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Steve Kinsey, Chair
and Honorable Commissioners
California Coastal Commission
45 Fremont Street, Suite 2000
San Francisco, CA 91405

**Re: Monterey Bay Shores Ecoresort (“MBS”) Project
Appeal No. A-3-SNC-114 (Security National Guaranty (“SNG”)
Hearing Pursuant to Settlement Agreement**

Dear Chair Kinsey and Commissioners:

This firm, with McCabe and Company, represents SNG in seeking your approval of the Monterey Bay Shores (“MBS”) Ecoresort Project, a 368-unit mixed-use resort development proposed on an oceanfront parcel in the City of Sand City on the Monterey Peninsula.

The MBS Project returns to you for a hearing pursuant to a Settlement Agreement. Importantly, Commission approval of the Project with terms and conditions that SNG can accept will resolve an unprecedented 15-year permit appeal during which the courts twice have overturned Commission denial decisions, and will result in SNG’s dismissal of a pending inverse condemnation/temporary takings lawsuit and a mandate case now pending the Court of Appeal.

We believe all parties recognize and agree that the matter requires closure.

To that end, in September 2013 the Commission authorized its Staff and SNG to negotiate a settlement based on a “Conceptual Site Plan” which the Commission reviewed in closed session. (See Exh. 1 hereto and Exh. 1 to the Settlement Agreement.) The settlement process was protracted. For its part, SNG made numerous revisions to the scale and orientation of its Project. SNG compromised on many anticipated conditions of approval. And, SNG submitted additional substantial evidence which demonstrates that the Project, as now modified, is consistent with the Sand City LCP and the public access and recreation policies of the Coastal Act.

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On December 24, 2013, Staff and SNG entered into the Settlement Agreement. (Separately provided to you.) In the Agreement, Staff agreed that “the Commission Executive Director has agreed, as reflected in this Agreement, to prepare a staff report recommending approval of a further modified project consistent with SNG’s proposed conceptual site plan (V4.3) and revised plans (Vesting Tentative Map (VTM) dated October 21, 2013, sheets TM-01 through TM-05, included as Exhibit A hereto, and subject to conditions, including those conditions in Exhibit B to the Agreement to which Staff and SNG agree. (Recital G.) Under the Agreement, SNG committed to accept the conditions in Exhibit B if they are imposed by the Commission without change. But, SNG and Staff were unable to agree at that time on but a handful of conditions – notably, those conditions that SNG believes are fundamental to its ability to finance, build and operate the Modified Project, and thus to any settlement and dismissal of the pending lawsuits. But, the Agreement noted that “Commission staff is in agreement with, and would accept most of those conditions of approval” (Para. 2; emphasis added.)

Consequently, SNG expected to see a Staff Recommendation consistent with the Conceptual Site Plan and Vesting Tentative Map (VTM) and Staff’s agreement with most of the conditions. That, however, is not the case. While we appreciate that Staff put considerable effort into preparing the Staff Report, the Staff Recommendation is completely inconsistent with the “Conceptual Site Plan” – which is not attached to the Staff Report, inconsistent with the Vesting Tentative Map, and, as the redline provided reflects, disagrees with the most of the conditions of approval in Exhibit B. The recommendation goes well beyond the LCP (contrary to the Court of Appeal decision in SNG I, discussed below) and recommends a series of conditions that, unfortunately, are pushed to the extreme, unreasonable, and tantamount to a “denial with conditions.” The Staff Recommendation would not bring closure to the appeal and litigation.

We have instead prepared the attached redline of Staff’s recommended conditions. Many conditions are acceptable, even though they differ from our Exhibit B to the Settlement Agreement. Those in dispute we have divided into two tiers. Tier 1 represents conditions that we ask be tweaked, and we believe this should be no problem for the Commission. Tier 2 are the conditions that are unacceptable to SNG, and which are addressed in this letter. At this point, after 15 years of running an administrative and litigation gauntlet, SNG understandably needs a Commission approval that achieves certainty (i.e., no further permits) and a Project that is economically feasible, buildable, operational, and financeable. If the conditions are

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modified as SNG has requested, that will bring closure to this matter. Those conditions, if adopted, result in a project that is LCP compliant and consistent with the access and recreation policies of the Coastal Act.

Project History

The MBS property is a 39-acre oceanfront site located west of State Highway 1 and is the northernmost parcel in Sand City. From about 1927 to 1986, the Lonestar Company conducted on the property one of the largest commercial sand mining operations in the western United States. Lonestar excavated and sold sand for industrial, commercial, and consumer uses. As the Court of Appeal noted in SNG I, discussed below, the sand mining operations left the site in an environmentally degraded condition, with an excavation pit near the middle of the property.

In 1982, the Commission certified Sand City's LCP and designated the MBS property for visitor-serving commercial uses, with a density not to exceed 650 units (this project, by contrast, proposes only 368 units, a 43% reduction).

Beginning in the late 1980's, the Monterey Peninsula Recreation and Park District attempted to amend Sand City's LCP through an LCP amendment "override" process to make parks and open space the preferred use on all land west of Highway 1. Sand City vigorously resisted the effort. In 1996, state Senate Majority Leader Henry Mello brokered a Memorandum of Understanding ("MOU") between State Parks, the Parks District and Sand City, dubbed the "Coastal Peace Accord." Under the MOU, Sand City agreed to set aside 80% of its coastal land for preservation and State Parks agreed to commercial and residential uses on two sites, including the MBS site as the larger site. This was followed by two LCP amendments ("LCPAs"). LCPA 1-93 (to which the MOU was attached), unanimously approved by the Commission, excluded the two sites from the park and open space designation. LCPA 2-97, site specific to the MBS property, clarified LUP land use designations on the MBS property so uses could be intermixed, the site could be developed with a maximum density of 650 units with a specified ratio of visitor-serving units to residential units. In effect, the MOU and resulting LCPAs contemplated a density transfer to the MBS property.

Relying on the LCP, LCPAs and "Coastal Peace Accord," SNG exercised its option on the property and bought it. In 1998, Sand City approved a 495-unit mixed use resort development. That decision was appealed to the Commission. In 2000, the Commission denied the Project. In 2008, in a published opinion, the Court of Appeal

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in *SNG v. California Coastal Commission (“SNG I”)* overturned the Commission’s decision, holding that the Commission cannot amend an LCP on permit appeal, and further that as stated in the LCP, there is no ESHA on the MBS property.

In 2009, on remand, the Commission again denied the Project, in part based on the lack of a water distribution permit. This time, SNG filed a mandate action (*SNG v. California Coastal Commission (“SNG II”)*) and a separate an inverse condemnation, seeking damages and attorneys’ fees (*SNG v. California Coastal Commission (“SNG III”)*). In 2010, while those lawsuits against the Commission were pending, the Court of Appeal issued yet a further published opinion overturning the Water Management District’s denial of a water distribution permit. The District has subsequently issued the permit, and water is no longer an issue for this Project.

In June 2013, the trial court in *SNG II* again overturned the Commission’s 2009 decision, ruling the Commission erred on denial issues relating to 1) adequacy of water supply, 2) establishment of an appropriate erosion setback line, 3) impairment of significant public views from Highway One, and 4) adequacy of protection for dunes and other natural resources. The Commission appealed and SNG, in turn, amended its inverse lawsuit (*SNG III*) to additionally plead a temporary takings and a further substantive due process claim.

In September 2013, the Commission authorized settlement negotiations based on the “Conceptual Site Plan” (V4.3) it reviewed in closed session and with which, per the Settlement Agreement, the Staff Recommendation was to be “consistent.”

Project Description

After the trial court ruling and meetings with Staff, SNG made substantial modifications to its MBS Project, consistent with the Conceptual Site Plan (V4.3) which the Commission reviewed in closed session and the revised Vesting Tentative Map which further defines the Project. The Conceptual Site Plan lowered the profile of the resort by eliminating all or portions of 11 stories and reducing its building footprint, bulk, and mass. It eliminated any structures from the LCP-designated view corridor (the NW section of the site) and substantially set back the Project from that corridor, providing additional open space. The revised Project also was moved landward to ensure that it is located inland of the 75-year erosion setback line. The resort entry road cut through the large existing degraded dune proposed for restoration (and which the trial court said was proper) was eliminated in favor of

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tunnel access to provide a continuous restored dune landform, and coastal access parking was moved further downcoast, per Staff's request, so that it would reduce further views of the property and increase the Bay view.

The resulting Modified Project reflects a unique curvilinear design, which we understand the Commission in closed session preferred to a "boxy" design. The property will be divided into three parcels and, consistent with the certified LCP, involves a mixed-use visitor-serving and residential with 368 units (not the maximum of 650 units permitted in the LCP), consisting of 184 hotel rooms, 92 hotel condominium units, and 92 residential condominium units, with a building footprint occupying less seven acres of the 39.2-acre parcel. As a unique ecoresort, the Project is proposed with many sustainable elements (green roofs, "green" walls, "smart" lighting; gray water recycling; and geothermal energy sources) and will be LEED certified (platinum).¹ Underground parking is proposed to reduce building height and avoid over 12 acres of impervious surface coverage. The Project features nearly 21 acres of habitat and dune restoration and comprehensive public access (parking, a regional bike trail and bike racks, a vertical trail, a vista point, lateral beach access, and other access amenities – benches, water fountain, recycling/trash bins, and doggie mit stations). SNG has agreed to conditions that require public access easements and a management plan, and further that all access amenities be constructed and available for public use prior to occupancy.

ISSUES WHERE THERE IS NO DISPUTE

Consistency with LUP Land Use Designations

LUP Policy 6.4 authorizes up to 650 units on the MBS property, permits residential, hotel and visitor-serving residential (hotel condo) uses to be intermixed subject to an overall site development plan.

