impact Fee adopted by TAMC in August 2008. The PSR improvements would mitigate intersections impacts at the Fremont Boulevard/State Route 1/ Monterey Road/Ord Avenue intersection once constructed. In the interim, the provision of a dedicated westbound left-turn lane from Monterey Road to southbound Fremont Boulevard would improve intersection operations as compared to Cumulative No Project Conditions. Although the intersection continues to operate at unacceptable LOS F, the intersection delays under Project Buildout with the proposed mitigation measure are less than the delays under Cumulative No Project Conditions and, therefore, the impact would be reduced to a less-than-significant level.</p> <p><b>MM CUMUL-2.1:</b> The proposed project will be required to pay for the proposed improvement which would need to be implemented before construction of the project commences (Phase I) to mitigate the project's contribution to the cumulative intersection LOS impacts at the Fremont Boulevard/State Route 1/ Monterey Road/Ord Avenue intersection to a less than significant level.</p>			permits

Environmental Impacts	Mitigation Measures	Responsibility for Monitoring Compliance	Method of Compliance	Timing of Compliance
	<p><u>California Avenue/Playa Avenue</u></p> <p>The intersection of California Avenue/Playa Avenue would operate unacceptably under cumulative project conditions and would meet the minimum volume threshold for the peak-hour signal warrant during the PM peak hour under Phase II of the project. With implementation of Phase I of the project the intersection would operate at an acceptable LOS under cumulative conditions. Mitigation of the project impacts to less-than-significant levels requires the signalization of this four-way stop intersection.</p> <p><b>MM CUMUL-2.2:</b> The proposed project shall signalize the intersection of California Avenue and Playa Avenue.</p>	Community Development Director and City Engineer	Installation of a traffic signal prior to Phase II of the project	Prior to issuance of building permits for Phase II of the project
	<p><u>California Avenue/Tioga Avenue</u></p> <p>The intersection of California Avenue/Tioga Avenue operates unacceptably under cumulative project conditions and would meet the peak-hour volume signal warrant during the PM peak hour. Signalization of this intersection would mitigate the impact to a less-than-significant level and cause the intersection to operate at LOS A. Alternatively, the addition of an exclusive right-turn lane on the westbound approach (for a total of one left-turn lane, one through-lane and one right-turn lane) would mitigate operations to an acceptable LOS B.</p>	Community Development Director and City Engineer	Installation of traffic improvements prior to project construction of Phase I	Prior to issuance of building permits



Environmental Impacts	Mitigation Measures	Responsibility for Monitoring Compliance	Method of Compliance	Timing of Compliance
	<p><b>MM CUMUL-2.3:</b> The proposed project shall implement improvements to the California Avenue and Tioga Avenue intersection to improve the level of service to acceptable levels.</p> <p><u>SR 218/SR 1 Northbound Ramp</u></p> <p>Signalization of the northbound ramp intersection of State Route 218/State Route 1 and adding an eastbound left-turn lane is required to mitigate the project's impact. Under cumulative project conditions, the northbound ramp is projected to operate at LOS B with this mitigation. Therefore, the signalization of the northbound ramp intersection would mitigate the impacts to less-than-significant levels.</p> <p><b>MM CUMUL-2.4:</b> The proposed project will signalize the SR 218/SR 1 northbound ramp intersection. The applicant will also secure an encroachment permit from CalTrans to advise motorists with pavement markings "keep clear" or "do not block".</p>	Community Development Director and City Engineer	Installation of a traffic signal	Prior to issuance of building permits
<b>Impact CUMUL-3:</b> The proposed project will contribute to cumulative impacts on two roadway segments.	<p><u>SR 1 from SR 218 to Del Monte Boulevard</u></p> <p>Capacity improvements along State Route 1 south of State Route 218 would be necessary to improve operations on the two roadway segments between State Route 218 and Del Monte Boulevard. No improvements are currently identified for this segment</p>	Community Development Director	Payment of Regional Development Impact Fee	Prior to the issuance of building permits

Environmental Impacts	Mitigation Measures	Responsibility for Monitoring Compliance	Method of Compliance	Timing of Compliance
	<p>of SR 1. Widening State Route 1 to six lanes would improve operations at these locations to LOS C or better under cumulative project conditions.</p> <p>Although no improvements are currently proposed for the segments of SR 1 from SR 218 to Del Monte Boulevard, TAMC is the responsible agency for the implementation of regional roadway improvements required to provide acceptable operations in the region. Since these freeway segments are already operating at a level of service that exceed Caltrans standards, TAMC should include the widening of these segments of SR 1 on their project list and pursue these improvements as part of the regional traffic impact fee. The continued implementation of the impact fee and construction of roadway improvements, as funding allows, will then reduce the cumulative impact of new and pending developments on the regional roadway system.</p> <p><b>MM CUMUL-3.1:</b> Although no improvements are currently identified for the two segments of SR 1 from SR 218 to Del Monte Boulevard, freeway impacts can be mitigated with contribution to the Regional Development Impact Fee adopted by TAMC.</p>			
<p><b>Impact CUMUL-10:</b> The proposed project may result in impacts to buried archaeological</p>	<p><b>MM CUMUL-10.1:</b> In the event of the discovery of prehistoric or historic archaeological deposits, work shall be halted within 50 feet of the discovery and a qualified professional archaeologist shall examine the find and make appropriate recommendations regarding</p>	Community Development Director	Review by a qualified archaeologist of any archaeological deposits and submittal of a report following implementation of mitigation	Prior to issuance of occupancy permit

Environmental Impacts	Mitigation Measures	Responsibility for Monitoring Compliance	Method of Compliance	Timing of Compliance
resources during construction of a traffic signal to mitigate cumulative traffic impacts.	<p>the significance of the find and the appropriate mitigation. The recommendation shall be implemented and could include collection, recordation, and analysis of any significant cultural materials.</p> <p><b>MM CUMUL-10.2:</b> In the event that human remains and/or cultural materials are found, all project-related construction shall cease within a 50-foot radius of the find in order to proceed with the testing and mitigation measures required. Pursuant to Section 7050.5 of the Health and Safety Code and Section 5097.94 of the Public Resources Code of the State of California:</p> <ul style="list-style-type: none"> <li>• In the event of the discovery of human remains during construction, there shall be no further excavation or disturbance of the site or any nearby area reasonably suspected to overlie adjacent remains. The Monterey County Coroner shall be notified and shall make a determination as to whether the remains are Native American. If the Coroner determines that the remains are not subject to his authority, he shall notify the Native American Heritage Commission who shall attempt to identify descendants of the deceased Native American. If no satisfactory agreement can be reached as to the disposition of the remains pursuant to this State law, then the land owner shall re-inter the human remains and items associated with Native American burials in a nearby location not subject to further subsurface disturbance.</li> </ul>		<p>measures.</p> <p>Contact Monterey County Coroner in the event of a discovery of human remains.</p>	

Environmental Impacts	Mitigation Measures	Responsibility for Monitoring Compliance	Method of Compliance	Timing of Compliance
	<ul style="list-style-type: none"> <li>A final report summarizing the discovery of cultural materials shall be submitted to the Director of Community Development prior to issuance of occupancy permits for the project. This report shall contain a description of the mitigation program that was implemented and its results, including a description of the monitoring and testing program, a list of the resources found, a summary of the resources analysis methodology and conclusion, and a description of the disposition/curation of the resources. The report shall verify completion of the mitigation program to the satisfaction of the Director of Community Development.</li> </ul>			

**CITY OF SAND CITY**

**RESOLUTION SC 13-93, 2013**

**RESOLUTION OF THE CITY COUNCIL OF SAND CITY APPROVING COASTAL DEVELOPMENT PERMIT (CDP 13-06) AND SITE PLAN (SP 13-03), AND PLANNED UNIT DEVELOPMENT PERMIT (PUD) FOR THE 340-ROOM COASTAL RESORT, KNOWN AS THE COLLECTION AT MONTEREY BAY, LOCATED AT THE NORTHWEST QUADRANT OF HIGHWAY ONE/TIOGA AVENUE**

**WHEREAS**, the applicant John King, dba King Ventures (Applicant) has applied for a Coastal Development Permit (CDP), Site Plan (SP), and Planned Unit Development (PUD) Permit and Zoning Amendment approval to develop certain property in the City of Sand City (City), which is an ocean-front site containing approximately 26.46 acres of land located in the coastal zone of the City (Project Site). The Project Site consists of three properties: the Sterling property (Assessor's Parcel Number 011-012-001), the McDonald property (Assessor's Parcel Numbers 011-012 -002, 005 and the Granite Construction property (Assessor's Parcel Number 011-501-016). The Project Site is located generally south of property owned by the Monterey Peninsula Regional Park District (MPRPD), north of Tioga Avenue and west of Highway 1; and

**WHEREAS**, the applicant's development proposal is commonly known as the Collection at Monterey Bay coastal resort (the Proposed Project). The Proposed Project is a 340-unit hotel and vacation club (105-room vacation ownership, 235-room hotel) resort development. The proposed project would also include ancillary facilities and public and private improvements, including, but not limited to conference facilities, restaurants, open space, habitat enhancement and public road extensions and trails; and

**WHEREAS**, the City has an adopted and certified Sand City Local Coastal Program (LCP) containing a Land Use Plan (LUP) and an Implementation Plan (IP).; and based upon the LCP, the Project Site allows for a maximum density of 745 units for the combined site; and

**WHEREAS**, the Project Site is also within an area covered by the Memorandum of Understanding executed in April, 1996 between the City, the former Sand City Redevelopment Agency, the Monterey Peninsula Regional Park District and the California Department of Parks and Recreation (MOU). The purpose of the MOU was to establish agreement among the City, the former Redevelopment Agency, and the park agencies as to which portions of the City's coast are appropriate for development. The MOU identified the Project Site and another site at the City's northern border as the appropriate locations for development on Sand City's coast. The need for the MOU arose because the park agencies had undertaken a program to acquire large portions of the privately owned coastal properties within the former redevelopment project area and the City for park and open space purposes, impairing the City's ability to generate property taxes and other revenue necessary for capital improvement funding and funding for general governmental purposes. The MOU resulted in the City and the former Redevelopment Agency dismissing with prejudice their role in a pending complaint against the Park District challenging, among other things, the Park District's land acquisition program in the City. Based upon the MOU, the City and the former Redevelopment Agency acquiesced to further acquisition of coastal properties by the park agencies for park and open space purposes; and

**WHEREAS**, as a result of the MOU, the Park District also agreed to withdraw a pending LCP amendment request submitted to the California Coastal Commission to approve "open space" as a preferred use in all City coastal zone districts and instead agreed to request that the California Coastal Commission recognize and acknowledge the signed MOU among the agencies as the solution to the long-debated issue about the siting of development along Sand City's coastline; and

**WHEREAS**, at their April, 1996 meeting, the California Coastal Commission approved a modified LCP amendment which excluded the Project Site and the Lone Star site from its effect (based on the Park District agreement to withdraw the amendment request) and acknowledged the executed MOU between the City, the former Redevelopment Agency, the Park District and the California Department of Parks and Recreation; and

**WHEREAS**, the MOU applies and refers, in part, to the Project Site (referred to as the McDonald Coastal Site and Sterling Site in the MOU) in the following way:

"The parties agree to support development in the general range of 300 to 450 mixed hotel, visitor-serving residential and residential units on the McDonald Coastal Site and Sterling Site (which may be combined), which is consistent with the existing or amended Sand City LCP. The parties agree that this is a reasonable number of units in light of the amount of open space that may eventually be acquired along the Sand City Coastline and the commitment of the City to utilize a portion of the transient occupancy tax revenues from visitor-serving development on these sites to benefit park and open space maintenance along the Sand City Coastline."; and

**WHEREAS**, a Final Environmental Impact Report (FEIR) has been prepared for the proposed project and identifies an environmentally superior project alternative which eliminates view obstructions from LCP-designated view corridors; and

**WHEREAS**, by separate action, the City has certified that the FEIR has been prepared in accordance with the requirements of and pursuant to CEQA, as more particularly described in the City of Sand City Resolution 13-91, (2013), which is incorporated herein by reference; and

**WHEREAS**, on November 19, 2013, and December 17, 2013, the City conducted a duly noticed public hearings to consider the Proposed Project and the Proposed Project Approvals (the Public Hearing); and

**WHEREAS**, at the November 19, 2013 Public Hearing, the City Council received and considered public testimony and written comments submitted in a timely manner prior to the Public Hearing as well as testimony from City staff, the recommendations of the City Design Review Committee (DRC) and the applicant's representatives, and the City Council closed the Public Hearing on the Certification of the Final EIR; and

**WHEREAS**, the City Council considered recommended Findings and Conditions of approval prepared by City staff, and said approval of the Coastal Development Permit, Site Plan, and PUD Permit is consistent with the Sand City General Plan and the Sand City Local Coastal Program.



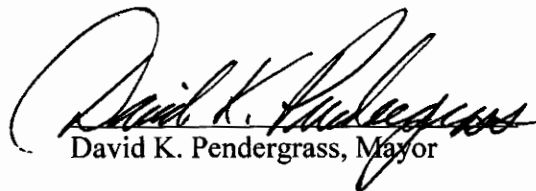
**NOW, THEREFORE, BE IT RESOLVED** by the Sand City Council as follows:

1. The City Council hereby adopts the Coastal Development Permit Findings, the CEQA Certification and Mitigation Monitoring and Reporting Findings and the Conditions of Approval, attached hereto as Exhibits A, B and C, respectively, for the approved project. Sand City LCP consistency findings are further explained and certified in the FEIR for the project, and said findings are incorporated herein by this reference.
2. The City Council selects and approves, the Collection at Monterey Bay environmentally superior alternative identified in the FEIR, and as further modified by project conditions of approval.
3. The community development director is authorized and directed to give due notice of determination that this Resolution is being carried out after considering the Final EIR in accordance with the provisions of CEQA and the Guidelines.
4. All exhibits, documents, materials, reports, data and information referred to in this Resolution are hereby incorporated into this Resolution as if set forth in full.

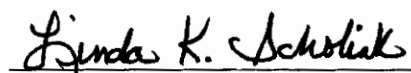
**PASSED AND ADOPTED** by the Sand City Council on this 17<sup>th</sup>, day of December, 2013, by the following vote:

AYES: Council Members Blackwelder, Carbone, Hubler, Kruper, Pendergrass  
NOES: None  
ABSTAIN: None  
ABSENT: None

APPROVED:

  
David K. Pendergrass, Mayor

ATTEST:

  
Linda K. Scholink, City Clerk

## EXHIBIT

### A

#### COASTAL DEVELOPMENT PERMIT FINDINGS

**Description of the Project:** The Collection at Monterey Bay Project ("Project") consists of development related to the Project Site, which is located in the coastal zone of the City of Sand City. King Ventures of San Luis Obispo is proposing a 340-unit Coastal Resort at the northwest quadrant of the Tioga Avenue/Highway One intersection. The proposed resort development will have direct access from Tioga Avenue and proposed access from an extension of Playa Avenue, under Highway One.

The Project site is approximately 26.46 acres and includes the parcels known as "the Sterling Site, where the Monterey Peninsula Engineering (MPE) supply yard is currently located, "the McDonald site", owned by the Successor Agency to the former Sand city Redevelopment Agency and a property owned by the City of Sand City (formerly owned by Granite Construction) where there is currently a scenic overlook to the Monterey Bay. (Building clusters shown on the plan set with labels "s" and "m" are meant to designate buildings on the Sterling site and McDonald Site, respectively.) A first phase of the project is proposed on the Sterling site, consisting of a 105-room vacation club. a second phase, which could be constructed as part of the first phase if market conditions warrant, consists of a 235 room resort hotel and conference center.

The Proposed resort development is consistent with the Sand City Local Coastal Plan (LCP) which allows up to 745 units for the combined, 3 sites. In 1996, however, the City entered into a memorandum of understanding (MOU) with the Monterey Peninsula Regional Park District (MRPD) and the California Department of Parks and Recreation (CDPR), calling for a significant reduction in density, allowing between 300 and 450 units on the combined "building envelope". At its northerly edge, the proposed site is adjacent to property owned by MPRPD.

The City finds as follows:

1. **Finding:** The City finds that the Approved Project, the environmentally superior alternative identified in the Final EIR, as conditioned, is consistent with the City of Sand City General Plan and all applicable policies and programs contained therein.

**Evidence:** Application materials and the text and policies of the Sand City General Plan have been evaluated during the course of the review of this application. No conflict or inconsistencies with the text or the policies were found to exist. The proposed findings of consistency with the City of Sand City General Plan to be made and adopted as part of the Resolution No. SC 13-93, 2013 ("Resolution of the City Council of the City of Sand City Approving a Planned Unit Development, Site Plan and Coastal Development Permit for the Collection at Monterey Bay Resort") are incorporated herein by this reference.

(a) **Public Access Improvements:** The City finds that conditions

of Project approval require dedication of public vertical and lateral sandy beach access easements. Construction of a public vertical access way and a vista point includes trash receptacles, signage and trail improvements and will be constructed as a clearly defined paved walkway or boardwalk (with fencing as required) in order to protect the vegetation introduced in the restoration/stabilization program. The public vista point takes full advantage of views to and across the Monterey Bay. [Reference: LCP LUP policies 2.3.1, 2.3.2, 2.3.3, 2.3.4, 2.3.6, 2.3.7, 2.3.8, 2.3.11, 2.3.12, 2.3.13, and 2.3.14]

(i) **Full Public Access:** The City finds that the Approved Project provides full access which will be conspicuously posted, and recreational opportunities to the public consistent with public safety needs and the need to protect public rights, rights of private property owners and natural resource areas from overuse. The Approved Project will also provide vertical access to the shoreline at the end of Tioga Avenue via a stairway located along the southerly boundary of the Project Site. The vista point will provide a view of Monterey Bay, the beach and the northern slopes of the Monterey Peninsula. Public access may be restricted in some areas during certain seasons for the purpose of protecting nesting areas for western snowy plover. As a mitigation measure, a biological steward will be employed to implement measures to restrict entry from the public into plover nesting areas. These measures will include placing signage to discourage access and installing temporary fencing. In addition, lighting will be allowed on the beach access boardwalks and at the vista point for safety reasons, subject to possible seasonal limitations during plover nesting periods as determined by the steward. [Reference: PRC section 30210]

(ii) **Enhancement of Public Right to Access:** The City finds that the Approved Project does not interfere with and substantially enhances the public's right of access to the sea. Although the public may have gained limited access rights over portions of the Project Site through past use, the Approved Project will formalize, confirm and legalize public access and provide for greatly expanded public rights to access over those portions the Project Site with dedicated vertical and lateral access. [Reference: PRC section 30211]

(iii) **Appropriately Designed Public Access:** The City finds that public access to the shoreline is adequately provided by the Approved Project and such access is appropriately limited through mitigation measures and conditions of approval where access is inconsistent with public safety and protection of fragile coastal resources. Public access may be restricted in some areas during certain seasons for the purpose of protecting nesting areas for western snowy plover. As a mitigation measure, a biological steward will be employed to implement measures to restrict entry from the public into plover nesting areas. These measures will include placing signage to

discourage access and installing temporary fencing. In addition, lighting will be allowed on the beach access boardwalks and at the vista points for safety reasons, subject to possible seasonal limitations during plover nesting periods as determined by the steward. [Reference: PRC section 30212]

(iv) **Adequate Public Facilities:** The City finds that the Approved Project provides adequate public facilities, including parking areas, boardwalks, signage, natural resource oversight and protection, to mitigate against the impacts of overcrowding or overuse by the public of the Project Site and surrounding area. A public parking area will be provided in the northern portion of the site and along Tioga Avenue. This area provides 37 parking spaces. In addition, a Class 2 bicycle lane will be provided along the Project entrance road (continuation of Sand Dunes Drive). Boardwalks will be provided along the access routes to protect against erosion, keep visitors out of sensitive habitat and to provide clear identification of the public access routes in order to protect private property from trespass. Public access signage will be provided in accordance Coastal Commission standards. Access, Signage and Planting Plan will be required to include signage to be used to discourage access to sensitive habitat. A biological steward will be employed to restrict entry from the public into the western snowy plover nesting areas and for purposes of establishing limitations on boardwalk lighting and protective fencing when plover are nesting. [Reference: PRC section 30212.5]

(v) **Free and Direct Public Access:** The City finds that the Approved Project will provide lower cost visitor and recreational opportunities by providing free and direct public access to recreational opportunities along the seashore, which include, but are not limited to, diving, sunbathing, surfing, walking, running, swimming, fishing and beach combing. [Reference: PRC section 30213]

(vi) **Implementation of Public Access:** The City finds that the public access provided by the Approved Project will be implemented in a manner that takes into account the need to regulate the time, place, and manner of public access in consideration of relevant factors, including, but not limited to, topography, appropriate levels of use on the Project Site, fragility of natural resources and the need to manage access to protect privacy of adjacent property owners and to control litter. The City further finds that it will utilize access management techniques, such as employment of a full time steward, boardwalks, lighting controls, signage and temporary fencing, to provide for the proper management of access and the protection of natural resources. [Reference: PRC section 30214]

(vii) **Management and Maintenance:** The City finds that the on-site public access facilities will be managed and maintained by the resort operator and/or public agencies subject to their approval of a public dedication of same and will not open until a management entity and/or agreement has been identified and agreed to by the City of Sand City. [Reference: LCP LUP policies 2.3.9 and 2.3.10]

**(b) Recreation and Visitor Serving Facilities:** The City finds that the Approved Project is a visitor serving Project and includes uses which are consistent with the permitted uses allowed under the LCP land use designations, designs that are consistent with design standards included in LCP Sections 5.3 and 6.4, and an amount of parking spaces that is in excess of the LCP parking requirements. [Reference: LCP LUP policies 3.3.1, 3.3.2, 3.3.3, 3.3.4, and 3.3.8] Conditions of Project approval require the dedication of public access easement for the provisions of public access ways. [Reference: LCP LUP policies 3.3.9 and 3.3.10]

**(i) Protection of Water-Oriented Recreational Activities:** The City finds that the Approved Project provides for and protects water-oriented recreational activities such as diving, sunbathing, surfing, swimming, fishing and beach combing which cannot be provided inland of the sea. Public access will be dedicated to and through portions of the Project Site as a condition of approval to the Project. [Reference: PRC section 30220]

**(ii) Provision of Public and Private Recreational Use:** The City finds that the Approved Project provides for and protects both public and private recreational use and development with the provision of dedicated public access to and through portions of the Project Site as a condition of approval. [Reference: PRC section 30221.

**(iii) Suitable Site for Visitor-Serving and Recreational Uses:** The City finds that the Approved Project is suitable for visitor serving commercial facilities and enhances public opportunities for coastal recreation.

**(iv) Upland Coastal Recreation:** The City finds that the Approved Project provides sufficient upland areas to support coastal recreational uses and that such areas are reserved for such use, namely sufficient parking, vertical access and vista points, described in the Final EIR. [Reference: PRC section 30223]

**(c) Coastal Resources Management:**

**(i) Natural Hazards:** The City finds that the conditions of Project approval require design and construction in accordance with the California Building Code (CBC) seismic safety requirements, road design standards, minimal water flow rates, and minimal fire response times, as well as the incorporation of the recommendations of geologic, soils and drainage investigations required for the Project, which will minimize risk from geologic, flood or fire hazards. [Reference: LCP LUP policies 4.3.8, 4.3.9, 4.3.10, 4.3.11, 4.3.12, 4.3.13, 4.3.14, 4.3.16, 4.3.17, and 4.3.18]

**(ii) Risk:** The City finds that the Approved Project will be designed to minimize the risk to life and property from geologic, flood, tsunami run-up,

and fire hazards. The Approved Project will be designed based on the California Building Code (CBC) to assure structural integrity. The buildings of the Approved Project will be set back from the mean high tide line and will satisfy the 50-year erosion setback established to protect the structures from long-term erosion. The Approved Project will have foundations of habitable structures that will be water proofed in accordance with recommendations of a final geotechnical report to protect the structures from a 100-year storm run-up event. [Reference: PRC section 30253]

(iii) **Sand Dunes and Environmentally Sensitive Habitats:**

The City finds that the Approved Project is conditioned upon implementation of a Habitat Protection Plan (HPP) and/or Habitat Conservation Plan (HCP) approved by the US Fish and Wildlife Service. The HPP provides an assessment of the current conditions on the Project Site relative to the existing biological resources on site, evaluates the effects of the proposed development and presents a set of management prescriptions for enhancement of the dune complex and preservation of sensitive species habitat on the Project Site in the context of the project. Development of the Approved Project is conditioned to require an agreement between the Project Owner and the City of Sand City to assure the implementation of the Habitat Protection Plan and maintenance of the sensitive habitat sites. The HPP will be used as the basis to develop a Habitat Conservation Plan (HCP), which is required prior to the U.S. Fish and Wildlife Service's issuance of an incidental take under section 10 of the Endangered Species Act of 1973, as amended. [Reference: LCP LUP policies 4.3.21, 4.3.22 (c) and (d), 4.3.23, 4.3.24, 4.3.25, 4.3.26, 4.3.27]

(iv) **Marine and Water Resources:**

The City finds the Approved Project maintains, enhances and restores marine resources by protecting the marine coastal waters and biological resources through setbacks, dedications of easements, preparation and implementation of an HPP and subsequent HCP. [Reference: PRC section 30230 and 30233(a)(6)(7) and (b)]

(v) **Archaeological Resources:**

The City finds that no archaeological resources have been identified on the Project Site. Development of the Approved Project is conditioned to require protection or salvage of archaeological resources if any are found during construction. [Reference: LCP LUP policy 4.3.33] If archaeological resources are uncovered during site preparation or construction activities, work will be halted in the immediate area of the find and the City of Sand City will be notified so that suitable mitigation measures can be formulated by a qualified archaeologist and implemented if necessary. [Reference: PRC section 30244]

(d) **Coastal Visual Resources:**

The City finds that the Approved Project will be sited, designed and appropriately landscaped to minimize the loss of views across the Project Site and to preserve the southbound views over the development designated in Local Coastal Program Land Use Plan Figure 9. [Reference: LCP LUP



policies 5.3. 1, 5.3.2, and 5.3.3] Design standards have been established for the Project consistent with the Local Coastal Program design policies. [Reference: LCP LUP policies 5.3.4 and 5.3. 5]. Site specific sign, landscape and parking design plans are also required as a condition of development of the Approved Project. The Approved Project will restore and enhance a presently visually degraded site that was mined for sand and currently contains a materials storage yard. [Reference: LCP LUP policy 5.3.6]

(i) **Visual Resources:** The City finds that during the siting and design of the Project, scenic and visual qualities of the Project Site, Sand City and the surrounding coastal areas were considered. A visual analysis was prepared for the project using a methodology established by standards set forth in the LCP. Further, the Final EIR independently evaluated the Project effects on visual resources. The visual resources were considered to be of public importance and every effort was made through project design, review by City staff and the Design Review Committee, and ultimately by the City Council to protect visual resources. The Approved Project will be sited and designed to protect views to and along the ocean and scenic coastal areas. The Approved Project will restore and enhance the visual quality of a visually degraded site that was mined for coastal resources (sand) and currently contains a variety of non-native plant species, and a construction materials storage yard. The Approved Project will protect the existing landform, and expand, restore and enhance this landform through a dune stabilization, revegetation and restoration program. This program, along with the lowering of the elevation of the Project Site, the reduced height achieved through lowering the site elevations and through reductions in building heights and density as a part of Project design review and approval, and the design features of the structures, achieves visual compatibility with the character of the surrounding Monterey Peninsula area and protection of views to and along the ocean. [Reference: PRC section 30251] The City further finds that a balance between protection of visual resources and the economic viability of the Approved Project is essential to the long-term viability of the Project and the City.

(ii) **Views, Vista Points and Siting of Development:** The City finds that the Approved Project as conditioned, includes a public vista point along the shoreline in conjunction with the vertical public access way. [Reference: LCP LUP policy 5.3. 7] The Approved Project will serve to improve the visual appearance and views from Highway 1 with the removal of non-native plant species, revegetation with native plant species, removal of a construction materials storage yard, and by utilizing existing dunes within the design to enhance and protect visual resources. The Approved Project will vary building heights, texture and colors to complement the colors of the natural environment and implements dune stabilization measures in accordance with the Habitat Protection Plan. [Reference: Policies 5. 3.8, 5. 3. 9, 5.3.10 and 5.3.11]

(e) **Land Use and Development**

(i) **Location:** The City finds that the Approved Project is located contiguous with and in close proximity to the existing developed areas of Sand City and Seaside, is within the urbanized Monterey Peninsula area, is on parcels designated in the LCP for visitor-serving use and at a point of attraction for visitors. The City also finds that the Project Site is able to be accommodated with adequate public services and, as conditioned, will not have significant adverse effects on coastal resources. [Reference: PRC section 30250] The Approved Project has been conditioned, sited and designed to prevent impacts which would significantly degrade habitat value and nearby park and recreation areas. [Reference: PRC section 30240(b)]

(ii) **Zoning Code:** The City finds that the Approved Project is consistent with sections 18.84.020 and 18.84.030 of the Municipal Code which requires the Applicant to provide public access in accordance with the requirements of the LCP. The conditions of approval require the dedication of public access as generally described in the Final EIR and as further required by the City Council. The City further finds that the vacation ownership resort portion of the Project is consistent with Chapter 18.86 of the Municipal Code which regulates timeshare units. Specifically, the City finds as follows:

(1) The impacts of the Approved Project on the present and future City services have been adequately analyzed and considered by the Final EIR. Changes or alterations to the Project or mitigation measures imposed as conditions of approval will assure that significant impacts to City services will be avoided or substantially lessened.

(2) The Approved Project as conditioned will not have a significant adverse impact on the health, safety and welfare of the general public.

(3) As conditioned, the vacation ownership resort units will be made available for sale in maximum increments of twenty-nine days and any one purchaser's occupancy will be limited to a maximum of twenty-nine consecutive days.

(4) As conditioned, a portion of the fees associated with the use of the vacation ownership resort units/memberships will include an annual payment to the City in lieu of the City's transient occupancy tax.

(iv) **Densities:** The City finds that the Approved Project includes a 235-room hotel, and a 105-unit vacation ownership resort, and that these densities are far less than the densities allowed in their respective land use designations as set forth in the Local Coastal Plan Land Use Plan. [Reference: LCP LUP policy 6.4.4]

(v) **Height Restrictions:** The City finds that the Approved Project buildings will not exceed the height limits set forth in the Local Coastal Plan Land Use Plan. [Reference: LCP LUP policy 6.4.5]

(vi) **Provision of Services:** The City finds that the Approved Project

will have an adequate water supply based on water credits owned by the applicant and through the water supply provided by the Sand City Desalination Facility. Cal-Am Water will provide domestic water, irrigation water, and fire flow to the Project. Sewer services will be provided by the Seaside County Sanitation District for local transport of effluent and the Monterey Regional Water Pollution Control Agency for regional treatment and disposal; and the Approved Project provides adequate parking and circulation for proposed uses and emergency access. [Reference: LCP LUP policies 6.4.11, 6.4.12, 6.4.20, 6.4.22, and 6.4.23] As a condition of Project approval, the Project will utilize water conservation fixtures and drought resistant landscaping. [Reference: LCP LUP policy 6.4.14 and 6.4.16] Since no feasible reclaimed water systems exist at the current time, irrigation for dune management will come from the public water supply. [Reference: LCP LUP policy 6.4.17]

(vii) **Circulation:** The City finds that the Approved Project will provide adequate streets, parking and loading, and the Project provides vehicular access to all parcels to be developed. [Reference: LCP LUP policies 6.4.24 and 6.4.32]. The Approved Project, as conditioned, will enhance public access that does not currently exist. Although the public may have gained limited access rights over portions of the Project Site through past use, the Approved Project will formalize, confirm and legalize public access and provide for greatly expanded public rights to access over those portions the Project Site with dedicated vertical and lateral access to the beach. The Approved Project will further maintain and enhance public access to the coast by providing an extension of Sand Dunes Drive leading to a public parking area; providing adequate public parking facilities; providing space for a bus turn around along the entry driveway for public transit opportunities; providing non-vehicular circulation within the development, including pedestrian boardwalks and bicycle paths; and providing recreational facilities on site, such as public and private boardwalks, vista points, and recreational areas, to provide residents and the public with recreational opportunities. [Reference: PRC section 30252]

**Evidence:** The text and policies of the Sand City Local Coastal Program, including the Land Use Plan and the Implementation Plan, have been evaluated during the course of the review of this application. No conflict or inconsistencies with the text or the policies were found to exist based on the approved project, as conditioned. In addition, the project file, public testimony, application materials and the Final EIR were reviewed to assess consistency with the Sand City Local Coastal Program and the California Coastal Act. All references cited in the project Final EIR support these findings and are incorporated herein by this reference.

## EXHIBIT

### B

#### **CEQA CERTIFICATION AND FINDINGS FOR THE COLLECTION AT MONTEREY BAY RESORT PROJECT COASTAL DEVELOPMENT PERMIT AND SITE PLAN (COMBINED DEVELOPMENT PERMIT) AND ADOPTION OF MITIGATION MONITORING AND REPORTING PROGRAM (MMRP)**

##### **1. CERTIFICATION UNDER CEQA**

(a) **Description of the Project:** The project consists of the development, pursuant to separate but related approval actions by the Sand City City Council, of the Collection at Monterey Bay Resort Project in the City of Sand City ("City") on property located generally located in the area bounded by Tioga Avenue and Highway 1, in its northwest quadrant.

The approved project is a 340-unit coastal resort that would be constructed on ocean-front sites located in the City of Sand City, California (the "Proposed Project"). The Proposed Project would include a vacation club and hotel including auxiliary facilities of a restaurant, conference rooms and other commercial auxiliary facilities, open space, public access trails, and restored and stabilized sand dune habitat.

As approved, the Proposed Project has been modified by the conditions of approval, attached hereto as Exhibit C, and the mitigation measures identified in the final Environmental Impact Report ("Final EIR") for the project and, as so modified, shall be referred to as the "Approved Project." The Approved Project consists of 340 units, a 105-room vacation club and a 235-room resort hotel, further described as environmentally superior alternative in the Final EIR (FEIR), and ancillary public and private improvements.

(b) **Project Approvals.** The major approval actions for the project are: 1) adoption of a Habitat Protection Plan; 2) approval of a Coastal Development Permit, Site Plan, and Planned Unit Development Zoning Permit and 3) adoption of a Mitigation Monitoring and Reporting Program.

(c) **Project Objectives:** The objectives (City and Applicant) of the project are those stated in the certified FEIR approvals by the City Council and incorporated herein by this reference

##### **2. CEQA FINDINGS:**

The City of Sand City City Council finds as follows:

(a) **Final EIR:** The Final EIR for the Proposed Project consists of the Draft Environmental Impact Report ("Draft EIR") for the Collection at Monterey Bay Project

prepared for the City by David J. Powers and Associates, Inc., dated November, 2012 and the First Amendment to the Draft EIR prepared for the City by David J. Powers and Associates Inc., dated October, 2013 which includes comments and responses to comments on the Draft EIR and revisions to the text of the Draft EIR.

The Final EIR analyzes and evaluates a series of actions for approval and development of a mixed-use resort and associated facilities on the Project Site. The approval actions analyzed in the final EIR include development permits and approvals of construction of the Proposed Project, including approval of a Habitat Protection Plan, Coastal Development Permit, Site Plan and Design Permit, and Mitigation Monitoring and Reporting Program.

The City Council finds as follows:

(i) The above-listed approval actions are within the scope of the Proposed Project analyzed in the Final EIR;

(ii) The Final EIR is fully adequate to consider the Proposed and Approved Project and reflects the independent judgment of the City of Sand City;

(iii) No new significant information was added to the EIR after circulation of the Draft EIR and the Final EIR does not change the content of the Draft EIR in a way that deprives the public of meaningful opportunity to comment upon a substantial environmental effect of the Proposed Project or a feasible way to mitigate or avoid such an effect (including feasible project alternative) that the Applicant has declined to implement. In particular:

(1) The Final EIR did not identify a new significant environmental impact that would result from the Proposed Project or from a new mitigation measure proposed to be adopted;

(2) The Final EIR did not identify a substantial increase in the severity of an environmental impact that would result unless mitigation measures are adopted that reduce the impact to a less than significant level;

(3) The Applicant has agreed to accept and the City has imposed all feasible project alternatives and mitigation measures identified in the Final EIR; and

(4) The Draft EIR was sufficiently complete in nature and allowed for meaningful public review and comment.

The City finds that changes and alterations resulting from the Final EIR clarified and amplified the discussion in the Draft EIR, made insignificant modifications to the Draft EIR and provided additional mitigation to provide further and additional assurances that the impacts identified in the Draft EIR would be reduced to a less than significant impact.

(iv) No subsequent changes have been proposed to the Proposed Project analyzed by the Final EIR which will require important revisions of the Final EIR due to the involvement of new significant environmental impacts not considered in the Final EIR;

(v) No substantial changes have occurred with respect to the circumstances under which the Proposed Project is to be undertaken which will require important revisions to the Final EIR due to the involvement of new significant environmental impacts not covered in the Final EIR.

**Evidence:** The Final EIR, project file, public testimony and application materials were reviewed to assess compliance with CEQA guidelines. City of Sand City Resolution SC \_\_\_, 2013 ("Resolution of the City Council of the City of Sand City Certifying as Adequate the Collection at Monterey Bay Resort Final EIR") is incorporated herein by reference.

(b) **Custodian of Records.** The location and custodian of records for the basis of decision of the City Council approving the actions described herein is the Sand City City Hall, City Clerk's office.

(c) **Mitigation Monitoring and Reporting Program (MMRP):** The City recognizes the requirements of Public Resources Code section 21081.6 which requires the adoption of a reporting or monitoring program designed to ensure compliance with mitigation measures during project implementation. The City Council finds that the monitoring program adopted concurrent with the Approved Project is fully adequate to meet the requirements of section 21081.6 and will ensure compliance with the mitigation measures identified in the Final EIR and conditions of approval during project implementation. The MMRP is attached and approved herein by this reference. It generally outlines potentially significant environmental impact of the project and required measures to reduce those impacts to less than significant levels.

**EXHIBIT C: THE COLLECTION AT MONTEREY BAY CONDITIONS OF APPROVAL**  
(Combined Development Permit: CDP 13-06, SP 13-03, and Planned Unit Development PUD)

**General Conditions**

1. **Permit Conditions Acknowledgment:** The approval granted by this permit shall not become effective until the applicant and property owners submit, in writing, that each understands and accepts all conditions of approval contained herein. Said written acknowledgments shall be submitted to the City within ninety (90) days from the date of approval of the project by the City Council. Failure to submit the written acknowledgments within 90 days shall result in this permit becoming null and void.
2. **Mitigation Monitoring:** Each and every mitigation measure contained in the Mitigation Monitoring and Reporting Program (MMRP) is hereby incorporated by reference into the conditions of approval for this combined development permit.
3. **Security Required:** The Resort developer or any successor in interest shall be responsible for constructing the public amenities and improvements required by this approval and/or the approval by the City Council. A bond, letter of credit or other security acceptable to the City Attorney shall be provided to insure completion of the public amenities and public improvements.
4. **Permit Approvals:** This permit approval includes the approval of a Planned Unit Development (PUD) permit in accordance with Section 18.60.020 of the Municipal Code.

**Coastal Development Permit/Site Plan/PUD**

5. **Occupancy Limitations:** The vacation club/timeshare shall be limited to owner and guest stays of no more than 29 consecutive days, and not more than 84 days in each calendar year. The property owner shall be required to record a deed restriction to this effect.
6. **Plan Consistency:** All development on the site shall conform to the approved site plan and approved architectural plans, as modified by these conditions, with a total unit count of 340.
7. **Amenity Maintenance Agreement:** Prior to issuance of any grading or building permits, the applicant shall enter into an agreement to maintain to the City's satisfaction the public amenities, including, but not limited to the bluff top overlook, park benches and tables, landscaping, public trails, bicycle racks, public restrooms and shower, habitat protection, and general public parking. All public access improvements and interim beach access shall be dedicated to the Public in a form acceptable to the City Attorney.
8. **On-site drainage:** The resort owner shall maintain all on-site drainage facilities. A bond, letter of credit or other security acceptable to the City Attorney shall be provided to secure completion of such drainage facilities.
9. **Project Approval:** This approval shall expire twenty-four (24) months from the date of the



City Council approval unless building permits have been applied for and are being diligently pursued. Extensions of up to one (1) year may be granted by the City Council, if requested prior to the approval expiration date(s).

10. **Construction Scheduling:** All on-site construction and grading activities shall be limited to the hours between 7:00 a.m. and 7:00 p.m. , all week. Construction and grading activities within public rights-of-way shall be limited to the days and hours approved by the public works director at the time of permit issuance.
- 11(a) **Coastal Erosion Setbacks:** Construction plans (contract documents) shall identify the mean high tide line and the location of the 50-year coastal erosion setback line in reference to all proposed structures. Public amenities on the bay side of the 50 year line shall be relocated, if feasible, when threatened by coastal erosion. A setback certification shall be prepared by a licensed engineer and submitted to the planning department prior to the foundation inspection of each structure.
- 11(b) **Waiver of Rights to Construct Shoreline Protective Devices:** Prior to issuance of a grading or building permit, the applicant shall submit a waiver of right to construct shoreline protective devices as a deed restriction to be recorded, to the satisfaction of the City Attorney. The City shall consult with the Coastal Commission staff regarding the wording of the waiver, consistent with Coastal Act policies and procedures.
- 11(c) **Emergency Management Plan:** Prior to issuance of a grading or building permit, the applicant shall submit a hazards management plan to implement procedures for emergency conditions associated with extreme or high sea level or wave runup and bluff erosion events. The plan will identify guest advisory actions in advance of the potential for such events, emergency response and the potential for site evacuation preceding such events. In particular, the plan will identify responsible property contacts for local emergency personnel communications, a description of annual training for resort staff and emergency information in printed forms located in all hotel rooms and posted in public spaces.
- 11(d) **Managed Bluff Retreat Program:** The applicant will be responsible for addressing bluff erosion over the life of the resort, as follows:
  1. Initial grading plans shall provide a baseline standard for grading of the fore dune areas (areas seaward of the resort) and the detailed landscaping and habitat planting plans to stabilize the bluff and enhance habitat use.
  2. The fore dune areas will be continuously managed and maintained by the applicant and any successors in interest by restoring damaged or dead plants, stabilizing sand and re-contouring the fore dune to be consistent with the baseline plan.
  3. As future erosion impacts the bluff edge, the applicant has the option of providing a sand replenishment plan to restore bluff and fore dune areas lost to erosion, subject to obtaining a coastal development permit for any such work proposed beyond the management and maintenance activities provided above.

4. At the point at which the bluff has receded to within 150 feet of any hotel structure or on the twenty-fifth (25th) anniversary of the issuance of the Coastal Development Permit, whichever occurs first, the applicant will conduct a survey of the bluff top, provide updated geological analysis of future erosion rates and provide a detailed plan to address how resort structures will be modified and/or removed as natural erosion reaches the resort improvements.

3. Coastal Hazards and Risk Assumption. The Coastal Commission staff provided examples of acceptable standards of risk assumption that city staff recommends be included in the conditions of approval for the project. It is recommended that they be added to condition 11, as follows:

11(e) **Coastal Hazards Risk:** By acceptance of this CDP, the Permittee acknowledges and agrees, on behalf of itself and all successors and assigns:

1. Coastal Hazards. The site is subject to coastal hazards, including but not limited to, episodic and long-term shoreline retreat and coastal erosion, high seas, ocean waves, storms, tidal scour, coastal flooding, liquefaction and the interaction of same;

2. Assumption of Risk. The Permittee assumes the risks to property and damage from such coastal hazards in connection with this permitted development;

3. Waiver of Liability. To unconditionally waive any claim of damage or liability against the City of Sand City and the California Coastal Commission, its officers, agents, and employees for injury or damage from such coastal hazards;

4. Indemnification. To indemnify and hold harmless the City of Sand City and the Coastal Commission, its officers, agents and employees with respect to the approval of the development against any and all liability, claims, demands, damages, costs (including costs and fees incurred in defense of such claims), expenses, and amounts paid in settlement arising from any injury or damage due to such coastal hazards; and

5. Property Owner Responsibility. That any adverse effects to property caused by the permitted development shall be fully the responsibility of the property owner.

11(f) **Coastal Hazards Response.** By acceptance of this CDP, the Permittee acknowledges and agrees, on behalf of itself and all successors and assigns, that:

1. CDP Intent. The intent of this CDP is to allow for the approved development to be constructed and used consistent with the terms and conditions of this permit for only as long as it remains safe for occupancy and use without additional substantive measures beyond ordinary repair and/or maintenance to protect it from coastal hazards; provided however, that the Permittee may apply for a CDP amendment to relocate threatened development elsewhere on the site within then existing building areas (and not outside of such areas);

2. Protective Devices Prohibited. In the event that the approved development is threatened with damage or destruction from coastal hazards, or is damaged or destroyed by

coastal hazards, protective structures (including, but not limited to seawalls, revetments, groins, deep piers/caissons, etc.) shall be prohibited; and

3. **Removal.** If the City has ordered that the approved development or portions of the approved development are not to be occupied or <sup>used</sup> due to one or more coastal hazards, and such safety concerns cannot be abated as provided under this CDP, then the Permittee shall remove such development or portions of such development. Prior to removal, the Permittee shall submit two copies of a Removal Plan to the City for review and approval. If the City determines that an amendment to this CDP or a separate CDP is legally required, the Permittee shall immediately submit the required application. The Removal Plan shall clearly describe the manner in which such development is to be removed and the affected area restored so as to best protect coastal resources, and shall be implemented immediately upon City approval or approval of the CDP/CDP Amendment, unless such CDP/CDP Amendment identifies a different time frame for implementation.

4. **Coastal Access.** During the meeting with coastal commission staff, we discussed how access is provided within the project area, including both the LCP-required extension of the coastal trail along the highway to Tioga Avenue and a minimum of 64 public parking spaces (10 % above the required resort spaces).

The Collection project includes three lateral access trails, one vertical access at Tioga Avenue to the beach, a public restroom and 102 public parking spaces, all amenities exceeding the minimum requirements of the LCP.

5. **Lower-Cost Visitor Accommodation.** The Coastal Act encourages the provision of lower cost visitor accommodations, as does the Sand City LCP. There is no specific requirement in the City's LCP to supply lower cost accommodations. However, by continuing to implement the 1996 MOU with the park agencies, most of the Sand City coast will accommodate low cost to no cost visitor usage as most of the area will be owned by State Parks or the Monterey Peninsula Regional Park District (Park District); and

12. **Public View Protection:** All proposed structures within the "view over" corridors specified in the EIR and the Local Coastal Plan shall be constructed in accordance with the height limitations as identified in the project's certified EIR.
13. **Maximum Project Density:** The hotel and vacation club buildings shall consist of no more than an aggregate total of 340 rooms and shall not be designed for multiple keys (aka "lock-out units") for a configuration exceeding 340 units.
14. **Maximum building heights:** Maximum building heights shall not exceed 25 feet above existing grade, within 100 feet of the Highway One right-of-way, and 45 feet above existing grade for all other parts of the site area. There shall be no obstruction of the view over corridors as established in the LCP and certified EIR. A building pad certification shall be prepared by a licensed engineer and submitted to the public works director prior to final inspection of grading activities. A roof ridgeline certification, indicating the maximum height of each building above existing grade shall be prepared by a licensed engineer and submitted to the public works director for approval prior to the final framing approvals for

each building

15. **Materials /Color Board:** The applicant shall submit an architectural materials and color board for review and approval by the community development director prior to issuance of building permit to illustrate consistency with the Design Review Committee (DRC) and City Council-approved plans for the project.
16. **Paint and material colors:** The hotel, vacation club, and ancillary structures shall be finished in a muted earthtone color, as deemed acceptable by the Design Review Committee (DRC).
17. **Trash Enclosures:** All trash enclosure areas shall be designed with walls six (6) feet in height with the capability of accommodating recycling bins. The enclosures shall be compatible with the overall building design theme in color and materials and shall include self-closing/self latching gates.
18. **Public Amenities/Vista Point:** Prior to the issuance of a certificate of occupancy, the applicant shall dedicate easements over all public trails, vista points and public amenities to the City of Sand City. The public vista point identified on the approved plans shall occur during the first phase of construction. The vista point shall include a minimum of two benches and a gazebo-type area/structure large enough to shelter ten (10) people.

The final design of the public vista point structure shall be reviewed and approved by the Design Review Committee (DRC) prior to installation. The design and materials shall be appropriate for the coastal climate and natural setting and shall be compatible with the project architecture.

19. **Public Amenities:** Prior to the issuance of any certificate of occupancy, the applicant shall obtain an encroachment permit from the City to construct the public amenities along Tioga Avenue and the vista point.
20. **Habitat Protection:** Habitat rehabilitation and fencing shall be performed in accordance with the Habitat Protection Plan (HPP) Appendix D of the FEIR, which is hereby approved by the City Council. The HPP requires specific habitat protection and enhancement measures for the following special status species of plants and animals: Monterey spineflower, Western snowy plover, Smith's blue butterfly, black legless lizard and burrowing owl. The HPP shall also be approved by the U.S. Fish & Wildlife Service (USFWS) prior to issuance of a building permit.
21. **Biological Monitor and Biological Steward:**
  - a. A USFWS -approved biologist shall monitor activities of the western snowy plover and other nesting migratory bird species throughout construction of the project; and shall monitor the project's impacts on the black legless lizard to relocate the lizard in accordance with the approved HPP.
  - b. A biological steward shall be funded by this project upon completion of phase I of

the project (construction of the vacation club units on the Sterling Site). The biological steward position, to be employed by the City of Sand City, shall be funded by a combination of a 35 cent per room charge and a portion of transient occupancy tax revenues received by the project. The biological steward shall be responsible for maintaining and managing habitat within the project area and on adjacent properties, subject to city council approval of agreements between the Monterey Regional Park District and the City of Sand City. The employment of the biological steward shall be required immediately prior to the opening of the resort.

22. **Regional recreation trail:** The applicant shall be responsible for the redesign and extension of the regional bike path along the entirety of the project site. Along the project site, the path will be a Class II bike path paralleling Sand Dunes Drive.
23. **Landscaping:** The final landscaping plan shall be reviewed and approved by the Design Review Committee (DRC) prior to issuance of a certificate of occupancy. Landscape material shall be permitted to grow beyond the maximum heights of the building ridgelines, but may not block a view corridor.
24. **Outdoor Lighting:** The applicant shall prepare and submit a lighting plan. The plan shall show the location, height, number of lights, wattage and estimates of maximum illumination on site for all exterior circulation lighting, outdoor building lighting, trail lighting, parking lot lighting, landscape lighting and main entry sing illumination. The lighting plan shall be submitted for review and approval by the community development department prior to the issuance of building permits. The plan shall also be reviewed and approved by a qualified biologist for potential impacts to wildlife. Fixtures shall be shielded so that only the subject property is illuminated and there is no spillover onto adjacent properties.
25. **Signs:** Prior to issuance of building permits, a uniform sign program shall be approved by the Design Review Committee. The sign program shall include all exterior signs, including resort identification signs, routing signs, public safety signs for trails, educational signs about habitat and any other proposed outdoor signage. The sign program shall indicate colors, materials, locations, sign heights and method of illumination (if any).

#### **Utilities/Mechanical Equipment/Storage**

26. **Undergrounding Required:** Prior to the issuance of any certificate of occupancy, all utilities serving the project site shall be placed underground. All appropriate permits shall be obtained for any such installation. The sewer force main serving the Monterey Peninsula shall be relocated in accordance with all requirements of the Monterey Regional Water Pollution Control Agency (MRWPCA).
27. **Mechanical Equipment Screening:** All roof-mounted equipment shall be screened and/or covered to the satisfaction of the community development department. Due to visibility from Highway I, all vents and ducts are encouraged to be placed in areas other than roof tops.
28. **Antennae installation:** Satellite dish antennae or any other antennae shall be placed in one

centralized location.

29. **Storage:** The storage of all goods, merchandise, supplies and other commodities shall be housed in entirely enclosed structures.

### **Fences, Walls and Gates**

30. **Fencing Plan:** Prior to the erection of any fence or wall, a fencing and wall plan shall be required and approved by the community development department. The fencing and wall plan shall be required prior to the issuance of any certificate of occupancy.
31. **Pool Enclosure:** All pools and spas shall be enclosed with a minimum 5 foot high fence with a self-closing and self-latching device.

### **Source Reduction and Recycling**

32. **Integrated Waste Management:** Prior to the issuance of any certificate of occupancy, the applicant shall prepare and submit to the community development department for review and approval an integrated waste management plan that addresses source reduction, reuse and recycling. The plan shall include a description of the materials that will be generated and measures to reduce, reuse and recycled materials, including, but not limited to beverage containers, food waste, office and guest room waste.
33. **Construction and Demolition Materials Management Plan:** Prior to the issuance of any building or grading permits, an approved construction and demolition materials management plan (CDMMP) shall be prepared and submitted to the community development department for approval. The CDMMP shall document how the applicant will divert existing on-site asphalt and rip rap materials along the coast through reuse on-site or processing at an off-site facility for reuse. The CDMMP shall also identify measures to reuse or recycle building materials, including wood, metal and concrete block to meet the City's diversion goal requirements.
34. **Solid Waste/Recycling Management:** The project site design shall incorporate areas for collection of solid waste with adequate space for separate collection of recyclables.

### **Street and Parking Improvements**

35. **Emergency Access:** A plan identifying emergency vehicular access shall be submitted to the Sand City contract fire department and the public works director for approval prior to the issuance of any grading or building permits.
36. **Emergency Evacuation:** Prior to issuance of any building permit, the applicant shall submit an emergency evacuation plan for approval by the building department.
37. **City-Owned Property:** The public parking, turnaround and landscaping improvements on the former Granite Construction property shall be installed by the applicant to the satisfaction

of the public works director. The City shall require the applicant to enter into a lease agreement to construct and maintain those amenities and public improvements. The lease shall also require the lessor to hold the City harmless from any loss arising from use of the property. The lease agreement shall be approved by the City Attorney prior to the issuance of any certificate of occupancy.

38. **Sand Dunes Drive Extension:** The Sand Dunes Drive Extension shall be a minimum width of 24 feet and contain a bike path of a minimum width of 12 feet, along its westerly edge. This road extension shall be dedicated to the City of Sand City. A public easement along bike lane shall also be granted to the City of Sand City.
39. **Improvement of Tioga Avenue:** Tioga Avenue shall be improved to city design standards and to the satisfaction of the public works director. In addition, public restrooms and parking shall be installed as specified in the EIR Project for the project. The public restroom shall be designed to be of the equivalent quality to those recently designed for the Rio Del Mar Beach area in Santa Cruz County. The restrooms and lifeguard station shall be offered for dedication to the California Department of Parks and Recreation (CDPR). Should the CDPR refuse the dedication, the restrooms shall be maintained by the applicant, or any successors in interest, for the life of the project.
40. **Handicapped Access Ramps:** Handicapped access ramps shall be installed and retrofitted where necessary in accordance with the standards of the Americans With Disabilities Act (ADA).
41. **Street Improvements:** All street improvements of Tioga Avenue and Sand Dunes drive shall be completed in accordance with City of Sand City public works standards. All street improvements shall require security bonds and shall be constructed prior to any issuance of a certificate of occupancy.