There is no issue that the Project is LCP compliant with the LUP land use designations. It proposes 368 units and intermixes uses to meet the required ratio of 2.7 visitor-serving units for every residential unit.

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Habitat Protection

As noted above, in *SNG I*, the Court of Appeal held its published opinion held that there is no ESHA on the MBS property. The Staff Report acknowledges this.

Nonetheless, SNG has submitted a comprehensive Habitat Protection Plan (“HPP”) for the revised project. It proposes to restore 20.56 acres of the property to foredune, secondary dune, back dune, wetland, and coastal bluff habitat. It also commits 15.65 acres to open space or conservation easement.

Specifically, the Project will restore the existing large degraded dune feature, as required by LCP Figure 9. It will preserve 1.4 acres of coastal dune scrub (including an area where seacliff buckwheat plants will be avoided), substantial amounts of ice plant will be removed, and approximately 400 buckwheat plants will be established to provide an enhanced opportunity for use by the Smith’s blue butterfly. The Project also will reestablish 3.7 acres of habitat for the Monterey spineflower and will avoid and promote potential western snowy plover habitat along the shoreline by providing biological surveys, erection of enclosures if plover nests are found, and an adaptive management plan, all of which is set forth the HPP.

Adequate Water Supply

In 2009, the Commission denied SNG a permit, in part, on grounds of a claimed inadequate water supply. In 2010, the Court of Appeal, in a published opinion, overturned the decision of the Monterey Peninsula Water Management District denying SNG a water distribution permit. Thereafter, as explained in the Staff Report, the Water District issued SNG the water distribution permit to serve the MBS development, and accordingly the Project is consistent with the LCP’s public services policies. Evidence of annexation into Cal-Am’s service territory from the CPUC was provided to Staff last October 2013, and the findings should be corrected to reflect that.

TIER II ISSUES – ISSUES THAT ARE FUNDAMENTAL TO SNG

Importantly, the standard of review for the Commission on this Project is whether it conforms to the certified LCP and, because it is located between the first public road and the sea, whether it is consistent with the public access and recreation policies of the Coastal Act.

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The principal flaw in previous staff recommendations on earlier versions of the Project is that Staff apparently does not like the LCP, which for Sand City was certified in 1982. Consequently, its recommendations have sought to revise the LCP through the permit appeal, and largely for that reason this appeal has persisted for 15 years and generated the three lawsuits. In 2008, in *SNG I*, the Court of Appeal established a fundamental proposition that necessarily guides the Commission's review here:

“The Commission has no power to revise the content of Sand City's certified LCP when hearing an administrative appeal from the grant of a CDP.” (*SNG v. CCC* (2008) 159 Cal.App.4th 402, 422-423 and 425 fn. 12.)

The problem, unfortunately, is perpetuated in the current Staff Recommendation. The Staff Report does note that the SNG I held that there is no ESHA on this property. The Staff Report does not, however, explain the jurisdictional limitation quoted above. It is the guiding principle for Commission review in this case.

I. View Issues

A. Preservation of LCP Views – Modify Staff's Special Conditions 1, 1(a) and 1(b)

SNG and Staff remain fundamentally at odds regarding the orientation of the Modified Project in terms of LCP views. Staff's position is, in essence, that the Project must be *invisible* from Highway One and must protect all bluewater views of Monterey Bay. That, however, is not what the certified LCP states. Indeed, in the settlement process leading to the Conceptual Site Plan (V4.3), SNG made numerous compromises regarding the scale and orientation of the Project to minimize view impacts and increase bluewater views, while providing restoration of the existing degraded dune feature on the property and other dune and habitat restoration. The Project, as revised, is four-square with the LCP.

Staff's position glosses over the certified LUP. LUP Policy 5.3.2 provides:

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“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.” (Emphasis added.)

LUP Figure 9 shows the one designated view corridor in the NW corner the property (including a designated vista point location) and also dune preservation, stabilization, and restoration of the existing large degraded dune.

There is no LUP policy mandating a view corridor beyond the LUP-designated view corridor. In fact, there is no LUP policy requiring a “dune view line,” except that SNG has agreed to provide an expansive one, as was shown the Commission on the Conceptual Site Plan. LUP Policy 5.3.8 provides:

“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.” (Emphasis added.)

Policy 5.3.8 “encourages” a new development to incorporate more view corridors from Highway One to the ocean, but it plainly also permits varied roof or building profile lines and bay view corridors through, between and/or over buildings. “Encourage” does not mean “requires,” “mandates” or “must.” The LCP does not state that there must or should be a view corridor beyond the LCP-designated view corridor over the entire property as viewed from Highway One. Nonetheless, SNG has received plenty of “encouragement” to protect views of the Bay and City of Monterey beyond the LCP-designated view corridor shown on Figure 9, and it has more than done so through creation of the Conceptual Site Plan’s “dune view line,” elimination of building stories and reducing elevations, eliminating any development in the designated view corridor (regardless of whether it is below the line of sight, which the trial court approved), and establishing a generous setback from the designated view corridor.

Further, LUP Policy 5.3.10 states: “Utilize existing or manmade dunes with project design to enhance visual resources.” And, LUP Policy 5.3.11 adds: “In new developments require dune stabilization measures where feasible and where they

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would stabilize an unconsolidated dune, and/or reduce views of the development from Highway One.”

The Modified Project is fully LCP-compliant. It will restore, enhance, and consolidate the large existing degraded dune landform left over from the sand mining operation. Although the trial court in SNG II ruled that an entry road cut through the restored dune is permissible, SNG has agreed instead to provide tunnel access to the resort, at a great additional cost, thus providing a large and consistent restored Flandrian dune formation.

SNG also submitted numerous precise, engineered cross-sections on its Vesting Tentative Map (“VTM”), including a “dune view cross-section” which demonstrates that all development north (upcoast) of the “dune view line” will be below the line of sight at elevations Staff required during discussions before the September 2013 closed session (again, shown on Conceptual Site Plan, VTM and other submittals), as viewed by a southbound motorist 5’ above Highway One.

Accordingly, beyond LCP Figure 9, the Modified Project will provide additional and substantial view corridors north of the dune view line which preserve the snippets of intermittent views of the Bay and the City of Monterey for the couple of seconds available to the motorist driving southbound at 65 mph on Highway One. Moreover, by virtue of lowering the existing foredune in front of the resort buildings to 32’, the development will increase bluewater views of Monterey Bay by approximately 14%. The Project is fully consistent with the LCP.

B. The Conceptual Site Plan’s “Dune View Line” Versus Staff’s New “Dune Line” -- Modify Staff’s Special Conditions 1, 1a-b

The Settlement Agreement requires Staff to recommend approval of the revised Project, “consistent with SNG’s proposed conceptual site plan (V4.3) and revised plans (Vesting Tentative Map (VTM) dated October 21, 2013, sheets TM-01 through TM-05). . . .” (Recital G; emphasis added.) The Conceptual Site Plan, which the Commission reviewed, and the VTM conspicuously show the “Dune View Line” and the specific elevations arrived in discussion with Staff which then were presented to the Commission in the September 2013 closed session. (See attached Exh. 1.) To our disappointment, despite clear language, the Staff Recommendation ignores the Settlement Agreement, the Conceptual Site Plan, and the Dune View Line, and

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instead recommends, post-settlement, a different, extreme “Staff Dune Line” along the 80’ contour, essentially running from one end of the restored dune to the other. (See attached Exh. 2.)

As explained, no LUP policy imposes a view corridor over the entire property or the protection of all bluewater views as viewed from Highway One, as Staff now recommends. Had the Commission intended such a policy when it certified the LCP, it could simply have said so in the LCP, but did not. Moreover, it would have made no sense for the Commission to permit up to 650 units on the property (we propose only 368 units) and to designate in LUP Figure 3 mixed-use development over basically the entire site outside the LCP-designated view corridor. Thus, Staff’s approach represents a de facto amendment of the LCP, which in 2008 the Court of Appeal held the Commission could not do in the extent of this appeal, and it is not what the Commission had in mind in certifying the LCP or the LCPAs following the “Coastal Peace Accord.”

Beyond that, there are three reasons why the “Staff’s Dune Line” makes no sense. First, a simple review of the topo on the Vesting Tentative Map (VTM) shows that this particular line currently provides no bluewater view at all. As viewed by a motorist from Highway One at approximately 81’ (5’ above the highway), the line runs first through a tall grove of Cypress trees (108’), then there is a modest-sized dune at 79’ westward, and finally a tall dune at 91’ is also located west of that line – all obstructing any water view. Second, as explained, the LCP does not require a “dune view line,” much less require creating yet additional bluewater views where none presently exist. The “Dune View Line” shown on the Conceptual Site Plan (V4.3) provides a more than generous view corridor in addition to the LCP-designated view corridor shown on Figure 9 in the LCP. Lastly, and critical for SNG, Staff’s new line would require lopping off portions of the middle of the resort Project, inconsistent with the Conceptual Site Plan and the specific building elevations on which the Commission agreed settlement would be based, thereby destroying the form of the Project proposed. By contrast, the “Dune View Line” on the Conceptual Site Plan (V4.3), previously reviewed by the Commission and to which SNG and Staff previously agreed in the Settlement Agreement, does preserve existing bluewater views.

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SNG therefore requests that the Commission modify Staff's Special Conditions 1, 1a-b to make clear that "dune view line" is that shown on the "Conceptual Site Plan" (V4.3), not the line Staff created after settlement.