#### **Construction/Grading/Drainage Requirements**

42. **Engineering Geology Report:** Structural building requirements and foundation design shall require the submittal of an engineering geology report specifying required foundation types for all proposed buildings. This report shall be approved by the City Engineer as part of the required conditions of building permit issuance. All recommendations within the report shall be incorporated into the design and construction of the project.
43. **Grading Plan:** A final grading plan shall be approved by the City Engineer prior to issuance of any grading permits. The grading plan shall include a balanced cut and fill approach to the site as indicated in the preliminary grading plan and calculations submitted by the applicant. Any excess sand shall be hauled off-site to a location acceptable to the City Engineer.
44. **Erosion/Dust Control:** Prior to the issuance of a grading permit, a dust and erosion control plan shall be submitted to the community development department for approval. Periodic watering of graded material will be required to control dust and sand dispersal.



45. **Habitat Protection Plan:** A qualified biologist shall be present during the snowy plover season (March - September) to insure that there is no harm to any snowy plover nesting areas. All requirements of the approved Habitat Protection Plan (HPP) shall be in force during grading and construction of the project.
46. **Retaining Walls** Retaining walls shall be limited in height as identified on approved grading plans by the City Engineer. Retaining wall colors and materials shall be approved by the community development department prior to grading permit approval. Retaining walls shall be of an earthtone color.
47. **Drainage:** Prior to the issuance of any grading or building permit, the applicant shall prepare and submit a master drainage plan for review and approval by the public works director. In addition, the landscape irrigation system and area drains proposed shall be reviewed and approved by the City Engineer prior to installation. All habitable buildings shall be flood-proofed below the 32-foot finished floor elevation.

#### **Storm Water Quality Management and Control**

48. **NPDES requirements:** Prior to the issuance of any grading or building permits, the applicant shall provide a water quality management plan and maintenance agreement (WQMPMA) outlining the post-construction best management practices (BMPs); and, a storm water pollution prevent plan (SWPPP) , describing the construction phase BMPs to ensure compliance with the NPDES general permit.. These plans shall be subject to the approval of the director of public works. A full description of the storm water quality requirements for this project are contained in **Exhibit D**, attached hereto and incorporated herein by this reference.

#### **Mitigation Monitoring and Reporting Plan**

49. **Environmental Conditions:** All requirements to reduce environmental impacts to a less than significant impact, as contained in the mitigation monitoring and reporting program (MMRP) are incorporated herein by this reference and shall be conditions of this permit. No certificates of occupancy shall be issued until the environmental mitigation measures required for the project are completed.

#### **Sewerage and Water line Design and Construction**

50. **Sewer Connection Approval.** Prior to issuance of any building or grading permits, the applicant shall pay all fees and prepare sewer plans and any necessary easements meeting the standards of the Seaside County Sanitation District (SCSD). The SCSD shall approve the plans and permits for required sewer installation prior to the issuance of building permits.
51. **Water Lines:** All water line design and construction shall be approved by the City Engineer California American Water (CAW) and the city's contract Fire Department, Monterey Fire, for fire flow requirements.

## **Fire Protection Requirements**

52. All plans shall be approved by the city's contract fire department, Monterey Fire, which shall include, but not be limited to the following requirements:
- a. Fire Flow: The required fire flow for the building complex shall be determined by the construction type and floor area of the largest building in the complex. The number of fire hydrants and duration of flow shall be also be determined by same.
  - b. The proposed buildings shall be required to have fire sprinklers and standpipes.
  - c. The buildings shall be required to have a fire alarm system in conformance with NFPA 72
  - d. Fire access roads of 20 foot wide minimum and 13.5 vertical clearance are required.

## **Indemnification**

53. The applicant agrees as a condition of approval of the permits for the Project to hold harmless, defend and indemnify the City of Sand City and its officials at the applicant's sole expense against any action brought as a result of the approval of the permits for the Project or the certification of the environmental impact report for the Project. The applicant will reimburse the City for any court costs and attorney's fees which the City may be required by a court to pay as a result of such action. The City may, at its sole discretion, participate in the defense of any such action/ but such participation shall not relieve the applicant of its obligations under this condition An indemnification agreement incorporating the provisions of this condition shall be recorded upon demand of the City Attorney or prior to the issuance of building permit for the Project, whichever occurs first.

## **Economic/Labor Considerations**

54. **Vacation Ownership Resort /Timeshare In-Lieu Fee:** An annual transient occupancy in lieu fee shall be paid on a quarterly basis to the City of Sand City for that portion of the project with vacation ownership (timeshare) units. The annual in lieu fee for the initial year of operation shall be \$100 per week interval sold. For example, based on 105 units and 5355 intervals sold, the annual fee paid to Sand City would be equal to  $5355 \times \$100 = \$535,500$ . This annual fee per interval shall also be subject to annual adjustment based on the All Urban San Francisco/Oakland/San Jose Metropolitan Area consumer price index (CPI -U) escalator.
55. **Labor Considerations:** A preference to use local labor shall be established by contacting the Private Industry Council (PIC) and local builders exchanges. Local construction firms that can demonstrate an ability to perform the work required shall be notified of upcoming construction by notice through the Monterey Builders Exchange. The developer and any successors in interest agree to give first consideration to construction firms that provide first priority to using local labor, as available, on this project.

**Non-interference clause:** Future hotel, timeshare (vacation club) and restaurant owners and/or operators agree to have non-interference clauses in all labor contracts to allow

employees the choice to unionize.

56. **Lower Cost Visitor-Serving Facilities.** Prior to issuance of any occupancy permits, the applicant shall be required to pay an in-lieu fee of \$1,230,000 (calculated as 235 hotel units x 70% occupancy = 165 occupied units x 25% = 41 units x \$30,000 fee per unit) to the Coastal Commission for the provision of lower cost visitor serving facilities within Sand City and/or Monterey County. Lower cost visitor accommodations shall be defined as overnight stays offered at daily rental rates lower than the median daily hotel room rates (ADR) published for the Monterey-Seaside-Marina area (assumed to be \$150/night). The applicant may exercise the option of developing an alternate program for providing lower cost visitor accommodations at the site, or within the Monterey County region instead of paying this fee, provided there is an equivalent benefit, such as: (a) on-site reduced or subsidized average daily rates; (b) vacation club ownership programs; (c) offsite hostel or comparable lower-cost accommodations; and/or (d) room rental surcharge collected and dedicated to lower-cost visitor accommodations. All programs used an alternative to the in-lieu fee shall require approval of the Executive Director of the Coastal Commission.
57. **Vacation Club Use and Operations.** The vacation club component of the project consist of 105 units (on the Sterling Site) that can be made available on a credit (or point) system generally established to allow one week purchases within the operating company's club system. The vacation club component of the project shall be subject to the following requirements:
- (a) **Vacation Club Owner Occupancy Limitations.** Each owner, including any individual, family, group, or partnership of owners for a given credit (regardless of the number of owners) may use said credits for no more than 84 days in any calendar year, and no more than 14 total days between the Saturday of the Memorial Day weekend through the Monday of the Labor Day weekend, with no stay exceeding 29 consecutive days of use during any 60 day period. Such occupancy limitations shall be unaffected by multiple owners during the calendar year, meaning that all such owners of any given credit shall be collectively subject to the occupancy restrictions as if they were a single, continuous owner.
  - (b) **Vacation Club Units Will Be Available to the General Public.** Whenever any vacation club unit is not occupied by its owner(s), the unit shall be available for use by the general public on the same basis as a traditional hotel room.
  - (c) **Vacation Club Management and Reservations.** The vacation club operator shall manage all aspects of the club, including but not limited to reservation booking, mandatory front desk check-in and check-out, maintenance, and cleaning services (including preparing units for use by guests/owners, a service for which the operator may charge unit owners a reasonable fee). All unit keys shall be electronic and shall be newly crated by the operator upon each change in user occupancy for any unit. The vacation club operator contract and the hotel operator contract may provide overlapping responsibilities for such similar services, at their discretion.
  - (d) **Conversion Prohibited.** The conversion of the approved vacation club units to other types of limited use visitor accommodation units (e.g., condo-hotel, fractional ownership,

etc.) or to full-time occupancy condominium units or to any other units with use arrangements that differ from the approved project shall be prohibited without amendment of the CDP.

(e) **Occupancy and Use Monitoring and Recording.** The vacation club operator shall monitor and record occupancy and use by the general public and the vacation club owners through each year. Such monitoring and record keeping shall include specific accounting of owner use, payments of fees to the City in-lieu of transient occupancy taxes (TOT); and TOT paid for all units rented to the public. The records shall be sufficient to demonstrate compliance with the restrictions set forth herein. All such records shall be maintained for ten years and shall be made available to the Executive Director of the Coastal Commission and/or the City.

(f) **Compliance Required.** The vacation club owner and operator shall maintain the legal ability to ensure compliance with the terms and conditions stated herein at all times in perpetuity, and shall be responsible for ensuring that all parties subject to these restrictions comply with the restrictions.

(g) **Declaration of Restrictions.** Prior to issuance of a grading or building permit, the applicant shall record this combined development permit against title to the property. A statement that the provisions of the deed restriction reflect the on-going requirements of this permit, and that this declaration cannot be changed in any material way without the approval of a coastal development permit amendment, unless it is determined by the Executive Director of the Coastal Commission that an amendment is not legally required'

58. **Water Supply:** The Environmental Impact Report certified for the project estimates that the project will use up to 64.4 acre feet of water annually. The City has authorized the allocation of twenty (20) acre feet of water from its Public Water Credit Account to the project. The City will also authorize the allocation of forty four (44.4) acre feet of water from the Sand City Water Entitlement to the project. If, for any reason, water allocated from the Public Water Credit Account cannot be used for the project, the City will authorize the allocation of an additional twenty (20) acre feet of water from the Sand City Water Entitlement to the project on the condition that the applicant abandon any right he may have to any allocation of water from the City's Public Water Credit Account.

## CITY OF SAND CITY

## ORDINANCE SC \_\_\_\_\_ (2014)

**AN ORDINANCE OF THE CITY OF SAND CITY AMENDING  
TITLE 18 OF THE MUNICIPAL CODE AND ZONING MAP TO ELIMINATE THE  
COASTAL ZONE MANUFACTURING (CZ-M) ZONING DESIGNATION FROM THOSE  
PROPERTIES COMMONLY REFERRED TO AS THE 'STERLING' SITE AND THE  
'GRANITE CONSTRUCTION' PROPERTY AND TO ESTABLISH A PLANNED UNIT  
DEVELOPMENT (PUD) COMBINING DISTRICT FOR ALL PROPERTIES WITHIN  
THE 'COLLECTIONS AT MONTEREY BAY' COASTAL RESORT PROJECT  
PROPERTIES (APN 011-012-001, 002, 005 & 011-501-016)**

**WHEREAS**, John King, of King Ventures (Applicant), submitted an application for a Coastal Development Permit (CDP), Site Plan (SP), and Planned Unit Development (PUD) approvals to develop certain ocean-front properties within the City of Sand City (City), containing approximately 26.46 acres of land located within the coastal zone of the City (Project Site), consisting of three properties; the "Sterling" property (Assessor's Parcel Number 011-012-005), the "McDonald" property (Assessor's Parcel Number 011-012-001 & 2), and the "Granite Construction" property (Assessor's Parcel Number 011-501-016), generally located north of Tioga Avenue, west of Highway 1 freeway corridor, and south of property owned by the Monterey Peninsula Regional Park District; and

**WHEREAS**, the Applicant's development proposal is commonly known as the 'Collection at Monterey Bay' coastal resort (Proposed Project), which is a 340-unit hotel and vacation club (235-room hotel & 105-room vacation ownership) resort development that includes ancillary facilities and public and private improvements such as a conference facility, restaurants, open space, habitat enhancement, and public road extensions and trails; and

**WHEREAS**, by separate action, the City Council of the City of Sand City certified the Final Environmental Impact Report (FEIR), prepared for the Proposed Project, as being in accordance with the requirements pursuant to the California Environmental Quality Act (CEQA), as more particularly described in the City of Sand City Resolution No. SC \_\_\_\_\_ (2013), which is incorporated herein by this reference; and

**WHEREAS**, Planned Unit Developments may be located in any coastal zoning district in accordance with the provisions of the Local Coastal Program's Implementation Plan for the purpose of providing long-term developments that contain a variety of land uses, and are designed to take advantage of unique site characteristics while containing only those land uses allowed or conditionally allowed by that site's zoning; and

**WHEREAS**, the Local Coastal Program's Implementation Plan requires a Planned Unit Development for Visitor Serving Commercial (VSC) developments; and

WHEREAS, the Project Site is within an area governed by the Memorandum of Understanding (MOU) executed in April of 1996 between the City, the former Sand City Redevelopment Agency, the Monterey Peninsula Regional Park District, and the State of California Department of Parks and Recreation, which established an agreement among the aforementioned parties as to which portions of the Sand City coastline were appropriate for development that included the Applicant's Project Site; and

WHEREAS, the proposed elimination of the 'Manufacturing' (M) zoning designations on the aforementioned 'Sterling' and 'Granite Construction' properties; and, establishment of the 'Planned Unit Development' combining district zoning overlay are both consistent with the Sand City General Plan, the Sand City Local Coastal Program (LCP), and the Sand City Zoning Ordinance.

NOW, THEREFORE, BE IT ORDAINED by the City Council of the City of Sand City as follows:

**SECTION 1 - Zoning Map:** Chapter 18.06.060, the official Sand City Zoning Map, is hereby amended to implement the following changes:

1. Eliminate the 'Coastal Zone Manufacturing' (CZ-M) designation on the 'Sterling' property (APN 011-012-005) and the 'Granite Construction' property (APN 011-501-016), and
2. Establish a 'Planned Unit Development' (PUD) overlay designation for the Subject Property (APN 011-012-001, 002, 005, and 011-501-016), as illustrated on "Ordinance Exhibit A", attached hereto and incorporated herein by this reference.

**SECTION 2 - Effective Date:** This ordinance and Zoning Map update shall become effective thirty (30) days following this ordinance's adoption by the City Council; or following adoption by the California Coastal Commission should the Collections project be appealed.

**PASSED AND ADOPTED** by the City Council of Sand City on this \_\_\_\_ day of January, 2014 by the following vote:

AYES  
NOES:  
ABSENT:  
ABSTAIN:

APPROVED

ATTEST:

\_\_\_\_\_  
David K. Pendergrass, Mayor

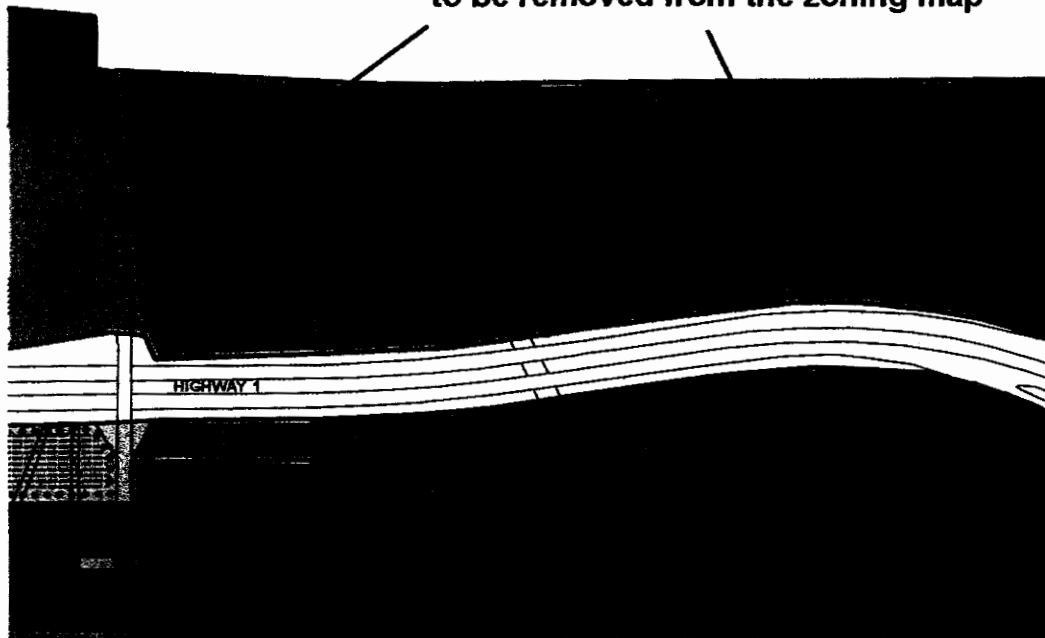
\_\_\_\_\_  
Linda K. Scholink, City Clerk

# ORDINANCE EXHIBIT A

ORD 14- (2014)

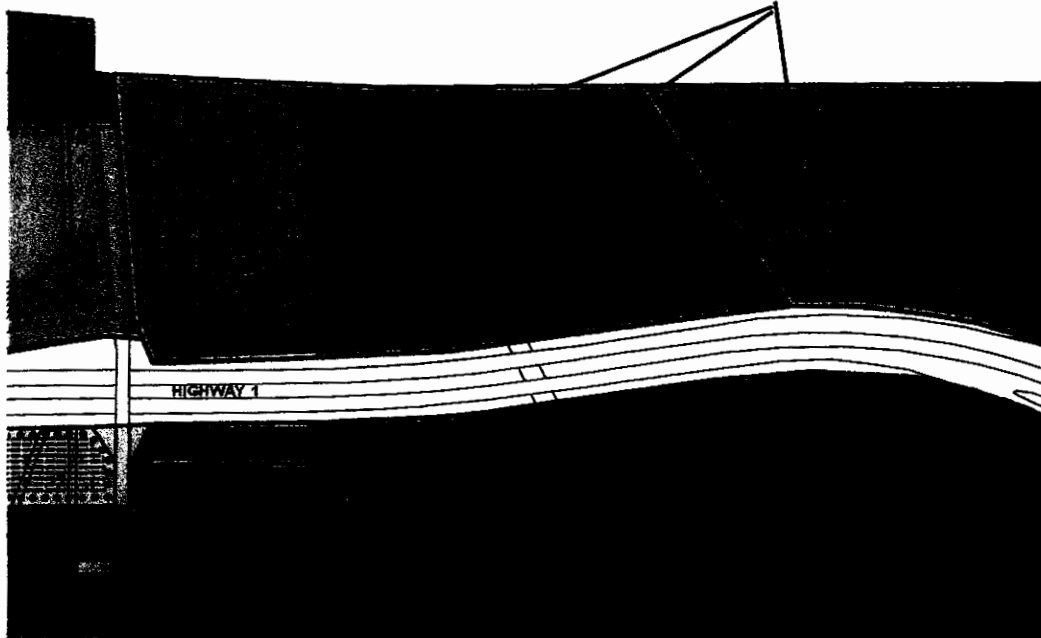
## Current Zoning Map

Existing 'CZ-M' designation  
to be removed from the zoning map



## Proposed Zoning Map

New Planned Unit Development (PUD)  
Zoning designation added for the 'Sterling',  
'McDonald', and 'Granite' properties.





## CALIFORNIA COASTAL COMMISSION

SOUTH CENTRAL COAST DISTRICT OFFICE

89 SOUTH CALIFORNIA STREET, SUITE 200

VENTURA, CA 93001-4506

VOICE (805) 585-1801 FAX (805) 644-1732

125 Front Street  
Santa Cruz, CA  
FAX 831 427 4877

## APPEAL FROM COASTAL PERMIT DECISION OF LOCAL GOVERNMENT

Please Review Attached Appeal Information Sheet Prior To Completing This Form.

SECTION I. Appellant(s)Name: **Ventana Chapter, Sierra Club**Mailing Address: **P.O.Box 667**City: **Mill Valley, California**Zip Code: **94942**Phone: **415-515-5688**SECTION II. Decision Being Appealed

1. Name of local/port government:

**Sand City**

2. Brief description of development being appealed:

**The "Collections" SCH #2006041070**

3. Development's location (street address, assessor's parcel no., cross street, etc.):

4. Description of decision being appealed (check one.):

- ☐ Approval; no special conditions
- ☒ Approval with special conditions:
- ☐ Denial

**RECEIVED****DEC 30 2013****CALIFORNIA  
COASTAL COMMISSION  
CENTRAL COAST AREA**

**Note:** For jurisdictions with a total LCP, denial decisions by a local government cannot be appealed unless the development is a major energy or public works project. Denial decisions by port governments are not appealable.

**TO BE COMPLETED BY COMMISSION:**

APPEAL NO:

**A-3-SNC-14-0001**

DATE FILED:

**12/30/2013**

DISTRICT:

**Central Coast**

CALIFORNIA COASTAL COMMISSION

CENTRAL COAST DISTRICT OFFICE  
5 FRONT STREET, SUITE 300  
MANTA CRUZ, CA 95060-4508  
PHONE (831) 427-4863 FAX (831) 427-4877



APPEAL FROM COASTAL PERMIT DECISION OF LOCAL GOVERNMENT

Please Review Attached Appeal Information Sheet Prior To Completing This Form.

SECTION I. Appellant(s)

Name: CA Coastal Commission, Commissioners Steve Kinsey and Mary Shallenberger  
Mailing Address: 45 Fremont Street, Ste. 2000  
City: San Francisco, CA Zip Code: 94105 Phone: (415) 904-5200

SECTION II. Decision Being Appealed

1. Name of local/port government:

Sand City

2. Brief description of development being appealed:

Construct a 340-room visitor serving coastal resort (The Collections at Monterey Bay) including a restaurant, conference center and wellness spa on a 26.46 acre site located west of Highway 1 and north of Tioga Avenue, Sand City. Project to be constructed in two phases. Properties known as the "Sterling" site, the "McDonald" site and the "Granite" site.

3. Development's location (street address, assessor's parcel no., cross street, etc.):

Tioga Avenue and Highway 1, Sand City (Monterey County)

4. Description of decision being appealed (check one.):

- ☐ Approval; no special conditions
- ☒ Approval with special conditions:
- ☐ Denial

RECEIVED

JAN 08 2014

CALIFORNIA  
COASTAL COMMISSION  
CENTRAL COAST AREA

Note: For jurisdictions with a total LCP, denial decisions by a local government cannot be appealed unless the development is a major energy or public works project. Denial decisions by port governments are not appealable.

TO BE COMPLETED BY COMMISSION:	
APPEAL NO:	A-3-SNC-14-0001
DATE FILED:	December 30, 2013
DISTRICT:	Central Coast

**APPEAL FROM COASTAL PERMIT DECISION OF LOCAL GOVERNMENT (Page 2)**

5. Decision being appealed was made by (check one):

- ☐ Planning Director/Zoning Administrator  
☒ City Council/Board of Supervisors  
☐ Planning Commission  
☐ Other

6. Date of local government's decision: December 17, 2013

7. Local government's file number (if any): CDP 13-06, PUD 13-03

**SECTION III. Identification of Other Interested Persons**

Give the names and addresses of the following parties. (Use additional paper as necessary.)

a. Name and mailing address of permit applicant:

King Ventures, 285 Bridge Street, San Luis Obispo, CA 95401, attn: John King

b. Names and mailing addresses as available of those who testified (either verbally or in writing) at the city/county/port hearing(s). Include other parties which you know to be interested and should receive notice of this appeal.

(1) City of Sand City, 1 Sylvan Park, Sand City, CA 93955, attn: Steve Matarazzo, Community Development Director

(2) Rita Dalessio and Lauren Silver, Ventana Chapter Sierra Club, P.O. Box 667, Mill Valley, CA 94942

(3) Ginetta Giovinco, 355 South Grand Avenue, 40<sup>th</sup> Floor, Los Angeles, CA 90071

(4)

## **APPEAL FROM COASTAL PERMIT DECISION OF LOCAL GOVERNMENT (Page 3)**

### **SECTION IV. Reasons Supporting This Appeal**

#### **PLEASE NOTE:**

- Appeals of local government coastal permit decisions are limited by a variety of factors and requirements of the Coastal Act. Please review the appeal information sheet for assistance in completing this section.
- State briefly **your reasons for this appeal**. Include a summary description of Local Coastal Program, Land Use Plan, or Port Master Plan policies and requirements in which you believe the project is inconsistent and the reasons the decision warrants a new hearing. (Use additional paper as necessary.)
- This need not be a complete or exhaustive statement of your reasons of appeal; however, there must be sufficient discussion for staff to determine that the appeal is allowed by law. The appellant, subsequent to filing the appeal, may submit additional information to the staff and/or Commission to support the appeal request.



## **Reasons for Appeal**

### **City of Sand City Coastal Development Permit (CDP) 13-06 (Collections Project)**

Sand City's approval of the above referenced CDP authorizes the construction and operation of a 340-room visitor serving resort (105-room condominium hotel and 235-room hotel). The approved project also includes a restaurant, conference center, onsite parking, a wellness spa, public access, road improvements to Sand Dunes Drive and Tioga Avenue, public restrooms, a lifeguard station, and public parking. All of the approved project components are located in the dunes west of Highway 1 and north of Tioga Avenue. For the following reasons, the approved project is inconsistent with the provisions of Sand City's certified Local Coastal Program with respect to hazards, natural visual resources, development, and public access, and is also inconsistent with the public access and recreation policies of the Coastal Act:

#### **Hazards**

The certified LCP's hazards policies and standards require all development to be sited and designed to minimize risk from geologic hazards. For all development in the coastal zone, the LCP also requires the preparation of a geologic report and the identification of appropriate hazard setbacks based on the economic life of the project (a minimum 50 years). The LCP also limits the use of shoreline protective devices to existing development. Also, the LCP requires geotechnical reports to recommend mitigation measures and alternatives to minimize impacts due to hazards. The LCP further requires that new development proposals be denied if shoreline hazards cannot be adequately mitigated as recommended in the geologic report, and also requires that a project be approved only if the project's density reflects consideration of the degree of the on-site hazard.

As approved by the City, the resort and related development would be sited in an area that may be threatened by coastal erosion within the next 50 years. The City's approval includes development seaward of the identified 50-year erosion setback (e.g. a roadway cul-de-sac, restrooms, lifeguard station, parking). At 18-feet NGVD, the underground parking garage is located within the FEMA 100-year flood inundation zone. Similarly, portions of the first floor habitable elements (+30 NGVD) may be subject to wave run-up and flooding under modest sea level rise scenarios and within the LCP's minimum 50-year time horizon. The City's approval also includes resort development (all habitable hotel, resort, vacation ownership units and non-habitable parking elements) that relies on foundational elements, including a system of deep piers that will act as a shoreline protective device. Finally, the City's approval does not explicitly address the removal of concrete, asphalt, slurry tailings, and other debris that are located seaward of the approved development which could create a hazard, exacerbate erosion, and adversely affect shoreline processes. For these reasons, the approved project is inconsistent with the LCP's hazards policies and standards.

#### **Visual Resources**

The LCP includes numerous policies and standards designed to protect ocean views from Highway One and other public viewpoints. The project approved by the City does not

conform to the LCP's visual resource protection policies because the approved project: exceeds LCP height limitations; encroaches upon and obstructs blue water views within identified view corridors established by the LCP; and will significantly detract from the natural scenic qualities of the area. The visual impact of the City-approved project, as viewed from the beach and from the City of Monterey, will be exacerbated by the approved landform alterations that will lower the height of the existing foredune area, inconsistent with LCP Policies that require the use of existing dunes to act as visual barriers. For these reasons, the approved project is inconsistent with the LCP's visual protection policies and standards.

### **Public Access and Recreation**

While the project includes public access and recreation improvements, it appears that at least some of these improvements are inconsistent with LCP and Coastal Act policies that protect public access and require the provision of maximum public access. Specifically, although the project would extend the Sand Dunes Drive bike path (which is a segment of the Monterey Bay Sanctuary Scenic Trail (MBSST)), the path would be relocated much closer to Highway 1 and be designed as a Class II shared vehicle - bike path. However, the existing path located north and south of the project site is a Class I dedicated bike/pedestrian trail, as are the entire remaining segments of the MBSST. The approved Class II designation path, which would provide a link in the California Coastal Trail, falls short of the design objectives for completing the MBSST. For these reasons, the approved project is inconsistent with the public access and recreation policies of the Coastal Act and the LCP.

### **Development**

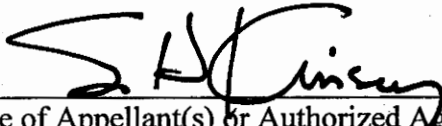
The certified LCP establishes that density allowances are maximums and that development shall be limited to that which adequately addresses resource constraints, including with regard to public access and recreation, natural hazards, dunes, and views to the bay. Although designed at a density that is less than the theoretical maximum for the site, given the underlying zoning, the City-approved project is much too dense given the resource constraints (hazards, views, etc.) of the site, meaning that a project of the proposed density cannot be built consistent with all applicable LCP policies. Thus, the approved project is inconsistent with the LCP in this respect.



**APPEAL FROM COASTAL PERMIT DECISION OF LOCAL GOVERNMENT (Page 4)**

**SECTION V. Certification**

The information and facts stated above are correct to the best of my/our knowledge.

  
\_\_\_\_\_  
Signature of Appellant(s) or Authorized Agent

Date: 1/8/14

**Note:** If signed by agent, appellant(s) must also sign below.

**Section VI. Agent Authorization**

I/We hereby authorize \_\_\_\_\_  
to act as my/our representative and to bind me/us in all matters concerning this appeal.

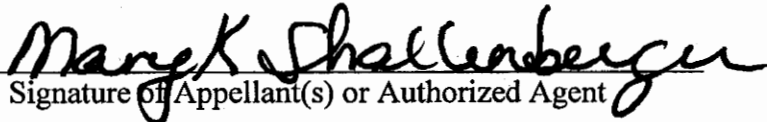
\_\_\_\_\_  
Signature of Appellant(s)

Date: \_\_\_\_\_

**APPEAL FROM COASTAL PERMIT DECISION OF LOCAL GOVERNMENT (Page 4)**

**SECTION V. Certification**

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Signature of Appellant(s) or Authorized Agent

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1/8/14

**Note:** If signed by agent, appellant(s) must also sign below.

**Section VI. Agent Authorization**

I/We hereby authorize \_\_\_\_\_  
to act as my/our representative and to bind me/us in all matters concerning this appeal.

\_\_\_\_\_  
Signature of Appellant(s)

Date:

**APPEAL FROM COASTAL PERMIT DECISION OF LOCAL GOVERNMENT (Page 2)**

5. Decision being appealed was made by (check one):

- ☐ Planning Director/Zoning Administrator  
☒ City Council/Board of Supervisors  
☐ Planning Commission  
☐ Other

6. Date of local government's decision: 12/17/13

7. Local government's file number (if any): SCH #2006041070

**SECTION III. Identification of Other Interested Persons**

Give the names and addresses of the following parties. (Use additional paper as necessary.)

a. Name and mailing address of permit applicant:

**King Ventures  
285 Bridge Street  
San Luis Obispo, CA 95401**

b. Names and mailing addresses as available of those who testified (either verbally or in writing) at the city/county/port hearing(s). Include other parties which you know to be interested and should receive notice of this appeal.

- (1) **Attorney for City of Seaside  
Ginetta Giovinco, Esq.  
355 S. Grand Avenue, 40th Floor  
Los Angeles, CA 90071**
- (2) **King Ventures  
285 Bridge Street  
San Luis Obispo, CA 95401**
- (3) **Steve Matarazzo  
Community Development Director  
Sand City Planning Dept.  
1 Sylvan Park, Sand City, CA 93955**
- (4)

## **APPEAL FROM COASTAL PERMIT DECISION OF LOCAL GOVERNMENT (Page 3)**

### **SECTION IV. Reasons Supporting This Appeal**

#### **PLEASE NOTE:**

- Appeals of local government coastal permit decisions are limited by a variety of factors and requirements of the Coastal Act. Please review the appeal information sheet for assistance in completing this section.
- State briefly **your reasons for this appeal**. Include a summary description of Local Coastal Program, Land Use Plan, or Port Master Plan policies and requirements in which you believe the project is inconsistent and the reasons the decision warrants a new hearing. (Use additional paper as necessary.)
- This need not be a complete or exhaustive statement of your reasons of appeal; however, there must be sufficient discussion for staff to determine that the appeal is allowed by law. The appellant, subsequent to filing the appeal, may submit additional information to the staff and/or Commission to support the appeal request.

**The Project as approved is inconsistent with the City's certified LCP policies, including those related to hazard avoidance, protection of public views, natural resource protection, public access, and adequacy of public services (traffic).**

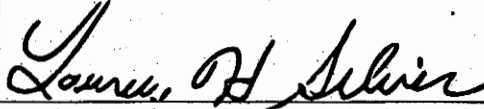
**Project revisions included in the FEIR do not adequately address natural resource constraints at the site, including protection of the Seacliff buckwheat and Western Snowy Plover. See LCP Policy 3.5.1 In addition, the revised project does not avoid and minimize significant impacts to important public views of the Pacific Ocean and the Monterey Peninsula. The FEIR does not adequately address traffic impacts, and does not adequately address shoreline hazards at the site.**

**The development is not sited and designed to avoid hazards, and is not sited to ensure safety and stability over its economic lifetime, as required by the Sand City LCP. It is clear that portions of the project as approved would be threatened by coastal erosion in scenarios based on longer (than 50 years) timeframes for the economic life of the project. The FEIR does not address higher risk scenarios. The FEIR does not discuss the effects on public access of re-routing the Monterey Bay Sanctuary Scenic Trail to accommodate the project.**

**APPEAL FROM COASTAL PERMIT DECISION OF LOCAL GOVERNMENT (Page 4)**

**SECTION V. Certification**

The information and facts stated above are correct to the best of my/our knowledge.



Signature of Appellant(s) or Authorized Agent

Laurens Silver, California Environmental Law Project

Date: 12/ 27/ 13

**Note:** If signed by agent, appellant(s) must also sign below.

**Section VI. Agent Authorization**

I/We hereby  
authorize

Laurens Silver, California Environmental Law Project

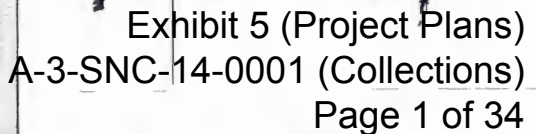
to act as my/our representative and to bind me/us in all matters concerning this appeal.



Signature of Appellant(s) *Chapter Chairperson*

Date: 12/27/13





## GRADING & DRAINAGE PLAN

64
0

Sears Stores	
In units	In sq ft
72 units	1,750,000 sq ft
800 units	784,000 sq ft
---	0
---	0
---	0
219 units	964,110 sq ft

McDonald's Stores	
In units	In sq ft
175 units	11,075 sq ft
40 units	56,820 sq ft
---	\$10,077 sq ft
---	11,950 sq ft
---	5,000 sq ft
---	18,800 sq ft
219 units	318,517 sq ft

Sears Roebuck	
In units	In sq ft
200 units	1,55,022 sq ft
1,400 units	1,348,789 sq ft
---	300,072 sq ft
---	11,950 sq ft
---	5,000 sq ft
---	18,800 sq ft
340 units	1,614,627 sq ft

Starting time provided	Accounted time provided	Total parking provided	Total parking required
131	419	610	HOV 3 + 610 = 1210
36	35	31	HOV 4 required = 121 species
32.7 species	494 species	641 species	683 species
—	44	44	64
1.4	—	3.6	0
—	44	44	0
34 species	34 species	200 species	64 species
341 species	341 species	750 species	687 species

1  
SHEET

**RECEIVED**  
JAN 17 2014  
CALIFORNIA  
COASTAL COMMISSION  
CENTRAL COAST AREA





Exhibit 5 (Project Plans)  
A-3-SNC-14-0001 (Collections)  
Page 2 of 34



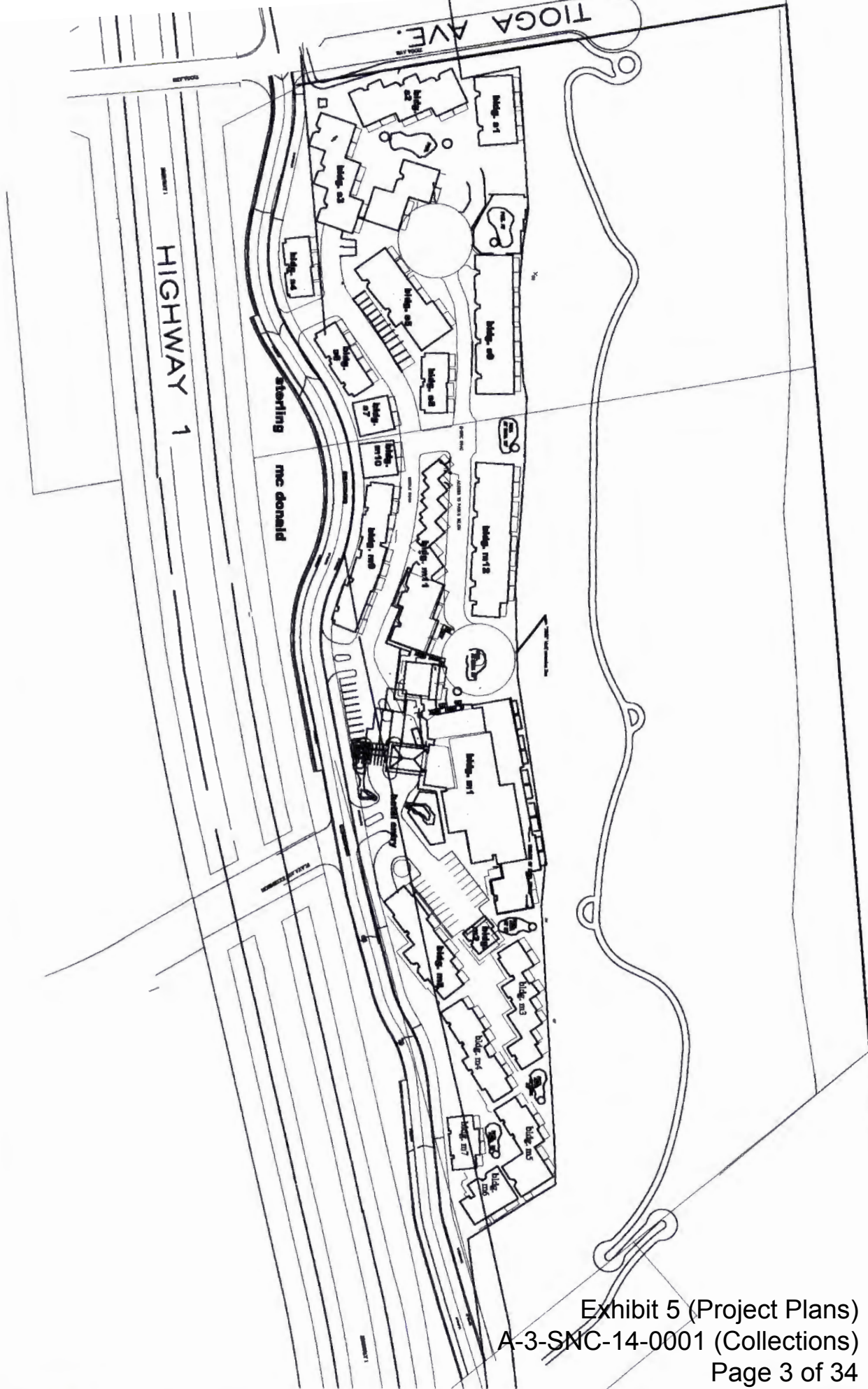


Exhibit 5 (Project Plans)  
A-3-SNC-14-0001 (Collections)  
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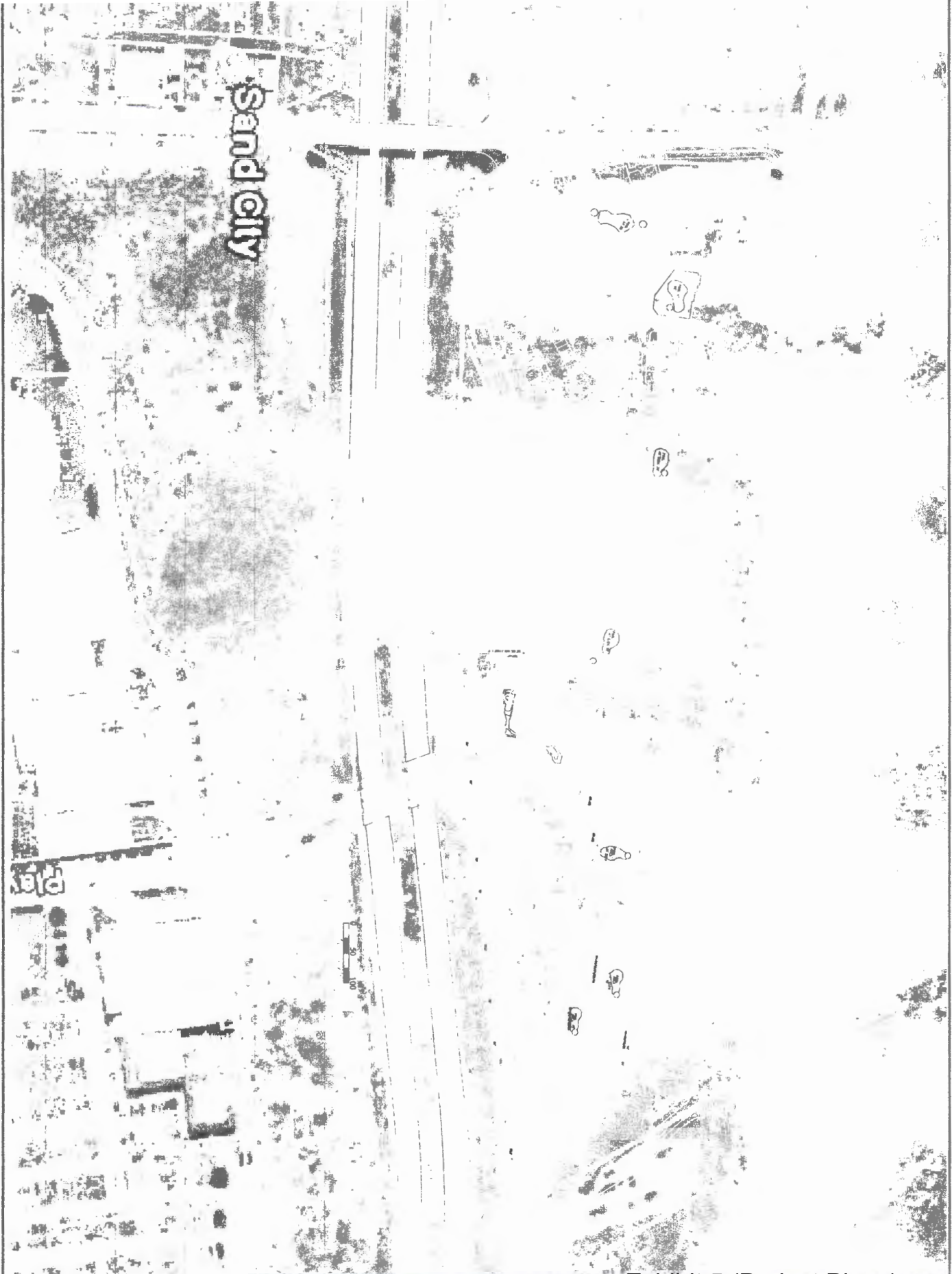


Exhibit 5 (Project Plans)  
A-3-SNC-14-0001 (Collections)  
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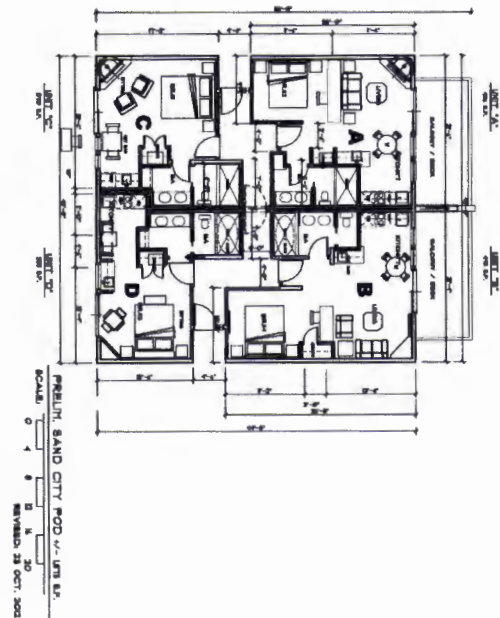
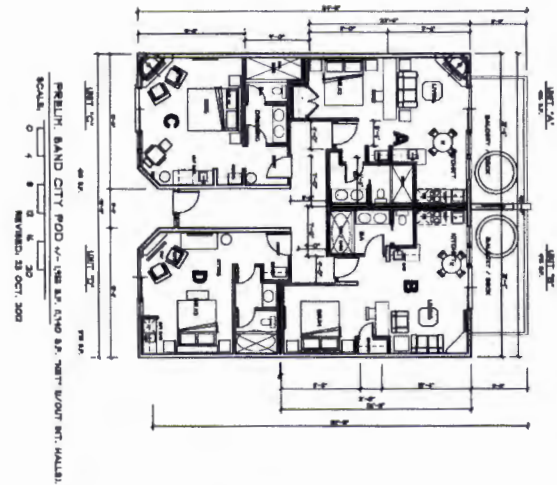
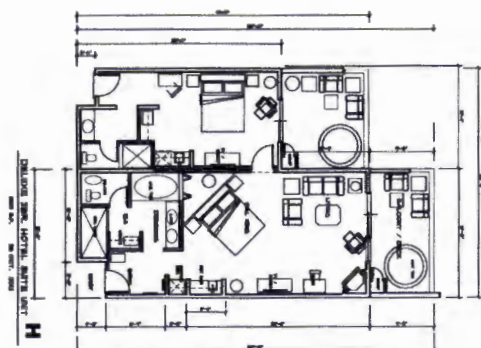
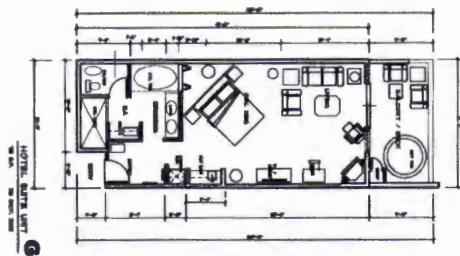
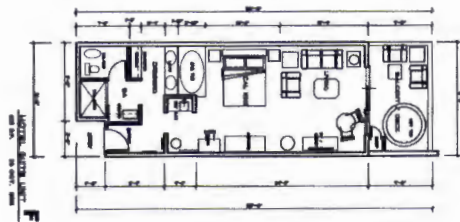
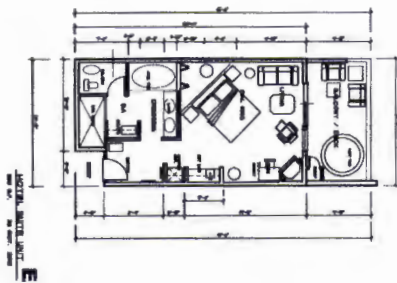


Exhibit 5 (Project Plans)  
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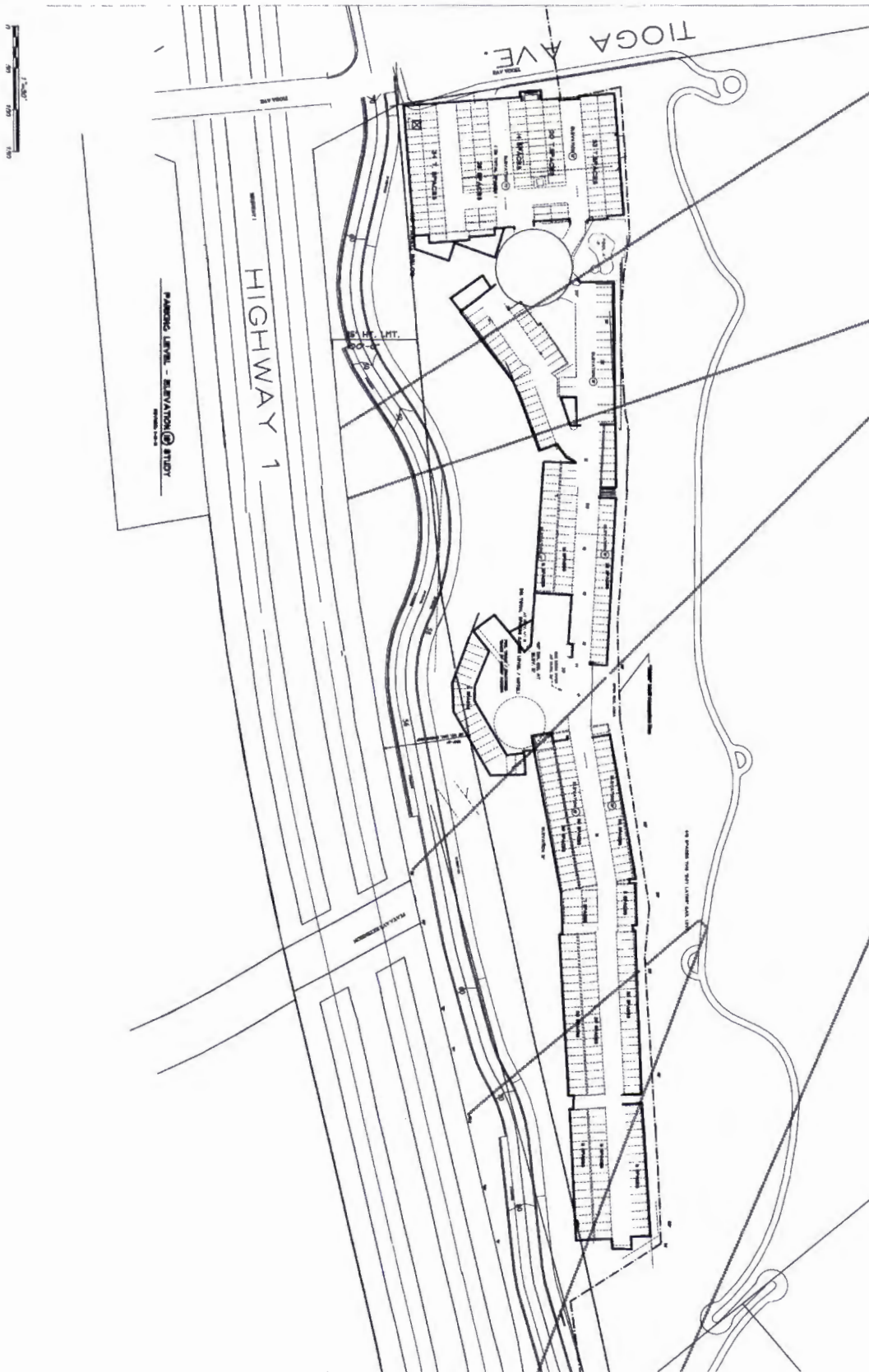


Exhibit 5 (Project Plans)  
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LEVEL "30 ELEV."  
REVISED: 11-3-12

HIGHWAY 1

TIOGA AVE.

15' HT. LMT.

PLAZA AND ENTRANCE

NOT TO SCALE

Exhibit 5 (Project Plans)  
A-3-SNC-14-0001 (Collections)  
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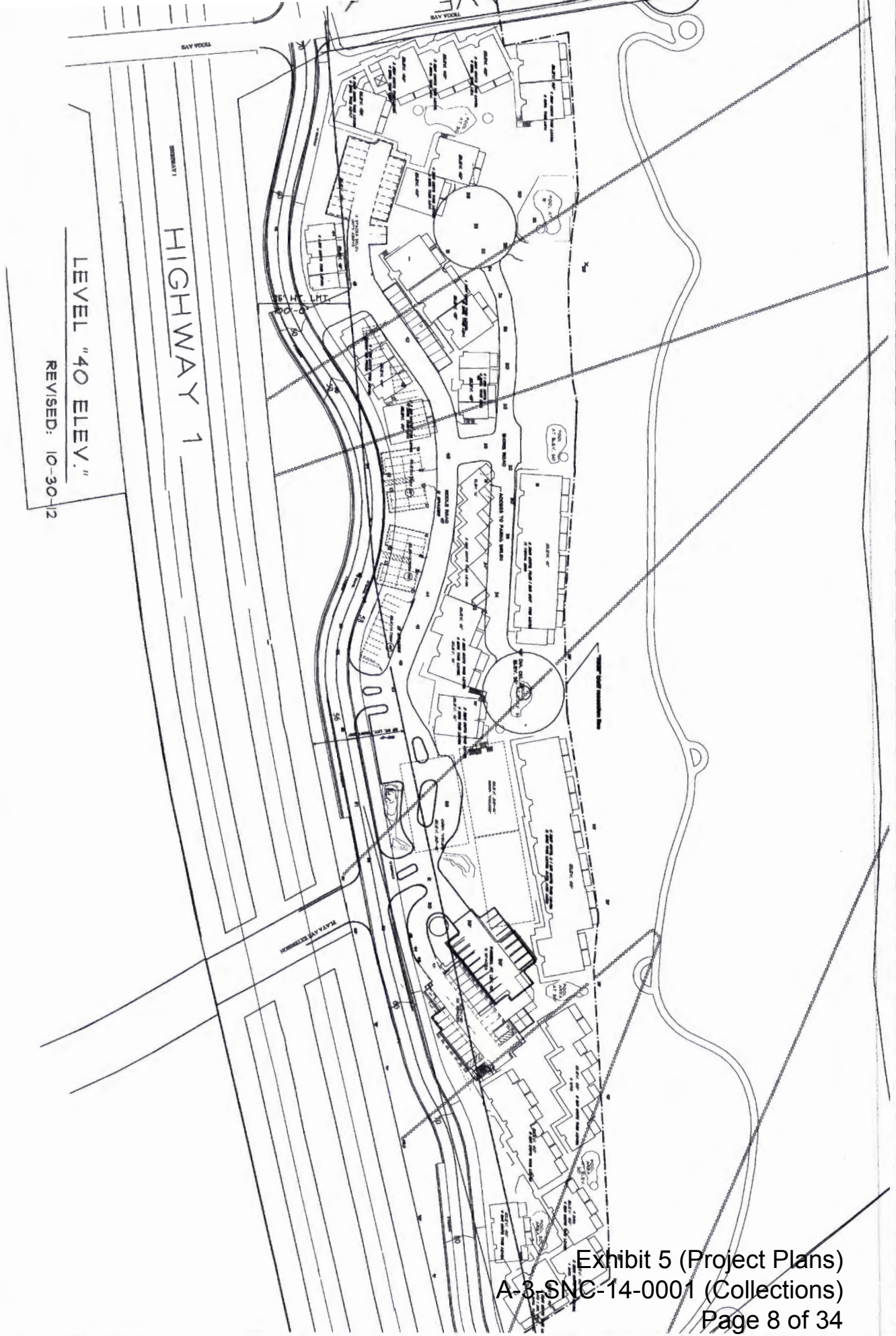


Exhibit 5 (Project Plans)  
 A-3-SNC-14-0001 (Collections)  
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LEVEL "50 ELEV."  
REVISED: 11-13-12

HIGHWAY 1

TIOGA AVE.