C. View Issues on the Inland Side of the Restored Dune Landform

The Staff Recommendation also includes several extreme conditions relating to the landward side of the restored dune. Ostensibly, these conditions seek to make the project disappear. They also would make the resort project impossible to develop and operate, and therefore are not acceptable to SNG. Starting at the entry:

Resort Identity Signage – Staff's Special Condition 1(q). Staff's Special Condition 1(q) requires all signs to be sited and designed to "minimize their visibility in public views," to seamlessly integrate with the restored dune landform, to avoid lighting as much as feasible, and to be subordinate to the dune setting. SNG has submitted an Access, Signage and Lighting Plan (ASLP). To a great extent, the signage discussed in the ASLP is consistent with this requirement. But Staff's condition is vague, and minimizing the project's visibility in public views would make it impossible for the southbound or northbound motorist on Highway One to know that a resort project, located seaward of the restored dune, is even located on this property.

For this Project to be viable, visible, lighted resort identity signage must be provided at the entrance to the project site at the west end of the extension of California Avenue, at both sides of the entry road, and the tunnel entrance to the resort. The ASLP provides that at the entry to the project site from California Avenue, resort signage will be situated on a retaining wall outside the main entry and on two gateway structures at the entry. The signs will identify the MBS resort complex, as well as the hotel, related facility operators, brand and residential development. The resort signage will be installed on a stucco or stone-faced wall. Sign style and colors will match the style and colors of the resort architecture. The lettering will be raised metal or brushed bronze letters recessed into a concrete or stucco wall and painted to match architectural details. Resort and brand logos or icons will be included on the signs. Low levels of down-lighting and directional up-lighting or background lighting (alternatively), will illuminate the sign after dark at both the main project site entryway and the entry signs into the resort at the entry tunnel. (ASLP, p. 4-2.)

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SNG requests that Staff's Special Condition 1(q) be modified to make clear that signs be sited and designed per Staff's limitations "consistent with the ASLP, including resort signage." That would eliminate any confusion.

Coastal Access Parking lot – Delete Staff's Special Condition 1(e). SNG proposes a 46-space coastal access parking lot, which is shown on the Vesting Tentative Map. Staff's Special Condition 1(e) would require the lot to be shifted further south, closer to the main tunnel access to the resort. The rationale given is that the parking would be "located in an important Highway 1 public viewshed." (Staff Report, p. 122.) In fact, however, the parking lot would not be located in the viewshed of Highway One at all.

Because of the elevation differences and location of the public parking lot, the lot could not be seen from Highway One. A Highway One motorist traveling at 81' (at a height of 5' above existing grade at 76') would first see the exit road from Highway One and elevated railway, and then only would be looking across a frontage road at the restored dune, and the parking lot would be well below existing grade at 65' tucked behind a retaining wall. This is evident from the view simulation provided in the briefing booklet and the precise cross-sections of the site provided.

Moreover, moving the lot south would create other issues not discussed in the Staff Report. First, it would move the parking area further away from the public access trail, overlook and beach access it is intended to serve. If anything, it should be moved closer to facilitate public access. Second, it would force the entry driveway to accommodate in the area of the tunnel all of the site traffic -- pedestrian traffic, emergency vehicles, bicycles, cars, trucks, and parking. The roadway would have to increase in width to safely support the traffic and parking simultaneously, which would require a substantial cut into the restored dune and a higher and more visible retaining wall fronting the dune as a result.

As proposed, there is a 60' buffer between the proposed roundabout in front of the entry tunnel and parking in the current design allows for easier transition from the parking area in and out, a buffer for large delivery trucks, a safer transition for pedestrians, bicyclists, and public access to the beach, overlook, and vertical trail.

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Accordingly, SNG requests that Staff's Special Condition 1(e) regarding the parking lot be deleted. It serves no purpose and makes no sense.

Parking Lot Setback – Delete Staff's Special Condition 1(j)2. The LUP “encourage[s] distinct separations between auto and pedestrian pathways.” (LUP Policy 5.3.4(1).) Thus, while a parking lot buffer is encouraged, it is not required. Staff's Special Condition 1(j)2, however, makes it a requirement by requiring a 5' separation between the public pathway that extends to the inland trail and the road and parking area. While a 5' wide pathway is provided between the parking area and a retaining wall on the landward side of the parking lot, there is insufficient room to provide an additional 5' buffer. Indeed, to provide the buffer would require a further cut into the restored dune on the seaward side of the road and with it, a taller, more visible retaining wall to hold back the restored dune.

Thus, the 5' parking lot setback does not work here. But, the parking lot will have a physical separation from the path. Accordingly, SNG agrees to a modification of Staff's Special Condition 1(j)2 to add as to the pathway that it “shall include separation from the road and parking utilizing concrete curbs, bumpers or other barriers to insure safety of pedestrians and bicyclists”. That meets the LUP policy and the limitations on this property.

Resort Access North of Entry Tunnel – Modify Staff's Special Condition 1(d). In its 2013 ruling, the trial court ruled that SNG could cut an entry road to the resort structure through the middle of the restored dune landform. To accommodate Staff's concerns, SNG compromised and the Modified Project proposes a compact entry tunnel instead, at great cost to SNG. The resort site plan and VTM also shows two access roads north of the tunnel which are required as part of daily circulation and the operation of the resort. Both are designed to be well below the line of site from Highway One (81') with pavers that match surrounding earthtone colors and descend to resort level 42' where they enter two tunnels the tops of which will appear as restored dune to integrate with the green living roof on top of the building and the surrounding area. The first access is for the hotel and back-of-house deliveries, trash pickup, and service access; it also serves as entry access to employee parking which descends to level 32'. The second access is to the condominiums. There will be no view impacts, and this particular area is not within any protected LUP viewshed.

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Staff's Special Condition 1(d) would require elimination of the two tunnels and shove all vehicular traffic – resort guests, trash pickup and back-of-the-house deliveries, and access to the condominiums –through the single compact entry tunnel. No viable resort could design entry access in this manner. As a practical matter, moreover, compliance with Staff's condition would be impossible here. The compact entry tunnel is at elevation 62'. By contrast, the tunnels to the north enter 20 feet lower at 42'. Inside the building at elevation 42', an area 110' in length enables delivery and trash trucks (as much as 40' in length and 15' in height) to turn around and maneuver in and out from the receiving docks – all out of sight. To accommodate the trucks and keep them hidden, two stories (20') in height are required so that the trucks can maneuver between level 42 and elevation 62'. This is not physically possible from the resort entry.

The second access to the north serves as the main access to 32' parking for the residential condominiums. This parking level is above the main resort parking at level 22', which supports the hotel, hotel condos and conference center. The top of this access, again, will appear as restored dune and will integrate with the green living roof on top of the building and the surrounding area.

In short, both access points to the north are necessary and required for proper resort operation, circulation, and safety of employees, guests and residents. They cannot be moved to the single compact entry tunnel and certainly cannot be eliminated. Moreover, the view simulations and the precise cross-sections in the briefing book demonstrate that the tunnels will not be seen from Highway One as they are 40' lower than the highway. Finally, no LUP policy requires that entry to the various elements of the resort be invisible.

SNG therefore requests that Staff's Special Condition 1(d) be modified to delete the restriction on essential secondary access at the north end of the Project.

Lighting – Modify Staff's Special Condition 1(m). No LCP policy restricts lighting along the entry road to the resort. Staff's Special Condition 1(m) would impose lighting restrictions that, again, are not required by the LCP, are not safe, pose an unacceptable risk to resort guests, residents, employees, and the public, and are not consistent with the Commission's previous decision authorizing exactly the same type of lighting along Sand Dunes Drive downcoast of the MBS property.

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In its Access, Signage and Lighting Plan, SNG has proposed lighting on the entry road, the public parking lot, and the two north access roads for safety purposes. To ensure safety, SNG proposes to place the overhead pole lights along the entry drive and part of the public parking lot. These lights are designed to be subordinate to the restored dune in the background so that they do not appear as against the blue sky, and they are partially hidden because the road and parking are well below grade on the property line. Again, these lights are consistent with the decorative overhead pole lights that the Commission approved on Sand Dunes Drive, south of the property.

The overhead pole lights will be 14 to 16 feet high, and will be placed from the main entry through the public parking area north to the end of the restored dune. Lighting north of the parking area, beyond the restored dune will be of lower height (5-7 feet) to avoid interference with the view corridor. Timers will be provided to turn off every other light at midnight each night, with the first and last light in the string remaining on.

On the north end of the public parking, pathway bollards are designed instead, specifically to be of limited height and are hidden well below the line of sight as viewed from Highway One. Together with low luminosity, they have no view impact.

Resort signage in the tunnel area would be installed on both sides of the tunnel on the retaining wall, with down lighting, subordinate to the tall dune but oriented so it can be seen from northbound and southbound on Highway One.

Staff's Special Condition 1(m), in essence, seeks to make the Project disappear, and nothing in the LCP requires that. Staff's condition would eliminate any overhead light standards or signage lighting. In other words, there would be no visible resort identification or any indication that the project exists on the site. From the public road to the entry tunnel, Staff would permit pathway and roadway bollards no more than 48" or less, and lighting upcoast of the main tunnel entrance (along the parking lot) would be prohibited other than the minimum necessary for pedestrian and vehicular safety purposes. These restrictions undermine the viability of the resort project. There must be adequate lighting to identify the project site, to provide safe vehicular ingress and egress, and to ensure the safety of hotel guests and residents and the public invited to use the public parking spaces.

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SNG requests that Staff's Special Condition 1(m) be modified to conformance instead with the lighting requirements of the Access, Signage and Lighting Plan, as set forth in the accompanying redline.