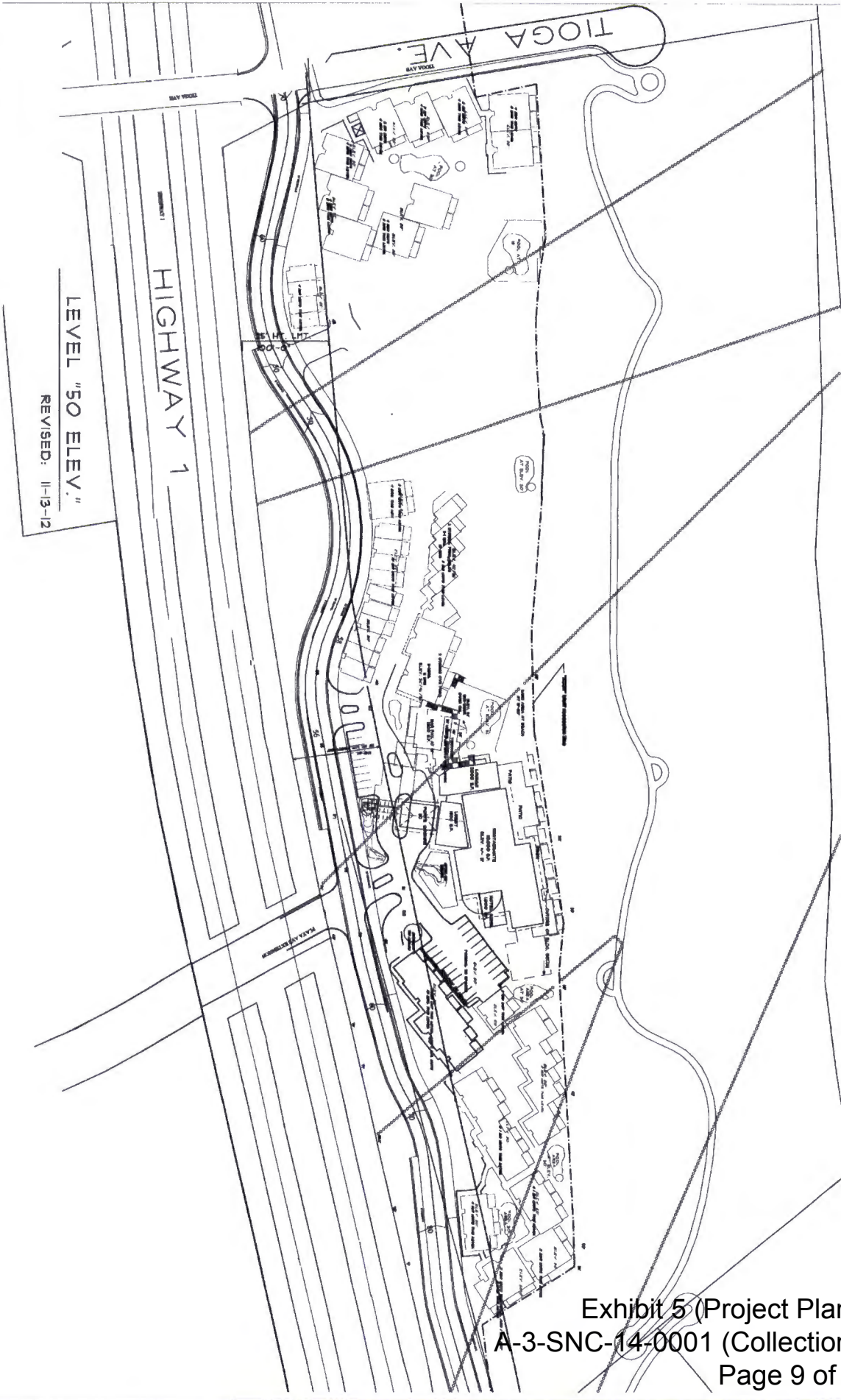


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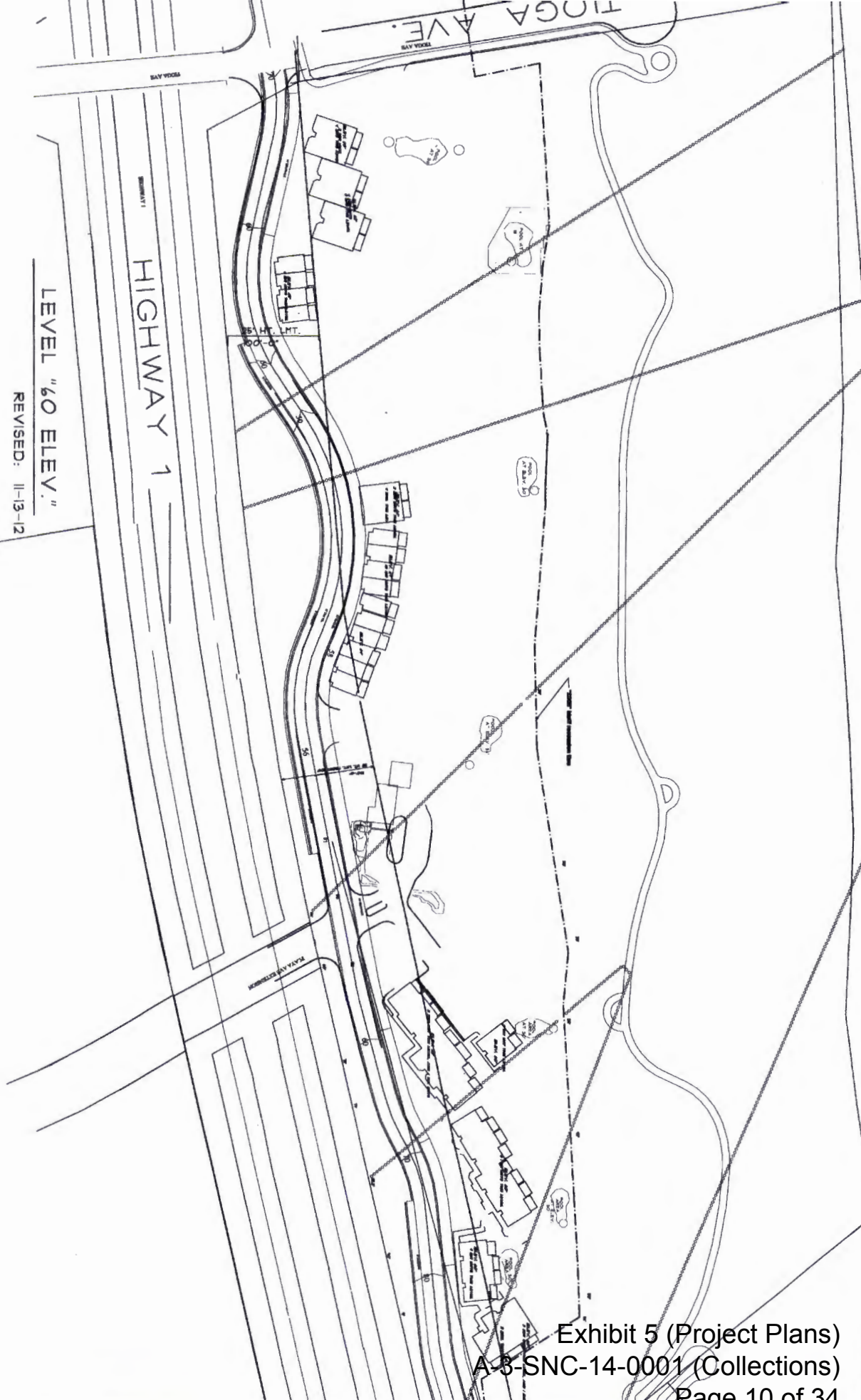


Exhibit 5 (Project Plans)  
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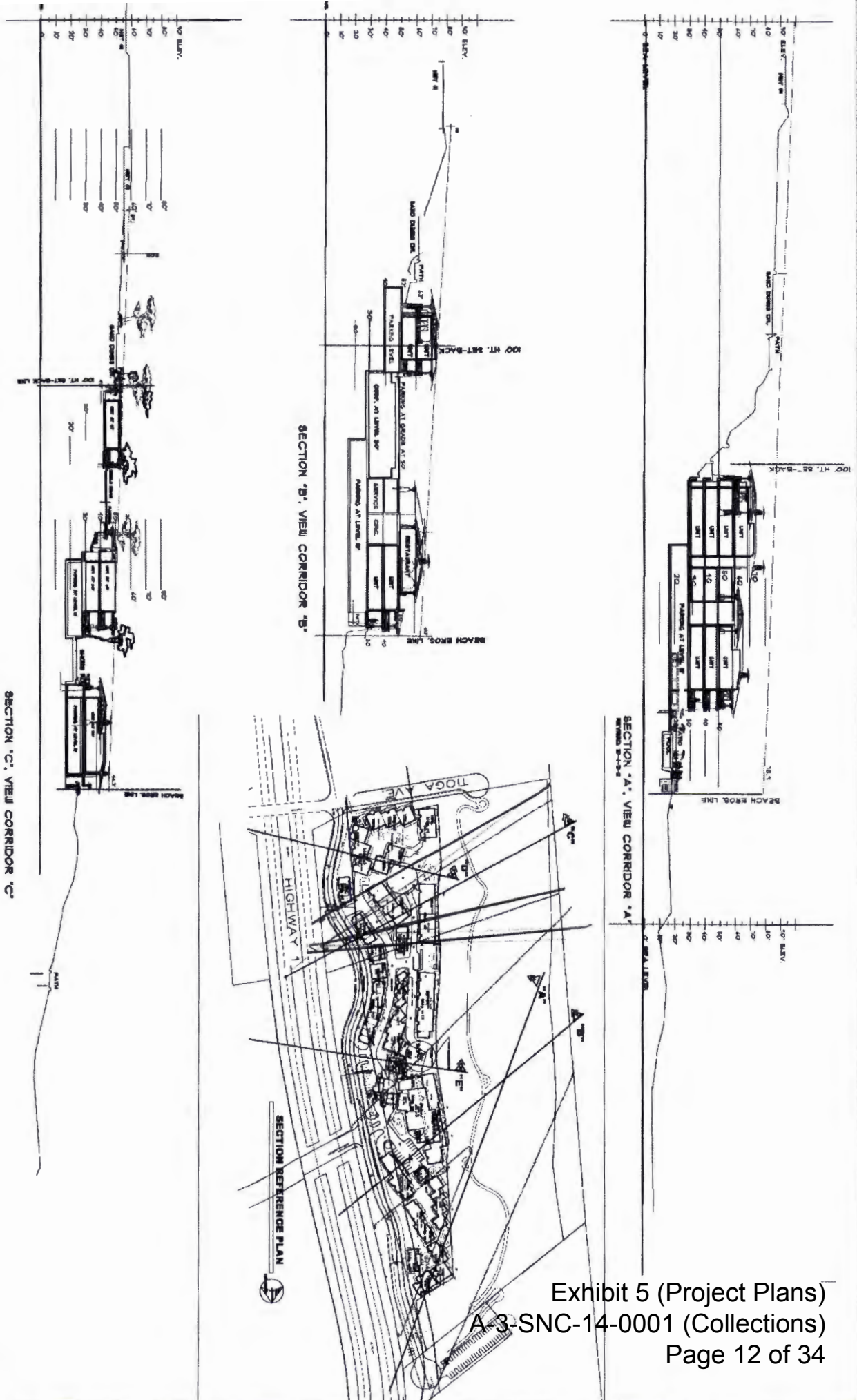


Exhibit 5 (Project Plans)  
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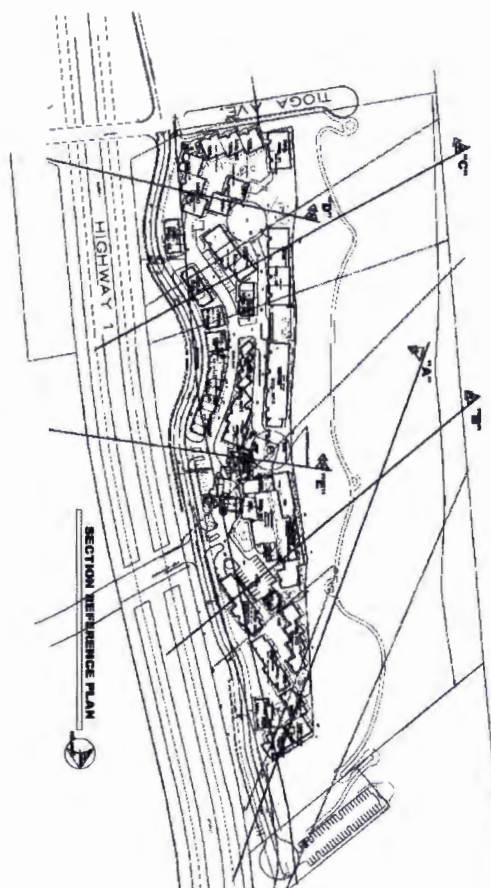
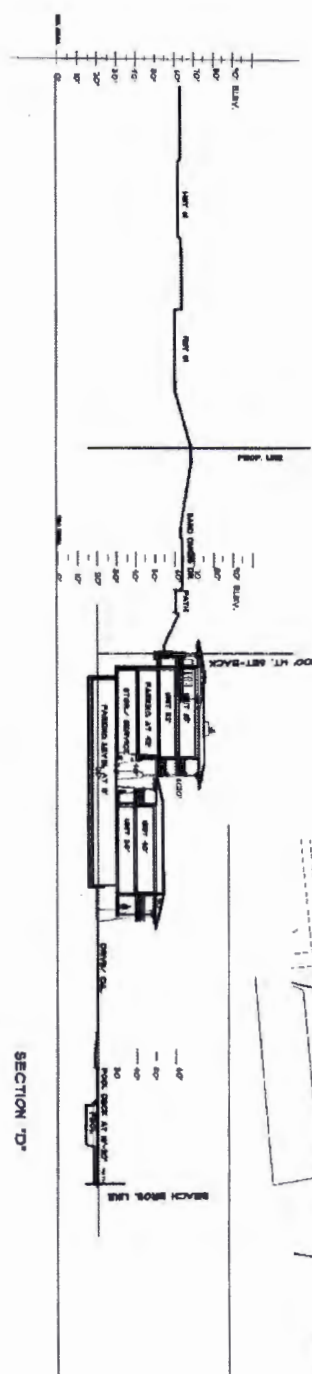
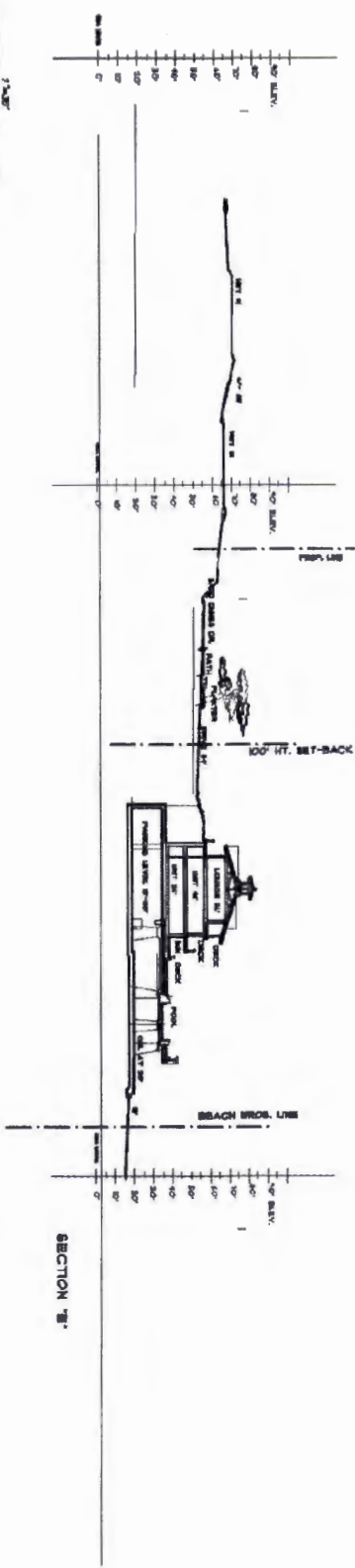


Exhibit 5 (Project Plans)  
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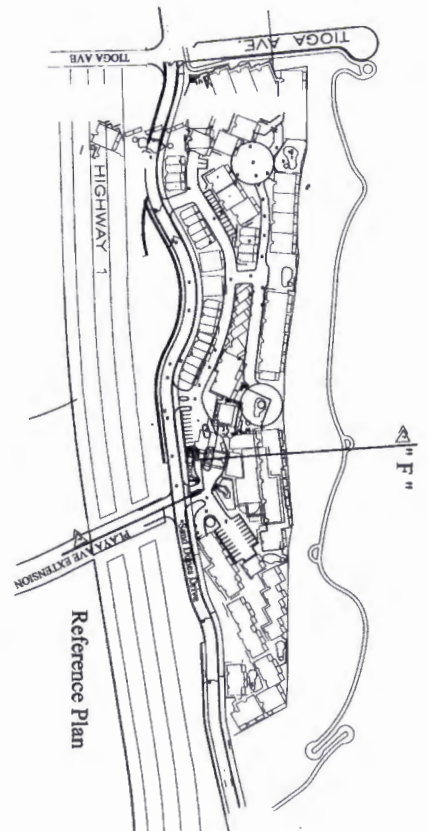
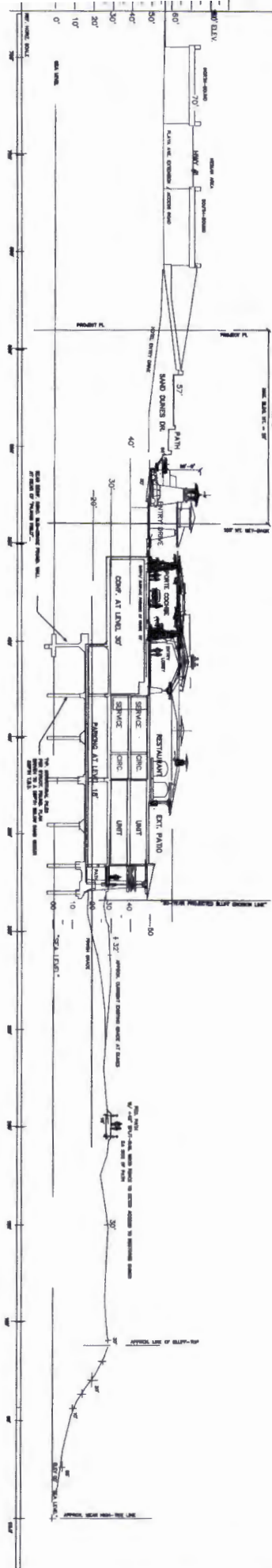


Exhibit 5 (Project Plans)  
A-3-SNC-14-0001 (Collections)  
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SECTION "F", SHOWING SUB-GRADE PILINGS AND FOUNDATION WORK  
7-5-2013

## SECTION "F"





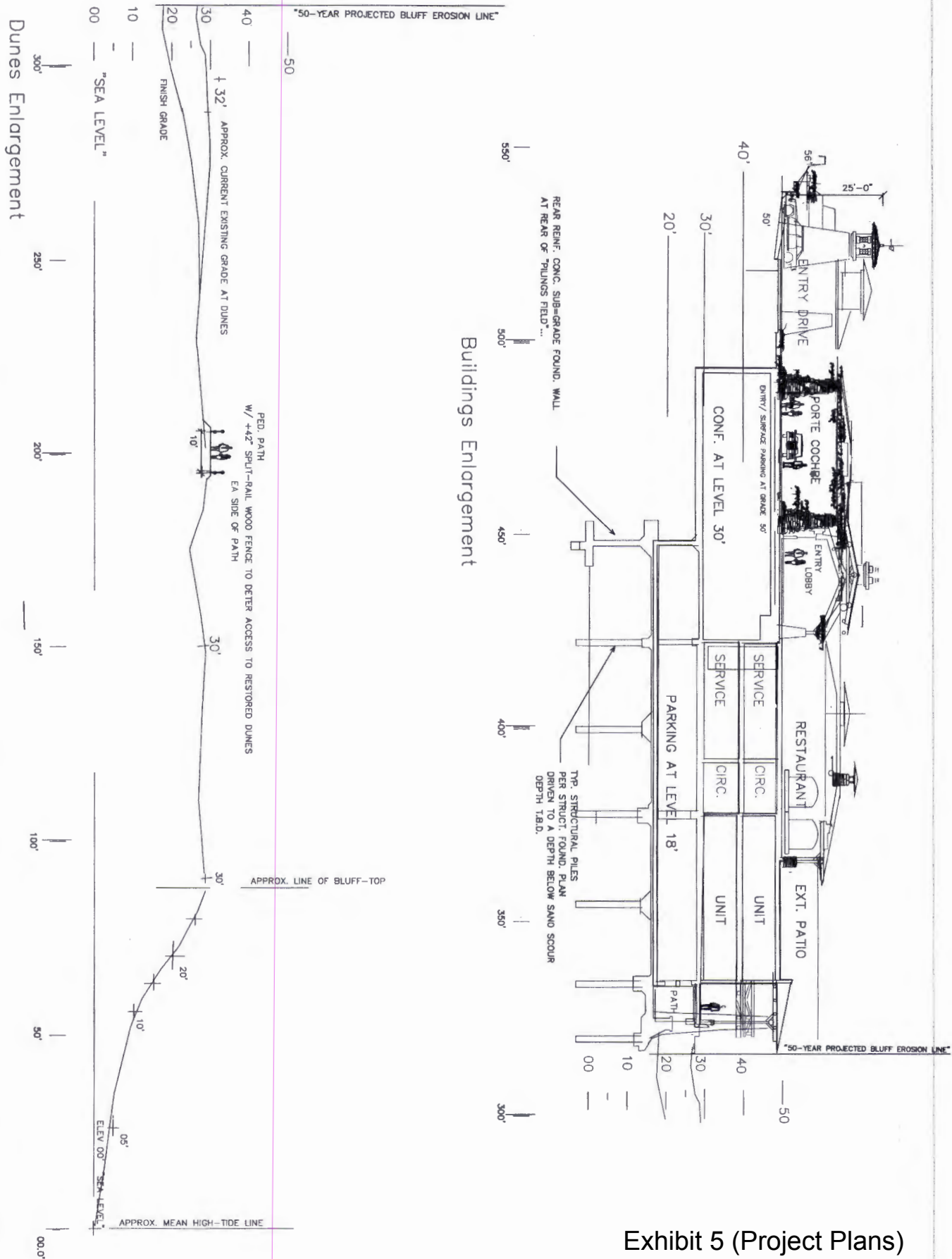


Exhibit 5 (Project Plans)  
A-3-SNC-14-0001 (Collections)  
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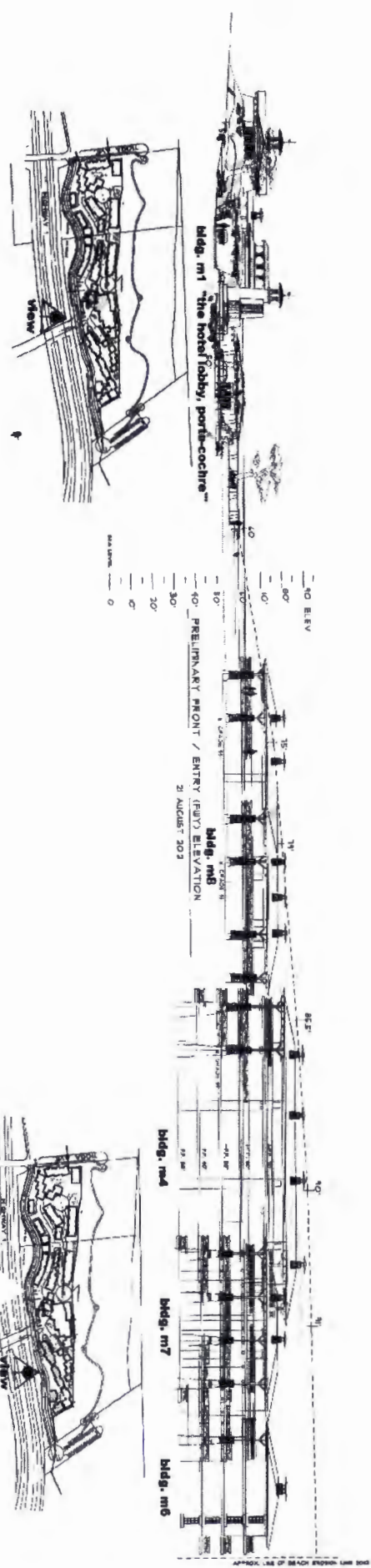


Exhibit 5 (Project Plans)  
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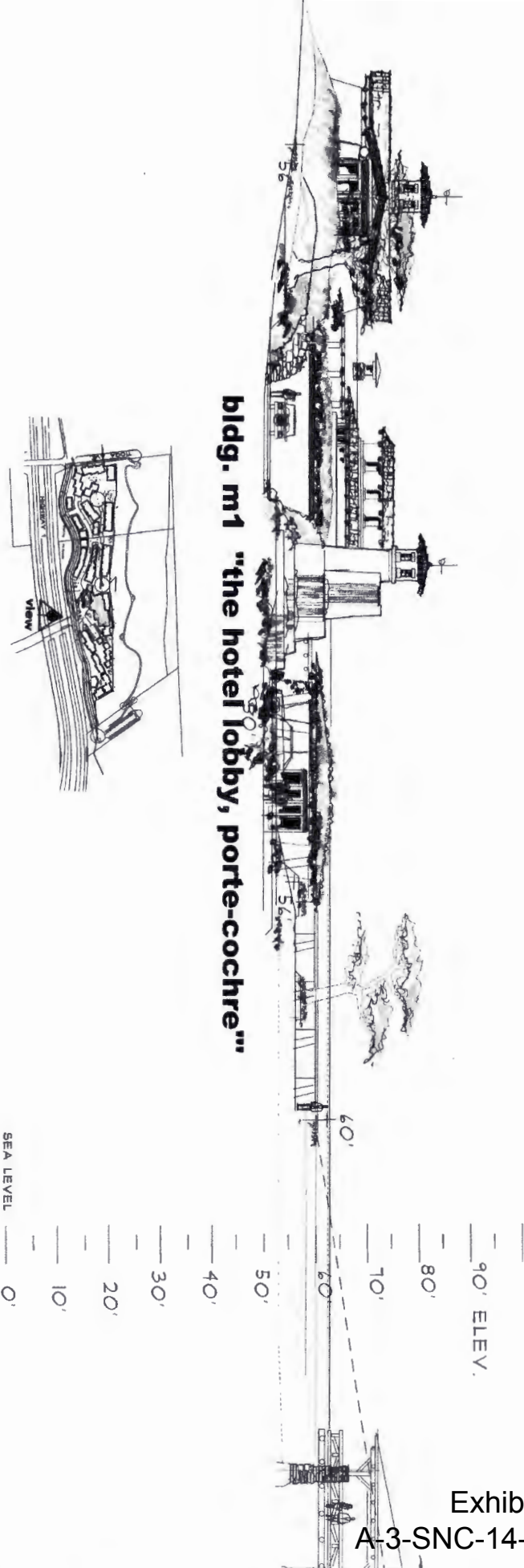


Exhibit 5 (Project Plans)  
A-3-SNC-14-0001 (Collections)  
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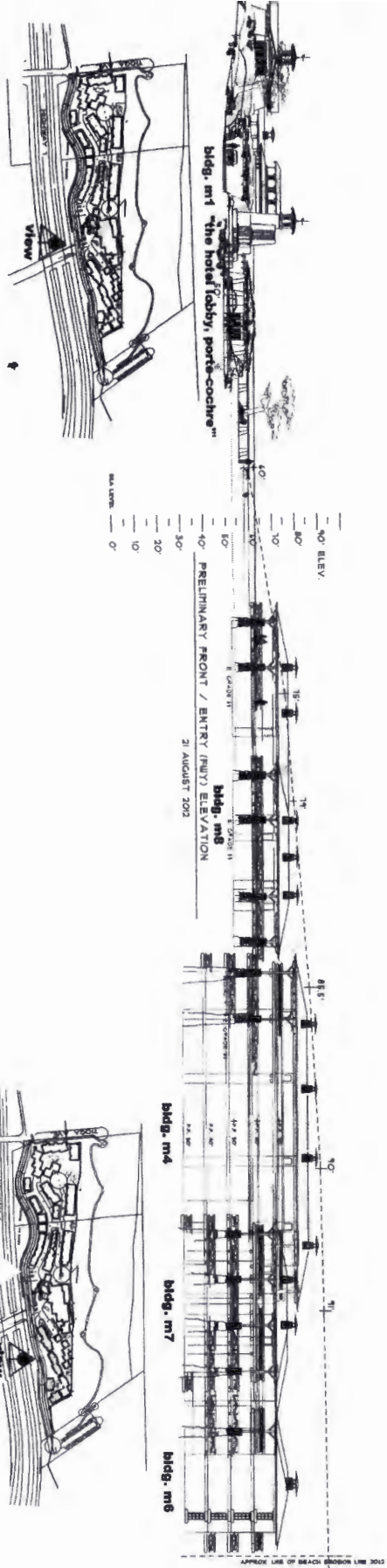