Existing Access to the Neighboring Parcel to the North – Modify Staff's Special Condition 1(d). Upcoast of the MBS property, between Ft. Ord Dunes State Park and Highway One, is a parcel owned by Mountain Lake Development Corporation. There is existing road access and recorded ingress and egress across the MBS property from the entry to that site. Staff's Special Condition 1(d) states that no other road development is authorized by this CDP and that any future road development requires a permit.

SNG requests that Staff's Special Condition 1(d) be modified to state: "Existing road to adjacent parcel to remain." That eliminates the possibility of a future interpretation that the existing road is foreclosed and a "taking" of the parcel to the north.

D. There is No LUP Policy Regarding Ft. Ord Upcoast.

The Staff Report makes repeated reference to views of the Project from the Ft. Ord property immediately upcoast. (Pages 74, 81.) Of course the Project would be visible from the newly created trail on that property opened in 2013. (See the View Simulation on page 6 of SNG's Briefing Book.) The Project would be elevated, well landward of the MHTL, and set back against the restored dune landform.

But, there is no protected view in the LCP from Ft. Ord or the trail. The LCP speaks to views, as already discussed, from Highway One. By giving heightened importance to this view, the Staff Report creates a de facto LCP amendment in the context of a permit appeal, again contrary to the holding of SNG I. Why doesn't the LCP address Ft. Ord views? The reason is because when this LCP was certified and the applicable standard of review was thereby created, Ft. Ord was a military base. Today, Ft. Ord is a State Park and approximately a year ago a trail was created which originates at a parking lot a couple of miles to the North and ends at the MBS property. The findings could state that this Project will serve to greatly facilitate the use of this trail by providing a 46-space coastal access parking lot in close proximity and a vertical access trail, overlook, and lateral beach access that now can be used by the State Park trail users.

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II. Hazard Issues

Resort Foundation Condition Language – Modify Staff's Special Condition 1(s).

A fundamental issue for SNG is the need to ensure that the conditions addressing hazards enable this resort project to be buildable and financeable and that the foundation for the Project will maximize, not “minimize,” protection and safety of the public.

SNG has not proposed a revetment or seawall and SNG has agreed in Staff's Special Conditions 9(b) and (c) that it will not utilize a revetment or seawall in the future, and further that if resort structure is damaged by wave action, that portion of the resort will be relocated or removed. Staff's condition language, however, does not permit this Project to be built, includes an unprecedented and unacceptable 50 foot removal setback requirement, as well as an unacceptable foundation requirement, and therefore remains an impediment to settlement. SNG has proposed different language below and in the redline.

The LUP contains several hazard policies. LUP Policy 4.3.4 states: Developments must be sited and designed to minimize risk from geologic and flood hazards. Policy 4.3.5/IP 2.2 provides: Setbacks must be based on at least a 50-year economic life for the project. Policy 4.3.8 further states: Deny development if hazards cannot be mitigated, and approve only if project density reflects degree of on-site hazard. Policy 6.4.1 similarly provides: LCP development densities are maximums, and shall be limited to adequately address natural hazards.

75 Year /2.6 Feet per Year Erosion Setback Line – Substitute Staff's Exhibit 20b to the 2009 Staff Report for Exhibit 9 to the Current Staff Report

The LUP requires an erosion setback based on at least a 50-year economic life for the project. SNG has agreed to the 75 year/2.6 feet per year erosion setback line (not the 50-year line) in Staff's Special Condition 1(k). SNG's engineer has plotted essentially the same line -- the 2088 Bluff Crest Recession Line at Elevation 32'. The problem is how Staff has drawn and characterized the line in the condition and Exhibit 9 to the Staff Report.

Special Condition 1(k) provides that with certain exceptions, all development "shall be located inland of the 75 year at 2.6 feet per year setback line as shown on Exhibit 9

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(using the inland edge of the line)." (Emphasis added.) Staff's Exhibit 9 is a crude line drawn with a broad felt pen that compromises the Project. (See attached Exhibit 3.) By contrast, in 2009, when the Commission considered the Project on remand following the Court of Appeal decision in SNG I, Staff produced an exhibit (Exh. 20b) with a professionally drawn erosion setback line which, for purposes of the resort structure, is nearly coincidental with SNG's line on the VTML. (See attached Exhibit 4.) Both exhibits are attached to show the difference.

SNG requests for Exhibit 9 to the Staff Report, that the 2009 exhibit be substituted for the hand-drawn line if SNG is to agree to the 75 year/2.6 feet per year line.

Additional 50' Removal Setback – Delete Staff's Special Condition 9(f) and (g) and Those Provisions in Condition 9 that Reference the Requirements of (f) and (g)

The Staff Report raises the question of whether the resort could at some point during its economic life be subject to hazards associated erosion, sea level rise, bluff retreat and tsunamis. The Staff Report generalizes and concludes, by speculation, that it will, and although SNG has now agreed to the 75 yr/2.6 ft per year line, that's not good enough. Staff's Special Condition 9 now recommends that there be, in addition, a 50' removal setback – an unprecedented requirement that has never been imposed on any other project on the Coast. So, the Staff Report now literally moves the line again – 75 yr/2.6 ft per year plus 50', eliminating 19 years (it is, in effect, a 56-yr line)! Thus, if and when the bluff erosion were to reach 50' from the resort structure, one additional foot closer would require removal of a portion of the structure to preserve a 50' setback.

SNG compromised and agreed to the 75 year/2.6 feet per year line. Piling it on to add yet a removal setback in addition is not only extreme but, as discussed below, unsupported and speculative. Further, it raises a very significant policy question for the Commission that is not appropriately aired in the context of SNG's 15-year appeal or based on the facts surrounding this specific property. Indeed, if a 50 foot removal setback were applied uniformly along the coast, countless numbers of residential and commercial developments that actually are proximate to the ocean (unlike this one, which is set back 360 feet from the Mean High Tide Line), either could not be built or would quickly face substantial removal of all or portions of their approved developments. Regarding the MBS site, there are two types of erosion at issue –

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long-term erosion and short-term episodic erosion. While there is no doubt that southern Monterey Bay has experienced both types of erosion, there is no evidence that either type of erosion has impacted the MBS site. This is ignored by the Staff Report.

As to long-term erosion, this site is uniquely located. In November 2008, the Association of Monterey Bay Area Governments (AMBAG) issued its “Coastal Regional Sediment Management Plan for Southern Monterey Bay” (“CRSMP” Report). The CRSMP Report explains that this site is located in what is referred to as “null zone” – *i.e.*, where the net alongshore transport from North Monterey Bay and South Monterey Bay converges. Consequently, the area offshore from the MBS site accumulates sand and, therefore, the property has not experienced erosion as has been the case with other portions of the Bay to the south or north. Indeed, this site has been consistently surveyed over an 18.6-year period. The results demonstrate that the Mean High Tide Line has moved significantly seaward by between approximately 24 and 80 feet and the site has not eroded but rather has accreted. Further, the project is located 360 feet inland of the mean high tide line and will be elevated at 32’ mean sea level. The Staff Report makes it appear that the resort structure is proximate to the beach at ground level and subject to extreme and potentially catastrophic recession. That simply is not the case.

As to episodic erosion, Commission staff geologist, Dr. Mark Johnsson, states in Exhibit 10 to the Staff Report: “It is well established that this site, like much of the Monterey Bay bluffed shoreline, experiences episodic bluff retreat in response to large storm events, particular those correlating with el Niño events. (Exhibit 10, p. 1; emphasis added.) While this may be established elsewhere along southern Monterey Bay, there is no evidence presented, cited or referenced which demonstrates a catastrophic (or episodic) erosion event adversely affecting this property. As the staff geologist explains: “There have been many anecdotal accounts of episodic erosion events, such as the 50 feet quoted in a report by Haro, Kasunich and Associates (2003), but documentation has been lacking. Where events are well documented, they have tended to be relatively far from the subject[] site.” (*Id.*; emphasis added.) That is not substantial evidence relating to this property. As to the lone example attributed to Haro, Kasunich and Associates, John Kasunich explains:

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“This type of recession could occur during a future El Niño type storm sequence similar to the 1983 storms. The 1983 El Niño type storm sequence took weeks to occur. A review of research by Quan (2013) indicates 44 feet of recession occurred during the 1997-1998 El Niño winter in a spot about one mile north of the proposed Resort. Yet, the MBS site only incurred an average of 7 feet of recession, as measured from the toe of the bluff, during the 18.75 year period between the 1995 and 2013 topographic surveys.” (HKA, Inc. to Dr. Ed Ghandour, April 1, 2014.)

In terms of actual erosion at the MBS site, HKA further notes that:

“researcher’s predictions were 600% to 1700% greater than actually occurred, during this time period at the MBS site. This site-specific data suggests that the concerns that episodic events of erosion that have the potential to cause 50 feet of bluff recession from coastal erosion at the are few and far between.” (Id.)

Thus, the 50 foot removal setback requirement has no foundation on this property. It is not supported by substantial evidence. Nor is the “Blufftop Edge Monitoring Plan” necessary. As HKA opined: “The Blufftop Edge Monitoring Plan as described is unwarranted.” (Id.) Nonetheless, SNG compromised and agreed to the 75 year/2.6 feet per year setback line at Elev 32’

In short, the 50 foot removal setback and blufftop edge monitoring requirement are not supported, not warranted, not necessary, and not the kind of requirement that SNG can accept or which would resolve this matter. Portions of Staff Special Condition 9, as reflected in the redline are acceptable to SNG, but SNG requests that Special Condition 9(f) and (g) be deleted, along with that portion of Staff’s Special Condition 9(a) which references subsection (g).²

² In the coastal context, and here, site-specific evidence controls generalized evidence. In Surfside Colony, Ltd. v. California Coastal Com. (1991) 226 Cal.App.3d 1260, the Commission imposed a lateral access condition on the approval of a revetment based on its general findings that revetments cause erosion which, in turn, affects the mean high tide line and public access. Site-specific evidence, however, demonstrated that the beach at issue was “unusual, if not unique” and that the revetment would have no impact there. The Court concluded that there was no substantial evidence to justify a “nexus” between the revetment and the public access

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Project Foundation -- Substitute SNG's Language for Staff's Special Condition 1(r)

Staff's Special Condition 1(r), regarding the Project foundation, yet goes one step further, and it is likewise unacceptable to SNG. SNG's project engineer, John Kasunich, explains that regardless of wave action, the foundation systems for the resort must include "structural slabs and piers or piles to penetrate shallow liquefiable sand layers and to reduce the effects of dynamic settlement of the dune sands during projected design seismic events." (HKA, Inc., "Geotechnical and Coastal Engineering Update", 10/23/13.) In a further memo, he adds: "Due to the young depositional characteristics of dune sands, it is likely that deep piers or piles will be needed to mitigate the static and dynamic settlement associated with seismic shaking and potential liquefaction. Deep piers or piles will need to penetrate loose dune sands to elevations below the potential liquefaction zone which is commonly encountered at sea level. Spacing and depth of foundation piles and piers will be determined based on structural loading of the building and the subsurface characteristics of soils encountered below various location of the structure. Neither revetments nor seawalls will be used as protective measures or to support the buildings." (HKA, Inc., Additional Responses letter to SNG, 1/16/14.) And, in an additional letter in response to the Staff Report, HKA explains as to Staff's suggestion of a "mat foundation or severable foundations that are limited in size, areal extent and depth": We do not find this foundation recommendation a suitable solution for the MBS Resort."

A further engineer, Magnusson Klemencic Associates (MKA), also evaluated the nature of the foundation required, and explains that, without considering wave action or other ocean-related site impacts from water: ". . . [G]iven the variability of the site founding layers across the site and the deflection sensitive nature of this project both for below grade, buried concrete structure water protection, and for brittle finishes of public and hotel room and resort spaces, a deep foundation solution that involves piles or caissons will be the most appropriate and safest foundation solution." (MKA, "Building Foundations" (3/25/14).

requirement, and the access requirement must be deemed a "taking" of the Colony's property. (*Id.* at 1269.) The 50 foot setback requirement here also would constitute a "taking."

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Staff's Special Condition 1(r), however, presumes instead a "mat foundation," but without any evidence. As the Staff Report states (at page 61): "Another potential option for the foundation design includes a shallow mat foundation, although without a more detailed analysis, it is unclear if such a foundation is feasible for the proposed development." This says, in effect, "We don't know, so we will just presume it." Presuming by Staff does not constitute substantial evidence. It is readily apparent that the additional 50' removal setback was drafted to negate the need to justify the mat requirement.

The experts, both HKA and MKA, explain that a foundation with a structural slab and piers and caissons is what is required for the resort structure to be safe. Both agree that a mat foundation is not appropriate and compromises the public safety and the project. SNG will not compromise safety by utilizing a mat foundation or the kind of Staff-suggested mat foundation which does not address the applicable hazards (seismic and liquefaction). The Staff Report asserts (at page 65), again without any evidence, that "[a] caisson system would be considered shoreline protection as soon as it is function in this way (e.g., when reached by shoreline erosion." This specious and directly contrary to this Commission's decisions which routinely now require foundations with caissons and piers to avoid the use of revetments and seawalls. First, SNG has agreed that it will not utilize a revetment or seawall. Second, the Commission (on Staff's recommendation) has consistently approved developments with caissons or piers in, for example, Malibu and elsewhere to avoid the need for a revetment or seawall. In this District alone, the Commission approved the Ocean View Plaza (3-08-013), a mixed use commercial-retail/residential project on Cannery Row in Monterey with caissons. This project, HKA notes, "will be impacted by the same sea-level rise effects as MBS. That proposed development has foundation piles proposed in the Surf zone." (HKA, April 1, 2014.) The Commission also approved the Beachwalk Resort (A-3-PSB-06-011), an ocean front hotel in Pismo Beach with caissons, as requested by Staff. As the Commission explained in the Beachwalk Resort approval: "Project modifications that replace the previously proposed seawall foundation with deep caissons reconcile inconsistencies with LCP policies that limit the construction of shoreline protective devices." The reason why caissons and piers are permitted is because they allow waves to run under the structure and break, which dissipates wave energy and avoids the potential for erosion otherwise caused by a revetment or seawall.

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Here, both the structure and geotechnical engineer agree. HKA states: “HKA agrees with MKA’s assessment and conclusion that deep foundations involving piles and caissons are required for the uneven structural loads and variable founding layers that exist across the MBS Resort site in order to address the various applicable hazards.” (HKA, April 1, 2014.)

Accordingly, SNG requests that the Commission substitute the following language for Condition 1(r):

“Foundations and retaining walls shall be sited and designed consistent with typical and normal engineering and construction practices and standards for such a project[complying with California Building Codes] as recommended by the project’s geotechnical, civil and structural engineers and shall incorporate caissons and piers or piles in order to minimize static and dynamic settlement of the dune sands during seismic, liquefaction, flooding tsunami or other such events or interactions of the same and maximize stability and ensure public safety over the life of the project. No shoreline revetment or seawall shall be permitted.

This condition language addresses both SNG’s concerns and the concerns that Staff has expressed, and is consistent with the factual evidence relating to the MBS site and the requirements of the LCP. SNG therefore requests the Commission to modify Staff’s Special Condition 1(r), as SNG has requested.

III. Dune Conservation

Dune Conservation Easement – Modify Staff’s Special Condition 4.

Staff’s Special Condition 4 describes the Dune Restoration Area in Special Condition 3 by an exhibit (Staff’s Exhibit 11a) which reflects the many changes to which SNG has disagreed. (See attached Exhibit 5.) Staff’s Exhibit, for example, reflects the deletion of the two secondary access roads upcoast of the main entry tunnel. The HPP includes a color exhibit that accurately and specifically reflects the location of the Dune Conservation Easement. This is Exhibit 21 to the Staff Report. (See attached Exhibit 6.) Both are attached so that they can be compared.

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SNG requests that Commission refer to the Dune Conservation Easement in Staff's Special Condition 4 as Exhibit 21 to the Staff Report.

IV. Interior Lighting and Windows

Restriction on “Interior” Unit Lighting – Modify Staff's Special Condition 1(m)

Staff's Special Condition 1(m) requires the siting and designing of exterior lighting in the Project to limit the amount of light and glare visible from public viewing areas. SNG agrees and has provided an Access, Signage and Lighting Plan (October 2013) to demonstrate compliance with that restriction. However, Staff has written the condition to extend to the “interior” lights within the units. SNG objects to that further restriction for four reasons.

First, there is no LUP policy which addresses or restricts a building's “interior” lighting. Second, LUP's view policies address view impacts only from Highway One; the interior units would not be seen from Highway One. Third, and importantly, view of “interior” lights from the MBS Project from the Monterey Marina (near Cannery Row across the Bay, a distance of 15,480') would not be perceptible. SNG has provided photographic evidence which demonstrates that. There is no contrary evidence. Finally, not only is the restriction factually unnecessary and beyond the requirements of the LCP, it simply would be next to impossible to police and enforce the use of “interior” lights within a unit.

Nonetheless, SNG has already agreed to use smart lighting systems and auto sensors in interior areas where glare may be visible from public viewing areas. Therefore, it requests that the Commission modify Staff's Special Condition 1(m) by striking the general references to interior lighting, but including the following

“Smart lighting systems with auto sensors shall be used in the interior in areas where glare may be visible from public viewing areas.”

Restriction on “Interior” Windows (Bird Strike) – Modify Staff's Special Condition 1(k)

Staff's Special Condition 1(k) includes a “bird strike” condition that is vague and unacceptable to SNG. This is a hotel with ocean views, and “frosted” or “partially frosted” glass do not make any sense and it is unclear what “visually permeable

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barriers that are designed to prevent bird strikes” means. SNG, though, is cognizant of the issue and is willing to address the through revised language as follows:

“All exterior windows shall be non-glare glass, and all other surfaces shall be similarly treated to avoid reflecting light. The windows shall have ultraviolet-light reflective coating or have pigmentations or tints specially designed to reduce bird-strikes by reducing reflectivity. Any coating or tinting used shall be installed to provide coverage consistent with manufacturer specifications.”

SNG therefore requests that the Commission revise Staff’s Special Condition 1(k) as set forth above.

V. Public Access Issues

Public Access Use Hours – Modify Staff’s Special Condition 5(f)

LUP Policy 2.3 requires that development of the MBS site provide a bicycle path as part of the regional bike path, lateral and vertical public access, a vista point, and parking for coastal access users. The Project is consistent with this Policy, providing for the first time on this property comprehensive public access and agreement to an access management plan.

There is no dispute that the newly provided public access is a key benefit of the Project. Historically, no legal access across the beach of the MBS site under a Mexican land Grant has been available to the public. There remain, however, two issues.

The first issue is public access use hours. Staff’s Special Condition 5(f) provides that the trail, vista point and the parking lot be available to the general public from 5 a.m. to midnight and that the beach be open 24 hours a day, despite the absence of parking (even Staff’s condition closes the parking lot at midnight, and there is no other parking), as noted in the Staff Report. The Project, however, is remote, the accessible areas in the dunes and on the beach after dark are not lighted by virtue of Staff’s lighting condition (Staff’s Special Condition 1(m)), and access needs to be effectively managed to balance both public accessibility and security for the resort facility that is responsible for providing and maintaining that access.