Exhibit 5 (Project Plans)  
 A-3-SNC-14-0001 (Collections)  
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Exhibit 5 (Project Plans)  
A-3-SNC-14-0001 (Collections)  
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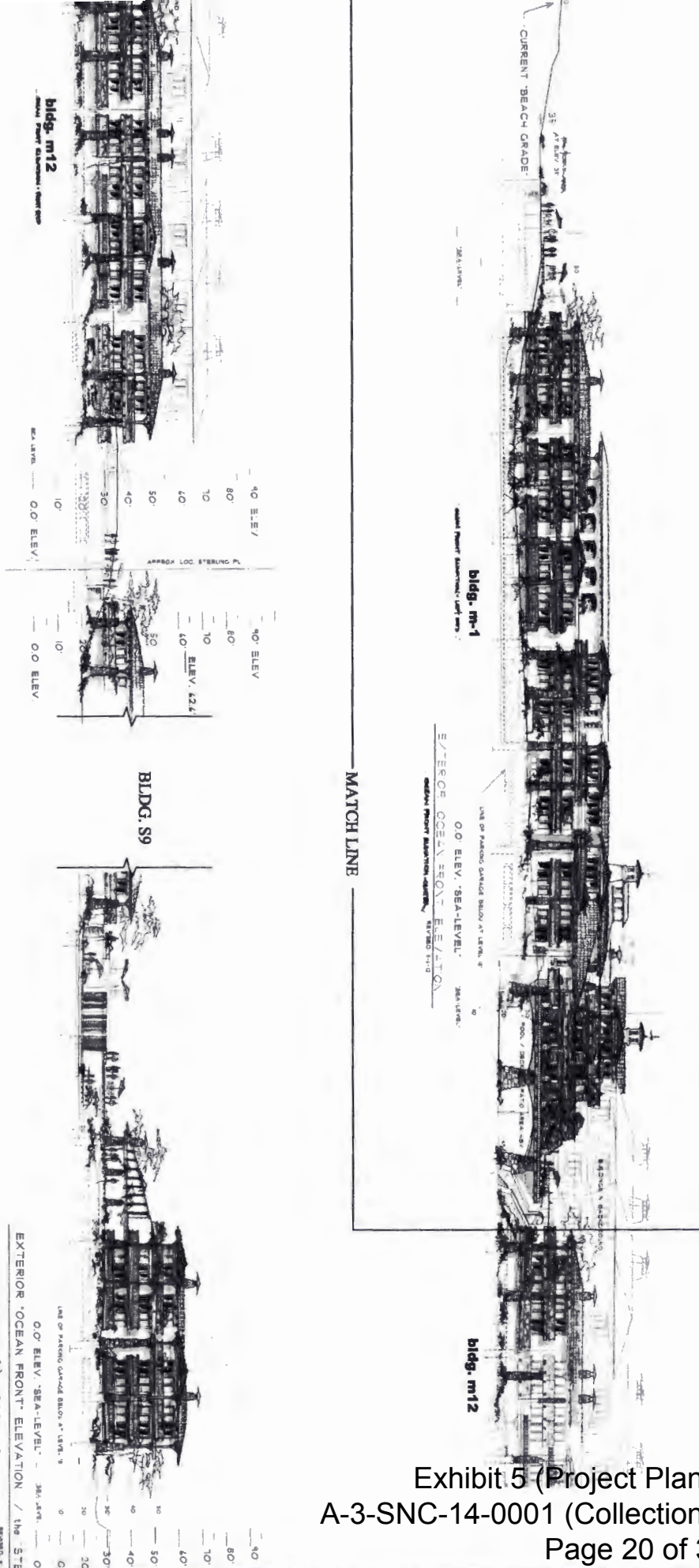
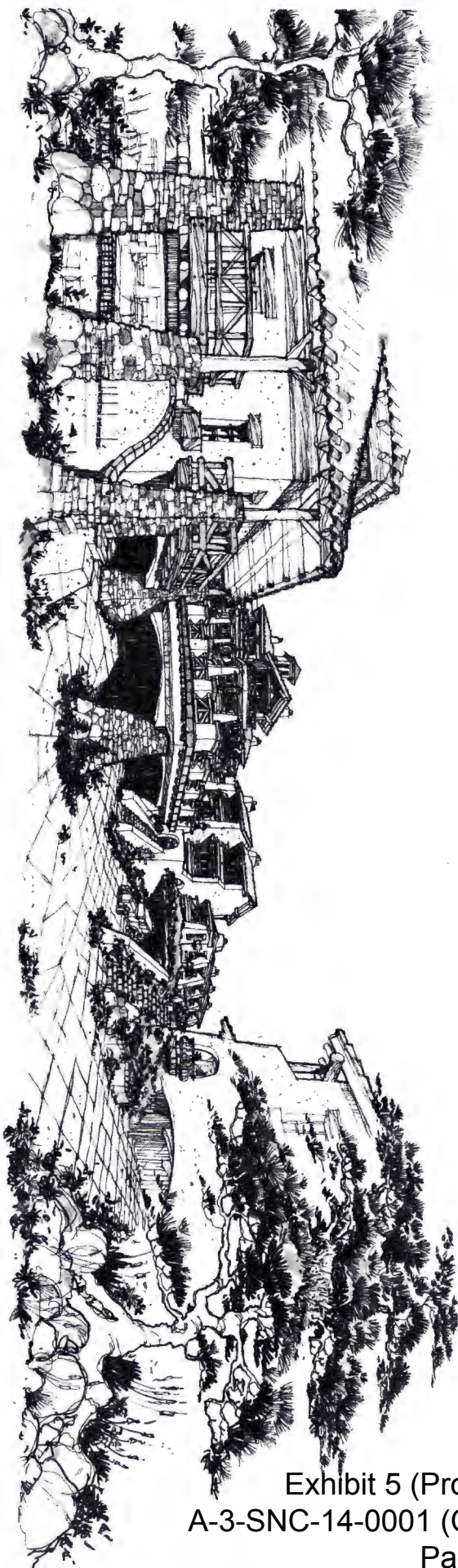


Exhibit 5 (Project Plans)  
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Oceanfront Rendering - Restaurant View from Beach

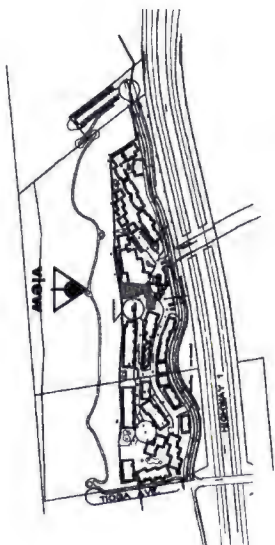


Exhibit 5 (Project Plans)  
A-3-SNC-14-0001 (Collections)  
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**bidg. m1 "the hotel lobby, restaurant, porte-cochre"**

"COMPOSITE" SOUTH END ELEVATION

13 NOVEMBER 2012

PRELIMINARY FRONT / ENTRY (FWY) ELEVATION

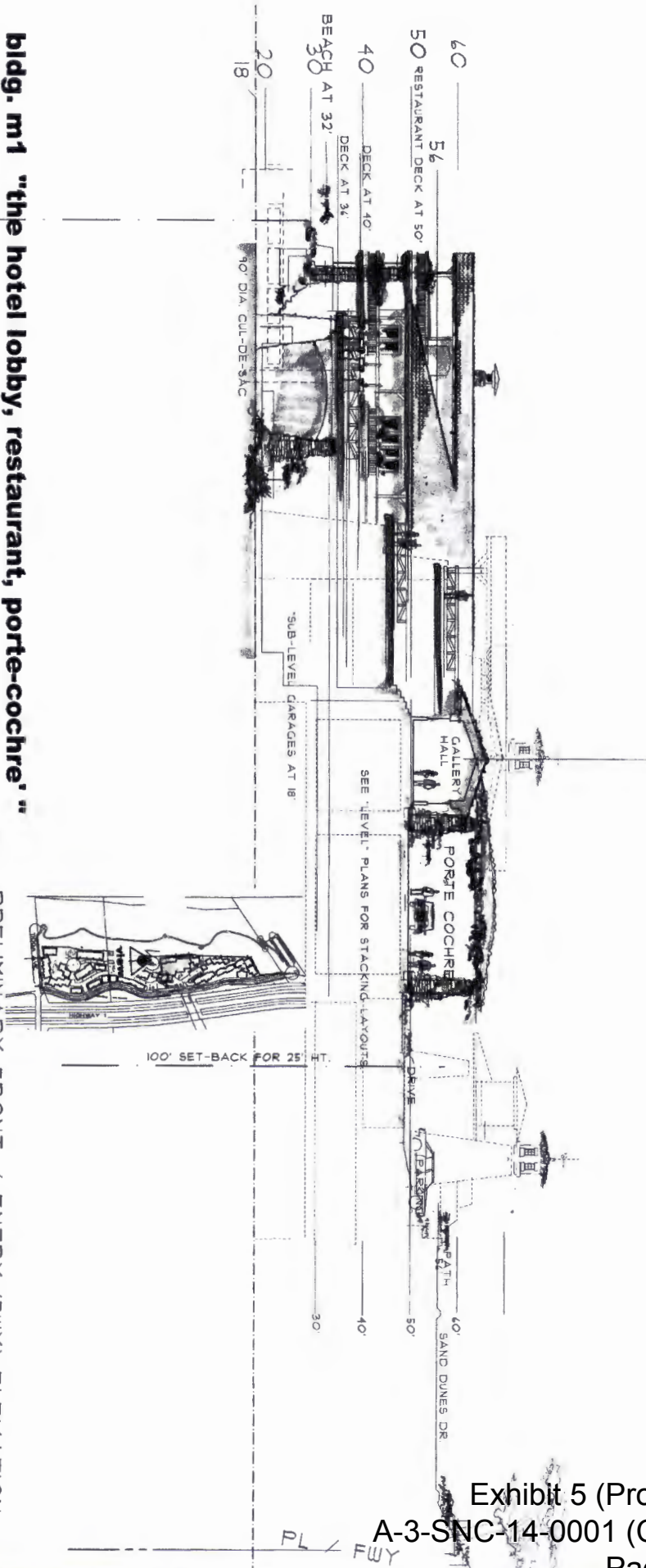
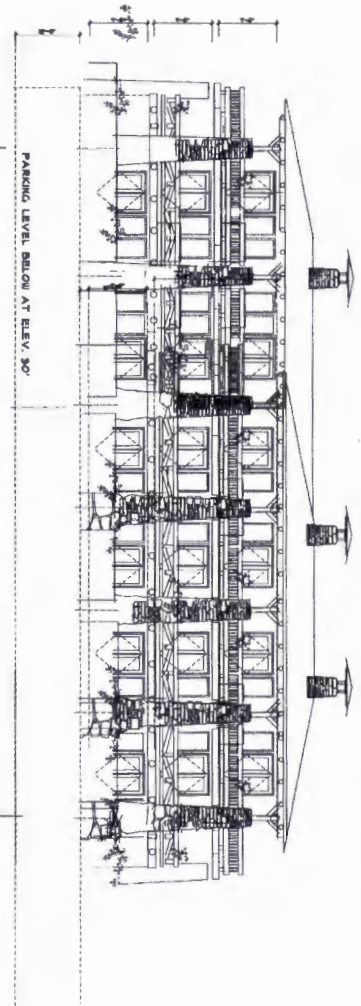


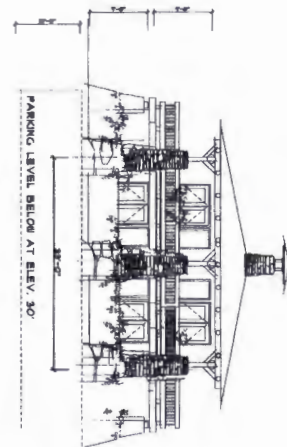
Exhibit 5 (Project Plans)  
A-3-SNC-14-0001 (Collections)  
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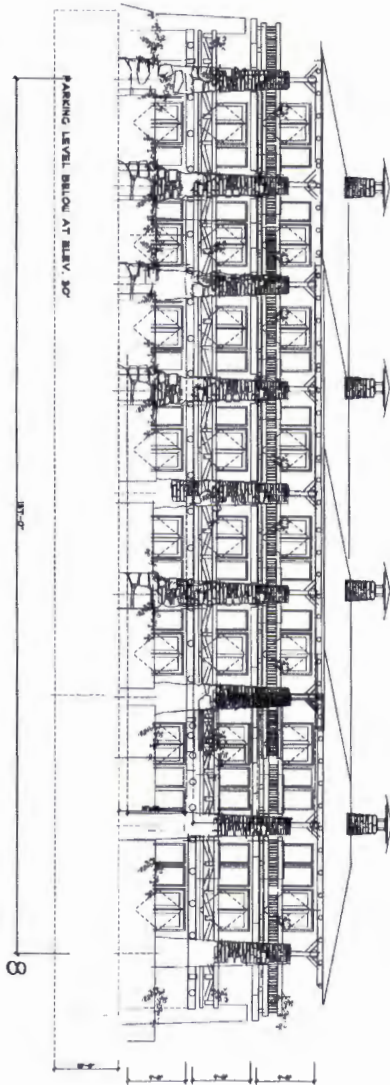


**bldg. m5 "beach front" elev.**

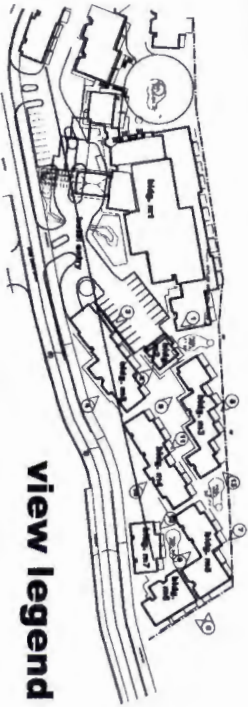
SCALE:



**bldg. m2 "west" elev.**

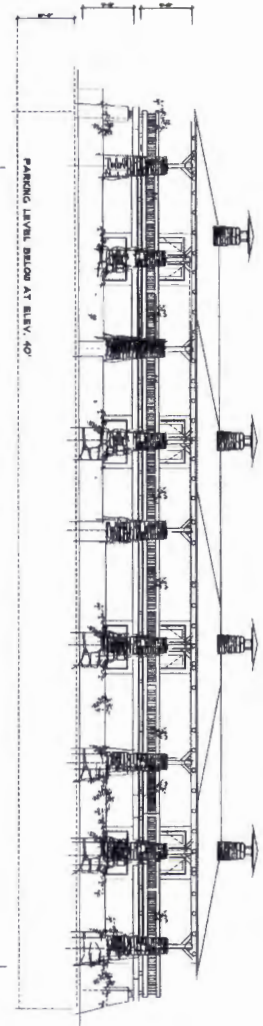


**bldg. m3 "beach front" elev.**



**view legend**



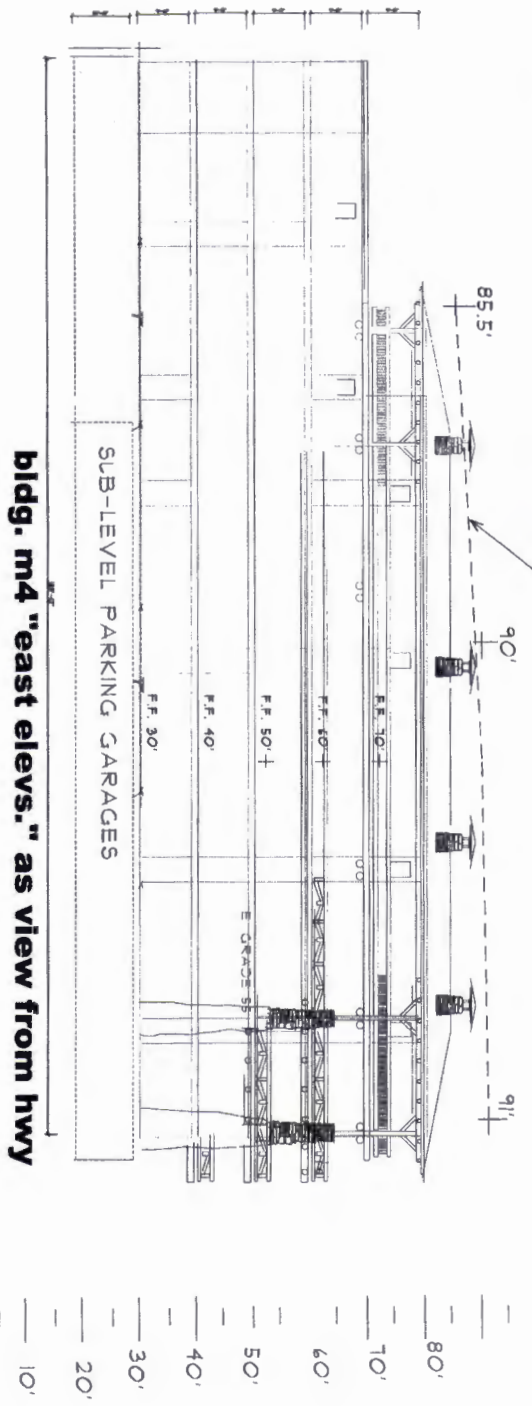


**bdg. m8 "sand dunes drive" elev.**



**view legend**

E. GRADE AT HWY BEYOND



**bdg. m4 "east elevs." as view from hwy**

SCALE: 1" = 10'

SAND DUNES DRIVE ELEVATIONS

10' SEA LEVEL 0'

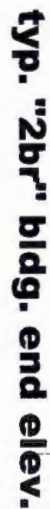
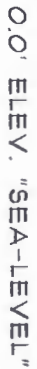


Exhibit 5 (Project Plans)  
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REVISÉD: 3-14-2013

06	2	2	0	4	0
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HOTEL NORTH END ELEVATIONS

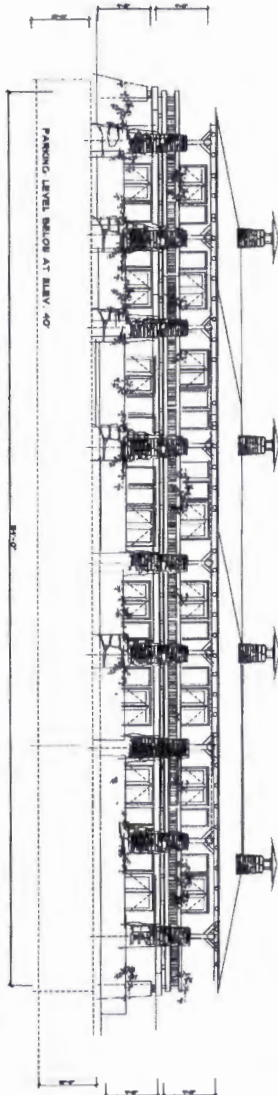
10-16-2013

**bldg. m8 "parking court" elev.**

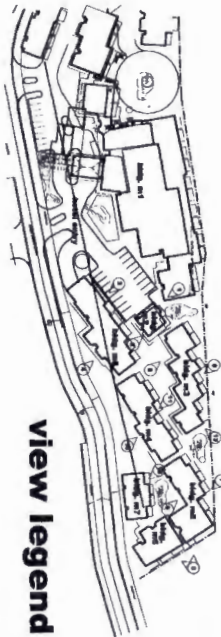
SCALE:



3

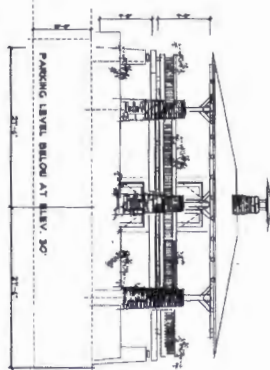


**view legend**

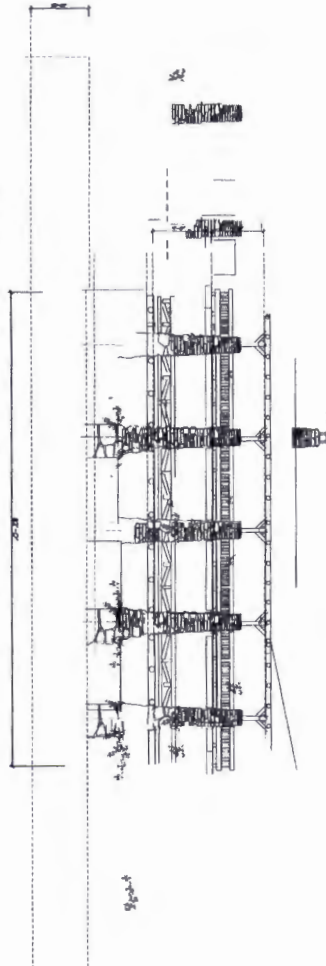


**bldg. m2 "entry court/ east" elev.**

2



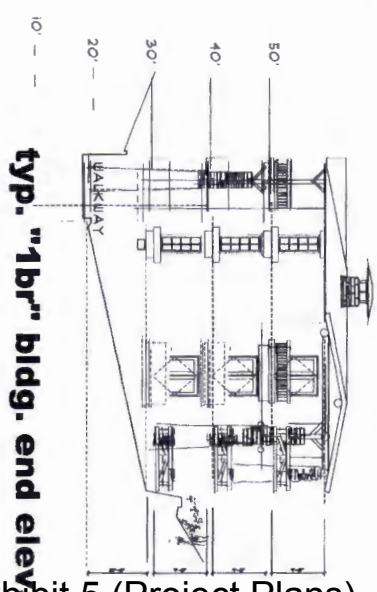
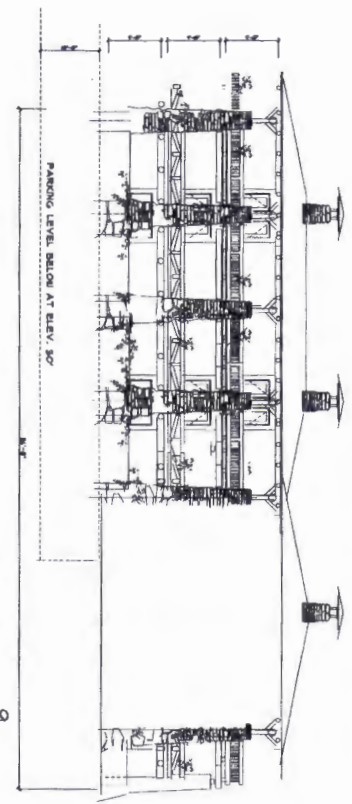
**bldg. m3 "center court" elev.**



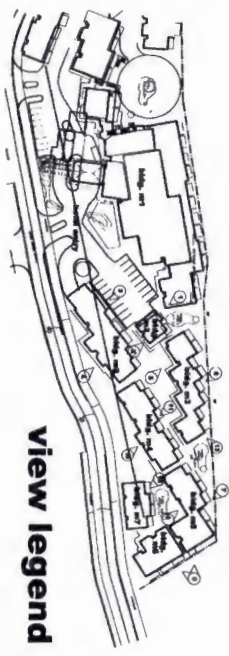
HOTEL "INTERIOR CENTER COURT" ELEVATIONS



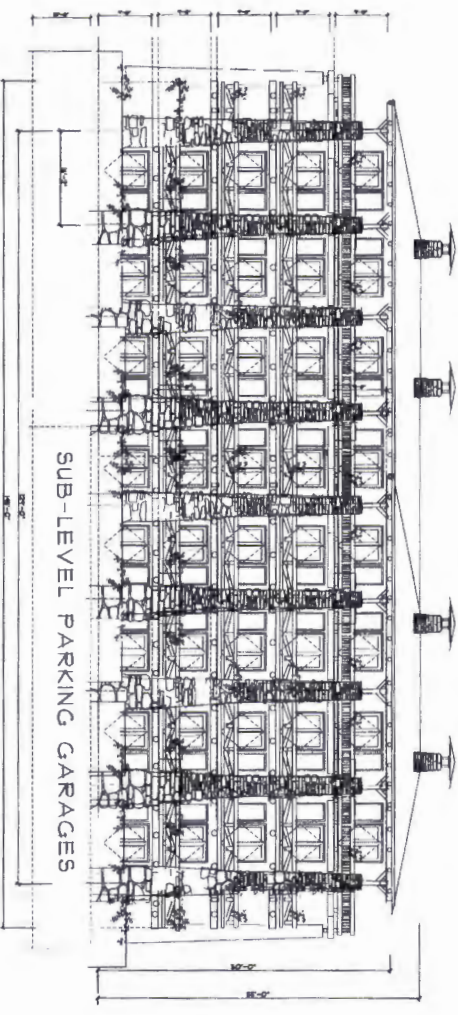
**bldg. m5 "center court" elev.**



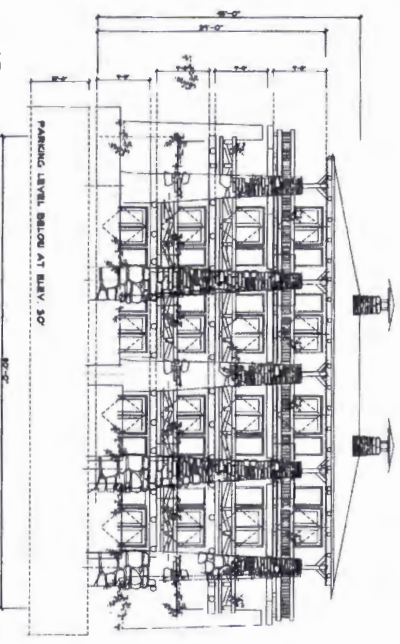
**view legend**



**bldg. m4 "center court" elev.**



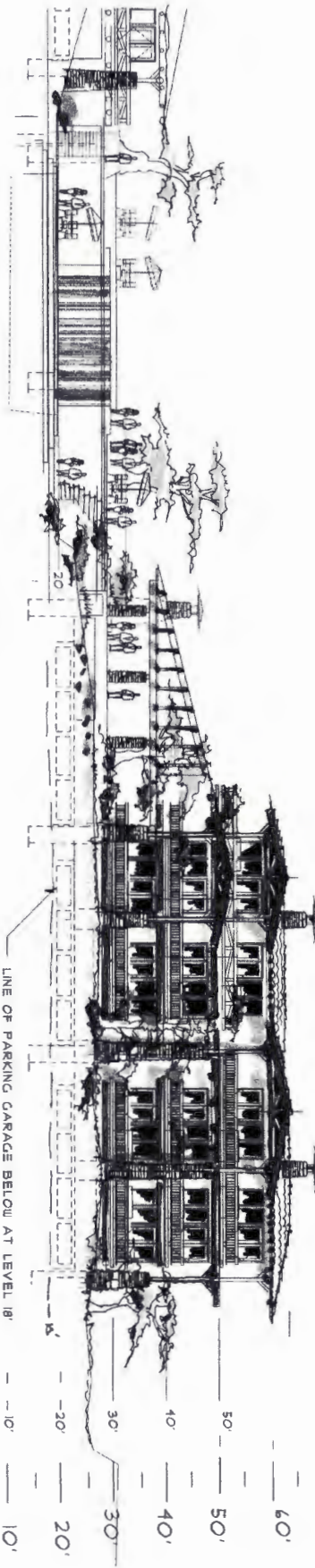
**bldg. m7 "center court" elev.**



SCALE: 1/8" = 1'-0"