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The Staff Report acknowledges that the LCP does not specify required public use hours. It merely requires visitor facilities to meet a range of needs and to be open to the public, which this Project, as proposed, does. The Staff Report also states that the Coastal Act generally requires "maximum" access (Section 30210), which is true. However, that is not an absolute, nor have the Commission's decisions treated the Act in that manner, often agreeing to hours restrictions. Coastal Act section 30214 requires that the public access policies "be implemented in a manner that takes in to account the need to regulate the time, place, and manner of public access depending on the facts and circumstances in each case," and that includes the "[t]he need to provide for the management of access areas so as to protect the privacy of adjacent property owners. . . ." SNG's proposed use hours – already which were increased through discussions with Staff -- are reasonable, consistent with Section 30214, and balance access and security.

The second access issue remaining is the number of coastal access user spaces required. LUP Policy 2.3.10 requires the provision of public parking as part of developments at a rate of 10% above the project's total required parking. SNG proposes 46, free on-site public parking spaces. Staff's Special Condition 5(h), however, requires 35 more spaces or the payment of a substantial in-lieu fee. The Staff Report miscalculates the number of required public parking spaces. Parking is not calculated by dissecting the components of a hotel (*e.g.*, restaurant, spa, meeting space), which would yield, cumulatively, a higher number of parking spaces. It is based on the number of units. Sand City Zoning Code section 18.64.050 provides parking requirements applicable here as follows: "N. Hotels and motels, one space for each living or sleeping unit," and "G. Dwellings, multiple (apartments, condominiums, or other multiple family developments), one and one-half covered parking spaces per unit." Thus, the 46 spaces are derived as follows: Hotel (184 at 1 space/room, Hotel Condo (92 at 1.5/unit, although viewed as a hotel use, it would be 1/unit), and condominiums (92 at 1.5/unit), for a total of 460 required parking spaces, 10% of which is 46. This is in addition to the resort's underground parking, which includes 947 spaces.

SNG therefore requests that modification of the public access use hours in Staff's Staff's Special Condition 5(f) as SNG has proposed and deletion of the off-site parking requirement in Staff's Special Condition 5(h). As so modified, the Project is consistent with the public access and recreation policies of the Coastal Act and the certified LCP.

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V. Building Height – Revise the Findings

Staff's Special Condition 1(g) deals with building heights. LUP Policy 6.4.5 states: "Height limit of 36 feet as measured from existing grade with the following exceptions: . . . (b) hotel uses shall not exceed 45 feet." (Emphasis added.)

The residential use proposed does not exceed 36 feet above grade. The hotel uses (hotel and hotel condominiums) do not exceed 45 feet above existing grade. Thus, the Project is LCP compliant. Staff's Special Condition 1(g) correctly reflects this. Staff's Special Condition 12 likewise recognizes both types of hotel uses for purposes of imposing an in-lieu on both the hotel and hotel condo units for the loss of low-cost overnight accommodations. The findings, however, do not explain the Project's consistency with the 45 foot height limit, and they should be revised to do so.

Since 2006, the Commission has consistently approved hotel condominium projects subject to standard restrictions specifically to ensure that the units will function as a "hotel use" rather than as residences or vacation homes. For this project, the Commission's standard hotel condo restrictions are set forth in Staff's Special Condition 11, which limits owner occupancy at MBS to 84 days maximum/year and requires placement of the units when not occupied in the hotel rental pool. Simply put, the hotel condo units will function purely as a transient hotel use for 281 days, or a minimum of 77% of the year. In fact, each condominium hotel approval requires an "audit" which the Commission Staff maintains, and the audits demonstrate that these units are purchased for investment and income and that most owners do not use them for 84 days or perhaps at all, putting the realistic hotel use at well in excess of 77%.

Staff's Special Condition 12 would require an in-lieu fee for low-cost overnight accommodations in the amount of \$25,700 per unit. This figure is based on actual, recent hostel construction costs specific to this area. The per unit fee would apply to 25% of both hotel units (184) and hotel condo units (92), and thus a fee of \$1,773,300. While there is no LUP policy that addresses or authorizes an in-lieu fee (and the fee is questionable because since no low-cost overnight accommodations are affected or lost, there is no constitutional "nexus" to support it), SNG has agreed to the condition.

SNG therefore requests that the findings be revised to reflect this rationale for Staff's Special Condition 1(g).

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VII. Hotel/Hotel Condo Occupancy Issues

A. Hotel Summer/Annual Occupancy Limits – Modify Staff’s Special Conditions 10(a)

Staff’s Special Condition 10(a) limits hotel occupancy between Memorial Day and Labor Day to 14 days and to a stay of no more than 29 days annually, even in low season. This unusual restriction that has been applied basically just in the Commission’s Central District area, ostensibly to create more turnover. In other words, in this District, you can vacation in a new hotel for two weeks only. If you want to stay longer, you have to go elsewhere. If you like the resort and want to come back a couple times during the year, even in low season, you get a total of 29 days, but not more.

There is no reason for imposing such a cramped limitation on this Project or to single out this area of the coastal zone as somehow different from the rest of the California coast where there is no such restriction. We note that as to one project, the Beachwalk Hotel (A-3-PSB-06-001) in Pismo Beach, in response to the applicant’s concern that the 14-day limitation might “unnecessarily restrict public use of the hotel,” Staff struck the 14-day requirement.

For SNG, this extreme restriction would affect its financing and place it at a competitive disadvantage because established hotels in the coastal zone in the Central District area (e.g., Monterey, Santa Cruz, Pismo Beach), do not have a 14-day limitation or a 29-day annual limitation, and hotels, established or otherwise, in coastal jurisdictions outside of this area also are not burdened by such a restriction.

The time limitations in Staff’s Special Condition 10(a) are uneven and unfair, and therefore should not be imposed on this applicant. They should be deleted.

B. Condo Hotel Summer/Annual Occupancy Limits – Revise the Findings

The LUP (LCPA 2-97) provides that all units in the visitor-serving residential (hotel condo) designation must be available to the general public through a rental pool program. All owners and renters of visitor-serving residential units shall be limited to a maximum stay of 29 consecutive days and 90 days in a year.

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The Project complies with this LUP policy. SNG has agreed to conditions which limit the maximum stay to 29 consecutive days and 84 days (not 90 as the LUP provides) in a year.

Staff's Special Conditions 11(c) and 11(g).2 repeat the 29-day consecutive, 84-day annual occupancy limits. The findings, however, do not. They state, contrary to the LUP, that the conditions prohibit condo hotel stays of more than 14 days and stays that exceed 29 consecutive days of use during a 60-day period. This is a "remnant" of past discussions with Staff which, we appreciate, were modified in the conditions themselves. As written, however, the text portion would essentially amend the LUP, again in violation of SNG I, which states that the LUP cannot be amended in the context of a permit appeal. The text limitations would make the hotel condo component unfinanceable, and thus could not be accepted by SNG.

To eliminate any confusion, the findings must be revised to match the occupancy limits in Staff's Special Conditions 11(c) and 11(g)2.

VIII. Excess Sand

Disposal of Excess Sand – Modify Staff's Special Condition 1(u)

The LCP does not address the disposal of excess sand from the MBS site. Staff's Special Condition 1(u) requires plans to clearly identify the manner in which excavated sand is disposed of. SNG has no objection to that, and has already done so. Sheet TM-1 of the Vesting Tentative Map (10/21/13, as amended 1/17/14), includes Item 16, which states that excavated sand will be disposed of, in order of preference, or in combination, by: (1) temporary stockpiling of sand (off-site outside the coastal zone, or a combination of stockpiling in and/or outside the coastal zone and in northeast corner of the site) for future beach nourishment project, consistent with the 2008 Coastal Regional Sediment Management Project (CRSMP) and/or Sand Compatibility and Opportunistic Use Program Plan (SCOUP); (2) sale for upland uses or to private contractors and aggregate companies; and (3) disposal at the Marina Landfill or other upland location. (See also HKA, "Excess Sand Disposition from the Monterey Bay Shores" (October 21, 2013). Disposal of excess sand under all three options will be accomplished outside the coastal zone.

Staff's Special Condition 1(u) would add a new requirement which departs from the standard condition that SNG and Staff discussed last October. Staff's condition

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would require yet another CDP or CDP amendment, or a determination that none is required, authorizing all aspects of such sand movement and disposal/reuse. Having spent 15 years running an administrative and litigation gauntlet, SNG cannot agree to obtaining another CDP or to a requirement that may further impede this project. It would, however, agree to the typical soil removal condition:

“Excess Sand. The Revised Plans shall clearly identify the manner in which excavated sand not necessary for the project (e.g., not necessary for dune extension, restoration, screening, etc.) is to be disposed of and/or beneficially reused. PRIOR TO COMMENCEMENT OF CONSTRUCTION, the Permittee shall provide evidence to the Executive Director of the location of the disposal site for all excess sand removed from the project site. If the disposal site(s) is located outside the Coastal Zone, no coastal development permit shall be required for the disposal site(s). If the disposal site(s) is located in the Coastal Zone, the disposal site(s) must have a valid coastal development permit for the disposal of material. If the disposal site(s) does not have a coastal permit, such permit will be required prior to the disposal of material.”

This substitute language is reasonable and consistent with other Commission decisions which have included conditions to address the removal of excavated soil or debris. Disposal here will be outside the coastal zone. No additional CDP is or should be required for that disposal.

As to excess sand, therefore, SNG would agree to the substitute language above for Staff’s Special Condition 1(u) and as reflected in the redline. There is no reason to delay or burden this Project further with yet another CDP or CDP amendment requirement.

IX. Other Agency Approval Issues

Other Agency Approvals After CCC Project Approval – Modify Staff’s Special Condition 14

Lastly, Staff recommends Special Condition 14, which would require SNG, *after* Commission approval of the Project, to yet provide evidence of approvals from other

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agencies prior to construction. As written, this condition is neither appropriate nor reasonable.

SNG previously provided evidence of the only approvals that are legally required or relevant to this Project under the LCP – Sand City’s project approval and the water distribution permit issued by the Monterey Peninsula Water Management District. If the Commission grants approval of the Project, the Commission will have already exercised its discretion in approving the revised Project. Staff’s Special Condition 14, however, unnecessarily puts an additional burden on SNG to go several other agencies – State Parks, State Lands, California Fish and Wildlife, Monterey Bay National Marine Sanctuary, and the U.S. Fish and Wildlife Service – when it is clear that those agencies do not have any jurisdiction with respect to the Project as it is proposed and conditioned, or do not otherwise have an applicable permitting requirement. Certainly if those agencies had requirements to satisfy, SNG would comply with them. However, indiscriminately listing agencies that do not have such requirements is confusing, misleading, and at this point simply inappropriate.

That said, SNG would agree to modified language as to California Fish and Wildlife and the U.S. Fish and Wildlife Service language that clarifies their respective areas of jurisdiction as follows:

“Confirmation of Other Agency Approval. PRIOR TO CONSTRUCTION, the Permittee shall submit to the Executive Director written evidence that all necessary permits, approvals, and/or authorizations for the approved project have been granted, if legally required, by the City of Sand City and the Monterey Peninsula Water Management District. Permittee also shall submit written evidence, if legally required, that all permits and/or authorizations for the approved project have been granted by the California Department of Fish and Wildlife (if required by the California Endangered Species Act), and the U.S. Fish and Wildlife Service (if required by the federal Endangered Species Act). If no permit, approval or authorization is required from a given agency, then Permittee shall have no obligation to submit any documentation to the Commission from that agency. Any mandatory changes to the approved project required by an agency listed in this condition shall be reported to the Executive Director. No changes to the approved project shall occur without a Commission amendment to this CDP unless the Executive Director determines that no amendment is legally necessary.”

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Staff's Special Condition 14 is not necessary to ensure that the revised Project, as proposed and conditioned, is consistent with the certified LCP or the access and recreation policies of the Coastal Act (Pub. Res. Code, § 30607). But, it is willing to accept the condition as modified above.

Conclusion

For all these reasons, SNG respectfully requests that the Commission approve the revised Monterey Bay Shores Ecoresort Project, with revisions to the conditions recommended by Staff, as reflected in the attached redline. That is what will bring this 15-year permit appeal to closure.

We look forward to discussing the Project further with you at the April 9, 2014 hearing.

Very truly yours,



Steven H. Kaufmann

Attachment(s)

Ccs: Dr. Charles Lester, Executive Director, CCC
Hope Schmeltzer, Chief Counsel, CCC
Dan Carl, Deputy Director, CCC
Madeline Cavaliere, District Manager
Mike Watson, Staff Analyst
Jamee Jordan Patterson, Esq., SDAG
Joel Jacobs, Esq., DAG
Dr. Edmond Ghandour, SNG
Thomas Roth, SNG legal Counsel
David K. Pendergrass, Mayor, Sand City
City Councilmembers, Sand City
Jim Heisinger, Sand City, City Attorney
Kelly Morgan, Interim City Administrator, Sand City
Susan McCabe, McCabe and Associates
Anne Blemker, McCabe and Associates

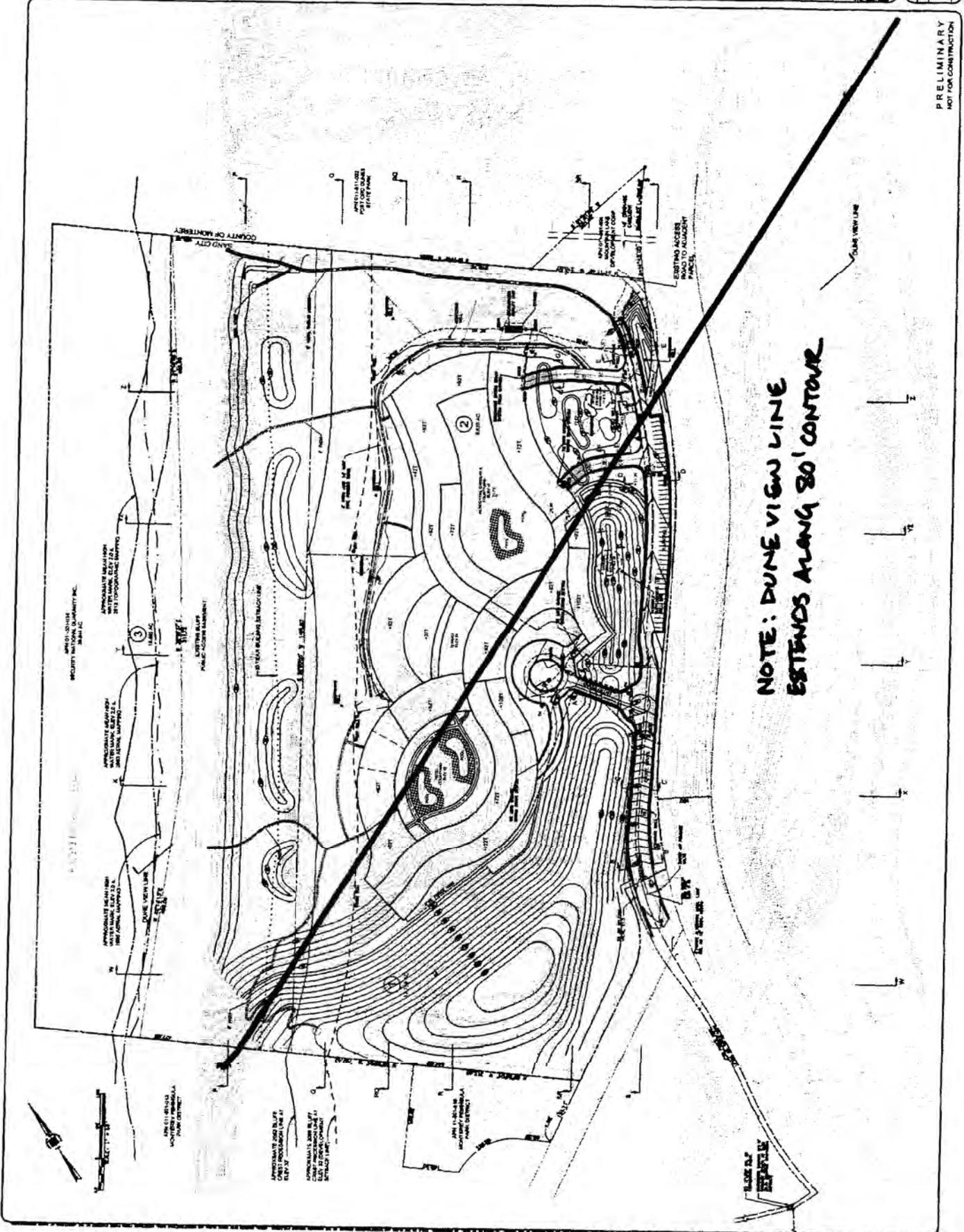
PRELIMINARY
NOT FOR CONSTRUCTION

VESTING TENTATIVE MAP
MONTREY BAY SHORES
APR 01-01-01

SECTOR ENGINEERS, INC.
ONE, CANTONMENT - SAN FRANCISCO, CALIFORNIA 94104
7701 BAY LAMBERTS LANE, MONTREY, CALIFORNIA 94038

Shawmut Group, Inc.
1000 Market Street, Suite 1000
San Francisco, CA 94102

DATE	DESCRIPTION
APR 01-01-01	ISSUED FOR PUBLIC COMMENT
APR 01-01-01	ISSUED FOR PUBLIC COMMENT
APR 01-01-01	ISSUED FOR PUBLIC COMMENT
APR 01-01-01	ISSUED FOR PUBLIC COMMENT