HOTEL "INTERIOR - END" ELEVATIONS

Exhibit 5 (Project Plans)  
A-3-SNC-14-0001 (Collections)  
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EXTERIOR "OCEAN FRONT" ELEVATION / the "STERLING"

bldg. s1

REVISED: 8-11-12

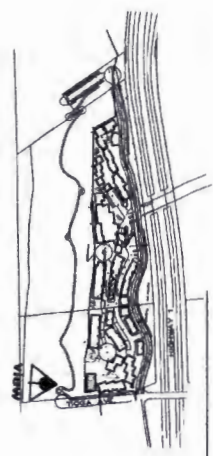
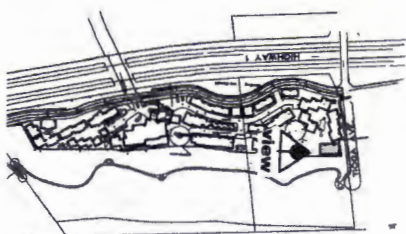
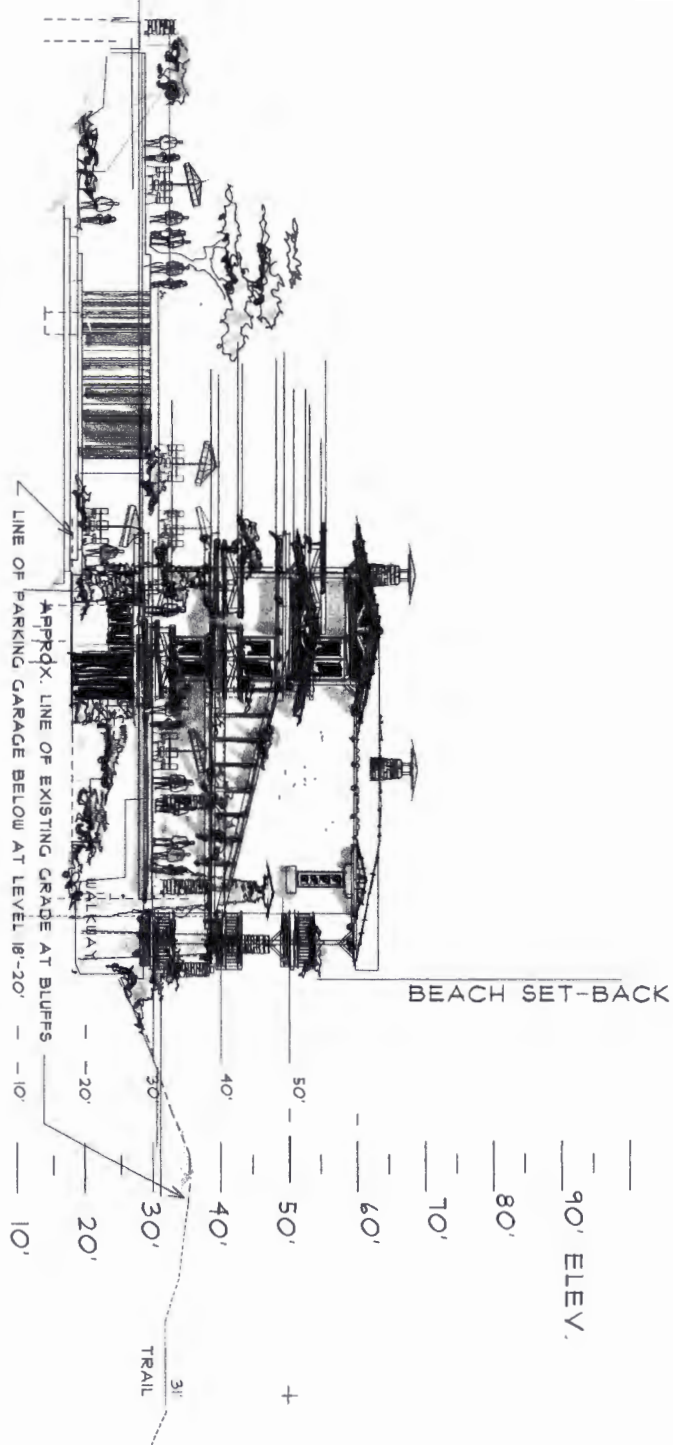


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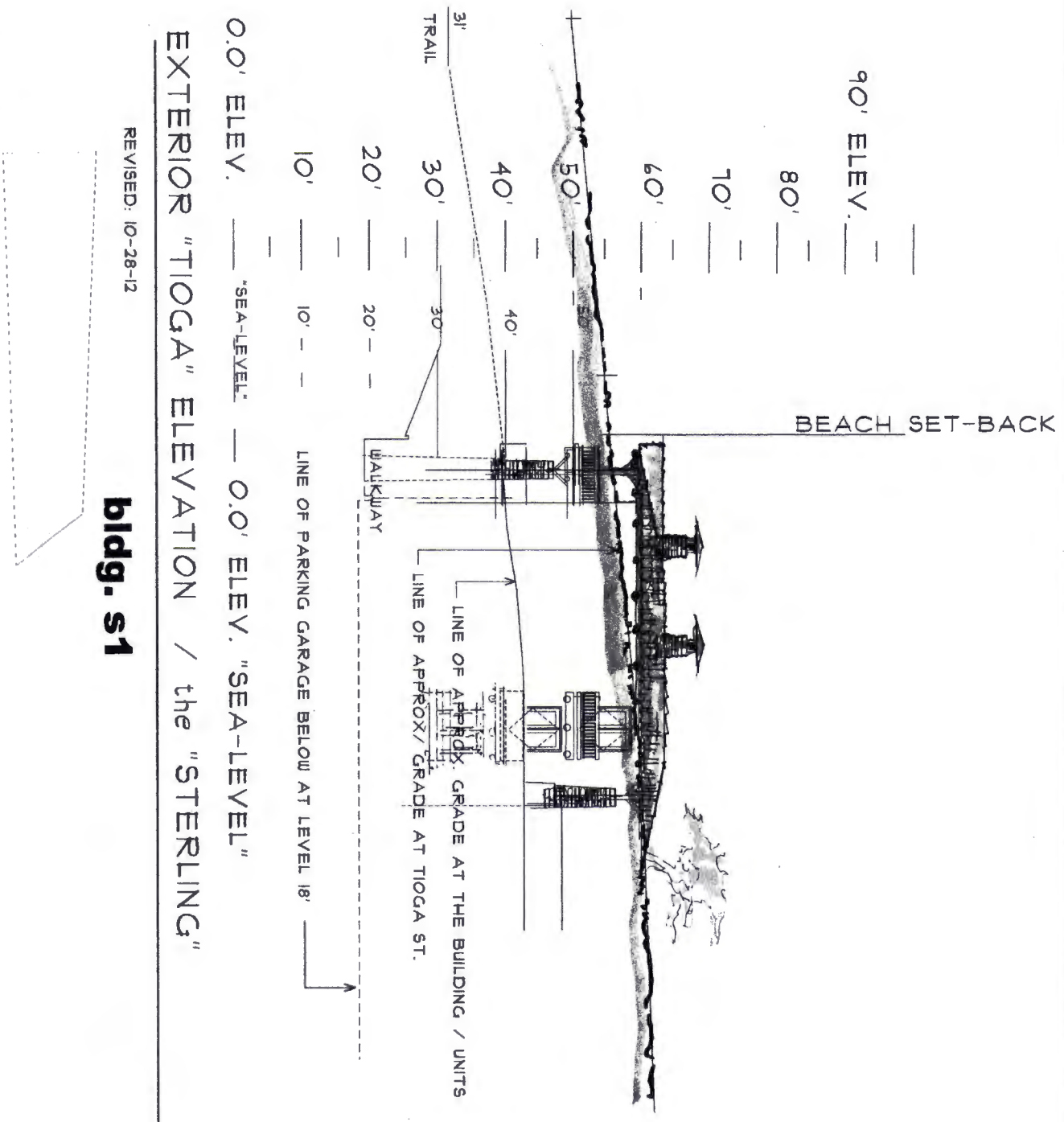
EXTERIOR "NORTH END" ELEVATION / from the "PARKING AREA"

**bldg. s1**

REVISED: 11-5-12







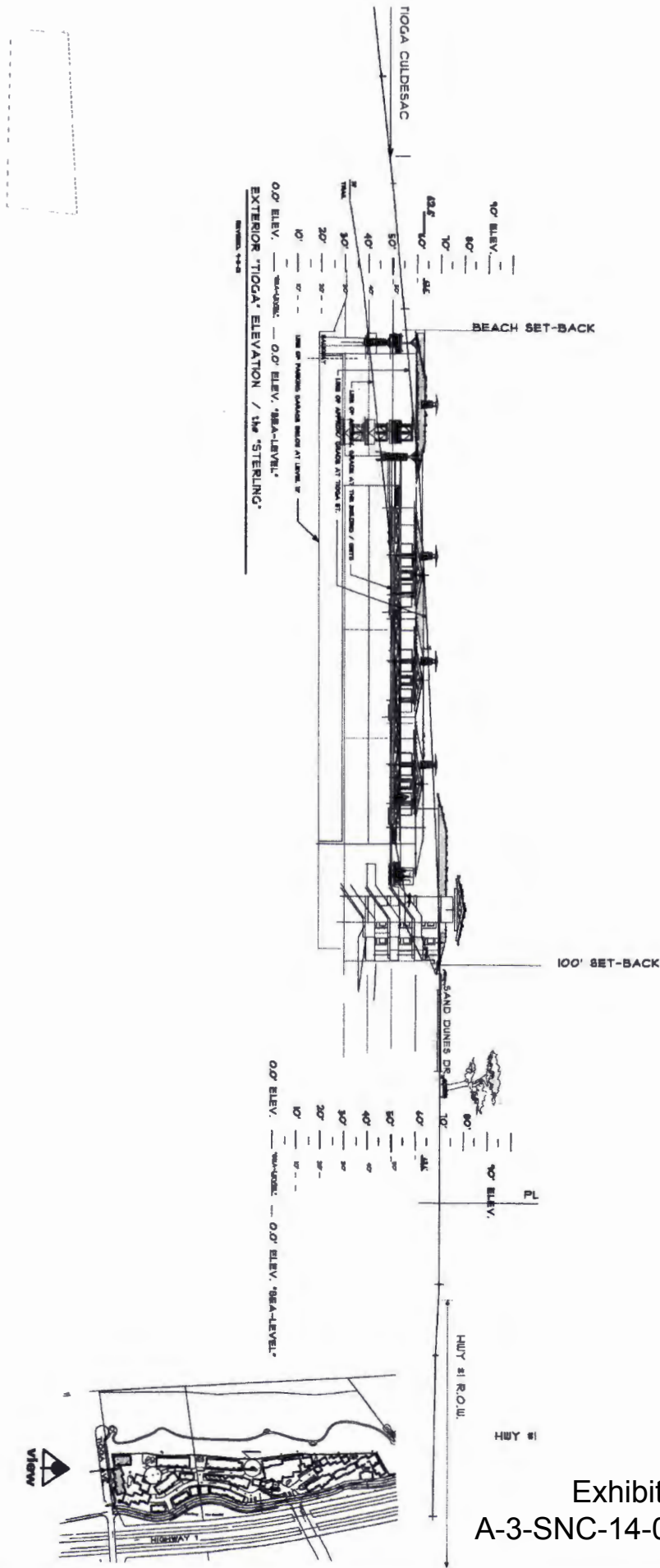


Exhibit 5 (Project Plans)  
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## Sand City Resort, Monterey Bay, California

### EXTERIOR COLORS/ MATERIALS

The "Fading Theme" for the project is to be "Old California," set "into the side of the hill" and exhibit a blend of "rural" palette, stone, wood and earth colors that will allow to project to blend into the existing ocean bluff terrain made up of a varied palette of colors and natural materials.

**MOOR:** Clay tile in an early "California Bluff" of warm sandy colors.

**STUCCO:** A varied selection of La Jolla Stucco golds and light tans, and pretty tone left green.

**STONE FACING:** A selection by "Borland Stone" to resemble a natural "Carmel Stone" appearance.

• "Marathon" Cement, "Laramie" Cement, "Cham" Mountain Lodge.

• A selection of natural stone for column forms, selected walls, planters and low wall areas.

**DOORS & WINDOWS:** A variety of wood, steel, and vinyl doors and windows in "painted metal" woods, "patina bronze metal", brown and white selected with care to withstand the harsh ocean exposure and still feel like early California.

**STAINED TIMBERS, DECKS, PORCHES & FASCIA:** TRIM, EXTERIOR SIDING & SHINGLES: "BIRCH" paint selections, or as "BIRCH" solid body stains.

• Interiors in "natural" brown, light brown, and tan with accents and wrought iron railings, etc. in dark grey, black and burgundy "patina".

• Two selections: "Madra Brown" and "Chambers" for "barns, trim, fences, doors, trim and siding panels."

**WALLS & COUNTRY-STYLE:** "Patina" or natural siding trim, or "Stone House" lamp-crate concrete, some paths or walls may be in natural "OG" treatments.

**DECKS & SURFACE FINISHING:** "Sand and Soil" with various patterns and textures with landscaping.

**BALCONIES & DECK MATERIALS:** A combination of:

• "Natural Wood" with stainless steel screens and cables.

• Powder coated galvanized metal railing painted in dark patina bronze shades to black; and

• Tempered glass panels where required by Coastal for wave interaction and ocean views.

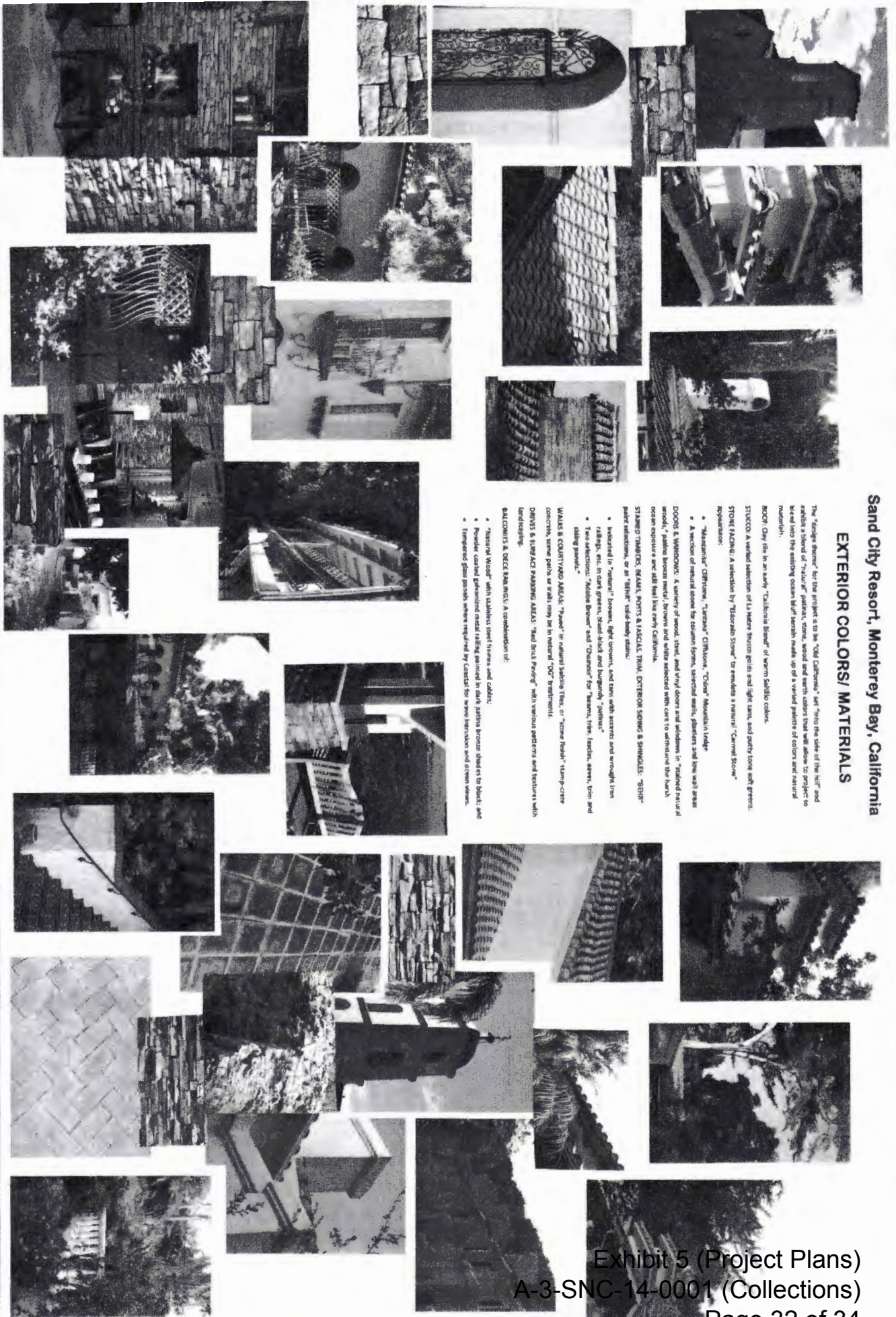


Exhibit 5 (Project Plans)  
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Progress Lighting  
701 Millerblum Blvd.  
Greenville, South Carolina  
29607

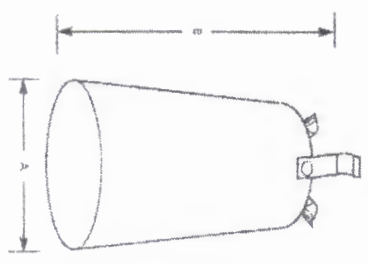
www.progresslighting.com

Nightsaver  
Lamp Shield

Outdoor

Type  
-19 -31 -33 -44  
P8705 ☐ ☐ ☐ ☐

Catalog No.	Finish				Dimensions (inches)	
	Roman Bronze	Brushed Nickel	Cobble- Stone	Oxford Silver	A	B
PE709	-19	-31	-33	-44	2-7/8	3-3/8



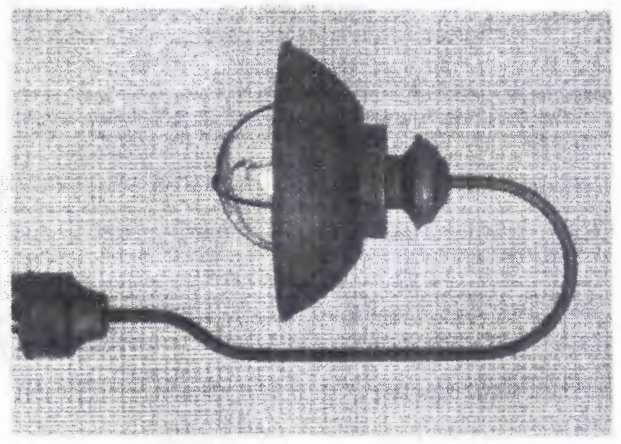
Specifications:

- General**

  - Shield to convert most wall & chain hung lanterns to a sky friendly fixture
  - When installed no light is emitted above 45 degrees
  - For A19 lamps mounted in a downward position (base up)
  - Available to match most lantern finishes.
- Mounting**

  - A high heat gasket is affixed to the top of the shield which slides over the base of the lamp
  - Lamp and shield are installed as a unit
- Other**

  - Patent Pending



OP215051B

Harwich 10" Outdoor Post Light Textured Black



OW215017B

Harwich 10" Outdoor Wall Light Textured Black



Exhibit 5 (Project Plans)  
A-3-SNC-14-0001 (Collections)  
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## Applicable LCP and Coastal Act Policies

### LCP Hazards Policies

***LUP Policy 4.3.1.*** Permit construction and maintenance of all shoreline protection devices (including seawalls) in situations where they are necessary to protect existing structures, coastal-dependent uses, public beaches and recreational areas, and public works. ... Such structures must not reduce or restrict public access, adversely affect shoreline processes, or increase erosion on adjacent properties.

***LUP Policy 4.3.4.*** All developments shall be sited and designed to minimize risk from geologic, flood or fire hazards.

***LUP Policy 4.3.5.*** Require preparation of geologic and soils reports for all new developments located in the coastal zone. The report should address existing and potential impacts, including ground shaking from earthquakes, direct fault offset, liquefaction, landslides, slope stability, coastal bluff and beach erosion, and storm wave and tsunami inundation. The report shall identify appropriate hazard setbacks or identify the need for shoreline protective devices to secure long-term protection of Sand City's shoreline, and shall recommend mitigation measures to minimize identified impacts. The reports shall be prepared by qualified individuals in accordance with guidelines of the California Division of Mines and Geology, the California Coastal Commission, and the City of Sand City. Geologic reports shall include the following:

- a) setback measurements that are determined from the most inland extent of wave erosion, i.e., blufftop or dune or beach scarp; if no such feature is identifiable, determine setback from the point of maximum expected design storm wave runup;
- b) setbacks based on at least a 50-year economic life for the project;
- c) the California Division of Mines and Geology criteria for reports, as well as the following: 1) description of site topography; 2) test soil borings and evaluation of suitability of the land for the proposed use; 3) evaluation of historic, current and foreseeable cliff and beach erosion, utilizing available data; 4) discussion of impacts of construction activity on stability of site and adjacent area; 5) analysis of ground and surface water conditions, including any hydrologic changes caused by the development; 6) indication of potential erodibility of site and recommended mitigation measures; 7) potential effects of seismic impacts resulting from a maximum credible earthquake and recommended building design factors and mitigation measures; 8) evaluation of off-site impacts; and 9) alternatives (including non-structural) to the project.

***LUP Policy 4.3.6.*** Encourage the clustering of developments away from potentially hazardous areas and condition project permits based upon recommendations presented in the geologic report.

***LUP Policy 4.3.7.*** No development will be allowed in the tsunami run-up zone, unless adequately mitigated. The tsunami run-up zone and appropriate mitigations, if necessary, will be determined by the required site-specific geological investigation.

***LUP Policy 4.3.8.*** Deny a proposed development if it is found that natural hazards cannot be mitigated as recommended in the geologic report, and approve proposed developments only if the project's density reflects consideration of the degree of the on-site hazard, as determined by available geotechnical data.

***LUP Policy 4.3.9.*** Implement building setbacks from active or potentially active fault traces of at least 50 feet for all structures. Greater setbacks may be required where it is warranted by site-specific geologic conditions and as determined by the geologic report.

***LUP Policy 4.3.10.*** Require all new developments to be designed to withstand expected ground shaking during a major earthquake.

***LUP Policy 4.3.11.*** Require the developer of a parcel in an area of known geologic hazards to record a deed restriction with the County Recorder indicating the hazards on the parcel and the level of geotechnical investigations that have been conducted.

***LUP Policy 4.3.12.*** Require drainage plans for developments proposed on coastal bluffs that would result in significant runoff which could adversely affect unstable coastal bluffs or slopes.

***LUP Policy 6.4.1.*** [LCP development densities] represent a maximum. As required by applicable policies of the LCP, permitted development intensities shall be limited to those which adequately address constraints including, but not limited to: public access and recreation needs (including adequate public access and recreation facilities inland of the 50-year erosion setback line); natural hazards....

***IP Section 2.2, Natural Hazards.*** ...all development will be sited to minimize risks from geologic, flood, or fire hazards ....

A preliminary geologic report also shall be prepared by a registered geologist and should address existing and potential impacts for ground shaking from earthquakes, direct fault offset, liquefaction, landslides, slope stability, coastal bluff and beach erosion, and storm wave and tsunami inundation. ...The report shall also determine a site specific tsunami run-up zone. ...The report shall also provide recommended mitigation measures for identified hazards, including at the minimum, the following: ...c) Recommended building setbacks for identified hazards based on at least a fifty year economic life for the project. Setback measurements shall be determined from the most inland extent of erosion; that is, bluff top or dune or beach scarp. If no such

*feature is identifiable, the setback shall be determined from the point of maximum expected design storm wave run-up. ...f) Recommend mitigations, if any, for development within an identified tsunami or design storm wave run-up zone. ...*

***IP Section 2.2, Protective Shoreline Structures.*** ...Setbacks shall be great enough to protect the economic life of the proposed development (at least 50 years). ...

## **LCP Public Services Policies**

***LUP Policy 4.3.27.*** Require future developments which utilize private wells for water supply to complete adequate water analyses in order to prevent impacts on Cal-Am wells in the Seaside Aquifer. These analyses will be subject to the review and approval of the Monterey Peninsula Water Management District. In support of MPWMD's review and permit authority, the City should incorporate these requirements into City development review.

***LUP Policy 6.4.10.*** New development shall be approved only where water and sewer services are available and adequate....

***LUP Policy 6.4.11.*** Prior to the approval of any new development within the coastal zone of the City of Sand City, adequate sewage treatment facility capacity shall be demonstrated consistent with the provisions and requirements of the California Regional Water Quality Control Board....

***LUP Policy 6.4.12.*** Within the Coastal Zone, permit only new development whose demand for water use is consistent with available water supply and the water allocation presented in Appendix F [MPWMD assignment to Sand City of a relative share of total Cal-Am water usage – see below].

***LUP Policy 6.4.13.*** Require all new developments to utilize water conservation fixtures (such as flow restrictions, low-flow toilets, et cetera).

***LUP Policy 6.4.14.*** Require water reclamation or recycling within large industrial uses and encourage water reuse for landscaping wherever possible and economically feasible.

***LUP Policy 6.4.16.*** Require that landscaping in new developments and public open space areas maximize use of low water requirement/drought resistant species.

***LUP Policy 6.4.17.*** If dune management programs are implemented on State owned properties or other Areas within the City, investigate the feasibility of using reclaimed water for irrigation.