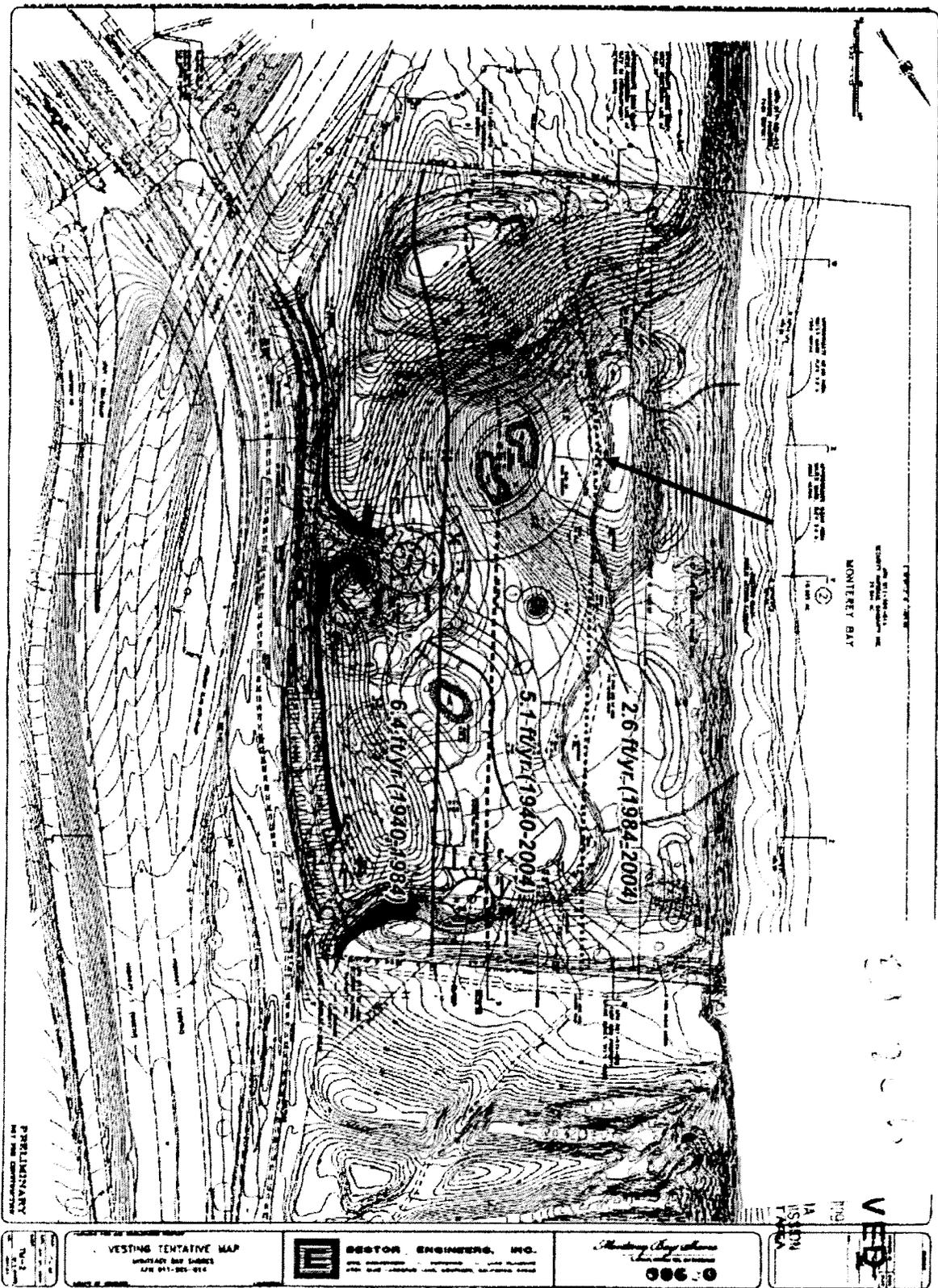
NOTE: DUNE VIEW LINE
EXTENDS ALONG 80' CONTOUR

EXHIBIT

2

Exhibit 6 Dune View Line
A-3-SNC-98-114 Settlement Agreement
1 of 1

Staff Recommendation for Total Setback (75 year economic life)
 under various assumed future bluff retreat rates (based on historic interval in parentheses)



CCC Exhibit 266
 (page 1 of 1 pages)

H-3 520-18-114

DATE	1/27/98
BY	TRJ
CHECKED	TRJ
SCALE	AS SHOWN

VESTING TENTATIVE MAP

MONTEREY BAY DISTRICT

APR 01 1998

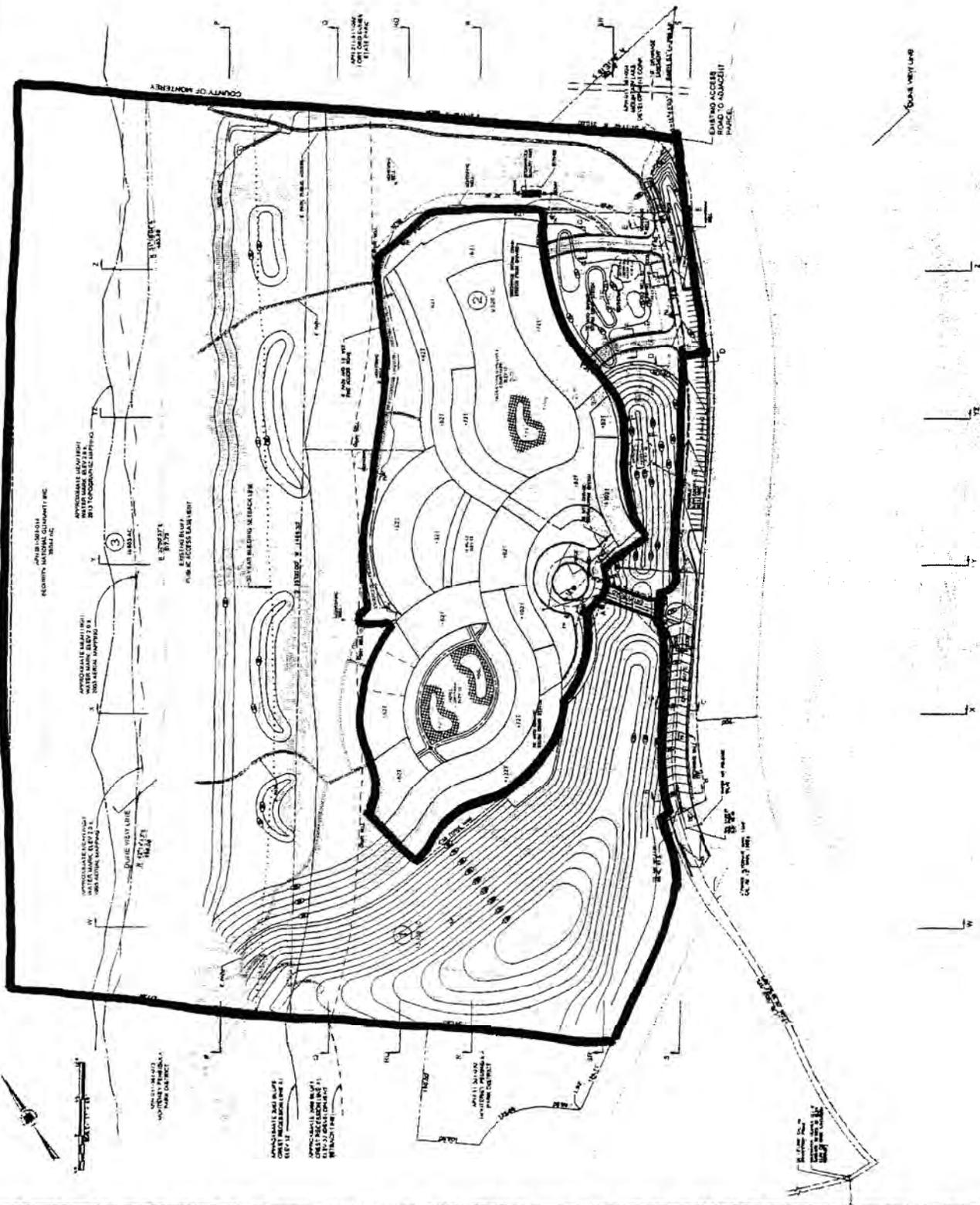
REVISIONS AND NOTES

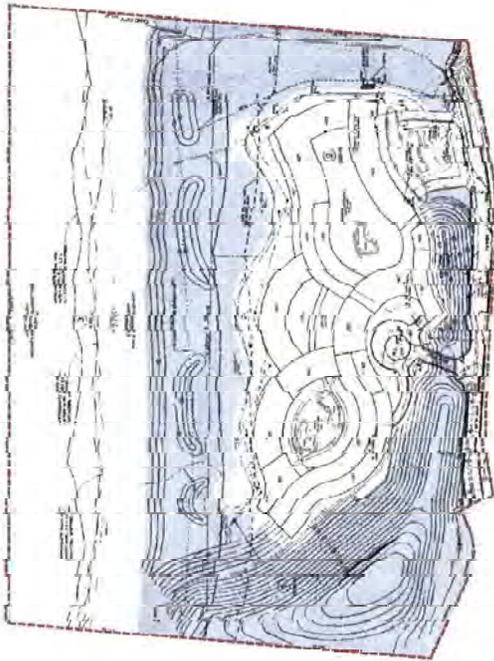
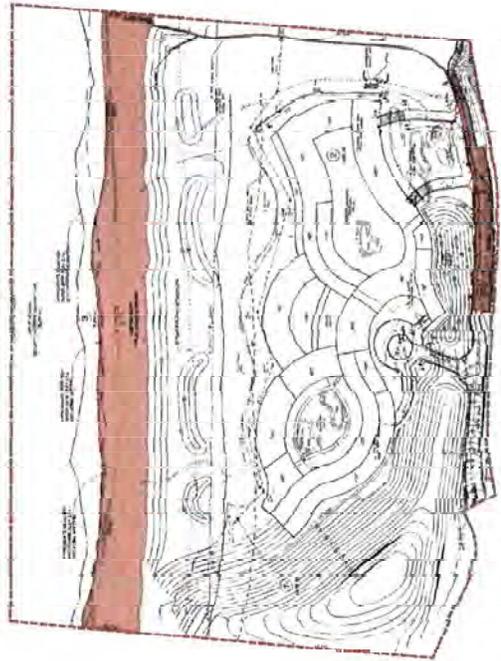


RESTON ENGINEERS, INC.

Reston Engineers, Inc.

DATE	1/27/98
BY	TRJ
CHECKED	TRJ
SCALE	AS SHOWN





Public Access Easement (4.67 acres)

Conservation Easement (15.65 acres)

Habitat Restoration (20.56 acres)

Botanic Garden (0.93 acres)



North Arrow



Source: Bestor Engineers 2013

Figure 7

Land Use Easements and Open Space

Monterey Bay Shores Habitat Protection Plan