***IP Coastal Zone Overlay District, Permit Conditions, Sections (c)(8) and (c)(10).*** In considering a coastal development permit application, the City Council shall give due regard to the Local Coastal Program in order to approve a development, and the Council shall make findings that approval of the permit is consistent with the Local Coastal Program, including but

*not limited to: ...(8) Demonstrated availability and adequacy of water and sewer services. ...(10) Compliance with City water allocation.*

***IP Section 3.2, Coastal Zone Overlay District, Permit Conditions, (c).*** *In considering a coastal development permit application, the City Council shall give due regard to the Local Coastal Program in order to approve a development, and the Council shall make findings that approval of the permit is consistent with the Local Coastal Program, including but not limited to: ...(8) Demonstrated availability and adequacy of water and sewer services. ...(10) Compliance with City water allocation;...*

***IP Section 4.2 (Sand City Water Allocation Resolution).*** *... In order to protect water resources, and ensure the availability of water for coastal land uses, the maximum water usage allowable in the coastal zone for new developments shall be limited to the water allocations established in the Local Coastal Land Use Plan. ...The water allocations established in the Local Coastal Program may be revised according to any changes in water allotments granted to Sand City by the District. A change in the water allocations established in the Local Coastal Land Use Plan will require a Local Coastal Program amendment.*

## **LCP Visual and Scenic Resource Protection Policies**

***LUP Policy 3.3.1.*** *Visitor-serving and public recreational uses are given priority west of State Highway One, as designated on the Land Use Plan Map in Section 6.0. Development of these uses shall be consistent with the protection of natural and visual resources.*

***LUP Policy 5.3.1.*** *Views of Sand City's coastal zone shall be enhanced and protected through regulation of siting, design, and landscaping of all new development in the coastal zone, adjacent to Highway One (on both the east and west) in order to minimize the loss of visual resources.*

***LUP Section 5.2.2 Coastal Visual Resources, Future Design Considerations.*** *View enhancement is an important aspect of Sand City's LCP. ... [LCP design standards have] been guided by the following concerns: 1. the protection and enhancement of visual access, views and scenic areas; 2. the assurance of visual and functional compatibility of new development with site characteristics and the existing City; 3. the assurance of visual and functional compatibility among new developments within the shoreline area; 4. the protection and/or utilization of significant landforms; and 5. improvement and upgrading of the image of the City as a whole.*

***LUP Policy 5.3.2*** *Views of Sand City's coastal zone, Monterey Bay and Monterey peninsula shall be protected through provision of view corridors, vista points, development height limits, and dune restoration areas, as shown on Figure 9. Major designated view corridors are: a) southbound view across the northern city boundary consistent with the public recreation*

*designation; ...f) southbound views beyond and above the existing dune line (which may be “rounded off”) shall be preserved.*

***LUP Policy 2.3.6.*** *Protect visual access at the general points shown on Figure 4 by requiring provision of public vista points as part of future developments in these areas. Site specific locations will be developed as part of future development proposals and according to the guidelines set forth in Policy 2.3.4.*

***LUP Policy 5.3.3.*** *View corridors are defined as follows:*

- a) “views across” shall be protected by retaining the view corridor free of new structures. These corridors will continue to provide broad unobstructed views of the sand dunes, shoreline, Monterey Bay, and the Monterey peninsula (southbound) or Santa Cruz Mountains (northbound); ...*

*“views over development” shall be provided by limiting the maximum height of development to protect views of the sweep of beach and dunes, Monterey Bay, and the Monterey peninsula. ... In measuring southbound views, viewpoints shall be assumed to be from the center point of the corridor at an elevation four feet above freeway grade in the southbound traffic lane, to a point at the Coast Guard Station in Monterey. North of Tioga Avenue, approved development shall [not] intrude upon, or block, an unobstructed view of more than one-third of the lineal distance across the Bay, measured as a straight line between the freeway viewpoint and the landward edge of the Coast Guard Breakwater...*

***LUP Policy 5.3.4.a.*** *Encourage project design that is compatible to its natural surroundings and that enhances the overall City image. All buildings should be designed and scaled to the community character as established by new development.*

***LUP Policy 5.3.4.b.*** *Encourage mass and height variations within coastal zoning limits in order to provide view corridors and to generate “lighter,” “airier” buildings. Encourage building designs that avoid overly bulky buildings that could significantly block view corridors*

***LUP Policy 5.3.4.f.*** *Encourage the use of existing natural and manmade dunes as earth berms for visual and noise barriers, as well as buffers between land uses. Landforms are more efficient for visual and noise reduction than planting screens.*

***LUP Policy 5.3.6.*** *Encourage restoration or enhancement, where feasible, of visually degraded areas. ...*

***LUP Policy 5.3.8.*** *In addition to view corridors designated on Figure 9, encourage new developments to incorporate view corridors from Highway One to the ocean, within project design, consistent with City standards for view corridors. Such standards for view corridors should include varied roof or building profile lines, and visual corridors through, between and/or over buildings to the bay.*



**LUP Policy 5.3.9.** *New development should to the extent feasible, soften the visual appearance of major buildings and parking areas from view of Highway One*

**LUP Policy 5.3.10** *Utilize existing or manmade dunes within project design to enhance visual resources.*

**LUP Policy 5.3.11.** *In new developments require dune stabilization measures where feasible and where they would stabilize an unconsolidated dune, and/or reduce views of the development from Highway One.*

**LUP Policy 6.4.1.** *... Land Uses. Establish the following land use designations in the coastal zone, as defined below and shown on the Land Use Plan Map in Figure 11...*

*The described densities, both above and below, represent a maximum. As required by applicable policies of the LCP, permitted development intensities shall be limited to those which adequately address constraints including, but not limited to: ... dune habitats and their appropriate buffers; and natural landforms and views to the Bay.*

**LUP Policy 6.4.4 Densities.** *Allow the following densities per land use type. Visitor Serving Hotels: 0-75 rooms per acre. ...LUP Area (B): Maximum Rooms Allowed: 375 rooms. Visitor Serving Motels: 0-37 rooms per acre. LUP Area (a): Maximum Rooms Allowed: 229 rooms; LUP Area (b): Maximum Rooms Allowed: 141 rooms.*

**LUP Policy 6.4.5.** *In the Sand City Coastal Zone, permit a height limit of 36 feet as measured from existing grade with the following exceptions:...*

- b) hotel uses shall not exceed 45 feet. Hotel uses shall not exceed 45 feet. ... All other on or above-ground private and public recreational structures, public-serving commercial uses and public amenity improvements shall not exceed 15 feet or one story in height from finished grade;*
- c) All development within 100 feet of the freeway right of way (considered as the main thoroughfare right of way, excluding on/off ramps) shall be designed so as to minimize significant adverse visual impacts, limited to 25 feet in height except as permitted by (b) above, and landscaped. Unattractive elements shall be screened; and*
- d) views over development (see Figure 9) shall be preserved by limiting heights as necessary to assure compliance with Policy 5.3.3....*

**IP Section 3.2, CZ-VSC Coastal Zone Visitor Serving Commercial, Permitted Uses, Subsection (a).** *Hotels, motels, vacation clubs/timeshares, public recreation areas, and accessory shops (such as gift shops, travel agencies, beauty shops, etc.) and any other visitor serving use as determined by the City Council to serve the purpose of this district. Vacation clubs/timeshares are defined as accommodations facilities with guest of owner stays limited to not more than 29*

*consecutive days, and not more than a total of 84 days in each calendar year. For projects involving the develop of vacation clubs/timeshares, the property owner shall be required to record a deed restriction, prior to the issuance of a coastal development permit, indicating the length of stay limitations and that the project is a visitor-serving use available to the general public through a rental pool program when not in use by vacation clubs/timeshares owners or members. ...*

***IP Section 2.2, Visual Resources.*** *Protection of visual resources will be accomplished through provision of view corridors, vista points, development height limits, and dune restoration areas as identified in the Local Coastal Land Use Plan. ...[Decision makers shall approve a CDP] only if it is found that the development is sited, designed, and landscaped in a manner that provides view corridors from Highway One to the ocean and considers protection and/or enhancement of coastal visual resources. ...*

***IP Section 3.2, CZ-VSC Coastal Zone Visitor Serving Commercial, Height Regulations:*** *No building shall exceed thirty-six (36) feet as measured from the existing grade except hotel uses shall be permitted variation in height to forty-five (45) feet. ... Views over development, as specified in the Local Coastal Land Use Plan, shall be preserved by limiting heights as necessary to assure compliance with policies contained in the Local Coastal Land Use Plan.*

***IP Section 3.2, CZ-VSC Coastal Zone Visitor Serving Commercial, Minimum Requirements:***

- (a) Density: For visitor-serving hotels, allow up to 75 rooms per acre. ...[maximum rooms allowed in Area CZ-VSC-B is 375 rooms] ... For visitor-serving motels, allow up to 37 rooms per acre. ...[maximum rooms allowed in Area CZ-VSC-a is 229 rooms; CZ-VSC-b is 141 rooms] ...*

## **LCP Natural Resource Policies**

***LUP Policy 4.3.20*** *Designate areas especially suitable for dune habitat restoration on the Coastal Resources Map (Figure 7). These include: ...*

*e) three areas west of the freeway north of Bay Avenue designated for stabilization/restoration as part of future development.*

*Require these areas to be maintained in open space, and prohibit grading except in conjunction with an approved habitat restoration activity, . . . . Permit these areas to be used for restoration or enhancement of native dune plant habitats, establishment of new habitat for rare or endangered species, and in conjunction with approved development for off-site habitat mitigation.*

***LUP Policy 4.3.19*** *Require implementation of dune stabilization and/or restoration Programs as a part of new developments west of Highway One, in areas shown on Figure 7. Requirements for these programs shall include:*

- a) a professional survey and habitat protection plan including relevant items set forth in Policy 4.3.18a;*
- b) identification of any grading proposed for recontouring and/or dune stabilization;*
- c) maximum use of native plant materials, including rare and endangered species;*
- d) a maintenance program which includes:*
  - 1) initiation of restoration activities prior to occupancy of new developments;*
  - 2) completion of restoration activities within a five-year period, during which the owner, developer, homeowners association, an assessment district or other appropriate management agency accepts responsibility for the restoration activity;*
  - 3) permanent preservation and maintenance of the restored habitat by integration with a development's general landscape program, dedication to a public agency, or other method; and*
  - 4) effective restrictions for prohibiting vehicular access and managing pedestrian access to and through such areas.*

*...*

- h) Native landscape planting and dune stabilization techniques, as recommended in the certified Environmental Impact Report for the regional bike path link (State Clearinghouse Number 93053047). It is recognized that these added native landscape and dune stabilization areas related to the bike path project may be disturbed by future development. However, they shall be protected within the terms of the required easements for regional bike path construction. Any loss of such native plant landscaping on these dune areas shall be offset with the preservation or restoration (revegetation with native plants) of an equivalent dune area not presently restored or preserved, in accordance with the policies of this Local Coastal Program.*

***LUP Policy 4.3.18.a*** *Prior to any development or specific plan approval which affects habitat areas identified on Figure 7, a qualified professional botanist shall prepare a plant survey and plan for the affected area that includes:*

- 1) Description of type and location of existing native and other species;*

- 2) *Protection goals consistent with Policy 4.3.20;*
- 3) *In habitat preservation areas: methods for controlling public access and eliminating invasive non-native species (ice plant);*
- 4) *In habitat enhancement and consolidation areas: irrigation, fertilization and long-term maintenance requirements, and methods of establishing new native plants (e.g., seeding, transplanting) and eliminating ice plant;*
- 5) *Mitigation measures for adverse impacts, such as loss of transplants to shock; and*
- 6) *A schedule setting forth time requirements for plant establishment, dune stabilization, access controls, etc.;*

***IP Figure 4: Habitat Overlay District***

*Purpose.*

*To provide areas suitable for dune restoration, relocation, and/or stabilization as part of future developments as designated in the Local Coastal Land Use Plan.*

*Permitted uses.*

- (a) *Restoration or enhancement of native dune plant habitats or establishment of new habitat for rare and endangered species;*
- (b) *Grading and other activities necessary to implement a habitat restoration activity;*
- (c) *Native plant relocation as established in the Local Coastal Land Use Plan.*

*Only the above permitted uses are allowed; no other permitted uses of the underlying district are allowed within this overlay.*

*Minimum requirements.*

*(a) A biological field survey and habitat protection plan is required to be prepared according to standards established in the Local Coastal Land Use Plan. If the plan includes habitat relocation or off-site restoration activities, it shall be forwarded to the Department of Fish and Game for review and approval. Plans involving rare or endangered species should also be forwarded to the U.S. Fish and Wildlife Service for consultation.*

*(b) Permanent protection shall be ensured for areas designated as habitat preserves as determined by the required field survey and habitat management plan through easements or dedications to public agencies to be reviewed and approved by the City Attorney and/or the Executive Director of the Coastal Commission pursuant to CZ "Review of legal documents" provisions.*

## **Required Survey and Habitat Protection Plan (IP, Page 20)**

*For dune stabilization and/or restoration programs as a part of new developments, the following requirements shall apply:*

- a) A biological field survey and habitat protection plan including relevant items set forth above;*
- b) Identification of any grading proposed for recontouring and/or dune stabilization;*
- c) Maximum use of native plant materials, including rare and endangered species;*
- d) A maintenance program which includes:*
  - 1) initiation of restoration activities prior to occupancy of new developments;*
  - 2) completion of restoration activities within a five year period, during, which the owner, developer, homeowners association, an assessment district or other appropriate management agency accepts responsibility for the restoration activity;*
  - 3) permanent preservation and maintenance of the restored habitat by integration with a development's general landscape maintenance program, dedication to a public agency, or other method.*
  - 4) effective restrictions for prohibiting vehicular access and managing pedestrian access to and through such areas.*

*Appendix C lists some native plants appropriate for landscaping in general, which was prepared by the Monterey peninsula Water Management District, and should be used as general landscaping guidelines. (IP, p. 20)*

The IP biological survey and habitat protection plan items referenced in subsection (a) are:

*The plant survey and habitat protection plan shall consist of the following components:*

- a) description of type and location of existing native and other species;*
- b) protection goals consistent with Policy 4.3.21 of the Land Use Plan;*
- c) in habitat preservation areas: methods of controlling public access and eliminating invasive non-native species (iceplant);*
- d) in habitat enhancement and consolidation areas: irrigation, fertilization, and long term maintenance requirements, and methods of establishing new native plants (e.g., seeding, transplanting) and eliminating iceplant;*



- e) *mitigation measures for adverse impacts, such as loss of transplants to shock;*
- f) *schedule setting forth time requirements for plant establishment, dune stabilization, access controls, etc.;*
- g) *All habitat protection plans shall include the maximum feasible planting or protection of dune buckwheat (*Eriogonum parvifolium* and *E. latifolium*) as a food source for the endangered Smith's blue butterfly (*Shijimiaeoides enoptes smithi*);*
- h) *An implementation and management component which provides for:*
  - 1) *fencing, signing, or other appropriate access control measures to be installed as a condition of development (or as a condition of permits for restoration activities if no other development is proposed);*
  - 2) *responsibility by the developer for habitat installation, maintenance and preservation for at least five years. Permanent maintenance shall also be provided for, with reliance on public and/ or private funding sources and ownership. Options include:*
    - a. *contribution of funds by developments requiring habitat preservation/ enhancement/relocation measures;*
    - b. *dedication of restored habitats to a public agency or private conservation organization with habitat management capabilities.*

Finally, the IP also specifies requirements for habitat protection plans that may involve habitat relocation or off-site restoration:

*For habitat relocation or off-site restoration, a field survey and habitat protection plan must be prepared. The protection plan must be reviewed by the California Department of Fish and Game, and must demonstrate:*

- a) *The long term suitability of the restored habitat for these species, including but not limited to wind protection, soil condition, and acre-for-acre replacement of habitat;*
- b) *the management methods needed for installation, nurturing, and permanent protection of the restored habitat including but not limited to the method of establishment (seed, hydro-mulch, transplant), and access restrictions;*
- c) *the requirements for successful establishment of each species in another location, after which removal of the original plants may be possible.*

**LUP Policy 3.3.1:** *Visitor-serving and public recreational uses are given priority west of State Highway One, as designated in the Land Use Plan Map in Section 6.0. Development of these uses shall be consistent with the protection of natural and visual resources.*

**LUP Policy 6.4.1:** *... The described [LCP development] densities, both above and below, represent a maximum. As required by applicable policies of the LCP, permitted development intensities shall be limited to those which adequately address constraints including, but not limited to: public access and recreation needs (including adequate public access and recreation facilities inland of the 50-year erosion setback line); natural hazards; dune habitats and their appropriate buffers; and natural landforms and views to the Bay....*

**LUP Policy 4.3.21:** *Enhance coastal plant communities by requiring new developments to utilize appropriate native coastal plants in landscaping plans that are compatible with existing native species. Prohibit the use of invasive plants in landscaping schemes.*

**LUP Policy 4.3.22:** *All off-road vehicles shall be prohibited on the dunes, except those necessary for emergency and to support coastal dependent uses and shall be limited to existing paths and stockpiles in order to protect dune vegetation.*

**LUP Policy 4.3.23:** *Where major access routes are available or desirable through sand dunes to the coast, boardwalks or other appropriate pathways constructed of permeable materials should be provided to protect the vegetation stabilizing the dunes.*

## **Public Access and Recreation**

**LUP Policy 2.3.1.** *Require all future shorefront developments to provide public access in the following manner: a) where access is shown on Figure 4, dedication of a vertical and/or blufftop access casement which meets the criteria established in Policy 2.3.4; b) where no access is shown on Figure 4, dedication of an access easement where it is found to be consistent with the criteria of Policy 2.3.4; or c) where no access is shown on Figure 4, and access dedication cannot be achieved consistent with Policy 2.3.4, payment of in-lieu fees for development and maintenance of other accessways.*

**LUP Policy 2.3.2.** *Require dedication of lateral access easements for dry sand access along sandy beaches as part of all shorefront development.*

**LUP Policy 2.3.3.** *Developed public accessways shall at the minimum provide trash receptacles, signs and trail improvements. Vista points shall be located and designed to take full advantage of views to and across the Bay, with provisions for vehicle turnouts where accessible from a public road, signs, and trash receptacles. Developed vista points should be accessible from a public road or accessway.*

**LUP Policy 2.3.4.** *Work with landowners and public agencies to develop and manage vertical and lateral accessways in the general locations shown on Figure 4. Future developments shall implement safe accessways and improvements as determined by the City. Site specific locations shall be developed as part of future development proposals, and according to guidelines established by the City. The following criteria shall be used to determine the exact location of accessways. a) Accessways should be located at intervals commensurate with the level of public use. b) Accessways should be sited where the least number of improvements would be required to make it usable by the public, where support facilities exist or can be provided, where public safety hazards are minimal, and where resource conflicts can be avoided or mitigated. c) Vertical accessways to the shoreline should be located in areas where there is sufficient beach area, and should be distributed throughout an area to prevent crowding, parking congestion, and misuse of coastal resources. d) Accessways and trails should be designed and sited to: 1) minimize alterations of natural landforms, conform to existing contours, blend in with the visual character of the setting, and be consistent with the City's design standards; 2) prevent unwarranted hazards to land and public safety; 3) provide for privacy of adjoining residences and minimize conflicts with adjacent or nearby established uses, and be wide enough to permit placement of a trail and/or fence and a landscape buffer; 4) prevent misuse of sensitive coastal resource areas; and 5) be consistent with military security needs. e) Coastal access trails should not be located in areas of high erosion or fire hazard or in areas hazardous to public safety (including blufftop areas where bluff stability is a concern), unless the trail is designed and constructed so that it does not increase the hazard potential, or if it is required to correct abuse by existing access use.*

**LUP Policy 2.3.8.** *New improved accessways shall not be made available for public use until public or private agencies responsible for managing the accessway have addressed the following management concerns: a) identification of the types of uses to be allowed; b) the need for any seasonal restrictions; c) the type of improvements needed, such as signs, gates, trash receptacles, boardwalks, restrooms; d) the proposed location, type and amount of parking facilities; and e) identification of the number of users that can be supported.*

**LUP Policy 2.3.9.** *Require new development to dedicate and improve accessways, which shall be opened to the public when such accessways are accepted by a public or private agency. ...*

**LUP Policy 2.3.10.** *Ensure provision of adequate parking for designated pedestrian accessways. Require provision of public parking as part of developments at a rate of 10 percent above the project's total required parking. The means of providing public parking areas will be the responsibility of State and local governmental entities and private development proposals. The following will be pursued where feasible and consistent with the Plan: a) utilization of State of California Parks Department Properties to provide public parking and other public services and amenities, which provide quick and easy access to beach areas; b) abandonment, when appropriate, of some City paper streets, which then could be utilized for public parking strips, or traded for adjacent properties to form a more logically shaped parking lot; c) the City shall*

*require approved development plans to include a provision for public parking on-site, or provide the property off-site, but in a convenient location to the beach areas, or be assessed an in-lieu pro-rata fee that the City could utilize for public parking and maintenance purposes. Parking areas should be located in geologically stable areas where they would not contribute to excessive erosion or slope failure. Parking areas shall be screened from public viewpoints through landscaping, berming or other appropriate measure consistent with the Design Standards required in Section 5.3 of this Plan.*

***LUP Policy 3.3.1.*** *Visitor-serving and public recreational uses are given priority west of State Highway One, as designated on the Land Use Plan Map in Section 6.0. Development of these uses shall be consistent with the protection of natural and visual resources.*

***LUP Policy 3.3.2*** *Encourage development of visitor serving facilities that provide services which meet a range of visitor needs. Provision of visitor facilities and services open to the general public, such as but not limited to state park facilities, dedication of sandy beach, and development of viewing areas and sheltered areas, is expected as part of each shorefront development project. Lower-cost visitor serving facilities such as campgrounds are encouraged.*

***LUP Policy 3.3.3.*** *Permitted uses in areas designated as visitor-serving commercial include hotels, motels, accessory shops (including gift shops, travel agencies, beauty shops, et cetera), food service establishments, service stations, recreation retail shops and services (i.e., bike rentals), campgrounds, recreational vehicle parks and other recreational facilities operated as a business and open to the general public for a fee. Permitted uses in areas designated as public recreation include public parks, picnic areas, parking areas, sandy beaches and accessways which are publicly owned or over which access easements are to be required as a condition of development. In addition to areas designated public recreation on the Land Use Plan Map, public recreation also means public uses within development projects such as picnic areas, wind shelters, promenades or other indoor public recreational area uses where outdoor recreation may not be favorable; other support facilities for public recreational uses; and controlled public access and/or educational programs in areas of dune restoration programs.*

***LUP Policy 3.3.8.*** *Require all visitor serving developments to provide adequate parking for the project users, commensurate with the proposed use. The developer will have to provide an adequate number of parking spaces to suit that development, including any public uses on-site. In addition, the developer will be required to provide additional public parking at a rate of 10 percent above the project's total required parking, consistent with Policy 2.3.10.*

***LUP Policy 3.3.9.*** *Ensure provision of adequate public beach recreational areas for public use commensurate with future population growth and development, and compatible with existing development. Require the dedication of all sandy beach areas seaward of the toe of the dune, bluff or shoreline protection device as a condition of future development.*

**LUP Policy 4.3.6.b.** *Encourage the clustering of developments away from potentially hazardous areas and condition project permits based upon recommendations presented in the geologic report. An active recreation beach zone and public amenity zone shall be established between the mean high water line and the building envelope (refer ahead to Figures 12 and 13). Uses allowed in the active beach and public amenity zones are described in Policy 6.4.1 of this plan.*

**LUP Policy 6.4.1.** *... The described densities, both above and below, represent a maximum. As required by applicable policies of the LCP, permitted development intensities shall be limited to those which address constraints including, but not limited to: public access and recreation needs (including adequate public access and recreation facilities inland of the 50-year erosion setback line); ...*

**LUP Policy 6.4.1.g.** *Allow public parks, picnic areas, parking areas, public vista points, sandy beaches and accessways which are publicly owned or over which access easements are to be required as a condition of development. In addition to areas designated public recreation in Figure 11, public recreation also means public uses within development projects such as picnic areas, wind shelters, promenades or other indoor public recreational areas; other support facilities for public recreational uses; and controlled public access and/or educational programs in areas of dune restoration programs.*

**LUP Policy 6.4.3d.** *(Circulation Designations, Public Access – Pedestrian/Bike Path) Plan and develop, provided that adequate funding is available, a public pedestrian/bike path along the existing and proposed Sand Dunes Drive right-of-way to connect to the regional bike path system in Fort Ord and Seaside/Monterey.*

**IP Section 3.2, CZ-PR, Coastal Zone Public Recreation District. Purpose.** *To provide areas for public use and enjoyment of the coast, and to enhance the recreational opportunities along Sand City's shoreline. Permitted uses, subject to Coastal Development Permit approval. (a) Public parks, picnic areas, parking areas, and sandy beaches; (b) Accessways which are publicly owned or over which access easements are to be required as a condition of development; (c) other support facilities for public recreational uses; (d) controlled public access and/or educational programs in areas of dune restoration programs. (e) all permitted and proposed uses shall be incorporated into a general parks plan or public works plan as part of an application for a coastal development permit.*

**IP Section 3.2, Coastal Zone Overlay District, Access requirements.** *(a) Offers to dedicate or grant public access easements shall be made in accordance with the provisions of the Local Coastal Land Use Plan. ... (b) Access easements shall be provided in accordance with provisions of the Local Coastal Land Use Plan and the following: (1) Vertical beach accessway easements shall be a minimum width of ten (10) feet and shall extend from the nearest public roadway to the sandy beach frontage. ... (2) Lateral beach accessway shall be provided by an easement with a minimum of 25 feet dry sandy beach or the entire sandy beach if the width of the*



*beach is less than 25 feet. (3) Blufftop access easements shall run along the edge of the bluff, and be of a width adequate to provide safe access. ....*

## **Coastal Act Access and Recreation Policies**

**Section 30210.** *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.*

**Section 30211.** *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.*

**Section 30212(a).** *Public access from the nearest public roadway to the shoreline and along the coast shall be provided in new development projects except where: (1) it is inconsistent with public safety, military security needs, or the protection of fragile coastal resources, (2) adequate access exists nearby, or, (3) agriculture would be adversely affected. ...*

**Section 30212.5.** *Wherever appropriate and feasible, public facilities, including parking areas or facilities, shall be distributed throughout an area so as to mitigate against the impacts, social and otherwise, of overcrowding or overuse by the public of any single area.*

**Section 30213.** *Lower cost visitor and recreational facilities shall be protected, encouraged, and, where feasible, provided. Developments providing public recreational opportunities are preferred. ...*

**Section 30214.** *(a) The public access policies of this article shall be implemented in a manner that takes into account the need to regulate the time, place, and manner of public access depending on the facts and circumstances 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 intensity. (3) The appropriateness of limiting public access to the right to pass and repass depending on such factors as the fragility of the natural resources in the area and the proximity of the access area to adjacent residential uses. (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 be carried out in a reasonable manner that considers the equities and that balances the rights of the individual property owner with the public's constitutional right of access pursuant to Section 4 of Article X of the California Constitution. 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.*

*(c) In carrying out the public access policies of this article, the commission and any other responsible public agency shall consider and encourage the utilization of innovative access management techniques, including, but not limited to, agreements with private organizations which would minimize management costs and encourage the use of volunteer programs.*

**Section 30220.** *Coastal areas suited for water-oriented recreational activities that cannot readily be provided at inland water areas shall be protected for such uses.*

**Section 30221.** *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.*

**Section 30222.** *The use of private lands suitable for visitor-serving commercial recreational 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.*

**Section 30223.** *Upland areas necessary to support coastal recreational uses shall be reserved for such uses, where feasible.*

**Section 30240(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 those areas, and shall be compatible with the continuance of those habitat and recreation areas.*

**Section 30253.** *New development shall do all of the following: ... (e) where appropriate, protect special communities and neighborhoods that, because of their unique characteristics, are popular visitor destination points for recreational uses.*

## **Traffic and Circulation**

**LUP Policy 6.4.10.** *New development shall be approved only where ...adequate circulation and parking has been provided for.*

**LUP Policy 6.4.23.a.** *Development within the coastal zone shall insure public safety by providing for adequate ingress or egress for emergency vehicles.*

**LUP Policy 6.4.24.** *Require future development in the Coastal Zone area to provide safe adequate streets, parking and loading.*

***IP Section 3.2 (Planned Unit Development Permit, Findings Required).*** ... Any development that is needed as part of the development scheme at the proposed location will not create traffic congestion, has adequate off- and on-site parking,...

## **Coastal Act Policies**

***Section 30210.*** 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.

***Section 30211.*** 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.

***Section 30212.5.*** Wherever appropriate and feasible, public facilities, including parking areas or facilities, shall be distributed throughout an area so as to mitigate against the impacts, social and otherwise, of overcrowding or overuse by the public of any single area.

***Section 30214.*** (a) The public access policies of this article shall be implemented in a manner that takes into account the need to regulate the time, place, and manner of public access depending on the facts and circumstances 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 intensity. (3) The appropriateness of limiting public access to the right to pass and repass depending on such factors as the fragility of the natural resources in the area and the proximity of the access area to adjacent residential uses. (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 be carried out in a reasonable manner that considers the equities and that balances the rights of the individual property owner with the public's constitutional right of access pursuant to Section 4 of Article X of the California Constitution. 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.

(c) In carrying out the public access policies of this article, the commission and any other responsible public agency shall consider and encourage the utilization of innovative access management techniques, including, but not limited to, agreements with private organizations which would minimize management costs and encourage the use of volunteer programs.

**Section 30252.** *The location and amount of new development should maintain and enhance public access to the coast by (1) facilitating the provision or extension of transit service, (2) providing commercial facilities within or adjoining residential development or in other areas that will minimize the use of coastal access roads, (3) providing nonautomobile circulation within the development, (4) providing adequate parking facilities or providing substitute means of serving the development with public transportation, (5) assuring the potential for public transit for high intensity uses such as high-rise office buildings, and by (6) assuring that the recreational needs of new residents will not overload nearby coastal recreation areas by correlating the amount of development with local park acquisition and development plans with the provision of onsite recreational facilities to serve the new development.*

**Section 30253.** *New development shall do all of the following: ...(e) where appropriate, protect special communities and neighborhoods that, because of their unique characteristics, are popular visitor destination points for recreational uses.*